

October 10, 2017

By Hand Delivery and E-Mail

Ms. Judith Whitney, Clerk
Vermont Public Utility Commission
112 State Street, Drawer 20
Montpelier, VT 05620-2701

Re: **CPG #16-0042-NMP -- Application of Orchard Road Solar I, LLC**

Dear Ms. Whitney:

Enclosed please find Applicant Orchard Road Solar I, LLC's ("ORS") *Initial Post-Hearing Brief* for filing in the above-referenced matter.

In addition, ORS would like to follow up on three informational requests that arose during the evidentiary hearing held on August 28-29, 2017.

1. First, the Hearing Officer requested that ORS provide the lease agreement to confirm that specific language is included regarding decommissioning of the Project, which is attached. ORS currently has a lease option with the landowner, and the lease agreement will be fully executed once a CPG is issued for the Project.
2. The Hearing Officer also requested that Applicant provide an approximation of the municipal taxes to be paid by the Project. Based on the projected energy output of the Project, Applicant estimates that municipal taxes will be approximately \$9,562 per year.
3. Finally, Applicant stated that it would confirm the estimated degree of slope of the proposed Project site. By this letter, the Applicant confirms that following the grade of the slope is approximately 13.5%.

Please do not hesitate to contact us with any questions.

Sincerely,



Geoffrey H. Hand, Esq.
Victoria M. Westgate, Esq.

cc: Service List

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

Application of Orchard Road Solar I, LLC for a)
certificate of public good, pursuant to 30 V.S.A.)
§§ 219a and 248, to install and operate a 500 kW) CPG #16-0042-NMP
group net metered solar electric generation facility)
located on Orchard Road in Middletown Springs,)
Vermont, to be known as the "Orchard Road)
Solar Project")

CERTIFICATE OF SERVICE

I, Gillian Bergeron, certify that on October 10, 2017, I forwarded copies of Orchard Road Solar I, LLC's *Letter to the Public Utility Commission re Initial Post-Hearing Brief and Informational Requests* to the service list below by the delivery method noted:

By Hand Delivery and E-Mail:

Ms. Judith Whitney, Clerk
Vermont Public Utility Commission
112 State Street, Drawer 20
Montpelier, VT 05620-2701

By E-Mail and First Class Mail:

Randy J. Miller, II, Esq.
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John E. Arsenault, Chairman
Middletown Springs Planning Commission
P.O. Box 1232
Middletown Springs, VT 05757

David P. Wright, President
Middletown Springs Historical Society, Inc.
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49 Rocks and Trees Lane
P.O. Box 1011
Middletown Springs, VT 05757

Richard Spitalny
24 Tanglewild Road
Chappaqua, NY 10514

Dated at Burlington, Vermont this 10th day of October, 2017.

By:

A handwritten signature in black ink, appearing to read "Gillian Bergeron". The signature is fluid and cursive, with the first name "Gillian" written in a larger, more prominent script than the last name "Bergeron".

Gillian Bergeron
Paralegal

**STATE OF VERMONT
PUBLIC UTILITY COMMISSION**

CPG #16-0042-NMP

Application of Orchard Road Solar I, LLC for a)
certificate of public good, pursuant to 30 V.S.A.)
§§ 219a and 248, to install and operate a 500 kW)
group net metered solar electric generation facility)
located on Orchard Road in Middletown Springs,)
Vermont, to be known as the “Orchard Road)
Solar Project”)

Hearing at
Montpelier, Vermont
August 28-29, 2017

Order entered: _____

**APPLICANT ORCHARD ROAD SOLAR I, LLC’S
INITIAL POST-HEARING BRIEF**

I. Introduction

This docket concerns an application filed by Orchard Road Solar I, LLC (“ORS”), pursuant to 30 V.S.A. §§ 219a and 248 and Public Utility Commission (“Commission” or “PUC”) Rule 5.100, requesting the Commission to issue a Certificate of Public Good for the installation and operation of a 500 kW group net metered solar electric generation facility to be located on Orchard Road in Middletown Springs, Vermont (the “Project”). The Commission has reviewed the materials filed by the Applicant and approves the application as follows.

