This Power Purchase Agreement is entered into as of \_\_\_\_\_ , 20\_\_ by and

between ("Provider") and the City of
Santa Barbara, a municipal corporation ("Host").

WHEREAS, Provider desires to develop, design, construct, own and operate a solar powered electric generating facility at Host's property located at

Santa Barbara, California, and sell the electric energy produced by the facility to Host.

WHEREAS, Host desires to make a portion of its property available to Provider for the construction, operation and maintenance of the facility and to purchase the electric energy produced by the facility.

NOW, THEREFORE, in consideration of the promises, the covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

1. DEFINITIONS

The following terms, when used herein, shall have the meanings

set forth beside them below.

"Access Rights" means the rights provided in this Agreement for Provider and its designees, including Installer, to enter upon and cross the Site to install, operate, repair, remove, and maintain the Facility, and to interconnect the Facility with the Local Electric Utility and to provide water, electric and other services to the Facility.

"Agreement" means this Power Purchase Agreement, including all exhibits attached hereto, as the same may be amended from time to time in accordance with the provisions hereof.

"Applicable Law" means any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, or guideline issued by a Governmental Authority that is applicable to a Party to this Agreement or the transaction described herein. Applicable Law also includes an approval, consent or requirement of any governmental authority having jurisdiction over such Party or its property, enforceable at law or in equity.

"Change in Law" means that after the date of this Agreement, an Applicable Law is amended, modified, nullified, suspended, repealed, found unconstitutional or unlawful. Change in Law does not include changes in federal or state income tax laws. Change in Law does include changes in the interpretation of an Applicable Law.

"Commercial Operation Date" means the date, which shall be specified by Provider to Host pursuant to Section 4(g), when the Facility is physically complete and has successfully completed all performance tests and satisfies the interconnection requirements of the Local Electric Utility.

"Confidential Information" has the meaning provided in Section 15(b).

"Construction Guaranty" means a performance bond or escrow agreement in favor of the Host and in accordance with Host's requirements in the amount of

\_\_\_\_\_\_\_\_\_\_ dollars, or such other construction guaranty deemed by Host to be
sufficient to secure the construction of the Facility in substantial conformance with the Proposal.

"CSI" means the California Solar Initiative.

"Dispute" has the meaning provided in Section 24(a).

"Electric Service Provider" means any person, including the Local Electric Utility, authorized by the State of California to provide electric energy and related services to retail users of electricity in the area in which the Site is located.

"Environmental Attributes" means Renewable Energy Certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, certificates, products, or valuations attributed to the Facility and its displacement of conventional energy generation.

"Facility" means an integrated system for the generation of solar energy consisting of the photovoltaic panels and associated equipment to be installed on the Premises in accordance with this Agreement.

"Facility Lessor" means, if applicable, any Person to whom Provider transfers the ownership interest in the Facility, subject to a leaseback from such Person.

"Fair Market Value" means the price that would be paid in an arm's length, free market transaction, for cash, between an informed, willing seller and an informed willing buyer (who is neither a lessee in possession nor a used equipment or scrap dealer), neither of whom is under compulsion to complete the transaction, taking into account, among other things, the age and performance of the Facility and advances in solar technology, provided that installed equipment shall be valued on an installed basis and costs of removal from a current location shall not be a deduction from the valuation.

"Force Majeure Event" has the meaning provided in Section 20(a).

"Governmental Authority" means any international, national, federal, provincial, state, municipal, county, regional or local government, administrative, judicial or

regulatory entity operating under any Applicable Laws and includes any department, commission, bureau, board, administrative agency or regulatory body of any government.

"Host" means the City of Santa Barbara, and its successors.

"Initial Period" has the meaning provided in Section 2.

"Installer" means the person designated by Provider to install the Facility on the

Premises. Installer shall be or such other qualified and licensed contractor
as may be approved by Host.

"Land Registry" means the office where real estate records for the Site are customarily filed.

"Lender" means persons providing construction or permanent financing to Provider in connection with installation of the Facility and shall include investors in sale-leaseback transactions.

"Local Electric Utility" means the local electric distribution owner and operator which under the laws of the State of California is responsible for providing electric distribution and interconnection services to Host at the Site.

"Operations Period" has the meaning provided in Section 2.

"Party" means either Host or Provider, as the context shall indicate, and "Parties" means both Host and Provider.

"Person" means any individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, firm, or other entity, or a Governmental Authority.

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| "Point of Delivery" has the meaning set forth in Section 6(a). "Premises" means the portion of the Site described on Exhibit D. "Provider" means | , and its |
| successors. |  |  |

"Renewable Energy Certificate" or "REC" means a certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, created by an applicable program or certification authority indicating generation of a particular quantity of energy, or product associated with the generation of a specified quantity of energy from a renewable energy source by a renewable energy facility.

"Site" means the real property described on Exhibit C attached hereto, which includes the Premises.

"Term" shall have the meaning provided in Section 2 hereof.

2. TERMS

1. This Agreement shall consist of an Initial Period, and, unless the Host has exercised its right under Section 4(b) hereof to terminate the Agreement or the Provider has exercised its right under Section 4(c) hereof to terminate the Agreement prior to the end of the Initial Period, an Operations Period. As used herein, "Term" shall mean all of the Initial Period and the Operations Period.
2. The Initial Period will begin on the later of the date set forth above or such

time when thirty (30) days have elapsed from Host's adoption
of an ordinance approving this Agreement and during such thirty (30) day period there has been no filing of a referendum on such ordinance approval. The Initial Period will terminate on the earlier of (i) the Commercial Operations Date or (ii) the date this Agreement is terminated pursuant to the provisions of Section 4(b) or Section 4(c).

1. If applicable, the Operations Period will commence on the Commercial Operations Date and, subject to the provisions of this Agreement, shall terminate at 11:59 p.m. on the last day of the month in which the twentieth (20th) anniversary of the Commercial Operation Date occurs.
2. Twenty-four months prior to the end of the Operations Period, the Parties will meet to discuss the extension of this Agreement on terms and conditions reflecting the then current market for solar generated electricity and with such other amendments and additional terms and conditions as the Parties may agree. Neither Party shall be obligated to agree to an extension of this Agreement.

3. ACCESS TO PREMISES AND OWNERSHIP OF FACILITY

1. Host hereby grants Provider and its designees access to the Premises, for the Term, for the purposes of designing, installing, operating, and maintaining the Facility, and any other purpose set forth in this Agreement, and otherwise in accordance with the provisions of this Agreement. Access shall be subject to and consistent with Airport Security Plan requirements as they exist from time to time.
2. Provider shall be the legal and beneficial owner of the Facility at all times. The Facility is personal property and shall not attach to or be deemed a part of, or fixture to, the Site. The Facility shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Host covenants that it will use reasonable commercial efforts to place all persons having an interest in or lien upon the real property comprising the Premises on notice of the ownership of the Facility and the legal status or classification of the Facility as personal property. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the Facility as a fixture of the Premises, Host shall provide a

disclaimer or release from such lienholder. If Host is the fee owner of the Premises, Host consents to the filing of a disclaimer of the Facility as a fixture of the Premises in the office where real estate records are customarily filed in the jurisdiction of the Premises. If Host is not the fee owner, Host will obtain such consent from such owner of the Premises. Provider may mortgage, pledge, grant security interests, or otherwise encumber, or enter into a sale and lease of the Facility in connection with any construction or permanent financing obtained by Provider in connection with the installation of the Facility, and any refinancing thereof.

(c) Host grants Provider and its representatives the following Access Rights

with respect to the Site, including without limitation:

1. reasonable vehicular and pedestrian access across the Site to the Premises as designated on Exhibit C for purposes of designing, installing, operating, maintaining, repairing and removing the Facility. In exercising such access Provider shall reasonably attempt to minimize any disruption to activities occurring on the Site. Access will be subject to and consistent with the Airport Security Plan.
2. the right to locate transmission lines and communications cables across the Site as designated on Exhibit C. The location of any such transmission lines and communications cables outside the areas designated on Exhibit C shall be subject to Host's prior written approval and shall be at a location that minimizes any disruption to Host's activities occurring on the Site, including Host's aviation uses, and minimizes aesthetic impacts, subject to the description of the Facility in Exhibit E.
3. adequate storage space on the Site convenient to the Premises for materials and tools used during construction, installation of the Facility. Host shall maintain overall security of the Site consistent with current practices, including lockable gates at all entrances. Provider shall provide and maintain such fencing or other enclosures as necessary to secure the specific storage area made available to Provider by Host.
4. water, drainage, and electrical connections on the Premises for use by Provider in installing, operating and maintaining the Facility, provided that Provider shall pay the cost of utilities and comply with stormwater discharge limitations applicable to the City.

(d) Provider will be responsible for connecting monitoring equipment for the

Facility to external networks so that it is possible for Provider to remotely monitor the Facility. Provider shall not interconnect with Host's systems.

(e) Unless otherwise mandated by the federal government, Host, or any

lessee, grantee or licensee of Host, will maintain its buildings and plantings on the Site and its adjacent properties to maintain the solar access of the Facility in substantially the

same condition as of the date of this Agreement and in a manner that shall not interfere with the construction, operation or maintenance of the Facility.

