

## LEASE/LEASE-BACK AGREEMENT

Portions of 895 Clark Street and 900 Clark Street, Riverside

(Northside Solar Farm, LLC)

This Lease/Lease-Back Agreement ("Agreement" or "Lease"), dated \_\_\_\_\_, 2023 ("Effective Date") for reference purposes only, is made by and between the CITY OF RIVERSIDE, a California charter city and municipal corporation, as lessor (hereafter referred to as "Lessor"), and NORTHSIDE SOLAR FARM, LLC, a California limited liability company, having offices at 12435 Pascal Avenue, Grand Terrace, CA 92313, as lessee (hereafter referred to as "Lessee"). Lessor and Lessee are sometimes referred to in this Agreement individually as a "Party" and collectively as "Parties."

### ARTICLE I

#### PREMISES; EFFECTIVE DATE; TERM; RENT; DEPOSIT; USE; EXTENSIONS

1.1 **Premises.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, in accordance with the terms and conditions of this Agreement, certain portions of vacant property located at 895 Clark Street and 900 Clark Street, Riverside, California, Riverside County Assessor Parcel Numbers 246-230-020 and 246-242-011, as described in the legal description attached hereto as Exhibit "A" and as depicted on Exhibit "B," both of which are attached hereto and incorporated herein by reference ("Premises" or "Leased Premises"). For purposes of this Lease, 895 Clark Street and 900 Clark Street, Riverside, California, shall be known as the "Property".

1.2 **Effective Date.** This Agreement shall be effective as of the date first written above.

1.3 **Initial Term.** Though this Agreement is effective as of the Effective Date, the term of the Agreement and Lessee's right to occupy and use the Premises (the "Initial Term") shall commence on the Commencement Date and shall expire Twenty-One Years following the Commencement Date (the "Expiration Date"). The period from the Commencement Date through the Expiration Date prior to any extension may be referred to herein as the "Initial Term" of the Agreement. The Commencement Date and Expiration Date shall be stated in the Acceptance Memorandum attached hereto as Exhibit "D" (the "Acceptance Memorandum") and, when signed by the parties, the Acceptance Memorandum shall be attached to and incorporated in this Agreement.

This Lease shall be subject to Lessee's review and approval, in Lessee's sole discretion, of the Premises and such other matters as may be relevant to Lessee in Lessee's sole discretion (the "Inspection"). Lessor shall deliver or make available to Lessee all information regarding the Premises in Lessor's possession reasonably requested by Lessee and Lessor shall cooperate with Lessee's Inspection. Lessee may perform a Phase I environmental assessment of the Premises, a physical condition assessment of the Premises and other assessments and investigations of the condition of the Premises. Lessee shall have the right during the Initial Term and any extension to survey, soil test, and make any other investigations necessary to determine if the surface of the Leased Premises is suitable for construction of the Solar Project, subject to Lessee executing a

Right of Entry Agreement from the City in substantially the same form as attached hereto as Exhibit "G." If Lessee in its sole discretion, within the above-stated time, determines that for any reason the Leased Premises is not suitable, this Agreement, upon written notice given by Lessee to Lessor, shall become null and void; provided that at Lessee's sole expense any damage to the Leased Premises caused by such testing and investigations of Lessee shall be promptly repaired

This Agreement shall also be subject to Lessee obtaining any zoning changes or variances, use permits, sign permits, development permits, construction permits, licenses and other governmental approvals that may be required for Lessee's development and use of the Premises (collectively, the "Governmental Approvals"), all under terms acceptable to Lessee in Lessee's sole discretion. Lessor shall cooperate with Lessee's applications for Governmental Approvals, and Lessor shall also review and approve Lessee's plans for alterations and improvements to the Premises (the "Lessor Plan Approval"), which approval shall not be unreasonably withheld, conditioned or delayed.

From the Effective Date until 11:59 p.m. California time on the date that is two years after the Effective Date (the "Approval Period"), Lessee shall use reasonable efforts to perform its Inspection, obtain the Governmental Approvals and Lessor Plan Approval. Notwithstanding anything to the contrary, until the expiration of the Approval Period, Lessee shall have the absolute right to terminate this Agreement due to the results of its Inspection, its inability to obtain Governmental Approvals and/or the Lessor Plan Approval, or for any other reason whatsoever in Lessee's sole and absolute discretion.

Lessee may request one extension to the Approval Period, not to exceed two years ("Approval Period Extension"). Lessor has the sole discretion to approve such request, and such approval shall not be unreasonably withheld, and shall be contingent upon Lessee meeting the milestones set forth in the Project Schedule, attached hereto as Exhibit "F" and incorporated herein by this reference.

If Lessee elects to proceed with this Agreement, Lessee shall deliver written notice thereof to Lessor ("Continuation Notice"). If Lessee elects to terminate this Agreement, Lessee shall deliver written notice of such election to Lessor ("Rejection Notice"). If Lessee either provides the Rejection Notice or fails to provide the Continuation Notice prior to the expiration of the term of the Approval Period or the Approval Period Extension (all of which such occurrences shall be deemed Lessee's election to cancel this Agreement), then the Agreement shall terminate and the parties shall have no further obligations. If Lessee sends a Continuation Notice to Lessor on or before the expiration of the Approval Period, then the Lease shall continue in accordance with its terms.

Lessee's acceptance of the Lease is not a waiver of Lessor's obligations regarding the Premises to the extent and as provided for in this Agreement. Within ten (10) days after Lessor's receipt of Lessee's Continuation Notice, Lessor shall surrender the Premises to Lessee in the condition required by this Lease. The date after Lessee's acceptance of this Lease on which Lessor surrenders possession of the Premises to Lessee in the condition required by this Lease shall be the "Commencement Date" of this Lease. On the Commencement Date, Lessor and Lessee shall

sign the Acceptance Memorandum and sign and record a Memorandum of Lease in the form of Exhibit "E" attached hereto.

### 1.3.1 **Extension to Initial Term.**

Lessee shall have the option and right to elect to extend this Lease contingent upon the occurrence of two (2) events. The option for the first extension for five (5) years may be exercised by Lessee upon Lessee obtaining, during the Option Period, a Power Purchase Agreement (PPA) award Feed In Tariff agreement for a twenty (20) year term prior to the first revenue period. The first revenue period consists of the first twenty-year term which begins ninety (90) days following the commercial operation of the solar facilities. The option for the second extension for up to twenty (20) year term may be exercised by Lessee upon Lessee obtaining a secondary Power Purchase Agreement (PPA) award Feed in Tariff agreement during the operational or first six (6) months of the decommissioning periods where the term of the extension will be set to the term of the awarded Power Purchase Agreement (PPA) Feed in Tariff agreement, with the total length of the Term, including all extensions, not to exceed 25 years in each term or 45 years in aggregate. Each such extension referred to as a "Renewal Term", or collectively as the "Renewal Terms". Lessee shall give Lessor written notice of its election to extend the Lease on or before the commencement of the Initial Term, no earlier than two hundred seventy (270) days or no later than one hundred and eighty days (180) days prior to the end of the then-current Term, as appropriate.

The final term commencing upon expiration of the Initial Term, or expiration of the last Renewal Term, as appropriate, to allow for Lessee's decommissioning and removal of the Solar Project (as defined below) (the "Final Term"). The Final Term shall last no longer than twelve (12) months, unless extended per mutual written agreement of Lessee and Lessor.

Lessee and Lessor may elect to maintain solar facilities upon expiration of the last Renewal Term. In such case, Lessee may elect to abandon in place the solar greenhouses, agrivoltaic solar facilities, and roof top solar facilities to the City, as further described in Exhibit "C," attached hereto and incorporated herein by this reference.

1.4 **Interim Rent.** Commencing on the Effective Date and continuing during the Approval Period until Lessee either (a) provides a Continuation Notice, in which case no additional Interim Rent (as defined below) shall be due or owing, and Base Rent shall be paid as set forth below; (b) provides a Rejection Notice, in which case no additional Interim Rent shall be due or owing; or (c) the expiration of the Approval Period, if Lessee fails to provide a Rejection Notice or Continuation Notice, in which case no additional Interim Rent shall be due or owing, Lessee shall pay to Lessor a one-time rent fee of Five Hundred and no//00 Dollars (\$500.00) ("Interim Rent"). Interim Rent shall be paid upon the Effective Date of the Lease. If Lessee requests and Lessor approves the Approval Period extension, Interim Rent in the amount of Five Hundred and no//00 Dollars (\$500.00) shall be paid in the same manner. Base Rent shall commence as set forth in Section 1.5 below titled, "Base Rent".

1.5 **Base Rent.** Lessee shall pay to Lessor the sum of One Hundred and no/100 Dollars (\$100.00) per year ("Base Rent"), beginning on the Commencement Date (the "Base Rent Start Date"), as Base Rent for the Premises. Said rental amount shall be due to Lessor on or before the

first day of each successive year during the Term. If the term of this Lease commences on a day other than the first day of a calendar month or ends on a day other than the last day of a calendar month, the Base Rent for the first and last fractional months of the Term of this Lease shall be appropriately pro-rated.

**1.5.1 Base Rent for Any Renewal Term.** Lessee shall pay to Lessor the sum of One Hundred and no/100 dollars (\$100.00) per year at the time of the renewal, plus an increase based upon any increase in the Consumer Price Index. Said rental amount shall be due to Lessor on or before the first day of each successive year during the Term. If the term of this Lease commences on a day other than the first day of a calendar month or ends on a day other than the last day of a calendar month, the Base Rent for the first and last fractional months of the Term of this Lease shall be appropriately pro-rated.

**1.6 Permitted Use.** Lessee agrees to use the Premises for the construction of at least 45,000 square feet of solar greenhouses, at least 12,000 square feet of agrivoltaics solar facilities, and at least 12,000 square feet of rooftop solar, as further described in Exhibit "C," attached hereto and incorporated herein by this reference, and for no other purpose (the "Solar Project"). Lessee's use of the Premises and the exercise of any rights granted herein shall not harm, injure, impede, alter, destroy, damage or threaten any of Lessor's water rights associated with the Premises, any existing or future wells or appurtenances over, under or on the Premises, the quality or quantity of the water associated with the Lessor's water rights, or interfere in any other way with the Lessor's water rights over, under or on the Premises. Should Lessor determine, in its reasonable discretion that Lessee's use of the property so violates the terms of this Lease, Lessee, upon written notice from Lessor of such violation, shall immediately cease and desist such use.

**1.7 Lease Back to Lessor.** Lessor shall retain all rights to access and manage the ground space within the interior of the solar greenhouses and the fields underneath agrivoltaic solar facilities installations. Revenues generated as a result of activities that take place within the solar greenhouses and underneath agrivoltaic panels will be managed and collected by Lessor. Upon the issuance of a certificate of occupancy for the Solar Project, Lessor and Lessee shall enter into a mutually approved and commercially reasonable lease ("Lease Back"), pursuant to which Lessee will lease back the Solar Project, except for the photovoltaic array, of the Solar Project to Lessor. The Lease shall include the following terms and conditions: (i) rent shall be One Dollar (\$1.00) per year, (ii) Lessee shall maintain the Leased Premises in good condition and repair during the term of the Lease, and (iii) the Lease may only be terminated by either party to the Lease for cause with at least one hundred and eighty (180) days' prior written notice by the non-defaulting party.

## **ARTICLE II**

### **CONDITION OF PREMISES; DELIVERY OF PREMISES; COMMON FACILITIES**

**2.1 Condition of Premises.** Lessee has examined the Premises and agrees to take possession of the Premises in an "as is" condition. Lessee acknowledges and agrees that, except for the express representations set forth in this Agreement, Lessor, including its authorized agents, representatives and employees, has not made any representations, guarantees or warranties regarding the Premises, nor has Lessor, its agents, representatives, or employees made any representations, guarantees or warranties regarding whether the Premises and improvements thereon comply with applicable

covenants and restrictions of record, building codes, ordinances or statutes in effect at the Commencement Date.

**2.2 Delivery of Premises.** Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date of this Agreement, as specified in Section 1.3. If, despite said efforts, Lessor is unable to deliver possession as agreed, Lessee shall not be subject to any liability therefore, nor shall such failure affect the validity of this Agreement. Lessee shall not, however, be obligated to pay rent or perform its other obligations until it receives possession of the Premises. If possession is not delivered within thirty (30) calendar days after the Commencement Date, Lessee may, by notice in writing after the end of such thirty (30) calendar day period, cancel this Agreement and the Parties shall be discharged from all obligations hereunder.

**2.3 Lessor Access.** Lessor, and its authorized agents, representatives, and employees, may immediately enter the Premises at any time in case of emergency (which means an imminent threat to life or material property damage), and otherwise with forty-eight (48) hours' prior notice to Lessee to: (i) inspect the Premises; (ii) exhibit the Premises to prospective purchasers, lenders, insurer, prospective sublessees or lessees; (iii) determine whether Lessee is complying with all its obligations hereunder; provided, however, that Lessor shall only exhibit the Premises to prospective lessees during the last three (3) months of the then-current Term.

There shall be no abatement of any Base Rent by reason of Lessor's entry of the Premises pursuant to this Section 2.3 and Lessee hereby waives any claim for damages, including but not limited to interference with business, lost profits, and any other incidental or consequential damages of any sort whatsoever, for any injury or inconvenience to or interference with Lessee's business, any loss of occupancy or quiet enjoyment of the Premises or any other loss occasioned by such entry. Lessor shall at all times have and retain a key with which to unlock all of the doors in, or about the Premises (excluding Lessee's vaults, safes and similar areas designated in writing by Lessee in advance); and Lessor shall have the right to use any and all means which Lessor may deem reasonably proper to open said doors in an emergency in order to obtain entry to the Premises, and any entry to the Premises obtained by Lessor by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into or detainer of the Premises or an eviction, actual or constructive, of Lessee from the Premises, or any portion thereof. No provision of this Agreement shall be construed as obligating Lessor to perform any repairs, alterations or improvements except as otherwise expressly agreed to be performed by Lessor in this Agreement.

### **ARTICLE III PAYMENT OF BASE RENT; LATE CHARGES**

**3.1 Payment of Rent.** Base Rent shall be paid in advance on or before the first calendar day of the initial month during the Term. If the Base Rent Start Date falls on a calendar day other than that first calendar day of the month or the Term ends on a calendar day other than that last calendar day of a calendar month, then Base Rent will be appropriately prorated by Lessor based on the actual number of calendar days in such month. Base Rent shall be paid to Lessor without written

notice or demand, and without offset, in lawful money of the United States of America at Lessor's address, or to such other address as Lessor may from time to time designate in writing.

**3.2 Late Charges.** Lessee hereby acknowledges that late payment by Lessee of the Base Rent, additional rent, or any other sums due under this Agreement will cause Lessor to incur costs not contemplated by this Agreement. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by the terms of any mortgage or trust deed covering the Premises.