II. Procedural History

On July 15, 2016 ORS filed its application with the Commission requesting a CPG pursuant to 30 V.S.A. §§ 219a and 248 to install and operate a 500 kW group net metered solar electric generating facility on the premises of a former commercial apple orchard, located at approximately 30 Orchard Road in Middletown Springs, Vermont. Upon filing its application with the Commission, ORS also submitted copies of its application to the Middletown Springs Planning

Commission, the Rutland Regional Planning Commission (“RRPC”), the Agency of Natural Resources (“ANR”), the Department of Public Service (“DPS” or “Department”), and Green Mountain Power (“GMP”)—the serving electric utility. ORS also noticed the Middletown Springs Selectboard and adjoining property owners to inform them that the application had been filed with the Commission.

A 45-day notice for the Project was provided to the Town and Regional Planning Commissions, the City of Middletown Springs Selectboard, adjoining landowners, the serving electric utility (GMP), ANR, and DPS on May 11, 2016. This notice complied with the requirements of Commission Rule 5.110(c), effective January 27, 2014.

On July 26, 2016, the Vermont Division for Historic Preservation (“VDHP”) filed comments with the Commission.

On July 29, 2016, adjoining landowner Richard Spitalny filed a letter with preliminary comments on the Project.

On August 1, 2016, Karen and Robert Galloway (the “Galloways”), owners of property in the vicinity of the Project, requested an extension of time to comment on the application.

On August 2, 2016, the Rutland Regional Planning Commission (“RRPC”) filed comments regarding the Project.

On August 4, 2016, the Commission issued a procedural Order noting that the Applicant had submitted its interconnection request to GMP on October 26, 2015, and that, as a result of its position in GMP’s interconnection queue, the application falls within GMP’s statutory net metering cap. Accordingly, the Commission’s Order noted the resumption of the review of the application.

On August 5, 2016, John E. Arsenault, chairman of the Middletown Springs Planning Commission, filed a motion to intervene on behalf of the Town of Middletown Springs (“Town”), relaying that the Town Selectboard had voted to intervene in this proceeding “for purposes of

collecting information on behalf of the public, with no current intention to take a position on the project.”

On August 18, 2016, Applicant filed responses to the preliminary comments filed with the Commission.

On September 6, 2016, “Neighbors of Orchard Road Solar I” filed comments with a request for a technical hearing, 10 separate motions to intervene, and a petition opposing the Project.

On September 6, 2016, Middletown Springs Historical Society, Inc. (“MSHS”) filed a motion to Intervene, and DPS filed comments stating that the application does not raise any significant issues with the substantive criteria of Section 248 on which DPS typically makes recommendations, including orderly development, system stability and reliability, and aesthetics.

On September 12, 2016, Mr. Spitalny filed comments on Applicant’s response of August 18, 2016. Also on September 12, 2016, the RRPC filed comments stating that it would not intervene in the proceeding, but raising issues concerning the sufficiency of the application.

On September 21, 2016, Applicant filed a response to each of the motions to intervene and the comments filed regarding the Project.

On December 1, 2016, ANR submitted comments regarding the Application. Neighbors responded to ANR’s letter on December 7, 2016.

On January 20, 2017, the Commission issued an Order granting motions to intervene in this Docket to the Town, MSHS, and the following Neighbors: Richard M. Spitalny, Ted and Dina Fitzpatrick, Peter and Aileen Stevenson, Karen L. Gutmann and Larry L. Springsteen, Douglas K. Freilich and Julie A. Sperling, Neil and Thomas Russell, Roy Cooper, Elizabeth Cooper, Daniel McKeen and Ellen Secord, and Karen and Robert Galloway (“Neighbors”).

On February 3, 2017, Mr. Spitalny filed a letter with the Commission regarding the process for the proceeding.