4. PLANNING AND INSTALLATION OF FACILITY

1. During the first thirty (30) days of the Initial Period, Provider shall, at its own expense, diligently assess the suitability of the Premises for the Facility. The assessment shall include inspection of the Premises on which the Facility will be located; application for any building permits or other governmental authorizations necessary for the construction of the Facility; making arrangements for interconnection with the Local Electric Utility; making any applications to the California Public Utilities Commission or other agencies for receipt of payments for the Facility under the CSI or other applicable programs; applying to any other governmental agencies or other persons for grants or other determinations necessary for the construction of or receipt of revenues from the Facility; and any other investigation or determination necessary for the construction, operation or maintenance of the Facility.
2. Based on the assessment conducted pursuant to Section 4(a), during the first three hundred sixty five (365) days of the Initial Period, Provider shall have the right to cease development of the Facility on the Premises, if any of the following conditions have occurred:
3. Provider, after consultation with Host, demonstrates with reasonable certainty that Provider will not be able, despite reasonable diligence, to obtain building permits, architectural approval, and all other permits or other approvals necessary to construct the Facility;
4. Information about the Site provided to Provider by Host is found to be inaccurate and such inaccuracy results in a material and substantial change in the cost or feasibility of constructing the Facility;
5. Circumstances beyond Provider's reasonable control prevent interconnection with the Local Electric Utility; or
6. The Local Electric Utility notifies Host or Provider that the Facility is ineligible to qualify for payments under CSI.

If Provider determines that any of such conditions have occurred, Provider shall furnish evidence, of such to Host. Provider will consider any information given by Host to Provider within seven (7) days of receipt of such evidence, after which Provider may terminate this Agreement without any further liability of the Parties to each other, by delivering to Host notice of such termination, provided that (i) Provider shall remove any equipment or materials which Provider has placed on the Site; (ii) Provider shall restore any portions of the Site disturbed by Provider to its pre-existing condition; (iii) the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the delivery of the notice; and (iv) the confidentiality provisions of Section 16,

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the indemnity obligations under Section 17 hereof, and the dispute resolution provisions of Section 26 hereof shall continue to apply notwithstanding the termination of this Agreement.

1. If neither party has terminated the Agreement by the end of the time period set forth in Section 4(b), or upon an earlier date as may be mutually agreed by the Parties, Host shall issue to Provider a Notice to Proceed and Provider shall proceed to construct the Facility as described in Exhibit E at Provider's sole expense, except to the extent Exhibit E expressly identifies a cost as Host's responsibility. Provider shall, within ten (10) days of such Notice to Proceed provide the Construction Guaranty to Host. Provider shall give as much notice of intent to commence installation of the Facility on the Premises as reasonably possible, but in no case less than fifteen (15) days, during which time Host and Provider will schedule a pre-construction meeting to discuss arrangements for the period of construction. Provider shall commence construction of the Facility not later than sixty (60) days following issuance of the Notice to Proceed. As of the date hereof; Provider anticipates that the Facility shall consist of the components and shall have the design set forth in Exhibit E attached hereto. Provider, however, has the right, subject to Host's reasonable approval, to modify the design of the Facility, including the selection of the components in the Facility, provided, however, that such changes shall not result in the Facility exceeding the nameplate capacity, building footprint, location and height set forth in Exhibits D and E, except as Host, in its sole discretion, may approve.
2. If within 365 days (not including any days in which a Force Majeure condition existed) following the date of the Notice to Proceed , the Commercial Operations Date has not occurred, Host may terminate this Agreement by delivering notice to Provider of its intention to terminate this Agreement, and the Agreement shall terminate thirty (30) days after Provider's receipt of such notice unless the Commercial Operation Date occurs within such thirty (30) day period, provided, however, that if Provider is unable to achieve the Commercial Operation within such period due to difficulties in receiving timely supply of equipment to be incorporated in the Facility or the presence of hazardous materials on the Site, Host's right to terminate under this Section 4(d) shall be extended for such period as may be reasonably necessary to accommodate the supply of such equipment or the remediation of such hazardous materials. Upon such termination, neither Party shall have any further liability to the other, provided that (i) Provider shall remove any equipment or materials which Provider has placed on the Site; (ii) Provider shall restore any portions of the Site disturbed by Provider to their pre-existing condition; (iii) the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the delivery of the notice; and (iv) the confidentiality provisions of Section 16, the indemnity obligations under Section 17 hereof, and the dispute resolution provisions of Section 25 hereof shall continue to apply notwithstanding the termination of this Agreement.
3. Provider shall install one or more meter(s), the quantity and specifications of which are consistent with the specifications set forth in Exhibit E, to measure the

output of the Facility at the Point of Delivery. Provider shall install an Interval Data Recorder (IDR) with industry standard telemetry.

1. Provider shall give Host regular updates, on a schedule reasonably requested by Host, on the progress of installation of the Facility and shall notify Host of when Provider will commence testing of the Facility. Host shall be entitled to have its representatives present during the testing process, but subject to written rules and procedures as may be established by Provider and Installer. After Provider has determined, in its reasonable judgment, and has provided Host with appropriate documentation that the Facility meets the requirements of the Local Electric Utility, has been installed in accordance with all Applicable Laws, and is capable of producing electricity on a continuous basis, Provider shall notify Host that installation of the Facility is complete and shall specify the Commercial Operations Date for the Facility, which may be immediately upon delivery of such notice to Host, provided however that Provider shall have notified Host of Provider's intent to specify the Commercial Operations Date at least ten (10) days prior to such date. All electricity produced by the Facility prior to the Commercial Operations Date shall be delivered to Host and Host shall pay for such electricity at a rate equal to 75% of the rate applicable to the first year of the Operations Period, provided that Host has inspected the Facility to confirm that all necessary equipment, including metering, is in place and functioning properly.
2. Host shall release its interest in the Construction Guaranty within thirty (30) days from Provider's achieving the Commercial Operation Date as evidenced by satisfactory documentation from the Local Electric Utility.
3. Provider and Installer are not responsible for any hazardous materials encountered at the Site. Upon encountering any hazardous materials, Provider and Installer will stop work immediately in the affected area and duly notify Host and, if required by Applicable Law, or any Governmental Authority with jurisdiction over Site. Upon receiving notice of the presence of suspected hazardous materials, Host shall take all measures required by Applicable Law to remediate the site, provided however if such remediation cost will exceed one hundred thousand dollars, Host may terminate this Agreement without any further liability of the Parties to each other, by delivering to Provider notice of such termination, provided that (i) Provider shall remove any equipment or materials which Provider has placed on the Site; (ii) Provider shall restore any portions of the Site disturbed by Provider to its pre-existing condition; (iii) the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the delivery of the notice; and (iv) the confidentiality provisions of Section 16, the indemnity obligations under Section 17 hereof, and the dispute resolution provisions of Section 25 hereof shall continue to apply notwithstanding the termination of this Agreement. Provider and Installer shall be obligated to resume work at the affected area of the Site only after a qualified independent expert provides written certification that (i) remediation has been accomplished as required by Applicable Law and (ii) all necessary approvals have been obtained from Governmental Authority having jurisdiction over the Project or Site. Notwithstanding the preceding provisions, Host is not responsible for any hazardous materials introduced to the Site by Provider or Installer.

 5. OPERATION OF THE FACILITY

1. Provider shall use licensed and bonded contractors to perform the work of installing, operating, and maintaining the Facility. All labor to install, operate, and maintain the Facility shall be paid not less than the minimum rates established by the State of California's Director of the Department of Industrial Relations (State Wage Rates). Provider intends to use Installer to perform such work, but may use other contractors, for all or a portion of such work, subject to the reasonable approval of Host. Provider shall advise Host of the contractors being used by Provider. Provider shall, to the extent consistent with applicable law and local practice, have contractors execute lien waivers to prevent the imposition of any mechanics, labor or materialman's liens against Host's interest in the Site. Provider shall be responsible for the conduct of its contractors, and Host shall have no contractual relationship with the contractors in connection with the work on the Facility. Provider shall ensure that Installer maintains insurance applicable to the Installer's activities which satisfy the requirements in Exhibit F.
2. Provider shall design, obtain permits, install, operate, and maintain the Facility so as to keep it in good condition and repair, in compliance with all Applicable Laws and in accordance with the generally accepted practices of the electric industry, in general, and the solar generation industry, in particular. Such work shall be at Provider's sole expense, except to the extent Exhibit E expressly identifies a cost as Host's responsibility. Provider shall, and shall cause its contractors to, keep the Site reasonably clear of debris, waste material and rubbish, and to comply with reasonable safety procedures established by Host for conduct of business on the Site.
3. Host will provide security for the Facility to the extent of its normal security procedures for the Site.
4. Provider may shut down the Facility at any time in order to perform required emergency repairs to the Facility. At other times, Provider shall give Host notice of the shutdown as may be reasonable in the circumstances. Provider shall not have any obligation to reimburse Host for costs of purchasing electricity which would have been produced by the Facility but for such shutdown. Provider shall not schedule shutdowns during peak periods of electric generation and periods when peak energy and demand prices are charged by the Electric Service Provider, except as may be required in accordance with prudent electric industry practices in the event of equipment malfunction.

 6. SALE OF ELECTRIC ENERGY

(a) Throughout the Operations Period, subject to the terms and conditions of

this Agreement, Provider shall sell to Host and Host shall buy from Provider all electric energy produced by the Facility, whether or not Host is able to use all such electric energy (Host shall be free to sell energy which is excess to its requirements to the Local Electric Utility or receive any applicable net metering credit from the Local Electric

Utility as contemplated by the provisions of Section 9(b)). The Point of Delivery of the electric energy shall be as indicated on the one-line diagram included in Exhibit E. Title to and risk of loss with respect to the energy shall transfer from Provider to Host at the Point of Delivery.