Accordingly, if any installment of Base Rent, additional rent, or any other sums due from Lessee under this Agreement, shall not be paid by Lessee and received by Lessor on the day it becomes due hereunder, Lessor shall provide written notice to Lessee alerting Lessee to the same (provided that Lessor shall only be required to provide one such notice each calendar year, after which point a late charge shall automatically accrue on the tenth day of the month), and if Lessee fails to remit the same within ten (10) days after its receipt of such notice, Lessee shall thereupon pay to Lessor a late charge equal to two percent (2%) of the overdue amount. Lessor and Lessee agree that this late charge represents a reasonable sum considering all of the circumstances existing on the date of this Agreement, including the relationship of the sum to the loss to Lessor that could be reasonably anticipated by such nonpayment by Lessee and the anticipation that proof of actual damages sustained by Lessor would be costly or inconvenient to determine. Lessor and Lessee agree that such late charge shall in no event constitute a waiver of Lessee's default with respect to such overdue amount, nor prevent Lessor from exercising any of the other rights and remedies available to Lessor at law, in equity, or under this Agreement. Lessor, at its option, may deem any such overdue amounts and/or late charges so unpaid to be additional rent, nonpayment of which shall, in addition to any other rights and remedies available to Lessor, give rise to those rights and remedies of Lessor set forth in Section 12.2 of this Agreement.

**ARTICLE IV  
USE; COMPLIANCE WITH LAWS; NON-DISCRIMINATION; LESSOR  
REPRESENTATIONS**

**4.1 Use.** The Premises shall be used only for the purposes set forth in Section 1.6 and this Section 4, and purposes incidental to that use. Lessee shall use the Premises in a careful, safe and proper manner. Lessee shall not use or permit the Premises to be used or occupied for any purpose or in any manner prohibited by any applicable law, ordinance order, rule, regulation or other governmental requirement. Lessee shall not commit waste or suffer or permit waste to be committed in, on or about the Premises. Lessee shall conduct its business and control its employees, agents and invitees in such a manner so as not to create a nuisance or a risk of fire or other hazard, or that would violate, suspend, void or increase the rate of fire or liability or any other insurance of any kind at any time carried by Lessor upon the Premises.

**4.2 Improvements of Leased Premises.**

a. Components. Lessee shall construct an approximately one (1) megawatt AC Solar Project (the "Solar Project") at its sole expense, as further described and depicted in Exhibit "C". The Solar Project shall consist of roads, culverts, laydown yards, environmental improvements, a raised structure for racking, racking, foundations, wiring, cabling, SCADA, communication

systems, inverters, batteries and transformers; necessary electrical interconnections and all improvements and connections required to transfer and deliver generation offsite, including three (3) phase extensions and power box(es); a 500 to 1,500 square-foot structure to house electrical and maintenance equipment (“PV Box”); security fencing and gating, with cameras, enclosing the Leased Premises; safety signage and solar photo voltaic (“PV”) panels (collectively the “Site Improvements and Infrastructure”). Lessor has no obligation to make improvements on the Leased Premises or Lessor Property to accommodate the Solar Project.

b. Preliminary Site Plan, Construction Plans. For any new construction on the Leased Premises, such construction shall be designed and built to the minimum standards for city, county, state and federal codes and requirements in effect and applicable to the installation at the time of construction, including without limitation, the applicable building and fire codes.

c. Signage. Lessee shall have the right to place one or more signs regarding the installation for advertisement, commercial, or operational value provided that, prior to putting up any such signage, Lessee has obtained all required sign permits and pre-approval of signage location from the local governing authority.

d. Fencing. Lessee shall retain the right to maintain fencing and security around the Solar Project for the duration of the Lease and any extensions thereto. Fencing will need to be reviewed and approved by City of Riverside Planning Division.

#### **4.3 Ingress, Egress, Utility and Solar Easements.**

Lessor agrees to execute any mutually agreeable easement agreement(s) required by Lessor for interconnection in the form required by Lessor to its electric utility system for the duration of the Lease, subject to the Riverside Public Utilities Rules and Rates, as amended from time to time. Upon plan approvals from City departments, the required easements include, without limitation, the following easements and related rights:

a. the exclusive right to erect, construct, reconstruct, replace, relocate, remove, operate, maintain and use the following from time to time, on, under, over and across the Property, in connection with Solar Project:

(i) a line of utility poles, with such wires and cables as from time to time are suspended therefrom, and/or underground wires and cables, for the transmission of electrical energy and/or for communication purposes, and all necessary and proper foundations, footings, crossarms and other appliances and fixtures for use in connection with said utility poles, wires and cables (collectively “Transmission Facilities”);

(ii) facilities consisting of one or more substations for electrical collection, change in voltage, interconnect to transmission line or lines, meter electricity, and related safety and monitoring equipment, together with the right to perform all other ancillary activities normally associated with such a facility as may be necessary or appropriate to service Solar Project, regardless where located (collectively “Interconnection Facilities”, which collectively with the



Transmission Facilities and improvements installed in connection with the Solar Project, collectively constitute the “Solar Improvements”); and

(iii) with all necessary easements as described in b through i below therefor;

b. An easement and right over and across the Lessor’s Property for any audio, visual, view, light, shadow, noise, vibration, electromagnetic or other effect of any kind or nature whatsoever resulting, directly or indirectly, from the Solar Project, including but not limited to rights to cast shadows and reflect glare onto all of Lessor’s property including any adjoining property, from the Solar Project and/or any and all other related facilities, wherever located;

c. An exclusive easement and right to capture, use and convert sunlight and related solar resources on an unobstructed basis over and across the Lessor’s Property; any obstruction to the receipt of and access to sunlight throughout the entire area of the Leased Premises is prohibited;

d. An access easement over and across the Lessor’s Property for ingress and egress to the Leased Premises, to and from a public road, and a temporary construction easement over Lessor’s Property adjacent to the Leased Premises for construction and maintenance of the Solar Improvements.

e. An easement and right on the Lessor’s Property to prevent measurable diminishment in output due to obstruction of the sunlight across the Leased Premises including but not limited to an easement right to trim, cut down and remove all trees (whether natural or cultivated), rocks, brush, vegetation and fire and electrical hazards now or hereafter existing on the Lessor Property which might obstruct receipt of or access to sunlight throughout the Leased Premises or interfere with or endanger the Solar Project or Lessee’s operations, and dispose of such items in its sole discretion;

f. The right of subjacent and lateral support on the Property to whatever is necessary for the operation and maintenance of the Solar Project, including, without limitation, guy wires and supports; and

g. The right to undertake any such purposes or other activities, whether accomplished by Lessee or a third party authorized by Lessee, that Lessor and Lessee mutually agree are necessary, useful or appropriate to accomplish any of the purposes or uses set forth in this Agreement or that are compatible with such purposes or uses.

The easement rights granted by Lessor under this Agreement constitute Easements In Gross, personal to and for the benefit of Lessee, its successors and assigns, as owner of such easements, and the parties expressly agree that such easement rights shall be transferable in accordance with the assignment provisions of this Agreement. The parties expressly intend for all easement rights herein to be, and for this Agreement to create, Easements In Gross in Lessee, and neither such easements nor this Agreement shall be appurtenant to any other property or interest. Notwithstanding the foregoing, if the Lessor conveys the Lessor Property during the Term, Lessor agrees that any granting document, including the deed, shall include within the property description, the existence of the easements contained herein.



The term of the easements described in this Section 4.3 shall commence upon the Lease Commencement Date of this Lease and shall continue until the last to occur of:

- (i) expiration of the Term, or
- (ii) removal by Lessee of all of its property from the Leased Premises after expiration of the Term.

Additional details concerning the location and configuration of the easement shall be set forth in a recordable instrument, prepared by Lessor, and to be mutually agreed between Lessor and Lessee, which Lessor agrees to execute, and have notarized, within a reasonable amount of time of any Lessee's request therefor made from time to time. In addition, at Lessee's request and expense, the easements described in this Section 4.3 may be set forth in a separate standalone easement agreement, to be mutually agreed between Lessor and Lessee, which Lessor and Lessee agree to execute, and which Lessee shall have recorded as an encumbrance on the property of Lessor and binding upon all subsequent owners, successors, and assigns.

**4.4 Compliance with Laws.** Lessee shall comply with all applicable laws, ordinances, orders, rules, regulations and other governmental requirements relating to the use, condition or occupancy of the Premises. The judgment of any court of competent jurisdiction, or the admission of Lessee in a proceeding brought against it by any governmental entity, that Lessee has violated any such governmental requirement shall be conclusive as between the Lessor and the Lessee and shall constitute grounds for declaration of default, material breach, forfeiture, and termination of this Agreement by Lessor.

**4.5 Compliance with Environmental Laws.** Lessee and the Premises shall remain in compliance with all applicable laws, ordinances, orders, rules and regulations regulating, relating to, or imposing liability of standards of conduct concerning any Hazardous Materials, or pertaining to occupational health or industrial hygiene, occupational or environmental conditions on, under, or about the Premises, as now or may at any later time be in effect, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") [42 USC Section 9601 et seq.]; the Resource Conservation and Recovery Act of 1976 ("RCRA") [42 USC Section 6901 et seq.]; the Clean Water Act, also known as the Federal Water Pollution Control Act ("FWPCA") [33 USC Section 1251 et seq.]; the Toxic Substances Control Act ("TSCA") [15 USC Section 2601 et seq.]; the Hazardous Materials Transportation Act ("HMTA") [49 USC Section 1801 et seq.]; the Insecticide, Fungicide, Rodenticide Act [7 USC Section 6901 et seq.] the Clean Air Act [42 USC Section 7401 et seq.]; the Safe Drinking Water Act [42 USC Section 300f et seq.]; the Solid Waste Disposal Act [42 USC Section 6901 et seq.]; the Surface Mining Control and Reclamation Act [30 USC Section 101 et seq.] the Emergency Planning and Community Right to Know Act [42 USC Section 11001 et seq.]; the Occupational Safety and Health Act [29 USC Section 655 and 657]; the California Underground Storage of Hazardous Substances Act [H & S C Section 25288 et seq.]; the California Hazardous Substances Account Act [H & S C Section 25300 et seq.]; the California Safe Drinking Water and Toxic Enforcement Act [H & S C Section 24249.5 et seq.] the Porter-Cologne Water Quality Act [Water Code Section 13000 et seq.] together with any amendments of or regulations promulgated under the statutes cited above and any other federal, state or local law, ordinance, order, rule or regulation

now in effect or later enacted that pertains to occupational health or industrial hygiene, and only to the extent the occupational health or industrial hygiene laws, ordinances, or regulations relate to hazardous substances on, under or about the Premises, or the regulation or protection of the environment, including ambient air, soil, soil vapor, groundwater, surface water or land use ("Environmental Laws").

A. Lessee shall immediately notify Lessor in writing and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports or notices relating to the condition of the Premises or compliance with Environmental Laws. Lessee shall promptly cure and have dismissed with prejudice and of those actions and proceedings to the reasonable satisfaction of Lessor. Lessee shall keep the Premises free of any lien imposed pursuant to and Environmental Law.

B. For the purpose of Section 4.5, the term "Hazardous Materials" shall include, without limitation, substances defined as "hazardous substances," "hazardous materials," "toxic substances," "hazardous wastes," "extremely hazardous wastes," or "restricted hazardous wastes," or stated to be known to cause cancer or reproductive toxicity, under any Environmental Law. Lessee shall not permit to occur any release, generation, manufacture, storage, treatment, transportation or disposal of any Hazardous Materials on the Premises during the Term; provided, however, that "Hazardous Materials" shall not include materials commonly used in the ordinary operations of a retail automobile sales, storage, and repair operations, provided that (1) such materials are used and properly stored in the Premises in quantities ordinarily used and stored in comparable retail automobile sales, service, storage, and repair operations, and (2) such materials are used and properly stored in compliance with Environmental Laws. Lessee shall promptly notify Lessor in writing if Lessee has or acquires notice or knowledge that any Hazardous Materials have been or are threatened to be released, discharged, disposed of, transported, or stored on, in, under or from the Premises; and if any Hazardous Materials are found on the Premises, Lessee, at its sole cost and expense, shall immediately take such action as is necessary to detain the spread of and remove the Hazardous Material to the complete satisfaction of Lessor and the appropriate governmental authorities.

C. Lessor shall, at Lessor's sole cost and expense, have the right from time to time with the notice required in this Lease, to conduct environmental audits of the Premises, and Lessee shall reasonably cooperate (at no cost to Lessee) in the conduct of those audits; provided, however, that Lessor's entry and audits shall not unreasonably interfere with Lessee's occupation of the Premises.

D. If Lessee fails to comply with the forgoing covenants pertaining to Hazardous Materials, Lessor may cause the removal (or other cleanup acceptable to Lessor) of any Hazardous Materials from the Premises. The costs of Hazardous Materials removal and any other cleanup (including transportation and storage costs) will be additional rent under this Agreement, and those costs will become due and payable on demand by the Lessor. Lessee shall give Lessor, its agents and employees access to the Premises to remove or otherwise cleanup any Hazardous materials. Lessor, however, has no affirmative obligation to remove or otherwise cleanup any Hazardous Materials, and this Agreement shall not be construed as creating any such obligation.

E. Except to the extent caused by Lessor's gross negligence or willful or criminal misconduct, Lessee shall indemnify, defend (with counsel reasonably acceptable to Lessor and at Lessee's sole cost), and hold Lessor and Lessor's elected and appointed officials, officers, employees, agents, successors and assigns free and harmless from and against all losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements or expenses of any kind (including attorneys' and experts' fees and expenses and fees and expenses incurred in investigating, defending or prosecuting any litigation, claim or proceeding) that may at any time be imposed upon, incurred by, or asserted or awarded against Lessor in connection or arising out of: (i) any violation or claim of violation of any Environmental Law by Lessee; or (ii) the imposition of any lien for the recovery of costs for environmental cleanup or other response costs relating to the release or threatened release of Hazardous Materials on, in, under or affecting all or any portion of the Premises. Lessee's indemnification shall survive the expiration and termination of this Agreement.

4.6 **Non-Discrimination.** Lessee herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through it, and this Agreement is made and accepted upon and subject to the requirement that there shall be no discrimination against or segregation of any person or group of persons, on account of race, color, creed, religion, sex, genetic information, gender, gender identity, gender expression, marital status, age, national origin, or ancestry, in the leasing, use, occupancy, tenure, or enjoyment of the Premises, nor shall the Lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of Lessees, Lessees, Sub-Lessees, or vendees in the Premises herein leased.