1. The electric energy from the Facility shall be delivered from Provider to Host at the-specifications set forth in Exhibit E and otherwise in compliance with all requirements of the Local Electric Utility.
2. Provider does not warrant or guarantee the amount of electric energy to be produced by the Facility for any hourly, daily, monthly, annual or other period. Provider is not a utility or an electric service provider, and does not assume any obligations of a utility or electric service provider, including any obligation to provide service or be subject to rate review by governmental authorities.
3. The output of the Facility will be measured by the meter installed in accordance with Section 4(e). Provider shall conduct tests of the meters at such times as it deems appropriate in accordance with industry standards, but not less than once in any two year period. Host shall pay for any independent testing of the meter(s) in excess of such minimum testing schedule that Host deems necessary, except if, after such testing, the meter is shown to be in error by more than 2%, in which case Provider shall pay for the cost of such test and billing adjustments shall be made retroactively to the date which is half-way in between the Host testing and the last testing date of the meter by Provider, but in no event longer than 180 days.

7. PAYMENT AND BILLING

1. Host shall pay Provider for electricity produced by the Facility at the rates set forth in Exhibit A hereto. The rate shall become effective on the Commercial Operations Date at the "Year 1" rate shown in Exhibit A and shall adjust annually thereafter in accordance with Exhibit A on each anniversary of such date. The energy purchase rates contained in Exhibit A reflect Provider's responsibility to pay for all costs for the design, permitting, construction, maintenance, operation, administration, and removal of the Facility pursuant to this Power Purchase Agreement. Host shall have no responsibility for any portion of any such costs, except to pay for electricity produced as provided in this Power Purchase Agreement.
2. Host shall pay for the electricity produced by the Facility quarterly in arrears. Promptly after the end of each calendar quarter, Provider shall provide Host with an invoice setting forth the quantity of electricity produced by the Facility in such

quarter, the applicable rates for such and the total amount due, which shall be the product of the quantity and the applicable rates.

1. Invoices shall be in writing and shall be either (i) delivered by hand; (ii) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid; (iii) delivered by a recognized overnight or personal delivery service; (iv)

transmitted by facsimile (such transmission to be effective on the day of receipt if received prior to 5:00 p.m. local time on a business day or in any other case as of the next business day following the day of transmittal); or (v) transmitted by email if receipt of such transmission by email is specifically acknowledged by the recipient (automatic responses not being sufficient for acknowledgement), addressed as follows:

Santa Barbara Municipal Airport 601 Norman Firestone Road Santa Barbara, CA 93117 Facsimile: (XXX) XXX-XXXX

1. Host shall pay each invoice within twenty (20) days of receipt of the invoice. Provided the Host has the ability to make payment by electronic funds transfer , payment shall be made by electronic funds transfer to an account designated by Provider in the invoice or in a written notice delivered to Host; otherwise payment shall be made by check or other means agreed by the Parties. Any amounts not paid when due, including any amounts properly disputed and later determined to be owing, shall accrue interest on the unpaid amount at the rate of 1% per month, compounded monthly.
2. If Host objects to all or a portion of an invoice, Host shall, on or before the date payment of the invoice is due, (i) pay the undisputed portion of the invoice, and (ii) provide an itemized statement of its objections setting forth in reasonable detail the basis for its objections. If Host does not object prior to the date payment of any invoice is due, Host shall be obligated to pay the full amount of such invoices but Host may subsequently object to such invoice and, if such objection proves to be correct, receive a refund of the disputed amount plus interest on the disputed amount at the rate of 1% per month, compounded monthly; provided, however, that Host may not object to any invoice more than twelve (12) months after the date on which such invoice is rendered. The right to dispute or object to an invoice, shall, subject to the time limitation provided in this Section 7(e), survive the expiration or termination of this Agreement.

8. GUARANTEE OF MINIMUM ANNUAL OUTPUT

Provider has estimated that the system will deliver the Expected Annual Output as indicated in Exhibit A of this agreement. Provider guarantees a Minimum Annual Output from the system of 90% of the Expected Annual Output from the system over the course of an operational year commencing with the commercial operation date. If Provider fails to meet the Minimum Annual Output requirement on an operational year basis, for reasons other than shutdown required by the Host, as described in Section 11, Provider will pay the Host, or the Host may, at its option, offset against future payments due Provider, an amount equal to the Host's lost savings.

The formula for calculating lost savings:

Lost Savings (Minimum Annual Output — Actual Annual Output Delivered) X

(Annual Average Tariff Price in $/kWh — Annual Contract Price for PV Electricity Produced)

If Provider fails to pay the Host the amount due for any annual shortfall of the guaranteed Minimum Annual Output within 60 days after notice to make such payment, Host shall have the express right to withhold payment, up to the shortfall amount due, from any payment otherwise payable to the Provider for electricity.

9. SUPPLEMENTAL POWER, NET METERING, AND RECS

1. Throughout the Term, Host shall be responsible for obtaining all of its requirements for electric energy in excess of the amounts produced by the Facility and pay for such service pursuant to contracts with or applicable tariffs of the Local Electric Utility or other Electric Service Provider. Provider shall have no obligation to obtain or pay for such supplemental or back-up electricity.
2. At any time that electric production from the Facility is greater than Host's requirements at such time, Host shall nevertheless pay Provider for all of the electricity produced by the Facility, except as provided in Section 14(e) of this Agreement, at the rates and in the manner provided in this Agreement. At Host's option, power in excess of Host's requirements may be delivered to the Local Electric Utility through the Point of Delivery and Host shall receive any payments from the Local Electric Utility, whether directly for the electricity or through receipt of credits or payments that may be available from the Local Electric Utility under net metering or similar programs. If Applicable Law or the practice of the Local Electric Utility restricts the ability of the Host to sell electricity produced by the Facility to the Local Electric Utility, then the Parties shall agree on alternate arrangements to enable them, insofar as possible, to receive payments from the Local Electric Utility, provided that the economic benefits to Provider remain as provided in this Section 9(b).

Except as provided in Section 9(b), Provider shall receive all payments available under the CSI and any other federal, state or local programs applicable to renewable energy sources and Host shall assist Provider in preparing all applications and other documents necessary for Provider to receive such payments, including designating Provider as the customer for purposes of the CSI or assigning payments from the CSI to Provider. If Host receives any payments under the CSI or other programs in respect of the Facility, except as provided in Section 9(b), it shall promptly pay them over to Provider. Host's obligation to make any payments to Provider under this paragraph (c) is limited to any payments actually received by Host.

(d) Host shall be the owner of any Renewable Energy Certificates and

Environmental Attributes which may arise as a result of the operation of the Facility and shall be entitled to transfer such Renewable Energy Certificates and Environmental Attributes to any person. Provider shall assist Host in preparing all documents necessary for Host to receive such Renewable Energy Certificates and Environmental Attributes, and if Provider is deemed to be the owner of any such Renewable Energy Certificates and Environmental Attributes, Provider shall assign the same (or the proceeds thereof) to Host. If Provider receives any payments in respect of such certificates or attributes, it shall promptly pay them over to Host.

1. Provider shall be entitled to receive any payments for electric capacity or ancillary services which may become available as a result of the construction or operation of the Facility. Host shall assist Provider in preparing all documents necessary for Provider to receive such payments, and if Host is deemed to be the owner or provider of such capacity or services, Host shall assign the same to Provider. If Host receives any payments in respect of capacity or such services it shall promptly pay them over to Provider.
2. Except as contemplated by the provisions of Section 9(b), the electricity purchased by Host from Provider under this Agreement shall not be resold, assigned or otherwise transferred to any other person, and Host shall not take any action which would cause Host or Provider to become a utility or public service company.
3. Neither Party shall assert that Provider is an electric utility or public service corporation or similar entity which has a duty to provide service, is subject to rate regulation or is otherwise subject to regulation by any governmental authority as a result of Provider's obligations or performance under this Agreement.

10. PURCHASE OPTIONS

1. Commencing on the seventh anniversary of the Commercial Operation Date, and on each subsequent anniversary of the Commercial Operation Date, the Host may, at Host's election, approach Provider to discuss the possible purchase of the Facility by Host from Provider. Host acknowledges that Provider shall have no obligation to sell the Facility, and Provider acknowledges that by initiating discussions Host shall not have made any commitments with respect to the purchase of the Facility.
2. Host shall have the right, but not the obligation, to purchase the Facility from Provider at the expiration of the Operations Period at the then Fair Market Value of the Facility. No earlier than twelve months prior to the expiration of such Operations Period and no later than nine (9) months prior to the expiration of the Operations Period, Host shall notify Provider of its intent to exercise the option. Within ninety-one (91) days of its receipt of such notice, Provider shall give Host its appraisal of the Fair Market Value of the Facility at the end of the Term, which appraisal shall be based on Provider's knowledge of solar industry facilities. Host may, but is not obligated to, accept such appraisal. If Host does not accept such appraisal within ten (10) days of receiving the appraisal from Provider, the Parties shall meet to discuss the appraisal. If they are unable to reach agreement within twenty (20) days of the Host's receipt of the appraisal from Provider, then the Parties shall mutually select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry. Such appraiser shall act reasonably and in good faith to determine Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties, provided however Host is under no obligation to purchase.
3. Upon Host's notice that it elects to exercise the option set forth in either Section 10(a) or 10(b) above, Provider shall prepare and deliver, or cause to be delivered, to Host a set of records on the operation and maintenance history of the Facility and a set of as-built drawings of the entire Facility. Upon payment of the option price, Provider shall deliver, or cause to be delivered, to Host a bill of sale conveying the Facility to Host. Such bill of sale shall not contain any warranties other than a warranty against any defects in title arising through Provider. Provider shall use all reasonable efforts to transfer any remaining manufacturer's warranties on the Facility, or portions thereof, to Host.
4. In connection with, and prior to the effective date of, Hosts' purchase of the Facility, Host and Provider may discuss entering into an operation and maintenance agreement under which Provider shall perform all or a portion of the operation and maintenance requirements of the Facility following Host's purchase of the Facility. However, neither party shall be under an obligation to enter into such an agreement.
5. If Host does not exercise the option to purchase the Facility and the Parties do not agree to any subsequent agreement with respect to the Facility by the end of the Operations Period, then Provider, at its expense, shall promptly decommission and remove the Facility within three (3) months of the expiration of the Operations Period. Host grants Provider and its representatives reasonable vehicular and pedestrian access across the Site to the Premises for purposes of decommissioning the Facility. In exercising such access and performing the decommissioning, Provider shall reasonably attempt to minimize any disruption to activities occurring on the Site. Host will provide adequate storage space on the Site convenient to the Premises for materials and tools used during decommissioning, which space Provider shall secure with fencing or other equipment as Provider deems necessary. During decommissioning, Provider will comply with all Applicable Law.
6. Host's option to purchase the Facility under Section 10(b) shall not survive the termination of this Agreement.