4.7 **Lessor Representations and Warranties.** Lessor hereby represents, warrants, and covenants unto Lessee the following:

A. Lessor is solvent as of the date hereof and the person executing this Lease is fully authorized and empowered to execute this Lease and to bind Lessor thereby. This Lease, when executed and delivered, shall be valid and binding upon Lessor.

B. To the best of Lessor's actual knowledge, the execution and performance of this Lease will not result in any breach of, or constitute a default under any mortgage, deed of trust, lease, loan, security agreement, or any other instrument or document to which Lessor is a party, or its Premises secured.

C. To the best of Lessor's actual knowledge, Lessor, is the sole holder of fee title to the Premises and, to the best of Lessor's actual knowledge, the consent of no other person is required to grant an exclusive leasehold interest in the Premises to Lessee. Title to the Premises is free of all monetary encumbrances other than those of public record that include covenants of nondisturbance.

D. To the best of Lessor's actual knowledge, the Premises does not currently violate any applicable laws (including, without limitation, any Environmental Laws) and there are no pending demands, claims or actions against Lessor or the Property relating to the condition or use

of the Property or its compliance with any applicable laws (including, without limitation, Environmental Laws). Lessee acknowledges that Lessor has not performed any assessment of the Premises to determine the present of Hazardous Materials and, to the best of Lessor's actual knowledge, the Property is free of Hazardous Materials.

E. So long as Lessee shall pay Base Rent and other amounts due hereunder as the same become due and comply with all other obligations under the Lease, Lessee shall peaceably and quietly have, hold and enjoy the Premises for the Term hereof, free of any claim or other action by Lessor or anyone claiming by, through or under Lessor and Lessee's occupancy and use of the Premises shall not be disturbed. To the best of Lessor's actual knowledge, no person other than Lessor's Public Utilities Department has the right to access or cross over the Premises from adjacent properties, whether by existing driveways or otherwise, and Lessee may remove or block all existing driveways to and from adjacent properties.

## **ARTICLE V TAXES AND UTILITIES**

5.1 **Possessory Interest Tax/Property Taxes.** Lessee recognizes and understands that this Agreement may create a possessory interest subject to taxation and that Lessee may be subject to the payment of taxes levied on such interest. Lessee shall pay all taxes including without limitation any possessory interest, property tax, real estate and personal property taxes and assessments assessed, levied, confirmed or imposed during the Term of this Agreement, whether or not now customary or within the contemplation of Lessor and Lessee: (i) upon, measured by or reasonably attributable to the cost or value of Lessee's equipment, furniture, fixtures and other personal property located in the Premises, or by the cost or value of the leasehold improvements made in or to the Premises by or for Lessee, regardless of whether title to the improvements is in Lessee or Lessor; (ii) upon or with respect to the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Lessee of the Premises or any portion of the Premises; and (iii) upon the Premises and all personal property, furniture, fixtures and equipment, and all replacements, improvements, or additions to them, whether owned by Lessor or Lessee; provided, however, that Lessee shall not be responsible to pay: any taxes assessed on any adjacent property not included in the Premises leased to Lessee, or any taxes assessed in connection with Lessor's income from or transfer of any interest in the Premises.

5.2 **Utilities.** Lessee shall pay the appropriate suppliers for all water, gas, power, electricity, light, heat, telephone, facsimile, internet, and other utilities and communications services used by Lessee on the Premises during the Term, including the taxes thereon, whether or not the services are billed directly to Lessee. Lessee shall procure, or cause to be procured, without cost to Lessor, any and all necessary permits, licenses or other authorizations required for the lawful and proper installation and maintenance upon the Premises of wires, pipes, conduits, tubes and other equipment and appliances for use in supplying any of the services to and upon the Premises. Lessor, upon request of Lessee, shall at the sole expense and liability of Lessee, join with Lessee in any application required for obtaining and continuing any of the services.

**ARTICLE VI**  
**INSURANCE; INDEMNIFICATION; WAIVER AND RELEASE**

6.1 **Minimum Insurance Requirements.** At all times during the Term and during any other time in which Lessee occupies the Premises, including during the Option Period and any extension to survey, soil test, and make any other investigations necessary to determine if the surface of the Leased Premises is suitable for construction of the Solar Project, Lessee, at its sole cost and expense, shall procure, pay for and maintain the following types of insurance with the following coverages:

A. **Commercial General Liability.** Lessee shall, at Lessee's sole expense, obtain and maintain during the Term: (i) a policy of commercial general liability insurance, including ISO Standard contractual liability insurance, for bodily injury, property damage and personal/advertising liabilities arising out of the use or occupancy of the Premises and all areas appurtenant thereto, including parking areas. Such insurance shall be in an amount satisfactory to Lessor and of not less than One Million Dollars (\$1,000,000) per occurrence and a Two Million Dollar (\$2,000,000) annual aggregate for all claims.

B. **Lessee's Property and Business Interruption Insurance.** Lessee shall, at Lessee's sole expense, obtain and maintain during the Term, insurance coverage for (i) Lessee's personal property, inventory, alterations, fixtures and equipment located on the Premises, for the full replacement value thereof without deduction for depreciation. The proceeds of such insurance, so long as this Agreement remains in effect, shall be used to repair or replace the personal property, inventory, alterations, fixtures and equipment so insured; and for (ii) loss of income and extra expense in such amounts as will reimburse Lessee for direct and indirect loss of earnings attributable to all perils commonly insured against by prudent Lessees.

6.2 **Delivery of Evidence of Lessee's Insurance.** Each certificate thereof shall be delivered to Lessor by Lessee on or before the effective date of such policy and thereafter Lessee shall deliver to Lessor renewal certificates within a reasonable amount of time following policy renewal. Lessee's compliance with the provisions of Article VI shall in no way limit Lessee's liability under any of the other provisions of this Agreement.

6.3 **Other Insurance Requirements.** The insurance to be acquired and maintained by Lessee shall be with companies admitted to do business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or higher. Lessee shall deliver to Lessor, prior to taking possession of the Premises, a certificate of insurance evidencing the existence of the policies required hereunder, and such certificate shall certify that the policy:

A. Names Lessor and any other entities designated by Lessor as additional insureds under the Commercial General Liability policy;

B. Insures performance of Lessee's indemnity set forth in this Agreement;

C. Provide that no act or omissions of Lessee shall affect or limit the obligations of the insurer with respect to other insureds or including Lessor;

D. Include all waiver of subrogation rights endorsements necessary to effect the provisions below; and

E. Provide that the commercial general liability policy and the coverage provided shall be primary, that Lessor although an additional insured, shall nevertheless be entitled to recovery under such policy for any damage to Lessor by reasons of acts or omissions of Lessee, and that coverage carried by Lessor shall be noncontributory with respect to policies carried by Lessee.

**6.4 Mutual Waiver of Subrogation.** The Parties hereto release each other and their respective authorized employees, agents and representatives, from any and all claims, demands, loss, expense or injury to any person, or to the Premise or to personal property, including, but not limited to, furnishings, fixtures or equipment located therein, caused by or resulting from perils, events or happenings which are the subject of insurance in force at the time of such loss. Each Party shall cause each insurance policy obtained by it to provide that the insurer waives all right of recovery by way of subrogation against either party in connection with any damage covered by any policy. Neither Party shall be liable to the other for any damage caused by fire or any of the risks insured against under any insurance policy in effect as required by this Agreement.

**6.5 No Ownership.** Nothing contained in Article VI shall be construed as creating or implying the existence of: (i) any ownership by Lessee of any fixtures, additions, alterations or improvements in or to the Premises, or (ii) any right on Lessee's part to make any addition, alteration or improvement in or to the Premises.

**6.6 Indemnity.**

Except to the extent caused by the negligence or willful or criminal misconduct of Lessor, Lessee agrees to fully indemnify, defend, and hold Lessor, its elected and appointed officials, officers, employees, agents, successors and assigns, free and harmless from any and all claims, liability, loss, damage, costs, or expenses, including attorney fees, resulting from Lessee's occupation or use of the Premises, specifically including, without limitation, any claim of liability, loss or damage arising by reason of

A. The death or injury of any person or persons, including Lessee or any person who is an employee, agent, guest, or customer of Lessee, or by reason of the damage or destruction of any property, including property owned by Lessee or any person who is an employee, agent, guest, or customer of Lessee, and caused or allegedly caused by either the condition of the Premises as a result of Lessee's occupation of the same, or some act or omission of Lessee or of some agent, contractor, employee, servant, guest, or customer of Lessee on the Premises;

B. Any work performed on the Premises or materials furnished to the Premises at the instruction or request of Lessee; and

C. Lessee's failure to perform any provision of this Agreement or to comply with any requirement of local, state or federal law or any requirement imposed on Lessee or the Premises by any duly authorized governmental agency or political subdivision.

6.7 **Waiver and Release.** Lessee waives and releases all claims against Lessor, its employees, and agents with respect to all matters for which Lessor has disclaimed liability pursuant to the provisions of this Agreement. In addition, except to the extent caused by the negligence or willful or criminal misconduct of Lessor, Lessee agrees that Lessor, its elected and appointed officials, employees, agents, successors and assigns shall not be liable for any loss, injury, death or damage (including consequential damages) to persons, property, or Lessee's business occasioned by theft; act of God; public enemy; injunction; riot; strike; insurrection; war; terrorism; court order; order of governmental body or authority; earthquake; fire; explosion; falling objects; water; rain; snow; leak or flow of water, or by dampness or from the breakage, leakage, obstruction, or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning, or light fixtures; or from construction, repair, or alteration of the Premises; or from any acts or omissions of any visitor of the Premises; or from any cause beyond Lessor's control.

## **ARTICLE VII REPAIRS AND MAINTENANCE; ALTERATIONS**

7.1 **Repairs and Maintenance Lessee Obligations.** Lessee shall, at its sole cost and expense, maintain the Premises in good order, condition and repair (normal wear and tear excepted), and make repairs, restorations and replacements to the Premises, including without limitation the heating, ventilation, air conditioning, mechanical, electrical, lighting, plumbing systems, structural roof, interior walls, interior surfaces of exterior walls, ceilings, floors, windows, doors, and the fixtures and appurtenances to the Premises as and when needed to preserve them in good working order and condition, normal wear and tear excepted. All repairs, restorations, and replacements shall be in quality and class equal to the original work or installations. If Lessee fails to make repairs, restorations or replacements within thirty (30) days of written notice thereof from Lessor (or such longer period as may be required if Lessee is not reasonably able to complete such repair in that time period), Lessor may make them at the expense of Lessee and the expense shall be collected as additional rent to be paid by Lessee within fifteen (15) calendar days after delivery of a statement for the expense.

7.2 **Security.** Security for the Solar Project shall be the responsibility of Lessee. Nothing in this Agreement shall be construed to impose security obligations upon and Lessor shall not be liable for any loss or damages suffered by Lessee or third-party owners due to Lessee's and such third parties use and occupancy of and activities on the Leased Premises.

7.3 **Alterations.** Lessee shall not make any alterations, improvements or additions in, on or about any of the Premises, without first obtaining Lessor's prior written consent, which shall not be unreasonably withheld, conditioned, or delayed. However, Lessor's prior written consent will not be necessary for any alteration, improvement, or addition which is either (i) non-structural in nature (*i.e.*, alterations which do not require governmental permits); or (ii) costs less than Five Thousand Dollars (\$5,000) including labor and material. All alterations, improvements or additions in, on or about the Premises, whether temporary or permanent in character, shall immediately become Lessor's property and at the expiration of the Term of this Agreement shall remain on the Premises without compensation to Lessee; provided, however, that Lessee shall



remain the owner of any and all furniture, trade fixtures, equipment, signs and all other items of Lessee's movable personal property located in, or, or about the Premises.

7.4 **Mechanic's Liens.** Lessee shall pay or cause to be paid all costs and charges for: (i) work done by Lessee or caused to be done by Lessee, in or to the Premises, and (ii) all materials furnished for or in connection with such work. Lessee shall indemnify the Lessor against and hold the Lessor and the Premises, free, clear and harmless of and from any liens or claims of liens arising out of any work performed, materials furnished or obligations incurred by the Lessee, and Lessee shall be responsible for the removal of any such liens and all costs to remove same. Failure to remove any such liens within thirty (30) calendar days of written request by Lessor shall constitute a default of this Agreement. At its election, but without having any obligation to do so, the Lessor may pay such liens not so removed by the Lessee and the any amount expended by Lessor shall be collected as additional rent to be paid by Lessee within fifteen (15) calendar days after delivery of a statement for the expense.

## **ARTICLE VIII DAMAGE AND DESTRUCTION; CONDEMNATION**

8.1 **Damage or Destruction of Premises.** Unless as the result of negligence or intentional unlawful act of Lessee, if during the term of this Agreement, any portion of the Premises shall be damaged by fire or other catastrophic cause, so as to render such portion of the Premises untenable, the obligations under this Agreement may be suspended while such portion of the Premises remains untenable. In the event of such damage, Lessee shall give Lessor notice of such untenable conditions and the Lessor shall elect in its sole discretion, whether to repair the Premises or to cancel this Agreement with respect thereto. It shall notify Lessee in writing of its election within thirty (30) calendar days after service of notice by Lessee. In the event that Lessor elects not to repair the Premises or portion thereof, this Agreement shall be deemed canceled as of the date the damage occurred with respect to the applicable portion(s).

8.2 **Condemnation.** If all or any part of the Premises shall be condemned or taken as a result of the exercise of the power of eminent domain, including any conveyance or assignment in lieu of any condemnation or taking, this Agreement shall terminate as to the part so taken as of the date of taking, and, in the case of a partial taking, either Lessor or Lessee shall have the right to terminate this Agreement as to the balance of the Premises by notice to the other within thirty (30) calendar days after the date of such taking; provided, however, that a condition to the exercise by Lessee of such right to terminate shall be that the portion of the Premises taken shall be of such extent and nature as substantially to handicap, impede or impair Lessee's use of the balance of the Premises. In any event, Lessor shall be entitled to any and all compensation, damages, income, rent, awards and any interest therein whatsoever which may be paid or made in connection therewith, and Lessee shall have no claim against Lessor for the bonus value of any unexpired Term of this Agreement or otherwise; provided, however, that nothing herein shall prevent Lessee from pursuing a separate award against the taking entity, specifically for its relocation expenses or for the taking of any personal property or trade fixtures belonging to Lessee, so long as such separate award to Lessee does not diminish any award otherwise due Lessor as a result of such condemnation or taking. In the event of a partial taking of the Premises which does not result in a

termination of this Agreement, the monthly rent thereafter to be paid shall be reduced in proportion to the portion of the Premises taken.

A. For purposes of Section 8.2, the date of taking shall be the date upon which the condemning authority takes possession of any part of the Premise or the date upon which Lessee is required by the condemning authority to commence vacating the Premises, whichever is earlier.