11. SHUTDOWNS, SALE OF SITE, AND CLOSURE OF PREMISES

(a) Host from time to time may request Provider to temporarily stop operation

of the Facility. Such request should be reasonably related to Host's activities in operating the Airport, including compliance with FAA mandates, or maintaining and improving the Site. During any such shutdown period (but not including periods of Force Majeure), Host will pay Provider an amount equal to the sum of (i) payments that Host would have made to Provider hereunder for electric energy that would have been produced during the period of the shutdown and (ii) revenues that Provider would have received under the CSI and any other assistance program with respect to electric energy that would have been produced during the period of the shutdown. Determination of the amount of energy that would have been produced during the period of the shutdown shall be based, during the first year of the Operations Period, on the estimated levels of production and, after the first year of the Operations Period, on the actual operation of the Facility in the same

period in the previous calendar year, unless Provider and Host mutually agree in writing to an alternative methodology.

1. If Host sells the Site and the improvements thereon Host may, in lieu of Host's continuing performance under this Agreement with respect to the Facility at the Site, cause a subsequent owner of the Site, who shall demonstrate to Provider's lenders that it possesses investment grade credit, to assume this Agreement with respect to such Site. Host shall give Provider at least 180 days notice of a pending sale.
2. In the event the Premises are closed as a result of an event not related to Force Majeure, Host shall nevertheless continue to pay Provider for all electricity produced by the Facility and delivered to the Point of Delivery.
3. Notwithstanding anything to the contrary in this Section 11, if there is a temporary shutdown or stop in operation of the Facility, not the result of a Force Majeure event, caused by or related to any action or inaction of Provider such that Facility is no longer able to produce electricity or transfer electricity to the Premises or to the Local Electric Utility and as a result, the Facility is not operating and producing electric energy for a continuous period of ninety (90) days, then either Party shall have the right to terminate this Agreement upon thirty (30) days notice to the other Party. Upon such termination, Provider shall be required within three (3) months of such termination to decommission and remove the Facility from the Site in accordance with the provisions of Section 10(e) hereto. In the event of such a termination of this Agreement with respect to the Facility, the Parties shall not be released from any payment or other obligation arising under this Agreement prior to the shutdown of the Facility, and the indemnity, confidentiality, and dispute resolution provisions shall survive the termination of this Agreement.

12. PERMITS AND OTHER APPROVALS

1. Provider shall be responsible for paying all costs for and arranging the interconnection of the Facility with the Local Electric Utility and shall obtain any consents or approvals from the Local Electric Utility which are necessary for the construction, commissioning, or operation of the Facility.
2. Provider shall pay for and obtain all approvals from governmental entities necessary for the construction and operation of the Facility, including land use permits, building permits, and demolition and waste disposal permits.
3. Host shall pay for and obtain all consents required for it to enter into and perform its obligations under this Agreement from its lenders, tenants, and any other persons with interests in the Site. These consents shall include estoppel certificates which recognize the rights of Provider, and its assignees and successors, under this Agreement.

13. TAXES

1. Provider shall be responsible for any and all income taxes associated with payments from Host to Provider for electric energy from the Facility. Provider, as owner of the Facility, shall be entitled to all deductions, credits and other tax benefits under federal and state income tax laws with respect to the Facility, including depreciation allowances, investment and production tax credits.
2. Host shall be responsible for all taxes, fees, and charges, including sales, use and gross receipts taxes, imposed or authorized by any Governmental Authority on the sale of electric energy by Provider to Host. Host shall timely report, make filings for, and pay any and all such taxes assessed directly against it and shall reimburse Provider for any and all such taxes assessed against and paid by Provider.
3. Host shall be responsible for all ad valorem personal property or real property taxes levied against the Site, improvements thereto and personal property located thereon, except that Provider shall be responsible for ad valorem personal property or real property taxes levied against the Facility. Provider acknowledges and agrees that this Agreement may create a possessory interest subject to property taxation. Provider agrees to pay and discharge any possessory interest taxes associated with the Facility, hereinafter levied or assessed or imposed upon or against the Facility, or against any of Provider's personal property now or hereafter located at the Site, or which may be levied, charged, assessed or imposed upon any taxable possessory interest or right of Provider acquired pursuant to this Agreement. If Host is assessed any taxes related to the existence of the Facility on the Premises, Host shall immediately notify Provider. Host and Provider shall cooperate in contesting such assessment; provided, however, that Host shall pay such taxes to avoid any penalties or interest on such Taxes, subject to reimbursement by Provider. If after resolution of the matter, such tax is imposed upon Host related to the improvement of real property by the existence of the Facility on the Site, Provider shall reimburse Host for such tax.
4. Each Party has the right to contest taxes in accordance with Applicable Law and the terms of encumbrances against the Site. Each Party shall use all reasonable efforts to cooperate with the other in any such contests of tax assessments or payments. In no event shall either Party postpone during the pendency of an appeal of a tax assessment the payment of taxes otherwise due except to the extent such postponement in payment has been bonded or otherwise secured in accordance with Applicable Law.
5. In the event either Party fails to pay any taxes that may become a lien upon the other Party's property, such Party may pay such amounts and in such event shall be entitled to recover such paid amount from the other Party, together with interest thereon at the rate of one percent (1%) per month, compounded monthly.
6. Any reimbursement of taxes owing pursuant to this Section 13 shall be paid within twenty (20) days of receiving an invoice therefor from the Party who paid the taxes.

14. INSURANCE

1. Provider shall maintain the insurance coverage set forth in Exhibit F in full force and effect throughout the Term.
2. Provider will also meet any additional insurance requirements as may be specified in the CSI program contract and/or utility interconnection agreement.
3. Provider shall furnish current certificates indicating that the insurance required under this Section 14 is being maintained. The insurance policy provided hereunder shall contain a provision whereby the insurer agrees to give the Host thirty (30) days written notice before the insurance is cancelled or materially altered.
4. Provider's insurance policy shall be written on an occurrence basis and shall include the Host as an additional insured as its interest may appear. A cross liability clause shall be made part of the policy. Provider's insurer shall waive all rights of subrogation against the Host.
5. All insurance maintained hereunder shall be maintained with companies rated no less than **B+** XII as to Policy Holder's Rating in the current edition of Best's Insurance Guide (or with an association of companies each of the members of which are so rated).

15. COOPERATION

1. The Parties acknowledge that the performance of each Party's obligations under this Agreement will frequently require the assistance and cooperation of the other Party. Each Party therefore agrees, that in addition to those provisions in this Agreement specifically providing for assistance from one Party to the other, that it will at all times during the Term cooperate with the other Party and provide all reasonable assistance to the other Party to help the other Party perform its obligations hereunder.
2. Host acknowledges that Provider will obtain construction and/or permanent financing from third party sources in connection with the installation of the Facility, and may from time to time refinance such financing. Such financing shall recognize Host's right under this agreement and shall not encumber Host's right and interests in the Site and Premises. Host agrees to execute all consents to assignment and provide such opinions of counsel as may be reasonably requested by Provider and Lender in connection with such financing.
3. Unless otherwise mandated by the federal government, Host will maintain its buildings and plantings on the Site and its adjacent properties to maintain the solar access of the Facility in substantially the same condition as on the date of this Agreement.
4. The Parties acknowledge that the installation of the Facility is part of a process of managing and reducing the cost of Host's electric requirements. Host agrees

to discuss with Provider other concepts, systems and approaches which Provider may propose from time to time to assist Host in the managing and reducing the cost of Host's electric requirements.

(e) If during the term of this Agreement Provider determines that it can

significantly increase the capacity or availability of the Facility beyond the capabilities of the Facility as initially installed under Section 4 hereof whether through availability of improved technology or otherwise, Host and Provider shall first discuss such opportunities and may agree to amend this Agreement accordingly on such terns as they may agree to.

16. PRESS RELEASES

1. The Parties acknowledge that they each desire to publicize information about this Agreement and the Facility. The Parties therefore agree that they may each make press releases about entering into this Agreement, the size and location of the Facility, and the identity of the other Party. To the extent allowed by law, the terms of this Agreement and information about the Facility, other than that described above, constitutes Confidential Information, as defined below.
2. For purposes of this agreement, Confidential Information means information of a confidential or proprietary nature that is specifically marked as confidential. Such information shall include, but not be limited to any documentation, records, listing, notes, data, computer disks, files or records, memoranda, designs, financial models, accounts, reference materials, trade-secrets, prices, strategic partners, marketing plans, strategic or other plans, financial analyses, customer names or lists, project opportunities and the like, provided however that Confidential Information does not include information which (i) was in the possession of the receiving party before receipt from the disclosing party; (ii) is or becomes publicly available other than as a result of unauthorized disclosure by the receiving party; (iii) is received by the receiving party from a third party not known by the receiving party with the exercise of reasonable diligence to be under an obligation of confidentiality respecting the information; or (iv) is independently developed by the receiving party without reference to information provided by the disclosing party.