B. Notwithstanding anything to the contrary contained in Section 8.2, if the Premises or any part thereof shall be taken under power of eminent domain on a temporary basis, this Agreement shall be and remain unaffected by such taking and Lessee shall continue to pay in full all monthly rent payable hereunder, provided that Lessee shall be entitled to receive that portion of any award which represents compensation for the use of or occupancy of the Premises during the Term of this Agreement, and Lessor shall be entitled to receive that portion of any award which represents the cost restoration of the Premises and the use and occupancy of the Premises after the end of the Term of this Agreement.

## **ARTICLE IX ASSIGNMENT; SUBLETTING; PROCESSING**

9.1 **Assignment and Subletting.** Other than a transfer to an affiliate or successor of Lessee, Lessee shall not assign, mortgage, pledge, encumber, or hypothecate this Agreement or any interest herein (directly, indirectly, voluntarily or involuntarily, by operation of law, or otherwise) or sublet the Premises or any part thereof without the prior written consent of Lessor first being obtained, which consent shall not be unreasonably withheld, conditioned, or delayed.

A. In the event that Lessee should desire to sublet the Premises or any part thereof, or assign this Agreement, Lessee shall provide Lessor with written notice of such desire at least sixty (60) calendar days in advance of the proposed effective date of such subletting or assignment. Such notice shall include: (i) the name of the proposed sublessee or assignee; (ii) the nature of business to be conducted by the proposed sublessee or assignee in the Premises; (iii) the terms and conditions of the proposed assignment or sublease including but not limited to a detailed description of all compensation in cash or otherwise which Lessee would be entitled to receive in connection with such assignment or sublease; and (iv) the most recent financial statements or other financial information concerning the proposed sublessee or assignee as Lessor may reasonably require. At any time within thirty (30) calendar days following receipt of Lessee's notice, Lessor may by written notice to Lessee elect to: (i) consent to the proposed subletting of the Premises or assignment of this Agreement; or (ii) disapprove of the proposed subletting or assignment. Lessor shall not unreasonably withhold its consent to a proposed subletting or assignment.

B. Subject to obtaining Lessor's consent in accordance with the requirements of Section 9.1, in order for any assignment or sublease to be binding on Lessor, Lessee must deliver to Lessor, promptly after execution thereof, an executed copy of such sublease or assignment whereby the sublessee or assignee shall expressly assume all obligations of Lessee under this Agreement as to the portion of the Premises subject to such assignment or sublease. Any purported sublease or assignment will be of no legal force or effect unless and until the proposed sublease

has been consented to, in writing, by Lessor and a fully executed copy thereof has been received by Lessor.

C. Regardless of Lessor's consent, no subletting or assignment shall release Lessee of its obligations, or alter the primary liability of Lessee to pay rent and to perform all other obligations to be performed by Lessee hereunder. The acceptance of payments by Lessor from any other person shall not be deemed to be a waiver by Lessor of any provision hereof. Consent to one assignment or subletting shall not be deemed consent to any subsequent or further assignment, subletting, hypothecation or third party use or occupancy.

D. Lessor shall have the unconditional right to sell, encumber, pledge, convey, transfer, and/or assign any and all of its rights and obligations under the Agreement without the consent of or notice to Lessee or any guarantor(s) of Lessee's obligations hereunder; provided that the Lessor assignee is solvent and assumes all obligations of Lessor hereunder accruing after the date of the transfer.

9.2 **Processing Fee.** Lessee agrees to pay Lessor an administrative fee of \$500.00 in conjunction with the processing and document review of any requested transfer, assignment, subletting, license, or concession agreement, change of ownership, mortgage or hypothecation of the Agreement or Lessee's interest in and to the Premises.

## **ARTICLE X HOLDING OVER; SALE OF PREMISES**

10.1 **No Right to Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Agreement. If, without objection by Lessor, Lessee holds possession of the Premises after expiration of the Term, Lessee shall become a Lessee from month-to-month upon the terms herein specified, except that the monthly rent shall equal to one hundred and fifty percent (150%) of the monthly rent payable by Lessee at the expiration of the Term. In addition, Lessee shall continue to pay all other amounts due to Lessor hereunder. Each Party shall give the other notice at least one (1) month prior to the date of termination of such monthly tenancy of its intention to terminate such tenancy. If, after objection by Lessor thereto, Lessee holds possession of the Premises after expiration of the Term, Lessee shall constitute a Lessee at sufferance and without in any way waiving the wrongful holding over of the Premises by Lessee, Lessor shall be entitled to receive for each month or portion thereof during which Lessee wrongfully holds over at the Premises monthly rent equal to two hundred percent (200%) of the monthly rent payable by Lessee at the expiration of the Term together with all other amounts otherwise due to Lessor hereunder. Lessor's receipt of increased monthly rent under this Section 10.1 shall not constitute an extension of the Term nor shall it constitute a waiver of Lessee's wrongful holding over and shall not prejudice any other rights or remedies available to Lessor under this Agreement or by law.

10.2 **Sale of Premises.** In the event Lessor, or any successor owner of the Premises, shall sell or convey the Premises, all liabilities and obligations on the part of the Lessor, or such successor owner, under this Agreement, accruing thereafter shall terminate, and thereupon all such liabilities

and obligations shall be binding upon the new owner. Lessee agrees to attorn to such new owner subject to such new owner's obligation to assume all obligations of Lessor under this Lease.

## **ARTICLE XI SUBORDINATION; ESTOPPEL CERTIFICATES; MORTGAGEE PROTECTION**

**11.1 Subordination.** This Agreement and the rights of Lessee hereunder are subject and subordinate to any ground or underlying lease and the lien of the holder of or beneficiary under a mortgage or deed of trust which now or in the future encumbers the Premises and to any and all advances made thereunder, and interest thereon, and all modifications, renewals, supplements, consolidations and replacements thereof. Lessee agrees that any ground or underlying Lessor or lender may at its option, unilaterally elect to subordinate in whole or in part, such ground or underlying lease or the lien of such mortgage or deed or trust to this Agreement. Such subordination or priority of this Agreement, as the case may be, shall be effective without the necessity of executing any further instrument or agreement to effect such subordination or priority; provided, however, that Lessee agrees to execute, acknowledge and deliver to Lessor upon demand any and all instruments reasonably required by Lessor or any such ground or underlying Lessor or lender evidencing the subordination or priority of this Agreement, as the case may be. Notwithstanding any other provision of this Lease, any such subordination by Lessee is and shall be with the understanding that so long as Lessee is not in default of its obligations under this Lease, the tenancy provided for herein shall continue in full force and effect and Lessee shall be permitted to occupy the Premises under the terms hereof notwithstanding any default by Lessor under such mortgage or security instruments, or any transfer of title to the Premises by foreclosure, deed-in-lieu of foreclosure or otherwise.

**11.2 Estoppel Certificates.** At any time and from time to time, Lessee shall execute, acknowledge and deliver to Lessor, within ten (10) business days after request by Lessor, a certificate certifying, among other things: (i) that this Agreement is unmodified and in full force and effect (or, if there have been modifications, that this Agreement is in full force and effect, as modified, and stating the date and nature of each modification); (ii) the date, if any, to which monthly rent and other sums payable hereunder have been paid; (iii) that no notice has been received by Lessee of any default which has not been cured except as to defaults specified in said certificate; and (iv) such other matters as reasonably may be requested by Lessor. If Lessee fails to respond to a request from Lessor for Lessee to execute and deliver an estoppel certificate to Lessor within the aforementioned ten (10) business day period, Lessor shall have the right to deliver a second notice (the "Estoppel Certificate Failsafe Notice") to Lessee, which Estoppel Certificate Failsafe Notice must be sent by a nationally recognized overnight courier for next business day delivery, requesting Lessee to execute and deliver the estoppel certificate to Lessor (and/or to such other addressee or addresses as Lessor may designate), provided that such Estoppel Certificate Failsafe Notice shall also include in bold, capitalized letters near the top margin of the first page of same, the following statement: **"LESSEE'S FAILURE TO RESPOND TO THIS REQUEST WITHIN FIVE (5) BUSINESS DAYS FOLLOWING LESSEE'S RECEIPT OF SAME SHALL CONSTITUTE AN EVENT OF DEFAULT UNDER THE LEASE AGREEMENT"**. If Lessee fails to deliver the estoppel certificate as instructed within five (5) business days following Lessee's receipt of the Estoppel Certificate Failsafe Notice, such failure shall constitute an Event of Default hereunder.

### 11.3 Mortgagee Protection.

Any Mortgagee of the Leased Premises, or any portion of Leased Premises, shall, for so long as its Mortgage is in existence and until the lien thereof has been extinguished, be entitled to the following protections, upon delivery to Lessor of notice of its name and address:

a. Mortgagee's Right to Possession, Right to Acquire and Right to Assign. A Mortgagee shall have the absolute right: (a) to assign its security interest; (b) to enforce its lien and acquire title to the leasehold estate by any lawful means; (c) to take possession of and operate the Leased Premises or any portion thereof and to perform all obligations to be performed by Lessee under this Agreement, or to cause a receiver to be appointed to do so; and (d) to acquire the leasehold estate by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer the leasehold estate to a third party. Lessor's consent shall not be required for (a) the pledge, mortgage or hypothecation of Lessee's rights in the Agreement, the Solar Improvements, or Lessee, or (b) the acquisition of Lessee's leasehold estate by a third party who acquires the same by foreclosure or assignment in lieu of foreclosure. As used in this Lease, (i) the term "Mortgagee" means any financial institution or other person or entity that from time to time provides secured financing for or otherwise encumbers some or all of Lessee's interest in the Agreement or Solar Project, collectively with any security or collateral agent, indenture trustee, loan trustee or participating or syndicated lender involved in whole or in part in such financing, and their respective representatives, successors and assigns, (ii) the term "Mortgage" refers to the mortgage, deed of trust or other security interest in this Agreement and/or the Solar Project and Solar Improvements given to a Mortgagee in connection with such financing and (iii) the term "Mortgaged Interest" refers to the interest in this Agreement and/or the Solar Project and Solar Improvements, that is held by the Mortgagee. Lessee shall have the right, without the consent of Lessor, to grant Mortgages on Lessee's interest hereunder.

b. Notice of Default: Opportunity to Cure. As a precondition to exercising any rights or remedies as a result of any alleged default by Lessee, Lessor shall give written notice of the default to each Mortgagee concurrently with delivery of such notice to Lessee, as applicable, specifying in detail the alleged event of default; provided however that such Mortgagee shall have provided Lessor with its current address. In the event the Lessor gives such a written notice of default, the following provisions shall apply:

(i) A "Monetary Default" means failure to pay when due any rent or other monetary obligation of Lessee to Lessor under this Agreement; any other event of default is a "Non-Monetary Default."

(ii) The Mortgagee shall have the same period after receipt of notice of default to remedy the default, or cause the same to be remedied, as is given to Lessee, plus, in each instance, the following additional time periods: (i) sixty (60) days after receipt of the notice of default in the event of any Monetary Default; and (ii) ninety (90) days after receipt of the notice of default in the event of any non-monetary default, provided that such period shall be extended for the time reasonably required to complete such cure, including the time required for the Mortgagee to perfect its right to cure such non-monetary default by obtaining possession of the Leased Premises (including possession by a receiver) or by instituting foreclosure proceedings,

provided the Mortgagee acts with reasonable and continuous diligence. The Mortgagee shall have the absolute right to substitute itself for Lessee and perform the duties of Lessee under this Agreement for purposes of curing such defaults. Lessor expressly consents to such substitution, agrees to accept such performance, and authorizes the Mortgagee (or its employees, agents, representatives or contractors) to enter upon the Leased Premises to complete such performance with all the rights, privileges and obligations of the Lessee. Lessor shall not terminate this Agreement prior to expiration of the cure periods available to a Mortgagee as set forth herein.

(iii) During any period of possession of the Mortgaged Interest by a Mortgagee (or a receiver requested by such Mortgagee) and/or during the pendency of any foreclosure proceedings instituted by a Mortgagee, the Mortgagee shall pay or cause to be paid the rent and all other monetary charges payable by Lessee under this Agreement which have accrued and are unpaid at the commencement of said period and those which accrue thereafter during said period. Following acquisition of Lessee's Mortgaged Interest by the Mortgagee or its assignee or designee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Agreement shall continue in full force and effect and the Mortgagee or party acquiring title to the Mortgaged Interest shall, as promptly as reasonably possible, commence the cure of all defaults under this Agreement and thereafter diligently process such cure to completion, whereupon Lessor's right to terminate this Agreement based upon such defaults shall be deemed waived; provided, however, the Mortgagee or party acquiring title to the Mortgaged Interest shall not be required to cure those non-monetary defaults which are not capable of being cured or performed by such party ("non-curable defaults"). Non-curable defaults shall be deemed waived by Lessor upon completion of foreclosure proceedings or acquisition of interest in this Agreement by such party.

(iv) Any Mortgagee or other party who acquires the Mortgaged Interest pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Lessee by this Agreement incurred or accruing after such party no longer has ownership of the leasehold estate or possession of the Leased Premises.

(v) Neither the bankruptcy nor the insolvency of Lessee or any Assignee shall be grounds for terminating this Agreement as long as the rent and all other monetary charges payable by Lessee under this Agreement are paid by the Mortgagee in accordance with the terms of this Agreement.

(vi) Nothing in this Agreement shall be construed to extend this Agreement beyond the Term or to require a Mortgagee to continue foreclosure proceedings after the default has been cured. If the default is cured and the Mortgagee discontinues foreclosure proceedings, this Agreement shall continue in full force and effect.

c. New Agreement to Mortgagee. If this Agreement terminates because of Lessee's default or if the Mortgaged Interest is foreclosed, or if this Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, then Lessor shall, upon written request from any Mortgagee, enter into a new lease of the Leased Premises, on the following terms and conditions:

(i) The terms of the new agreement shall commence on the date of termination, foreclosure, or rejection and shall continue for the remainder of the Term of this Agreement, at the same rent and subject to the same terms and conditions set forth in this Lease. Such new agreement shall be subject to all existing subleases, provided the sublessees are not then in default.

(ii) The new agreement shall be executed within thirty (30) days after receipt by Lessor of written notice of the Mortgagee's election to enter a new agreement, provided said Mortgagee: (i) pays to Lessor all rent and other monetary charges payable by Lessee, as applicable, under the terms of this Agreement up to the date of execution of the new agreement, as if this Agreement had not been terminated, foreclosed, rejected or disaffirmed, less the rent and other income actually collected by Lessor from sublessees or other occupants of the Leased Premises; and (ii) perform all other obligations of Lessee under the terms of this Agreement, to the extent performance is then due and susceptible of being cured and performed by the Mortgagee; and (iii) agrees in writing to timely perform, or cause to be performed, all non-monetary obligations which have not been performed by Lessee and would have accrued under this Agreement up to the date of commencement of the new agreement, except those obligations which constitute non-curable defaults as defined above; (iv) reimburses Lessor for Lessor's reasonable attorney fees incurred in reviewing the same. Any new agreement granted the Mortgagee shall enjoy the same priority as this Agreement over any lien, encumbrance or other interest created by Lessor.

(iii) At the option of the Mortgagee, the new agreement may be executed by a designee of such Mortgagee without the Mortgagee assuming the burdens and obligations of the Lessee thereunder.

(iv) If more than one Mortgagee makes a written request for a new agreement pursuant hereto, the new agreement shall be delivered to the Mortgagee requesting such new lease whose Mortgage is prior in lien, and the written request of any other Mortgagee whose lien is subordinate shall be void and of no further force or effect. Lessor shall be reimbursed all reasonable expenses incurred in determining whose Mortgage is prior in lien.

d. Mortgagee's Consent to Amendment, Termination or Surrender. Notwithstanding any provision of this Agreement to the contrary, the parties agree that so long as there exists an unpaid Mortgage, this Agreement shall not be modified or amended and Lessor shall not accept a surrender of the Leased Premises or any part thereof or a cancellation or release of this Agreement from Lessee prior to expiration of the Term without the prior written consent of the Mortgagee. This provision is for the express benefit of and shall be enforceable by such Mortgagee.

e. No Waiver. No payment made to Lessor by a Mortgagee shall constitute an agreement that such payment was, in fact, due under the terms of this Agreement; and a Mortgagee having made any payment to Lessor pursuant to Lessor's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment.

f. No Merger. There shall be no merger of this Agreement, or of the leasehold estate created by this Agreement, with the fee estate in the Leased Premises by reason of the fact that this Agreement or the leasehold estate or any interest therein may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein,



and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Leased Premises and all persons (including Mortgagee) having an interest in this Agreement or in the estate of Lessor shall join in a written instrument effecting such merger and shall duly record the same.

g. Third Party Beneficiary. Each Mortgagee is and shall be an express third-party beneficiary of the provisions of this Section, and shall be entitled to compel the performance of the obligations of Lessor under this Agreement.

h. Further Amendments. Provided that no material default in the performance of Lessee's obligations under this Agreement shall have occurred and remain uncured after the expiration of all applicable notice and cure periods, at Lessee's request, Lessor shall (a) amend this Agreement to include any provision that may reasonably be requested by an existing or proposed Mortgagee, or by any entity that is proposing to directly or indirectly acquire any Project, and (b) shall execute such additional documents as may reasonably be required to evidence such Mortgagee's or other entity's rights hereunder; provided, however, that such amendment shall not materially impair the rights of Lessor under this Agreement, or extend the Term of this Agreement. Further, Lessor shall, within one hundred thirty (130) days after written notice from Lessee or any existing or proposed Mortgagee, execute and deliver thereto a certificate to the effect that Lessor (a) recognizes a particular entity as a Mortgagee under this Agreement and (b) will accord to such entity all the rights and privileges of a Mortgagee hereunder.

i. Further Amendments to Leased Premises Description. In the event that it is determined by Lessee or any Mortgagee that there are any inaccuracies in or changes required to the legal description of the Leased Premises contained in Exhibits A and B, the validity of this Agreement shall not be affected, and, upon the request of Lessee made from time to time, Lessor shall execute an amendment to the legal description of the Leased Premises contained in Exhibits A and B of this Agreement and in any memorandum of this Agreement to reflect the legal description of the Leased Premises as contained in any survey obtained by Lessee for the Leased Premises.

**ARTICLE XII  
DEFAULT; REMEDIES; DISPUTE RESOLUTION**

12.1 **Event of Default.** The occurrence of any one or more of the following events ("Events of Default") shall constitute a breach of this Agreement by Lessee, with the matter described in subsection A. constituting a "Monetary Event of Default" and each of the matters described in subsections B., C., D., E., F., G., H., I., and J. each constituting a "Non-Monetary Event of Default":

A. If Lessee shall default in its obligation to pay any installment of Base Rent when due and shall not cure such failure within ten (10) days following Lessee's receipt of written notice thereof by Lessor to Lessee (a "Monetary Event of Default"); or

B. If Lessee shall vacate or abandon the Premises, which shall be deemed to occur if Lessee fails to continuously occupy the Premises for a period of thirty (30) days during the Initial

Term or any extension thereof and fails to re-occupy the Premises following ten (10) days written notice from Lessor; provided, however, that nothing herein shall be construed as an express or implied covenant of continuous operation on the part of Lessee, and Lessor acknowledges that there is no covenant of continuous operation with respect to the Premises, arising hereunder or otherwise on the part of Lessee; or

C. If Lessee shall fail to perform or observe any other term hereof to be performed or observed by Lessee hereunder, and such failure shall not have been cured by Lessee within thirty (30) calendar days after notice thereof from Lessor, or, if such failure shall be of a nature so as reasonably to require more than thirty (30) calendar days to effect the cure thereof, Lessee shall not within said thirty (30) calendar day period commence with due diligence and dispatch the curing of such failure; or

D. If Lessee shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due or shall file a petition in bankruptcy, or shall be adjudicated as bankrupt or insolvent or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or shall fail timely to contest the material allegations of a petition filed against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Lessee or any material part of its property; or

E. If within ninety (90) calendar days after the commencement of any proceeding against Lessee seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed, or if, within ninety (90) calendar days after the appointment without the consent or acquiescence of Lessee, of any trustee, receiver or liquidator of Lessee or of any material part of its properties, such appointment shall not have been vacated; or

F. If this Agreement or any estate of Lessee hereunder shall be levied upon under any attachment or execution and such attachment or execution is not vacated within ten (10) calendar days; or

G. If Lessee fails to timely deliver to Lessor an estoppel certificate, execute and acknowledge or otherwise respond within five (5) business days following receipt of an Estoppel Certificate Failsafe Notice pursuant to Section 11.2; or

H. If Lessee assigns or attempts to assign this Agreement or subleases or attempts to sublease any portion of the Premises in violation of Section 9.1; or

I. If waste is committed on the Premises by Lessee; or

J. The occurrence of any event which pursuant to the terms hereof constitutes an Event of Default hereunder.

12.2 **Remedies.** On the occurrence of an Event of Default by Lessee hereunder, Lessor shall have the right to pursue any one of the following remedies (provided that Lessor may only repossess the Premises following a Monetary Event of Default): (i) repossess the Premises; or (ii) allow Lessee to remain in full possession and control of the Premises.

A. If Lessor chooses to repossess the Premises, then this Agreement will automatically terminate in accordance with the provisions of California Civil Code Section 1951.2. In the event of such termination of the Agreement, Lessor may recover from Lessee:

(i) The worth at the time of award of the unpaid rent which had been earned at the time of termination, including interest at twelve percent (12%) per annum;

(ii) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of the award exceeds the amount of such rental loss that Lessee proves could have been reasonably avoided, including interest at the maximum rate allowed by law;

(iii) The worth at the time of award of the amount by which the unpaid rent for the balance of the Term after the time of award exceeds the amount of such rental loss that Lessee proves could be reasonably avoided; and

(iv) Any other amount reasonably necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform its obligations under this Agreement or which, in the ordinary course of things, would be likely to result therefrom.

B. "The worth at the time of the award," as used in Section 12.2A(i) and (ii) shall be computed by allowing interest at twelve percent (12%) per annum. "The worth at the time of the award," as referred to in Section 12.2A(iii) shall be computed by discounting the amount at the discount rate of the Federal Reserve Bank at the time of the award, plus one percent (1%).

C. Lessee shall be liable immediately to Lessor for all third-party costs Lessor actually incurs in re-letting the Premises, including lost rents, eviction costs, attorney's fees, and brokers' commissions. Upon any Event of Default by Lessee, Lessor shall use reasonable efforts to mitigate its damages, including, without limitation, re-letting the Premises; provided that any such re-letting can be for a period shorter or longer than the remaining Term. Lessee shall pay to Lessor the rent due under this Agreement on the dates the rent is due, unless Lessor notifies Lessee that Lessor elects to terminate this Agreement or Lessor has relet the Premises. After Lessee's default and for as long as Lessor does not terminate Lessee's right to possession of the Premises, if Lessee obtains Lessor's consent, Lessee shall have the right to assign its interest in this Agreement, or sublet all or a portion of the Premises, but Lessee shall not be released from liability or its obligations under this Agreement. Lessor's consent to a proposed assignment or subletting shall be as required in Section 9.1.

D. If Lessor elects to re-let the Premises, then any rent that Lessor receives from re-letting shall be applied to the payment of: (i) first, any indebtedness from Lessee to Lessor other

than rent due from Lessee; (ii) second, all costs incurred by Lessor in re-letting, including costs for maintenance; and (iii) third, Rent due and unpaid under this Agreement.

E. After deducting the payments referred to in Section 12.2, any sum remaining from any rent that Lessor receives from re-letting shall be held by Lessor and applied in payment of future rent as rent becomes due under this Agreement. In no event shall Lessee be entitled to any excess rent received by Lessor. If, on the date rent is due under this Agreement, the rent received from any re-letting is less than the rent due on that date, then Lessee shall pay to Lessor, in addition to the remaining rent due, all costs which Lessor incurred in re-letting, including without limitation maintenance, that remain after applying the rent received from the re-letting, as provided in Section 12.2.

**12.3 Continuation After Default.** Even though Lessee has breached this Agreement and/or abandoned the Premises, this Agreement shall continue in full force and effect for so long as Lessor does not terminate Lessee's right to possession as provided in Section 12.2 above, and Lessor may enforce all its rights and remedies under this Agreement, including the right to recover rent as it becomes due under this Agreement. In such event, Lessor may exercise all of the rights and remedies of a Lessor under California Civil Code Section 1951.4, or any successor statute. Acts of maintenance or preservation or efforts to re-let the Premises or the appointment of a receiver upon initiative of Lessor to protect Lessor's interest under this Agreement shall not constitute a termination of Lessee's right to possession.

**12.4 Lessor's Right to Cure Default.** All agreements and provisions to be performed by Lessee under any of the terms of this Agreement shall be at its sole cost and expense and without abatement of rent, except as set forth herein. If Lessee shall fail to pay any sum of money, other than Rent, required to be paid by it hereunder or shall fail to perform any other act on its part to be performed hereunder and such failure shall not be cured within the applicable cure period provided for herein, if any, Lessor may, but shall not be obligated so to do, and without waiving or releasing Lessee from any obligations of Lessee, make any such payment or perform any such other act on Lessee's part to be made or performed as provided in this Agreement. All sums so paid by Lessor and all necessary incidental costs shall be on Lessee's account and shall be deemed additional rent hereunder and shall be payable to Lessor on demand.

**12.5 Dispute Resolution.** Any dispute arising out of or relating to this Agreement, or breach thereof, shall be first submitted to the senior management of each Party for resolution during a thirty (30) calendar day dispute resolution period. Notice must be in writing and served pursuant to Section 13.2 herein. The foregoing dispute resolution period shall run concurrently with any notice and cure periods provided for herein.

**12.6 Termination by Lessee.** Lessee may terminate this Lease only during the Approval Period or the Approval Period Extension, at its option, after giving not less than thirty (30) days' notice to Lessor, if:

a. Any governmental agency denies a request by Lessee for or revokes a permit, license, or approval that is required for Lessee to construct or operate the Site Improvements and Infrastructure on the Leased Premises;

b. Lessee determines, in its sole discretion, that technical problems, which problems cannot reasonably be corrected, preclude Lessee from using the Leased Premises for its intended purpose;

c. Lessee determines that Lessee does not have acceptable and legally enforceable means of ingress and egress to and from the Leased Premises;

d. Utilities necessary for Lessee's use of the Leased Premises are not available to the Leased Premises; or

e. The Leased Premises are damaged or destroyed to an extent that prohibits or materially interferes with Lessee's use of the Leased Premises.

In the event of termination by Lessee pursuant to this provision, Lessee shall be relieved of all further liability hereunder except its obligation to remove its improvements as provided herein. Any rental fees paid prior to said termination date shall be retained by Lessor.

### **ARTICLE XIII RIGHTS TO SITE IMPROVEMENTS AND INFRASTRUCTURE UPON TERMINATION**

13.1 **Title: Lessee.** At least ninety (90) days prior to the expiration of the Term (including the expiration of any extension to such Term under Section 1), Lessee shall advise Lessor in writing of Lessee's intention regarding Lessor's ownership of the Solar Project upon expiration, based upon one of the options set forth in this Section 13.1:

i. **Retain Title and Operating Rights.** Lessee will retain ownership of the Solar Project and continue to operate the Leased Premises under a new lease agreement with Lessor if:

1. Lessee has advised Lessor of Lessee's desire to continue operations in writing a minimum of ninety (90) days prior to the expiration date of the applicable term, as required in this Section 13.1(i)(1); and

2. Lessor and Lessee have agreed to the new lease provisions at least thirty (30) days prior to the expiration date of this Agreement. The newly negotiated lease shall then begin upon the expiration of this Agreement.

It is understood and agreed that if Lessee and Lessor are unable to agree upon the terms of such new lease, then the provisions of Section 13.1(ii), below, regarding removal shall apply.

ii. **Remove.** Lessee will remove the Solar Project, including the Site Improvements and Infrastructure owned by Lessee and solar panels owned by third parties with the exception of underground utilities and cabling and any such items that the Lessor and Lessee agree in writing to abandon in place. Such removal shall be completed within six (6) months

following the expiration of the then-current term of this Lease, during which time Lessee shall be subject to all terms and conditions in this Lease with respect to access and said removal as if still a Lessee.

13.2. **Abandonment/Noncompliance with Section 13.1.** If Lessee either (i) vacates and/or abandons the Leased Premises or (ii) does not provide the notice to Lessor described in Section 13.1 within the time period for such notice described therein, then Lessor shall notify Lessee whether Lessor desires to enter into a new lease as described in Section 13.1(i) or desires Lessee to remove the Solar Project as described in Section 13.1(ii), and the parties shall proceed accordingly; provided however that in the event that Lessor and Lessee have not entered into the new lease described in Section 13.1(i) at least ten (10) days prior to the expiration of the Term (including the expiration of any extension to such Term under Section 3), then Lessee shall remove the Solar Project as set forth in Section 13.1(ii). If Lessee is obligated under this Section 13 to remove the Solar Project and fails to do so within the time set forth in Section 13.1(ii), then Lessee shall be in default, and Lessor, after notice of default and expiration of the applicable cure periods set forth in Article 12 hereof, may remove the Solar Project at Lessee's cost.