17. INDEMNIFICATION

As part of the consideration for this Agreement, Provider shall provide the following:

(a) Provider shall, to the extent permitted by law, investigate, defend, indemnify, and hold harmless the Host, its officers, employees, and agents from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges, and expense (including reasonable attorney fees), and causes of action of whatsoever character (hereinafter collectively referred to as "claims") which the Host may incur, sustain or be subjected to on account of loss or damage to property or loss of use thereof, or for bodily injury to or death of any persons (including but not limited to property, employees, subcontractors, agents and invitees of each party hereto) arising out of or in any way

connected with the work to be performed under this Agreement, except to the extent a claim arises from a professional error or omission.

(b) With respect to those claims arising from a professional error or omission, the following indemnification shall be applicable: Provider shall investigate, defend, indemnify and hold harmless the Host, its officers, agents, and employees from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges, and expenses (including reasonable attorney's fees) and causes of action of whatsoever character which Host may incur, sustain or be subjected to on account of loss or damage to property or loss of use thereof; or for bodily injury to or death of any persons (including but not limited to property, employees, subcontractors, agents and invitees of each party hereto) arising out of or due to the professionally negligent acts, errors or omissions of Provider.

18. SECURITY FOR OBLIGATIONS

1. Host and/or Provider shall make any necessary filings to disclaim the Facility as a fixture of the Premises and the Site in the Land Registry to place all interested parties on notice of the ownership of the Facility by Provider.
2. Upon request by Provider, the Parties shall execute and record with the Land Registry easements and other instruments documenting the Access Rights granted by Host to Provider in this Agreement, and which shall be in form and substance reasonably acceptable to both Parties. The cost of recording shall be borne by the Provider.
3. With respect to consents that Host obtains under Section 12(c) hereof from holders of mortgages, liens or other encumbrances against the Site such consents shall include recognition of, and agreement not to disturb, the rights of Provider hereunder. Such consents, or acceptable notices thereof; shall be recorded, at Host's expense, in the Land Registry. Host may in the future mortgage, pledge, grant security interests in all or a portion of the Site and the improvements thereon, provided the mortgagee or other grantee of the encumbrance acknowledges this Agreement, the Facility, the Access Rights granted hereunder, and the priority of Provider's rights in the Facility and the Access Rights.
4. Each Party shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien, (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature, including claims by governmental authorities for taxes (collectively referred to as "Liens" and each, individually, a "Lien") on or with respect to the interests of the other in the Site, the Premises, and the Facility, and in the Access Rights granted hereunder. Each Party shall promptly notify the other of the imposition of a Lien on the property interests of the other Party, and shall promptly discharge such lien, provided however, that a Party may seek to contest the amount of validity of any Lien affecting the property of the other Party, provided it timely complies with all procedures for contesting such Lien, posts any bond or other security necessary under such procedures, and if such procedures do not require

the posting of security, the Party establishes for the benefit of the other Party a deposit, letter of credit or other security acceptable to the other Party to indemnify the other Party against any Loss (as defined in Section 17(a)) which could reasonably be expected to arise if such Lien is not removed or discharged.

19. REPRESENTATIONS AND WARRANTIES

(a) Each Party hereby represents and warrants to the other, as of date hereof,

that:

1. Organization. It is duly organized, validly existing and in good standing under the laws of its state of formation and the State of California, and has the power and authority to enter into this Agreement and to perform its obligations hereunder.
2. No Conflict. The execution and delivery of this Agreement and the performance of and compliance with the provisions of this Agreement will not conflict with or constitute a breach of or a default under (i) its organizational documents; (ii) any agreement or other obligation by which it is bound; (iii) any law or regulation.
3. Enforceability. (x) All actions required to be taken by or on the part of such Party necessary to make this Agreement effective have been duly and validly taken; (y) this Agreement has been duly and validly authorized, executed and delivered on behalf of such Party; and (z) this Agreement constitutes a legal, valid and binding obligation of such Party, enforceable in accordance with its terms, subject to laws of bankruptcy, insolvency, reorganization, moratorium or other similar laws, provided however that with respect to Host, such representations are subject to the adoption of an ordinance approving this Agreement and no challenge or filing of a referendum on such ordinance approval being made within a thirty (30) day period after such adoption.
4. No Litigation. There are no court orders, actions, suits or proceedings at law or in equity by or before any governmental authority, arbitral tribunal or other body or threatened against or affecting it or brought or asserted by it in any court or before any arbitrator of any kind or before or by any governmental authority which could reasonably be expected to have a material adverse effect on it or its ability to perform its obligations under this Agreement, or the validity or enforceability of this Agreement.

(b) In addition to the representations and warranties in Section 19(a), Host

hereby represents and warrants to Provider, as of date hereof, that:

(i) Electric Usage. Host has given Provider complete and correct

records of its electric usage at the Site.

 (ii) Condition of Premises. Host has given Provider, to the extent of

its knowledge, complete and correct records of the physical condition of the Premises. Provider acknowledges that it has had an opportunity to review the condition of the Site and Premises prior to entering into this Agreement.

20. FORCE MAJEURE

(a) "Force Majeure Event" means any act or event that prevents the affected

Party from performing it obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence (including the expenditure of reasonable sums). Subject to the foregoing, Force Majeure Event may include the following acts or events: (i) natural phenomena, such as storms, hurricanes, floods, lightning and earthquakes; (ii) explosions or fires arising from lightning or other causes unrelated to the acts or omissions of the Party seeking to be excused from performance; (iii) acts of war or public disorders, civil disturbances, riots, insurrection, sabotage, epidemic, terrorist acts, or rebellion; (iv) strikes or labor disputes; and (v) action by a governmental authority, including a moratorium on any activities related to this Agreement. Force Majeure Events shall not include equipment failures or acts or omissions of agents, suppliers or subcontractors, except to the extent such acts or omissions arise from a Force Majeure Event. Changes in prices for electricity shall not constitute Force Majeure Events.

(b) Except as provided in Section 20(c) or otherwise specifically provided in

this Agreement, neither Party shall be considered in breach of this Agreement or liable for any delay or failure to comply with this Agreement, if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief as a result of the Force Majeure Event shall promptly (i) notify the other Party in writing of the existence and details of the Force Majeure Event; (ii) exercise all reasonable efforts to minimize delay caused by such Force Majeure Event;

1. notify the other Party in writing of the cessation of such Force Majeure Event; and
2. resume performance of its obligations hereunder as soon as practicable thereafter.

(c) Obligations to make payments for services already provided shall not be

excused by a Force Majeure Event.

(d) In the event of a casualty event which destroys all or a substantial portion

of the Premises, Host shall elect, within sixty (60) days of such event, whether it will restore the Premises, which restoration will be at the sole expense of Host. If Host does not elect to restore the Premises, then Provider shall not restore the Facility and this Agreement will terminate. If Host does elect to restore the Premises, Host shall provide notice of such election to Provider and Provider shall then elect, within sixty (60) days of receipt of such notice, whether or not to restore the Facility, subject to the Parties agreeing on a schedule for the restoration of the Premises and an equitable extension to the Term of this Agreement. If the Parties are not able to so agree or if Provider does not elect to restore the Facility, it shall promptly remove any portions of the Facility

remaining on the Premises and this Agreement will terminate. If Provider does elect to restore the Facility it shall do so at its sole expense. Termination provisions pursuant to this paragraph 19(d) shall be: (i) the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the casualty event; and (ii) the confidentiality provisions of Section 16, the indemnity obligations under Section 17 hereof, and the dispute resolution provisions of Section 25 hereof shall continue to apply notwithstanding the termination of this Agreement.

(e) Notwithstanding anything to the contrary in Sections 20 (a) — (c), if

nonperformance on account of a Force Majeure event continues beyond a continuous period of ninety (90) days, then either Party shall have the right to terminate this Agreement upon thirty (30) days notice to the other (it being agreed that in case of a casualty event which destroys all or a substantial portion of the Premises, the provisions of Section 20(d) shall apply). Upon a termination in accordance with this Section 20(e), Provider shall be required to decommission and remove the Facility from the Site in accordance with the provisions of Section 10(e). In the event of such a termination of this Agreement with respect to the Facility, the Parties shall not be released from any payment or other obligation arising under this Agreement which accrued prior to the shutdown of the Facility or the Premises, and the indemnity, confidentiality and dispute resolution provisions of this Agreement shall survive the termination of this Agreement.

1. CHANGE OF LAW

In the event there is any Change in Law that is applicable to the operation of the Facility, the sale of electric energy produced by the Facility, or any other obligation of the Provider or Host hereunder, there shall be no adjustment to the rates for electric energy from the Facility set forth in this Agreement, notwithstanding that compliance with the Change in Law results in an increase in Provider's costs to operate and/or maintain the Facility or increases the cost to Host of using electricity produced by the Facility.