### **ARTICLE XIII OIL, GAS, MINERAL, AND AGRICULTURAL RIGHTS**

14.1. Lessor does not grant, lease, let, or demise hereby, but expressly excepts and reserves here from all rights to oil, gas, and other minerals in, on, or under and that might be produced or mined from the Leased Premises; provided, however, that no drilling or other activity will be undertaken on the surface of the Leased Premises to recover any oil, gas, or minerals during the Term hereof, and further provided that any activity associated with such minerals shall not interfere with or disturb Lessee's quiet use and enjoyment of the Leased Premises. In the event that there shall exist at any time any mineral rights separate from Lessor's fee interest in the Leased Premises, Lessor shall deliver to Lessee, within ten (10) days of any request Lessee made by Lessee from time to time, such documentation as may be required to ensure that such mineral rights are subordinate and inferior to the rights, privileges, powers, options, immunities, and interests granted to Lessee hereunder and to allow Lessee to obtain an endorsement over such mineral rights in any title commitment or title policy requested by Lessee, including without limitation a non-disturbance agreement executed by Lessor and the holder of such mineral rights, in form acceptable to Lessee.

14.2. Lessor is entitled to continued use of the Leased Premises for agricultural purposes; *provided that* such rights are subordinate and inferior to the rights, privileges, powers, options, immunities, and interests granted to Lessee hereunder. Lessor will allow full and unencumbered access to any area in which continued use of the Leased Premises for agricultural purposes is occurring for the purposes of (i) mobilization, delivery, construction and operation of the solar system and all related work, and (ii) cleaning, maintenance, testing, replacement & repair on and of the system in whole or in part. Lessor and its agricultural sublessees or related parties further agree to ensure their agricultural activities do not modify, adjust, change, affix or otherwise tamper with any of Lessee's installed equipment without prior written consent by Lessee, which may not be unreasonably withheld, and Lessor shall ensure that any such use of the site does not interfere with or disturb Lessee's quiet use and enjoyment of the Leased Premises.

**ARTICLE XV**  
**GENERAL PROVISIONS**

15.1 **Attorneys' Fees.** Should any action or proceeding be commenced by Lessor to enforce the provisions provided in this Agreement, or should any litigation be commenced between the parties to this Agreement concerning said Property, this Agreement, or the rights and duties of either in relation thereto, all parties shall bear their own attorneys' fees.

15.2 **Notice.** All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered or sent by registered or certified mail, return receipt requested, telegraphed, delivered or sent by telex, telecopy or cable and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if mailed, three (3) business calendar days after the date of posting by the United States post office, (iii) if given by telegraph or cable, one (1) business calendar day after the date delivered to the telegraph company with charges prepaid.

To Lessor:   The City of Riverside  
   Attn: Community & Economic Development Department  
   3900 Main Street  
   Riverside, CA 92522  
   Phone: 951-826-2135

To Lessee:   Northside Solar Farm, LLC  
   12435 Pascal Avenue  
   Grand Terrace, CA 92313

With a Copy:                                     Pillsbury Winthrop Shaw Pittman LLP  
   31 West 52<sup>nd</sup> Street  
   New York, NY 10019-6131

A. Notice of change of address shall be given by written notice in the manner detailed in this Section. Rejection or other refusal to accept, or the inability to deliver because of changed address of which no notice was given, shall be deemed to constitute receipt of the notice, demand, request or communication sent.

B. Lessee hereby agrees that service of notice in accordance with the terms of this Agreement shall be in lieu of the methods of service specified in Section 1161 of the California Code of Civil Procedure Section 1161. The provisions of California Code of Civil Procedure Section 1013(a), extending the time within which a right may be exercised or an act may be done, shall not apply to a notice given pursuant to this Agreement.

15.3 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute one and the same instrument.



15.4 **Captions.** Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

15.5 **Amendment of Agreement.** The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the Parties hereto.

15.6 **Waiver.** The waiver by Lessor or Lessee of any agreement, condition or provision herein contained shall not be deemed to be a waiver of any subsequent breach of the same or any other agreement, condition or provision herein contained, nor shall any custom or practice which may grow up between the Parties in the administration of the terms hereof be construed to waive or to lessen the right of Lessor or Lessee to insist upon the performance by Lessee or Lessor in strict accordance with said terms. The subsequent acceptance of any payment hereunder by Lessor shall not be deemed to be a waiver of any breach by Lessee of any agreement, condition or provision of this Agreement, other than the failure of Lessee to pay the particular amount so accepted. Specifically, Lessor may accept any payment from Lessee and apply same to any amount owing hereunder notwithstanding any stated intent or instruction on the part of Lessee to the contrary and without waiving or compromising any claim that such payment was less than the payment actually due from Lessee.

15.7 **No Merger.** The voluntary or other surrender of this Agreement by Lessee, or a mutual cancellation thereof, shall not work as a merger, and shall, at the option of Lessor, terminate all or any existing subleases or sub-tenancies, or may, at the option of Lessor, operate as an assignment to it of any or all such subleases or sub-tenancies.

15.8 **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.

15.9 **Fees and Other Expenses.** Except as otherwise provided herein, each of the Parties shall pay its own fees and expenses in connection with this Agreement, including any permit or license fees which Lessee may be required to obtain pursuant to its occupancy.

15.10 **Authority to Execute Agreement.** Lessor and Lessee represent and warrant that the individuals who have signed this Agreement have the legal power, right and authority to enter into this Agreement so as to bind each Party for whom they sign to perform as provided herein.

15.11 **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto. Lessee shall be responsible for the acts or omissions of its sub-Lessee(s), if any.

15.12 **Incorporation of Exhibits.** Each of the Exhibits to this Agreement are incorporated by reference as though fully set forth herein.

15.13 **Entire Agreement.** This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between Lessee and Lessor as

to the subject matter hereof. No subsequent agreement, representation, or promise made by either Party hereto, or by or to any employees or agents of either Party shall be of any effect unless it is in writing and executed by the party to be bound thereby.

**15.14 Real Estate Broker.** Both parties represents and warrants that neither party has signed a listing agreement, dealt with, or otherwise agreed to pay a broker's commission, finder's fee, or other like compensation to anyone in connection with the lease of the Leased Premises or the transaction contemplated by this Agreement.

**15.15 Further Assurances.** Each of the parties agrees to do such further acts and things and to execute and deliver such additional agreements and instruments as the other may reasonably require to consummate, evidence, or confirm this Agreement or any other agreement contained herein in the manner contemplated hereby.

**15.16 Dispute Resolution.** Any dispute between Lessor and Lessee arising under this Agreement shall in the first instance be addressed by taking the following steps; 1) by informal negotiations between Lessor and Lessee following an exchange of written notice of and response to said dispute and for a period of time not to exceed 45 days unless extended by mutual agreement; and if not resolved by negotiations, then 2) by any other such remedy at law that may be available.

**15.17 Right to Record.** Lessee shall have the right to prepare, execute and record a memorandum of lease, setting forth the general terms of the Lease and such other information as Lessee deems necessary, which memorandum Lessor agrees to execute and deliver to Lessee. Lessee shall provide the Lessor a copy of the recorded Memorandum of Lease after recordation by the local County Registry of Deeds or other competent jurisdiction.

**15.18 Tax Credits.** If under applicable law the holder of any interest under this Agreement becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at Lessee's option, Lessor and Lessee shall amend this Agreement or replace it with a different instrument so as to convert Lessee's interest in the Property to a substantially similar interest that makes Lessee eligible for such tax credit, benefit or incentive; provided, however, that nothing in this Agreement shall entitle Lessee to a fee interest in the Leased Premises, diminish Lessee's payment obligations under this Agreement or extend the Term of this Agreement.

**15.19 Time is of Essence.** Time is of essence for Lessor's and Lessee's obligations under this Agreement.

**15.20 Severability.** If any section, subsection, term, or provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of said section, subsection, term, or provision of the Agreement, or the application of same to parties or circumstances other than those to which it was held invalid or unenforceable, shall not be affected thereby and each remaining section, subsection, term, or provision of this Agreement shall be valid or enforceable to the fullest extent permitted by law.

15.21 **Interpretation.** Each party to this Agreement and its counsel have reviewed and revised this Agreement. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or of any-amendments or exhibits to this Agreement.

15.22 **Exhibits.** The following exhibits attached hereto are incorporated herein to this Agreement by this reference:

- Exhibit "A" Legal Description
- Exhibit "B" Plat Map
- Exhibit "C" Project Description
- Exhibit "D" Acceptance Memorandum
- Exhibit "E" Memorandum of Lease
- Exhibit "F" Project Schedule
- Exhibit "G" Right of Entry

**[SIGNATURES ON FOLLOWING PAGE.]**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the calendar day and year written below.

**CITY:**

**CITY OF RIVERSIDE**

By: \_\_\_\_\_  
City Manager

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

ATTEST:

By: \_\_\_\_\_  
City Clerk

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

APPROVED AS TO FORM:

By: Susan Wilson  
Assistant City Attorney

**LESSEE:**

**NORTHSIDE SOLAR FARM, LLC**

By: [Signature]  
Title: Manager  
Printed Name: Tom Soto

By: [Signature]  
Title: Manager  
Printed Name: FRED SCHWARTZ

**EXHIBIT "A"**

**PREMISES**

**(Inserted behind this page)**

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

Address: 895 Clark Street  
A.P.N.: 246-230-020

That certain real property located in the City of Riverside, County of Riverside, State of California, described as follows:

Lot 8 of the Rose Tract, as shown by map on file in Book 6, Page 6 of Maps, Records of Riverside County, California.

Area – 3.42 Acres more or less

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyors Act.

*Curtis C. Stephens*      *2/25/19*      Prep. *(e)*  
Curtis C. Stephens, L.S. 7519      Date



Address: 900 Clark Street  
A.P.N.: 246-242-011


That certain real property located in the City of Riverside, County of Riverside, State of California, described as follows:

Lot 9 of the Rose Tract, as shown by map on file in Book 6, Page 6 of Maps, Records of Riverside County, California.

**TOGETHER WITH** that portion of Bowman Street as shown on said Rose Tract, vacated by Riverside County Resolution No. 91-318, recorded September 27, 1991, as Instrument No. 1991-334564 of Official Records of Riverside County, California, lying Southwesterly of a line from the most Easterly corner of said Lot 9 and perpendicular to the Southeast line of said Bowman Street.

Area – 3.83 Acres more or less

This description was prepared by me or under my direction in conformance with the requirements of the Land Surveyors Act.

Curtis C. Stephens 2/25/19 Prep.   
Curtis C. Stephens, L.S. 7519 Date



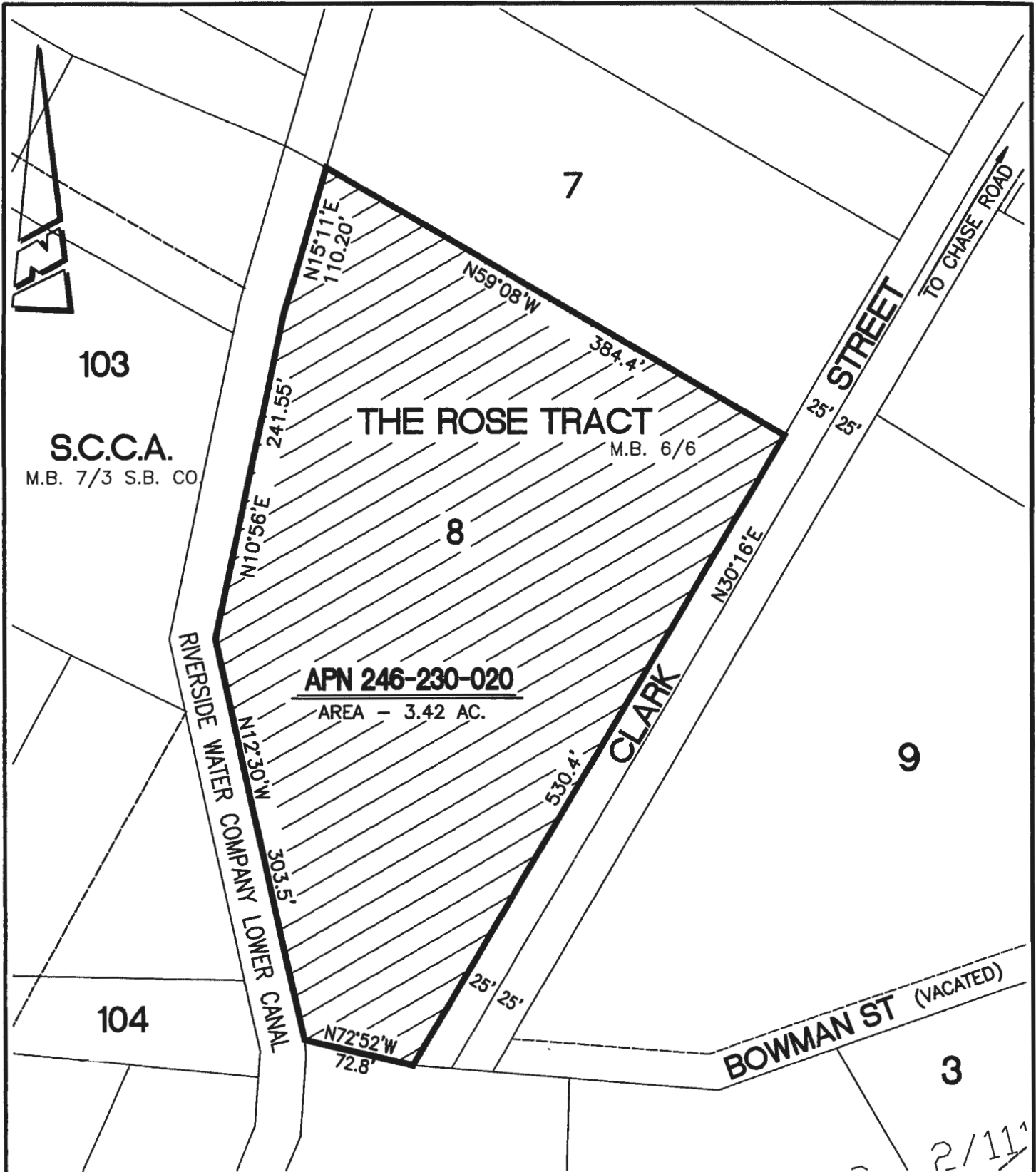


**EXHIBIT "B"**

**PLAT MAP**

**(Inserted behind this page)**

CARROLL D  
PLAT MAPS



• CITY OF RIVERSIDE, CALIFORNIA •

THIS PLAT IS SOLELY AN AID IN LOCATING THE PARCEL(S) DESCRIBED IN THE ATTACHED DOCUMENT. IT IS NOT A PART OF THE WRITTEN DESCRIPTION THEREIN.

SHEET 1 OF 1

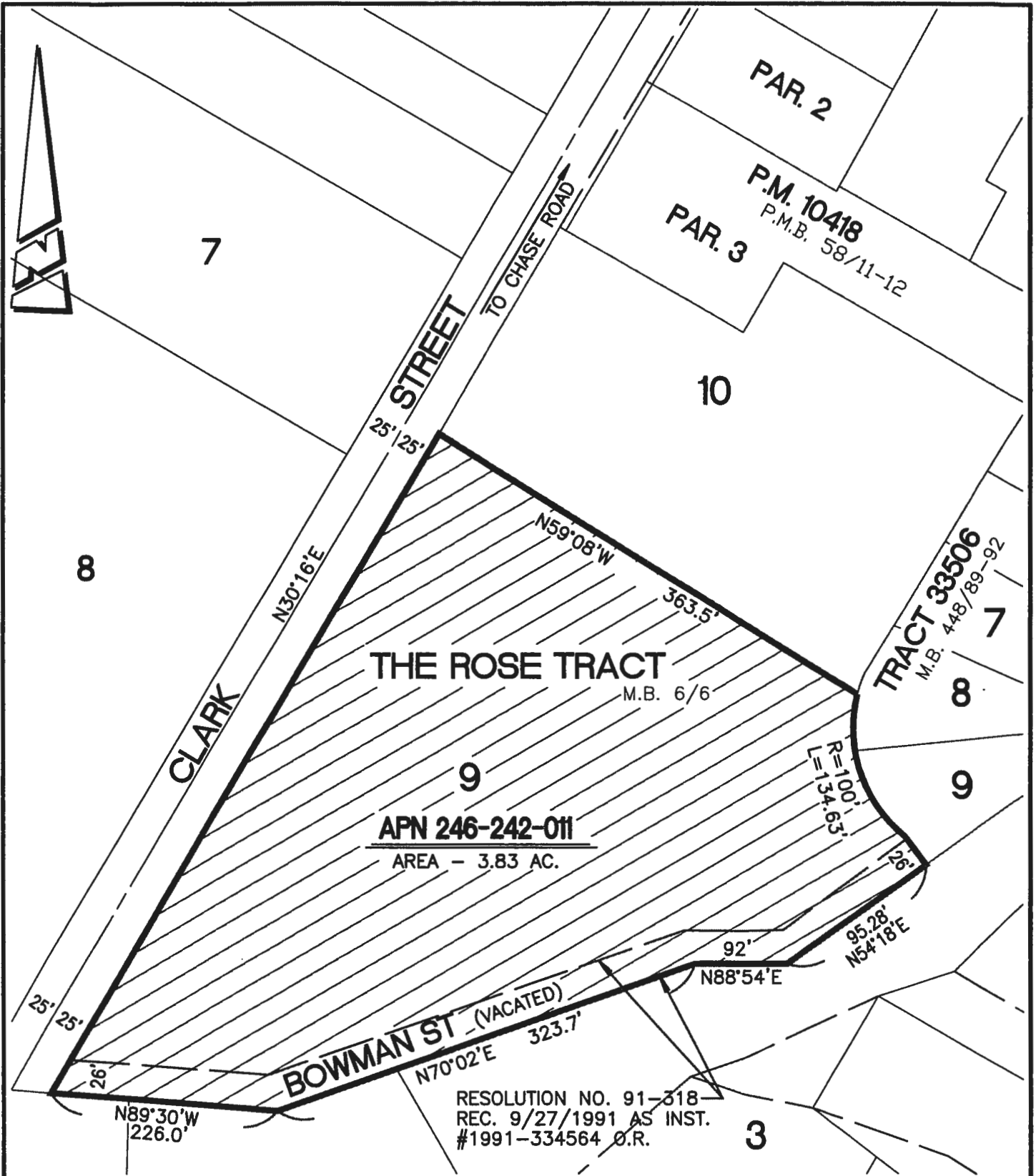
SCALE: 1"=100'

DRAWN BY: CURT

DATE: 2/25/2019

SUBJECT: 895 CLARK STREET - APN 246-230-020

2/11



• CITY OF RIVERSIDE, CALIFORNIA •

THIS PLAT IS SOLELY AN AID IN LOCATING THE PARCEL(S) DESCRIBED IN THE ATTACHED DOCUMENT. IT IS NOT A PART OF THE WRITTEN DESCRIPTION THEREIN.

SHEET 1 OF 1

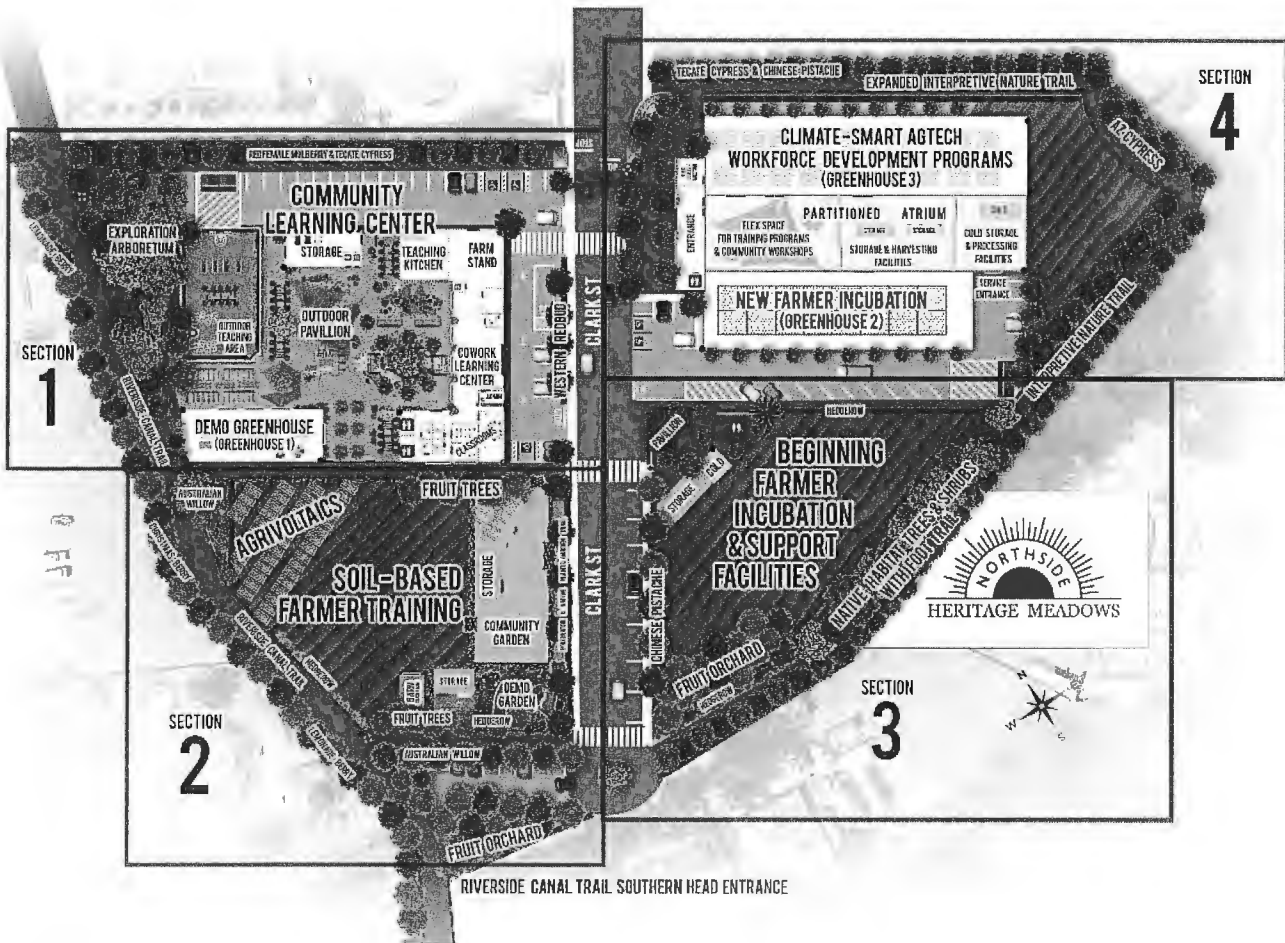
SCALE: 1"=100'    DRAWN BY: CURT    DATE: 2/25/2019    SUBJECT: 900 CLARK STREET - APN 246-242-011

**EXHIBIT "C"**

**PROJECT DESCRIPTION**

**(Inserted behind this page)**

# Northside Agriculture Innovation Center Conceptual Site Plan



Multiple public, private and public partners have collaborated to develop the conceptual site plan to develop multiple site elements to create an unique and innovative space to facilitate public engagement and workforce programs in regenerative, sustainable, controlled-environment, and high-tech agriculture. The resulting site plan facilitates the following priorities:

## **Urban Greening (entire project site)**

- Nearly seven acres of open space to sequester carbon via planting of 450+ trees and shrubs and healthy soils farming practices to demonstrate heat island mitigation and carbon-sequestration functions provided by green infrastructure and working landscapes.
- The management of land-based activities in sustainable, climate-impact mitigating methods to demonstrate how agricultural and natural landscapes can address climate change impacts.
- Approximately ½ mile of trails around the perimeter of the project site with interpretive signs.

## **Workforce Development (Sections 2, 3 and 4)**

- State-of-the-art solar greenhouses to train climate-smart agricultural practices to prepare a highly skilled workforce in sustainable, controlled environment, and high-tech agricultural

technologies; four agricultural workforce programs have been developed, with two certified by UCR University Extension and other two undergoing certification.

- Integration of solar photovoltaic (PV) panels over soil-based agricultural activities to facilitate research and training in emerging dual-use agrivoltaic practices, the integration of solar and agriculture.
- Over 1.5 acres committed for soil-based training via the Next Generation Farmer Training Program certified by UCR University Extension.
- Additional future opportunities include collaboration with partners to establish an on-site microgrid to support research and training in solar renewable energy management, solar facilities, and multi-sector connectivity.

### **Innovation and Entrepreneurship (Sections 2, 3 and 4)**

- Solar greenhouses, coworking spaces, and incubation facilities planned for NAIC will:
  - Train at least 135 individuals annually; and
  - Incubate 6-10 new farmers and ag tech start-ups annually with an estimated 25 companies launched over 10 years.
- Specialized agriculture-based education and training will be delivered by accredited instructors and business mentorship via seasoned entrepreneurs in residence.

### **Community Engagement (Sections 1, 2 and 4)**

- An open-space agricultural-themed venue for community events including a community garden, indoor/outdoor event spaces, a co-work learning center, and demonstrations of climate-smart agricultural practices to educate a broad audience on how agriculture can function in an urban environment.
- Demonstration greenhouses to show case agriculture of the future and a teaching kitchen for food demonstrations and events.
- Site trails to encourage public engagement.

## Section 1 Conceptual Renderings



Demo solar greenhouse on the right. Co-work learning center in the background.



Outdoor pavilion with solar shade for community events and workshops.



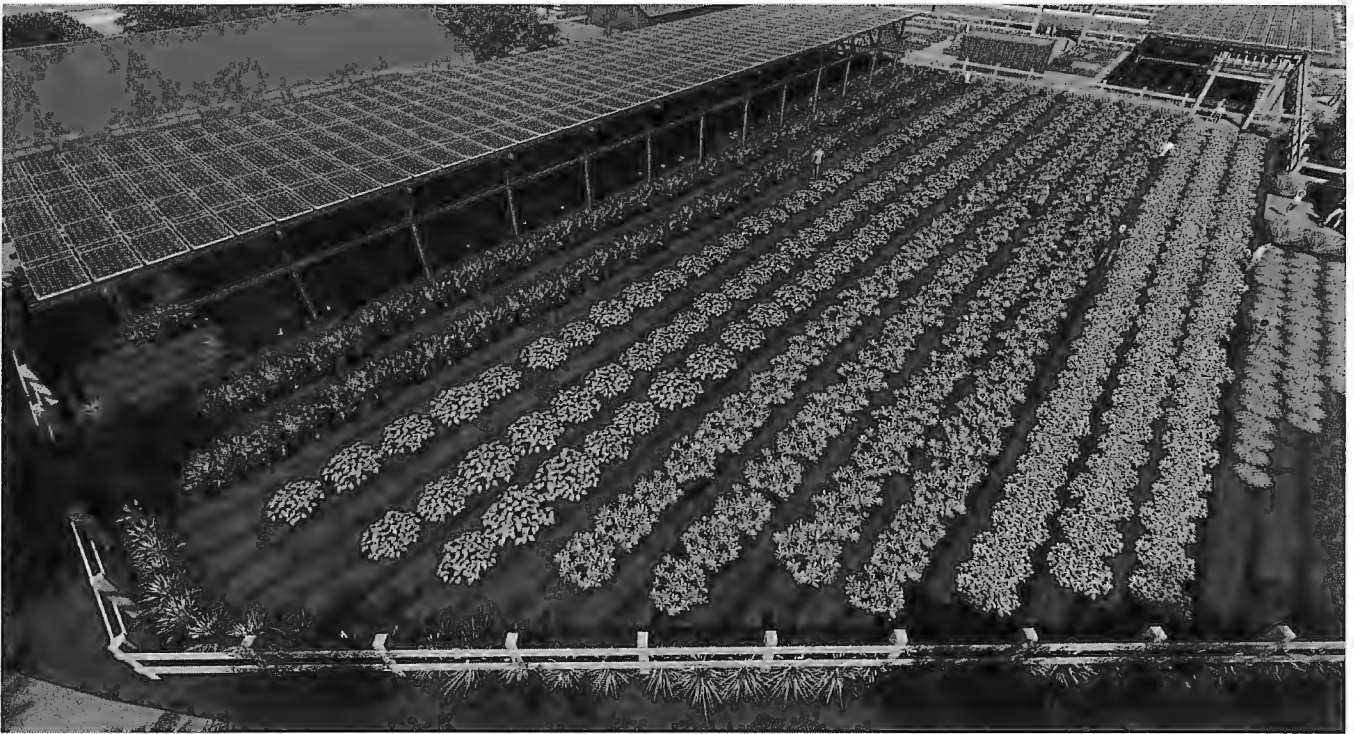
Co-work learning center in the background, will house future demo kitchen, office spaces and meeting rooms.



Outdoor event space. Co-work learning center and solar demo greenhouse in background.



## Section 2 Conceptual Renderings



Open space for soil-based farmer training programs and integration of agrivoltaics.





30-plot community garden with integration of agrivoltaics.



Demonstration garden with native plants and pollinators, with site trail.

### Section 3 Conceptual Renderings



Additional outdoor venue for community events and site restroom facilities.



Beginning farmer incubation plots.