1. PROVIDER DEFAULT AND HOST REMEDIES

(a) Events of Default by Provider. Provider shall be in default of this

Agreement if any of the following ("Provider Events of Default") shall occur:

1. Any representation or warranty by Provider under Section 19 hereof; is incorrect or incomplete in any material way, or omits to include any information necessary to make such representation or warranty not materially misleading, and such defect is not cured within fifteen (15) days after receipt of notice from Host identifying the defect.
2. Provider, fails to commence installation of the Facility as provided in Section 4(d), abandons construction of the Facility and fails to resume construction within thirty (30) days after receipt of notice from Host stating that, in Host's determination, Provider has abandoned construction of the Facility.
3. After the Commercial Operation Date, Provider fails to operate the Facility for a period of ninety (90) days which failure is not due to damage to the Facility not caused by Providers operation or inoperation, act of governmental authority, or exercise of Provider's rights under this Agreement, or otherwise excused by the provisions of Section 20 (b) (relating to Force Majeure Events); and Provider fails to resume operation within thirty (30) days after receipt of notice from Host stating that, in Host's determination, Provider has ceased operation of the Facility.
4. Provider fails to perform any obligation hereunder, such failure is material, such failure is not excused by the provisions of Section 20(b) (relating to Force Majeure Events), and such failure is not cured within: (x) ten (10) days if the failure involves a failure to make payment when due or maintain required insurance or (y) thirty (30) days if the failure involves an obligation other than the payment or the maintenance of insurance, after receipt of notice from Host identifying the failure.
5. Provider (A) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property; (B) admits in writing its inability, or is generally unable, to pay its debts as such debts become due; (C) makes a general assignment for the benefit of its creditors; (D) commences a voluntary case under any bankruptcy law; (E) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) acquiesces in, or fails to contest in a timely manner, any petition filed against Provider in an involuntary case under bankruptcy law or seeking to dissolve Provider under other Applicable Law; or (G) takes any action authorizing its dissolution.

(b) Upon an Event of Default by Provider, Host shall provide Lender with a

reasonable opportunity to cure such Event of Default pursuant to Section 27(e)(iv), and if Lender does not cure such Default, Host may terminate this Agreement, seek to recover damages for costs of replacement electricity and pursue other remedies available at law or equity, in such case, Provider shall within three (3) months of written request of Host remove the Facility from the Premises and restore the Premises as described in Section 10(e).

23. HOST DEFAULT AND PROVIDER REMEDIES

(a) Events of Default by Host. Host shall be in default of this Agreement if

any of the following ("Host Events of Default") shall occur:

(i) Any representation or warranty by Host under Section 19 hereof, is

incorrect or incomplete in any material way, or omits to include any information necessary to make such representation or warranty not materially misleading, and

such defect is not cured within fifteen (15) days after receipt of notice from Provider identifying the defect.

1. Host obstructs commencement of installation of the Facility or fails to take any actions necessary for the interconnection of the Facility, or fails to take electric energy produced by the Facility, and fails to correct such action within thirty (30) days after receipt of notice thereof from Provider;
2. Host sells the Site without the buyer assuming the obligations of Host hereunder and Buyer does not provide adequate assurance, including appropriate credit support, to Provider for purchasing quantities of electric energy from the Facility comparable to that purchased (or anticipated to be purchased) by Host hereunder.
3. Host fails to perform any obligation hereunder, such failure is material, such failure is not excused by the provisions of Section 20(b) (relating to Force Majeure Events), and such failure is not cured within: (x) ten (10) days if the failure involves a failure to make payment when due or maintain required insurance or (y) thirty (30) days if the failure involves an obligation other than the payment or the maintenance of insurance, after receipt of notice from Provider identifying the failure.
4. Host (A) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property; (B) admits in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) makes a general assignment for the benefit of its creditors; (D) commences a voluntary case under any bankruptcy law; (E) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) acquiesces in, or fails to contest in a timely manner, any petition filed against Host in an involuntary case under bankruptcy law or seeking to dissolve Host under other Applicable Law; or (G) takes any action authorizing its dissolution.

(b) Upon an Event of Default by Host, Provider may terminate this

Agreement, sell electricity produced by the Facility to persons other than Host and recover from Host any loss in revenues resulting from such sales and pursue other remedies available at law or in equity.

24. LIMITATIONS ON DAMAGES

 NEITHER PARTY NOR ANY OF ITS INDEMNIFIED PERSONS SHALL

BE LIABLE TO THE OTHER PARTY OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT, OR IN CONNECTION WITH THIS AGREEMENT.

25. DISPUTE RESOLUTION

1. The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out or relating to this Agreement (a "Dispute") within 30 days after the date that a Party gives written notice of such Dispute to the other Party.
2. If, after such negotiation in accordance with Section 25(a), the Dispute remains unresolved, either Party may require that a non-binding mediation take place. In such mediation, representatives of the Parties with authority to resolve the dispute shall meet for at least three (3) hours with a mediator whom they choose together. If the Parties are unable to agree on a mediator, then either Party is hereby empowered to request the American Arbitration Association to appoint a mediator. The mediator's fee and expenses shall be paid one-half by each Party.
3. In the event any Dispute is not settled to the mutual satisfaction of the Parties pursuant to Sections 25(a) or 25(b), both Parties shall retain the right, but not the obligation, to pursue any legal or equitable remedy available to it in a court of competent jurisdiction.

26. NOTICES

All notices or other communications which may be or are required to be given by any party to any other party pursuant to this Agreement shall be in writing and shall be either (i) delivered by hand; (ii) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid; (iii) delivered by a recognized overnight or personal delivery service; (iv) transmitted by facsimile (such transmission to be effective on the day of receipt if received prior to 5:00 p.m. local time on a business day or in any other case as of the next business day following the day of transmittal); or (v) transmitted by email if receipt of such transmission by email is specifically acknowledged by the recipient (automatic responses not being sufficient for acknowledgement), addressed as follows:

If to Host:

Airport Director

601 Norman Firestone Road

Santa Barbara, CA 93117
Facsimile: (XXX) XXX-XXXX

If to Provider:

Notices shall be effective when delivered (or in the case of email, when acknowledged by the recipient) in accordance with the foregoing provisions, whether or not (except in the case of email transmission) accepted by, or on behalf of, the Party to whom the notice is sent.

Each Party may designate by Notice in accordance with this section to the other Party a new address to which any notice may thereafter be given.

27. MISCELLANEOUS

1. Governing Law. This Agreement shall be governed by the laws of the State of California.
2. Rules of Interpretation. Section headings are for convenience only and shall not affect the interpretation of this Agreement. References to sections are, unless the context otherwise requires, references to sections of this Agreement. The words "hereto", "hereof' and "hereunder" shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The word "person" shall include individuals; partnerships; corporate bodies (including but not limited to corporations, limited partnerships and limited liability companies); non-profit corporations or associations; governmental bodies and agencies; and regulated utilities. The word "including" shall be deemed to be followed by the words "without limitation". In the event of any conflict between the text of this Agreement and the contents of an Exhibit hereto, the text of this Agreement shall govern
3. Severability. If any non-material part of this Agreement is held to be unenforceable, the rest of the Agreement will continue in effect. If a material provision is determined to be unenforceable and the Party which would have been benefited by the provision does not waive its unenforceability, then the Parties shall negotiate in good faith to amend the Agreement to restore to the Party that was the beneficiary of such unenforceable provision the benefits of such provision. If the Parties are unable to agree upon an amendment that restores the Party's benefits, the matter shall be resolved under Section 25(c) in order to restore to the Party that was the beneficiary of the unenforceable provision the economic benefits of such provision.
4. Amendment and Waiver. This Agreement may be amended only in writing signed by both Parties. Any waiver of any of the terms hereof shall be enforceable only to the extent it is waived in a writing signed by the Party against whom the waiver is sought to be enforced. Any waiver shall be effective only for the particular event for which it is issued and shall not constitute a waiver of a subsequent occurrence of the waived event nor constitute a waiver of any other provision hereof, at the same time or subsequently.
5. Assignment. Subject to the prior written approval of Host, Provider may assign its rights and obligations hereunder to an affiliate of Provider and may mortgage, pledge, grant security interests, assign, or otherwise encumber its interests in this

Agreement to any Persons providing financing for the Facility. Host acknowledges that Provider will be financing the acquisition and installation of the Facility either through a Facility Lessor, Lender, or with financing accommodations from one or more financial institutions and that Provider may sell or assign the Facility and/or may secure Provider's obligations by, among other collateral, an assignment of this Agreement and a first security interest in the Facility. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any Lender or Facility Lessor, as applicable, Host agrees as follows:

(i) Consent to Collateral Assignment. Subject to the prior written approval of

Host, Host may consent to the sale of the Facility to a Facility Lessor and the collateral assignment to the Lender or Facility Lessor of the Provider's right, title and interest in and to this Agreement.

(ii) Rights Upon Default by Provider Under a Sale/Leaseback Transaction.

Notwithstanding any contrary term of this Agreement: (1) The Facility Lessor, as owner of the Facility, or the Facility Lessor or Lender as collateral assignee of this Agreement, respectively, shall be entitled to exercise, in the place and stead of Provider, any and all rights and remedies of Provider under this Agreement in accordance with the terms of this Agreement. The Facility Lessor or Lender shall also be entitled to exercise all rights and remedies of owners or secured parties, respectively, generally with respect to this Agreement and the Facility; (2) The Facility Lessor or Lender shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Provider thereunder or cause to be cured any default of Provider thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Facility Lessor or Lender to cure any default of Provider under this Agreement or (unless the Facility Lessor or Lender has succeeded to Provider's interests under this Agreement) to perform any act, duty or obligation of Provider under this Agreement, but Host hereby gives it the option to do so; (3) Upon the exercise of remedies, including any sale of the Facility by the Facility Lessor or Lender, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Provider to the Facility Lessor or Lender (or any assignee of the Facility Lessor or Lender as defined below) in lieu thereof, the Facility Lessor or Lender shall give notice to Host of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement; (4) Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Provider under the United States Bankruptcy Code, at the request of Facility Lessor or Lender made within ninety (90) days of such termination or rejection, Host may, but is not obligated to do so, enter into a new agreement with Facility Lessor or Lender or its assignee having substantially the same terms and conditions as this Agreement.

1. Acknowledgement and Confirmation. Host shall provide an
Acknowledgement and Confirmation in substantially the same form as Exhibit G, Exhibit H, or Exhibit I to this Agreement, as applicable, from Host's landlord or lessor, if any, that the ownership of the Facility remains in Provider and further acknowledging that the Facility is personal property of Provider.
2. Right to Cure. (1) Host will not exercise any right to terminate or suspend this Agreement unless it shall have given the Facility Lessor or Lender prior written notice of its intent to terminate or suspend this Agreement, as required by this Agreement, specifying the condition giving rise to such right, and the Facility Lessor or Lender shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement; provided that if such Provider default reasonably cannot be cured by the Facility Lessor or Lender within such period and the Facility Lessor or Lender commences and continuously and with due diligence pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed an additional ninety (90) days. The Parties' respective obligations will otherwise remain in effect during any cure period. (2) If the Facility Lessor or Lender or its assignee (including any purchaser or transferee), pursuant to an exercise of remedies by the Facility Lessor or Lender, shall acquire title to or control of Provider's assets and shall, within the time periods described in Section 27(e)(iv)(1) above, cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such Person shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

Neither Party may assign, sell, transfer or in any other way convey its rights, duties or obligations under this Agreement, either in whole or in part, without the prior written consent of the other Party which consent shall not be unreasonably withheld or delayed. For purposes of this Section 27(e), transfer does not include any sale of all or

substantially all of the assets of Provider or any merger of Provider with another Person, whether or not Provider is the surviving entity from such merger, or any other change in control of Provider.

(f) Counterparts. This Agreement may be executed in two or more

counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(rest of page left blank intentionally — signatures appear on next page)

IN WITNESS WHEREOF, intending to be legally bound hereby, Provider and Host have executed this Power Purchase Agreement as of the date first set forth above.

By:

By:
Name (printed): Title:

**City of Santa Barbara, a municipal corporation:**

Airport Director

ATTEST:

City Clerk

APPROVED AS TO CONTENT:

Assistant Airport Director

APPROVED AS TO INSURANCE:

Risk Manger

APPROVED AS TO FORM:

City Attorney

By

EXHIBIT A

EXPECTED ANNUAL OUTPUT AND ENERGY PURCHASE RATES

|  |  |  |
| --- | --- | --- |
| Year | Expected Annual Output in kWh | Purchase Rate per kWh |
| 1 |  |  |
| 2 |  |  |
| 3 |  |  |
| 4 |  |  |
| 5 |  |  |
| 6 |  |  |
| 7 |  |  |
| 8 |  |  |
| 9 |  |  |
| 10 |  |  |
| 11 |  |  |
| 12 |  |  |
| 13 |  |  |
| 14 |  |  |
| 15 |  |  |
| 16 |  |  |
| 17 |  |  |
| 18 |  |  |
| 19 |  |  |
| 20 |  |  |

EXHIBIT B

RESERVED

EXHIBIT C

DESCRIPTION OF SITE

EXHIBIT D

DESCRIPTION OF PREMISES

EXHIBIT E

DESCRIPTION OF FACILITY

The Facility will be constructed substantially in conformance with the technical criteria shown in this Exhibit E. The following specific provisions shall apply:

1. In accordance with the provisions of Host's Request For Proposals, installation of the Facility shall be in accordance with the City of Santa Barbara Solar Design Guidelines, shall require neat and orderly installation of all equipment, and shall not include any overhead wires.
2. Each point of connection of the Facility solar energy system to the site distribution system will be equipped with a revenue-grade meter approved by the City, such as Itron Sentinel or equivalent. The meter(s) shall be a socketed type, form 9S. Host recognizes that State-mandated metering requirements shall also dictate the selected metering equipment. All costs associated with utility interconnection shall be borne by the Project Developer.
3. Provider is responsible for all costs associated with the design, structural analysis, construction, maintenance, and repair of the Facility.
4. Provider shall consult with Host on a weekly basis during design and preparation of final construction drawings with the goal of confirming that the work is being done in conformance with this Agreement.
5. The Facility may not interfere with the safe operation of the Airport, including FAA equipment, aircraft operations, Airport operations and parking lots. If the Facility interferes in any way with FAA equipment or aircraft operations the Project Developer will immediately and entirely eliminate the source of any interference at their sole cost. The Project Developer will phase construction of the Project to minimize disruption to Airport parking activities, if necessary.
6. The PV collection system and support structure must be aesthetically pleasing and of a style and design acceptable to the Airport Department, Architectural Board of Review, Planning Commission, building department, and other review and approval bodies, while minimizing environmental impacts.
7. Project Developer shall install PV modules with a minimum manufacturer's warranty of 20 years and inverters with a minimum manufacturer’s warranty of 10 years. All solar electric generating equipment, inverters and meters used on the Project must be eligible for California Solar Initiative funding. All Project equipment and appurtenances will be installed in conformance with manufacturer's recommendations and applicable codes.
8. If the proposed Facility impacts existing lighting for public or operational areas, Project Developer will provide adequate high-efficiency replacement lighting, consistent with FAA and city requirements, as part of development of the Project. Lighting conditions will meet lighting standards appropriate for the area. All parking lot lighting should continue to be powered by SCE.
9. Support structure design must minimize perching and nest building opportunities for birds.
10. All materials used to construct the Project shall be suitable for marine environment applications, including but not limited to, the following:
11. Above-ground conduit and conduit fittings shall be rigid, liquid tight flexible metallic conduit, or equivalent, as approved by City.
12. Fasteners and hardware shall be galvanized steel, stainless steel, or corrosion and sunlight resistant material, as approved by City.
13. In addition to meeting the local electrical code requirements, all conductors shall be copper and carry at least a damp location rating or better if required by code.
14. Structural materials shall be suitable for use under the prevailing environmental conditions for which they are intended. This includes, but is not limited to, a marine environment. Material exposed to the marine environment shall be galvanized steel, stainless steel, anodized aluminum, or corrosion and sunlight resistant material, as approved by City.
15. PVC electrical raceways, enclosures, and/or fittings shall not be approved where exposed to sunlight.

EXHIBIT F

INSURANCE REQUIREMENTS

Insurance Requirements as to Provider

**INDEMNIFICATION PROVISION**

As part of the consideration for this Agreement, Provider shall provide the following:

1. Provider shall, to the extent permitted by law, investigate, defend, indemnify, and hold harmless the Host, its officers, employees, and agents from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges, and expense (including reasonable attorney fees), and causes of action of whatsoever character (hereinafter collectively referred to as "claims") which the Host may incur, sustain or be subjected to on account of loss or damage to property or loss of use thereof, or for bodily injury to or death of any persons (including but not limited to property, employees, subcontractors, agents and invitees of each party hereto) arising out of or in any way connected with the work to be performed under this Agreement, except to the extent a claim arises from a professional error or omission.
2. With respect to those claims arising from a professional error or omission, the following indemnification shall be applicable: Provider shall investigate, defend, indemnify and hold harmless the Host, its officers, agents, and employees from and against any and all loss, damage, liability, claims, demands, detriments, costs, charges, and expenses (including reasonable attorney's fees) and causes of action of whatsoever character which Host may incur, sustain or be subjected to on account of loss or damage to property or loss of use thereof; or for bodily injury to or death of any persons (including but not limited to property, employees, subcontractors, agents and invitees of each party hereto) arising out of or due to the professionally negligent acts, errors or omissions of Provider.

**INSURANCE**

As part of the consideration of this Agreement, Consultant agrees to purchase and maintain at its sole cost and expense during the life of this agreement insurance coverage as specified in I, II, III, & IV below. All insurance coverage is to be placed with insurers that: 1) have a Best rating of no less than B+: XII, and 2) are admitted insurance companies in the State of California. All other insurers require prior approval of the City.

I. General and Automobile Liability: Combined single limits of not less than Two Million

Dollars ($2,000,000) of General Liability and Two Million Dollars ($2,000,000) of Automobile Liability insurance, including Bodily Injury and Property Damage.

Such insurance shall include:

1. Extension of coverage to City, its officers, employees and agents, as additional insureds, with respect to Consultant's liabilities hereunder in insurance coverage identified in item "I" above, but only as respects to the operations of the named insured. A copy of the endorsement evidencing that the City of Santa Barbara has been added as an additional insured on the policy, must be attached to the certificate of insurance.
2. A provision that coverage will not be cancelled or subject to reduction until at least thirty (30) days' prior written notice has been given to the City Clerk, addressed to P.O. Box 1990, Santa Barbara, California 93102-1990.
3. A provision that Consultant's insurance shall apply as primary, and not excess of, or contributing with the City.
4. Contractual liability coverage sufficiently broad so as to include the liability assumed by the Consultant in the indemnity or hold harmless provisions included in this Agreement.
5. A Cross Liability clause, or equivalent wording, stating that coverage will apply separately to each named or additional insured as if separate policies had been issued to each.
6. Broad form Property Damage Endorsement.
7. Policy shall apply on an "occurrence" basis.
8. Workers' Compensation: In accordance with the provisions of the California Labor Code, Consultant is required to be insured against liability for Workers' Compensation or to undertake self-insurance. Statutory Workers' Compensation and Employers' Liability of at least $1,000,000 shall cover all Consultant's staff while performing any work incidental to the performance or this agreement. The policy shall provide that no cancellation, major change in coverage or expiration shall be effective or occur until at least thirty (30) days after receipt of such written notice by City.
9. Professional Liability: Professional Liability (Errors and Omission) insurance with limits of liability of not less than One Million Dollars ($1,000,000) to cover all services rendered by the Consultant pursuant to this Agreement. Said policy shall provide that City shall be given thirty (30) days written notice prior to cancellation or expiration of the policy or reduction in coverage.
10. Builders All Risk: Builders All Risk insurance with limits equal to the anticipated cost of construction for the facility.