## Section 4 Conceptual Renderings



Flexible atrium in solar greenhouses for community events, workshops, support facilities (e.g. processing, storage, cold storage) for site's agricultural activities.



Solar greenhouse for research, workforce development, ag-tech start up incubation.



**EXHIBIT "D"**

**ACCEPTANCE MEMORANDUM**

**[address] (the "Property")**

Pursuant to Section 1.3 of the Lease/Lease-Back Agreement dated on or about \_\_\_\_\_, 202\_\_ (the "Lease") between City of Riverside, a California charter city and municipal corporation ("Lessor") and Northside Solar Farm, LLC ("Lessee") with respect to the Property, Lessor and Lessee acknowledge and agree that for all purposes in the Lease:

1. The Commencement Date is \_\_\_\_\_ 202\_\_, and Lessee has accepted possession of the Property as of the Commencement Date.
2. The Expiration Date of the Initial Term is \_\_\_\_\_, 202\_\_ (20 years after Commencement Date).
3. The Base Rent Start Date is \_\_\_\_\_, 202\_\_ (upon Commencement Date).
4. Notices to Lessor for Lessor Repairs and/or emergencies are to be given to:  
Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_ Cell Phone: \_\_\_\_\_ Email: \_\_\_\_\_

When signed by Lessor and Lessee, this Acceptance Memorandum is attached to and incorporated in the Lease as Exhibit D, shall replace the form of Exhibit D attached to the Lease as of the Lease Date and the Lease is amended to be consistent with this Acceptance Memorandum.

Dated: \_\_\_\_\_, 202\_\_

Lessor:

**City of Riverside**

a California charter city and municipal corporation

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

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

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

Lessee:

**Northside Solar Farm, LLC**

a Delaware corporation

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

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

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

**EXHIBIT "E"**

**MEMORANDUM OF LEASE**

WHEN RECORDED, RETURN TO:

**MEMORANDUM OF LEASE**

**Lessor:** **The City of Riverside**  
**3900 Main Street**  
**Riverside, CA 92522**

**Lessee:** Northside Solar Farm, LLC

**Property:**

This Memorandum of Lease is recorded in the Riverside County Public Records to give notice of that certain Lease/Lease-Back Agreement dated \_\_\_\_\_, 202\_ (the "Lease") made by and between Lessor and Lessee. The Lease term commences \_\_\_\_\_, 202\_ and expires \_\_\_\_\_ 202\_\_, subject to extension under the terms stated in the Lease. All of the other terms, conditions, and agreements contained within the Lease are fully incorporated herein by reference as if set forth in full herein. This Memorandum of Lease does not amend the Lease and is subject to all terms of the Lease.

**Lessor:** **City of Riverside**  
a California charter city and municipal corporation  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Lessee:** **Northside Solar Farm, LLC**  
a Delaware corporation  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT "F"**  
**SCHEDULE OF PERFORMANCE**

<b>Milestone</b>	<b>Date</b>
Leased Premises Inspection: Lessee will have reviewed, and approved that Premises are suitable for construction after performance of Inspection. Lessee will notify Lessor of such approval in writing.	No later than 24 months after the Effective Date of this Agreement, unless mutually extended by the Parties.
Application of Government and Lessor Plan Approval: Lessee will have submitted all required applications, drawings, and plans to obtain governmental approvals to develop and use Premises.	No later than 24 months after Lessee provides Lessor with written approval that Leased Premises are suitable for construction.
Obtainment of Government and Lessor Plan Approval: Lessee will have obtained Governmental and Lessor Plan Approval to commence development and construction of Premises.	Later than expiration of the Approval Period of five years from Effective Date.
Construction Commencement: Lessee shall substantially commence the improvements as defined in Section 4.2 Improvements of Leased Premises.	No later than 12 months after the Approval Period.
Construction Completion: Lessee to have completed construction of improvements as defined in Section 4.2 Improvements of Leased Premises.	No later than 60 months following the Effective Date of this Agreement.

**EXHIBIT "G"**  
**RIGHT OF ENTRY**



**Project:** Lease/Lease-Back Agreement for Solar Project  
**Site Location:** Portions of 895 Clark Street and 900 Clark Street, Riverside  
**Assessor's Parcel No.:** 246-230-020 and 246-242-011

## **RIGHT OF ENTRY AGREEMENT**

This Right of Entry Agreement (“Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between the **CITY OF RIVERSIDE**, a California charter city and municipal corporation (“City”), and **NORTHSIDE SOLAR FARM, LLC**, (“Grantee”). City owns the real property identified as vacant land located 895 Clark Street and 900 Clark Street, Riverside, California, Riverside County Assessor Parcel Numbers 246-230-020 and 246-242-011, as shown on Exhibit “A” attached hereto and incorporated herein by reference (“Property”) and Grantee would like to enter the property to conduct geotechnical surveys and borings on the Property.

1. **Scope:** City hereby grants permission to Grantee, its employees, agents, and subcontractors to enter the Property. Grantee’s use of the Property is to survey, soil test, and make any other investigations necessary to determine if the surface of the Property is suitable for construction of the Solar Farm. Grantee agrees that entry to parcels will be accomplished using existing roads and driving paths where available. Where no reasonable paths are present, arrangements will be made with City as to the access method. The scope of work is as follows: [describe work]

Grantee has attached a map to provide the Community & Economic Development Department Director with approximate site location, for the soil testing. Grantee shall provide the Director of Community & Economic Development Department of the City of Riverside with at least 72 hours advanced written notice, provide specific site location, and obtain consent from either of the Deputy Director of the Public Works to request any intrusive soil testing.

2. **Term.** This Agreement will be effective on the date first written above and shall terminate on \_\_\_\_\_, unless earlier terminated as set forth in this Agreement.

3. **Compensation.** None.

4. **Condition of Premises.** During the term of this Agreement, Grantee is to avoid damaging or contaminating the Property, including any facilities, existing trees, landscaping or plants, and shall take all reasonable steps to maintain the Property in an orderly and appealing manner. At the completion of the work, Grantee will restore the Property to a condition equal to or better than its condition at the commencement of the term of this Agreement.

5. **Termination.** This Agreement may be terminated by either party upon three (3) days prior written notice to the other party or immediately by the City if it is determined that

Grantee's actions are unsafe or a liability to the City.

6. **Access to the Property.** Grantee shall make every reasonable effort to keep access to the Property open at all times and shall not interfere with City's activities in any way.

7. **Indemnification.** Except as to sole negligence or willful misconduct of the City, Grantee agrees to indemnify, defend and hold the City, its officers and employees, harmless from and against all claims, damages, losses, liability, cost, or expense, including attorney's fees, which arises out of or is in any way connected with the performance of work under this Agreement by Grantee or any of Grantee's employees, agents or subcontractors (collectively, "Claims"). Grantee shall also be responsible for any attorneys' fees the City incurs in the event the City has to file any action in connection with this right of entry.

The parties expressly agree that any payment, attorney's fee, costs, or expenses the City incurs or makes to or on behalf of an injured employee under the City's self-administered workers' compensation is included as a loss, expense, or cost for the purpose of this Section, and that this Section shall survive the expiration or early termination of this Agreement.

8. **Workers' Compensation Insurance.** By executing this Agreement, Grantee certifies that it is aware of and will comply with Section 3700 of the Labor Code of the State of California requiring every employer to be insured against liability for workers' compensation, or to undertake self-insurance before commencing any of the work. Grantee shall carry the insurance or provide for self-insurance required by California law to protect Grantee from claims under the Workers' Compensation Act. Prior to City's execution of this Agreement, Grantee shall file with City either (1) a certificate of insurance showing that such insurance is in effect, or that they are self-insured for such coverage, or (2) a certified statement that they have no employees, and acknowledging that if they do employ any person, the necessary certificate of insurance will immediately be filed with City. Any certificate filed with City shall provide that City will be given ten (10) days prior written notice before modification or cancellation thereof.

9. **General Commercial Liability and Automobile Insurance.** Prior to City's execution of this Agreement, Grantee shall obtain, and shall thereafter maintain during the term of this Agreement, commercial general liability insurance and automobile liability insurance as required to insure Grantee against damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from or which may concern operations by anyone directly or indirectly employed by, connected with, or acting for or on behalf of Grantee. The City, and its officers, employees and agents, shall be named as additional insureds under the Contractor's insurance policies.

All liability insurance shall be issued by insurance companies authorized to transact liability insurance business in the State of California with a policy holder's rating of A or higher and a Financial Class of VII or higher.

Grantee's commercial general liability insurance policies shall cover both bodily injury (including death) and property damage (including, but not limited to, premises operations liability,

products-completed operations liability, independent contractor's liability, personal injury liability, and contractual liability) in an amount of \$1,000,000 per occurrence and a general aggregate limit in the amount of \$2,000,000, unless otherwise approved or reduced by the City's Risk Manager ("Risk Manager"), or his designee.

Grantee's automobile liability policy shall cover both bodily injury and property damage in an amount of \$1,000,000 per occurrence unless otherwise approved or reduced by the Risk Manager, or his designee.

These amounts of coverage shall not constitute any limitation or cap on Grantee's indemnification obligations under Section 7 hereof.

Prior to City's execution of this Agreement, copies of insurance policies or original certificates and additional insured endorsements evidencing the coverage required by this Agreement, for both commercial general and automobile liability insurance, shall be filed with City and shall include the City and its officers, employees and agents, as additional insureds under the Grantee's required insurance policies in this Section 9, solely for work done by and on behalf of Grantee for the City of Riverside. Said policies shall be in the usual form of commercial general and automobile liability insurance policies.

The policies shall not be cancelled unless thirty (30) days prior written notification of intended cancellation has been given by Grantee to City by certified or registered mail, postage prepaid. Grantee may self-insure the insurance requirements under this Section 9.

The City, its officers, employees, and agents make no representation that the types or limits of insurance specified to be carried by Grantee pursuant to this Agreement are adequate to protect Grantee. If Grantee believes that any required insurance coverage is inadequate, they will obtain such additional insurance coverage as it deem adequate, at its sole expense.

10. **Hazardous Substances Indemnity.** Grantee expressly agrees to and shall indemnify, defend, release, and hold the City, its officers, officials, directors, agents, servants, employees, attorneys, and contractors harmless from and against any liability, loss, fine, penalty, fee, charge, lien, judgment, damage, entry, claim, cause of action, suit, proceeding (whether legal or administrative), remediation, response, removal, or clean-up and all costs and expenses associated therewith, and all other costs and expenses (including, but not limited to, attorneys' fees, expert fees, and court costs) in any way related to the disposal, treatment, transportation, manufacture, or use of any Hazardous Substances on, in, under, or about the Property by Grantee, or its respective officers, directors, agents, servants, employees or contractors, or by any other third party acting under the control or request of Grantee, other than the City and its respective officers, agents, servants, employees or contractors. This indemnity, defense, and hold harmless obligation shall survive the expiration or termination of this Agreement.

11. **Hazardous Substances Defined.** Hazardous Substances shall mean any (a) substance, product, waste or other material of any nature whatsoever which is or becomes listed, regulated, or addressed pursuant to CERCLA, 42 U.S.C. § 9601, et seq.; The Hazardous Materials

Transportation Act, 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq. (“RCRA”); The Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; The Clean Water Act, 33 U.S.C. § 1251, et seq.; The Hazardous Waste Control Act, California Health and Safety Code (“H. & S.C.”) § 25100, et seq.; the Hazardous Substance Account Act, H. & S.C. § 25330, et seq.; the California Safe Drinking Water and Toxic Enforcement Act, H. & S.C. § 25249.5, et seq.; Underground Storage of Hazardous Substances H.& S.C. § 25280, et seq.; the Carpenter-Presley-Tanner Hazardous Substance Account Act (H & S.C. § 25300 et seq.); The Hazardous Waste Management Act, H. & S.C. §§ 25170.1, et seq.; Hazardous Materials Response Plans and Inventory H. & S.C. § 25001 et seq.; or the Porter-Cologne Water Quality Control Act, Water Code § 13000, et seq., all as amended, or any other federal, state or local statute, law, ordinance, resolution, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect, (b) any substance, product, waste, or other material of any nature whatsoever which may give rise to liability under any of the above statutes, (c) petroleum, crude oil, or any substance which contains gasoline, diesel fuel or other petroleum hydrocarbons other than petroleum and petroleum products contained within regularly operated motor vehicles, and (d) polychlorinated biphenyls (PCB), radon gas, urea-formaldehyde, asbestos, and lead.

12. **Venue.** Any action at law or in equity brought by any of the parties hereto for the purpose of enforcing a right or rights provided for by this Agreement shall be tried in the Superior Court of the County of Riverside, State of California, and the parties hereby waive all provisions of law proving for a change of venue in such proceedings to any other county.

13. **Nondiscrimination.** During Grantee’s performance of this Agreement, it shall not discriminate on the grounds of race, religious creed, color, national origin, ancestry, age, physical disability, mental disability, medical condition, including the medical condition of Acquired Immune Deficiency Syndrome (AIDS) or any condition related thereto, marital status, sex, genetic information, gender, gender identity, gender expression, sexual orientation, military and veteran in the selection and retention of employees and subcontractors and the procurement of materials and equipment, except as provided in Section 12940 of the California Government Code. Further, Grantee agrees to conform to the requirements of the Americans with Disabilities Act in the performance of this Agreement.

14. **Notices.** Service of any notices, bills, invoices, or other documents required or permitted under this Agreement shall be sufficient if sent by one party to the other by United States mail, postage prepaid and addressed as follows.

**City**  
City of Riverside  
3900 Main Street  
Riverside, California 92522  
Attn:

**Grantee**  
Northside Solar Farm, LLC  
  
Attn:

15. **Assignment.** It is mutually understood and agreed that this Agreement is personal to Grantee and shall be binding upon Grantee and its successors and may not be assigned or transferred in any way. Any transfer shall be void and of no effect.

16. **Authority.** The individuals executing this Agreement each represent and warrant that they have the legal power, right, and actual authority to bind their respective entities to the terms and conditions hereof and thereof.

17. **Severability.** Each provision, term, condition, covenant, and/or restriction, in whole and in part, in this Agreement shall be considered severable. In the event any provision, term, condition, covenant, and/or restriction, in whole and/or in part, in this Agreement is declared invalid, unconstitutional, or void for any reason, such provision or part thereof shall be severed from this Agreement and shall not affect any other provision, term, condition, covenant, and/or restriction, of this Agreement and the remainder of the Agreement shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date and year first written above.

**CITY OF RIVERSIDE**

**GRANTEE**

By: \_\_\_\_\_  
Director  
Community & Economic  
Development Department

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

APPROVED AS TO FORM:

ATTEST:

By: \_\_\_\_\_  
Deputy City Attorney

By: \_\_\_\_\_  
City Clerk