Approval of the insurance by City or acceptance of the certificate of insurance by City shall not relieve or decrease the extent to which the Consultant may be held responsible for payment of

damages resulting from Consultant's services or operation pursuant to this Agreement, nor shall it be deemed a waiver of City's rights to insurance coverage hereunder.

A Certificate of Insurance supplied by the City evidencing the above shall be completed by Consultant's insurer or its agent and submitted to the City prior to execution of this Agreement by the City. Consultant shall exercise due diligence to require all subcontractors and all tiers of such subcontractors to provide General and Automobile Liability, Workers' Compensation, and Professional Liability insurance as set forth in I, II, and III of this section.

If, for any reason, Consultant fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. City, at its sole option, may terminate this Agreement and obtain damages from the Consultant resulting from said breach. Alternately, City may purchase such required insurance coverage, and without further notice to Consultant, City may deduct from sums due to Consultant any premium costs advanced by City for such insurance.

EXHIBIT G

FORM OF ACKNOWLEDGEMENT AND CONFIRMATION

This Acknowledgement and Confirmation, dated as of (this

"Acknowledgement"), is made by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,

the "Host" under that certain Power Purchase Agreement dated \_\_\_\_\_\_\_\_, 200\_ (as amended from time to time, the "Agreement") with **[Project LLC],** a Delaware limited liability company ("Provider"). This Acknowledgement is provided pursuant to Section 1 of the Agreement to the Provider, Lender or Facility Lessor (as defined in the Agreement).

The solar photovoltaic facility (the "Facility") to be operated and maintained by Provider

pursuant to the PPA is located at Host's facility at (the "Premises").

1. Acknowledgement of Collateral Assignment.

1. Host acknowledges the collateral assignment by Provider to the Facility Lessor, of Provider's right, title and interest in, to and under the Agreement, as consented to

under Section 1 of the Agreement.

1. The Facility Lessor as such collateral assignee shall be entitled to exercise any and all rights of lenders generally with respect to the Provider's interests in the Agreement, including those rights provided to Lenders and Facility Lessor in

Section 1 of the Agreement.

1. Host acknowledges that it has been advised that Provider has i) conveyed the ownership interest and ii) granted a first priority security interest in the Facility to Lender and that Facility Lessor has relied upon the characterization of the Facility as personal property, as agreed in the Agreement.
2. Until further written notice, Host agrees to make all payments due Provider under the Agreement to Facility Lessor at the following address:

[address information to be added]

2. Confirmation. Host confirms the following matters for the benefit of the Facility Lessor:

1. To Host's knowledge, there exists no event or condition which constitutes a default, or that would, with the giving of notice or lapse of time, constitute a default, under the Agreement.
2. Host has approved the Facility as installed at the Premises.

 (c) Host is aware of no existing lease, mortgage, security interest or other interest in

or lien upon the Premises which could attach to the Facility as an interest adverse to Lender's or Facility Lessor's security interest therein.

3. Third-Party Beneficiary. Facility Lessor shall be a third-party beneficiary to this Acknowledgement with full right and authority to enforce the provisions hereof.

HOST

By:

Name:

PROVIDER **[Project LLC]**

By:
Name:

EXHIBIT H

FORM OF INDEPENDENT LANDLORD - OWNER/LESSOR ACKNOWLEDGEMENT
AND CONFIRMATION

This Owner/Lessor Acknowledgement and Confirmation, dated as of (this

"Acknowledgement"), is made by , \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, ("Owner/Lessor"). Owner/Lessor is the [owner] [lessor] of real property situated in the City/Town of County of , and State of

 having a street address of (the "Premises"). The Premises are

leased to ("Host") by Lease dated (the
"Lease").

Owner/Lessor has been advised of a certain Power Purchase Agreement dated

 , 200\_ (the "Agreement") between Host and **[Project LLC]** ("Provider") pursuant
to which a solar photovoltaic facility (the "Facility") is to be installed, operated and maintained

by Provider at Host's [\_\_\_\_\_\_\_\_\_\_\_\_\_] facility (the "Building") at the Premises. The Facility
will be connected to the electrical system of the Building as a supplemental source of electrical power.

This Acknowledgement is provided pursuant to Section [ ] of the Agreement at the

request of the Host to [Project LLC], a Delaware limited liability company ("Provider") and Lender or Facility Lessor (as defined in the Agreement). Owner/Lessor has been advised that part of the collateral securing such financial accommodations is the granting of a first priority security interest (the "Security Interest") in the Facility to Lender or Facility Lessor to be perfected by the filing of a Financing Statement (Form UCC-1) under the Uniform Commercial Code. The Security Interest will cover the Facility as personal property only, and not as a fixture.

Owner/Lessor hereby acknowledges and confirms to Provider and Lender or Facility Lessor the following matters with respect to the Premises:

1. Host either has the absolute right to install the Facility and grant the Security Interest under the terms of the Lease or has it obtained the consent of the Owner/Lessor to do so.
2. The granting of the Security Interest will not violate any term or condition of the Lease or, to the best of Owner/Lessor's knowledge, of any covenant, restriction, lien, financing agreement, or security agreement affecting the Premises.
3. Owner/Lessor acknowledges that Lender or Facility Lessor has relied upon the characterization of the Facility as being and remaining at all times personal property, as agreed in the Agreement in accepting the Security Interest as collateral for its financing of the Facility.
4. Owner/Lessor is aware of no existing lease, mortgage, security interest or other interest in or lien upon the Premises that could attach to the Facility as an interest adverse to Lender's or Facility Lessor's Security Interest therein.
5. To the Owner/Lessor's knowledge, there exists no event or condition which constitutes a default, or which would, with the giving of notice or lapse of time, constitute a default, under the Lease.
6. Owner/Lessor will use commercially reasonable efforts to place its successors, assigns, and lienors on notice of the ownership of the Facility by Provider, the existence of the Security Interest, and the fact that the Facility is not a part of the Premises or a fixture thereof, as necessary and appropriate to avoid confusion or adverse claims.
7. Owner/Lessor disclaims any right to receive any rebate, subsidy, tax credit, or renewable energy credits or other environmental attributes based upon the installation of the Facility at the Premises.

Provider and Lender or Facility Lessor shall be third-party beneficiaries to this Acknowledgement with full right and authority to enforce the provisions hereof.

OWNER/LESSOR HOST

By: By:

Name: Name:

Title: Title:

EXHIBIT I

FORM OF HOST LANDLORD - OWNER/LESSOR ACKNOWLEDGEMENT AND
CONFIRMATION

This Owner/Lessor Acknowledgement and Confirmation, dated as

of , 200\_ (this "Acknowledgement"), is made by
("Owner/Lessor"). Owner/Lessor is the owner of real property situated in the City/Town

of , County of and State of

 having a street address of (the
"Premises").

Owner/Lessor is party to that certain Power Purchase Agreement dated

 (the "Agreement") between Owner/Lessor and
**[PROJECT LLC]** ("Provider") pursuant to which a solar photovoltaic facility (the "Facility") is to be installed, operated and maintained by Provider at Owner/Lessor's facility (the "Building") at the Premises. The Facility will be connected to the electrical system of the Building as a supplemental source of electrical power. Owner/Lessor is the "Host" under the Agreement

This Acknowledgement is provided pursuant to Section 1 of the Agreement to Provider and Lender or Facility Lessor (as defined in the Agreement, which is providing financial accommodations to Provider to finance the installation of the Facility. Owner/Lessor has been advised that part of the collateral securing such financial accommodations is the granting of a first priority security interest (the "Security Interest") in the Facility to Lender to be perfected by the filing of a Financing Statement (Form UCC-1) under the Uniform Commercial Code. The Security Interest will cover the Facility as personal property only, and not as a fixture.

Owner/Lessor hereby acknowledges and confirms to Lender or Facility Lessor the following matters with respect to the Premises:

1. Host has the absolute right to install the Facility and grant the Security Interest.
2. To the best of Owner/Lessor's knowledge, the granting of the Security Interest will not violate any term or condition of any covenant, restriction, lien, financing agreement, or security agreement affecting the Premises.
3. Owner/Lessor acknowledges that Lender or Facility Lessor has relied upon the characterization of the Facility as being and remaining at all times personal property, as agreed in the Agreement, in accepting the Security Interest as collateral for its financing of the Facility.
4. Owner/Lessor is aware of no existing lease, mortgage, security interest or other interest in or lien upon the Premises that could attach to the Facility

as an interest adverse to Lender's or Facility Lessor's Security Interest therein.

1. Owner/Lessor will use commercially reasonable efforts to place its successors, assigns, and lienors on notice of the ownership of the Facility by Provider, the existence of the Security Interest, and the fact that the Facility is not a part of the Premises or a fixture thereof, as necessary and appropriate to avoid confusion or adverse claims.
2. Owner/Lessor disclaims any right to receive any rebate, subsidy, tax credit, or renewable energy credits or other environmental attributes based upon the installation of the Facility at the Premises.

**OWNER/LESSOR**

[Type in name of Host/Owner/Lessor]

By:

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

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