On February 22, 2017, the Commission issued an order concluding that the application raises significant issues with respect to the following substantive criteria under Section 248: orderly development, above-ground historic sites, and aesthetics.

On April 6, 2017, a site visit was held in Middletown Springs, VT.

On May 26, 2017, DPS submitted the prefiled direct testimony and exhibits of Jeremy Owens regarding the aesthetics of the Project.

On May 31, 2017, Neighbors submitted prefiled direct testimony and exhibits of the neighbor-intervenors and 2 expert witnesses (Michael Lawrence and Todd Thomas).

On June 28, 2017, Applicant filed prefiled rebuttal testimony and exhibits of Rod Viens and Mark Kane.

On June 30, 2017, Applicant filed objections to the admissibility of portions of the Neighbors' prefiled testimony and exhibits.

On July 19, 2017, certain Neighbors (Richard Spitalny, Robert and Karen Galloway, Daniel McKeen, and Neil and Thomas Russell) filed their opposition to the Applicant's objections.

On July 28, 2017, the same Neighbors filed objections to the admissibility of portions of the prefiled rebuttal testimony and exhibits of Mr. Viens.

On August 2, 2017, Applicant filed a surreply to the Neighbors' opposition to the Applicant's objections.

On August 14, 2017, Applicant filed its opposition to the Neighbors' objections.

On August 25, 2017, the Commission issued an order on the objections to the admissibility of testimony and evidence filed by Applicant and select Neighbors, sustaining in part and overruling in part the objections to admissibility.

On August 28 and 29, 2017, an evidentiary hearing was held for this matter in Montpelier, Vermont.

III. Findings

Based on the application, the associated prefiled testimony and exhibits, and the evidence heard during the evidentiary hearing, this matter is ready for decision.

A. Project Description

1. Orchard Road Solar I, LLC is a Vermont limited liability company, registered to do business in Vermont, with principal offices at 205 Billings Farm Road, Building 4, White River Junction, VT 05001. Viens pf. at 1.
2. ORS is developing the Project in conjunction with Global Resource Options, Inc. (d/b/a groSolar). Viens pf. at 1.
3. The Project consists of the installation and operation of a no more than 500 kW AC capacity solar electric generation system, which is expected to produce approximately 850,000 kWh per year. Viens pf. at 2, 5.
4. The Project will be sited on approximately 5 acres of land that is being leased from a larger existing tract of land (approximately 126 acres) off of Orchard Road in Middletown Springs, Vermont. The Project is proposed to be located on part of an old apple orchard that is no longer being used for apple production. Viens pf. at 2-3; Exh. ORS-RV-2.
5. The Project will be accessed via an existing access drive from the Wescott Road which will be extended as a 12' permanent access drive into the Project area. Viens pf. at 9; Exh. ORS-RV-2.
6. As measured from the closest panel, the Project is set back approximately 135 feet from Wescott Road and approximately 400 feet from Orchard Road and includes a 50-foot buffer between the array structures and adjacent property boundaries. Viens pf. at 3; Exh. ORS-RV-2.

7. All setbacks conform to state minimum standards from highways and bordering property boundaries. Viens pf. at 6.
8. The Project's equipment consists of the following: approximately 2,250 330-watt individual solar photovoltaic panels, a metal rack support structure for fixed racking under the panels to create collector arrays, approximately 21 string inverters with a maximum capacity of 500 kW AC, electrical lines connecting the panels to the inverters and an underground conduit or above ground cable tray connecting to the switchgear enclosures, and underground electrical lines from the switchgear to three 167 kVA pole mounted transformers and the Green Mountain Power ("GMP") distribution system. The final selection of equipment will be made after all permitting is complete and Applicant selects equipment manufacturers. Viens pf. at 5, 7; Exhs. ORS-RV-2; ORS-RV-3; ORS-RV-4.
9. Due to the expected availability of higher efficiency panels at time of construction, the Project may utilize higher wattage panels, which would reduce the Project size by approximately 10 percent. (Viens) 8/28/17 tr. at 101-102.
10. The individual solar panels that comprise the array will be mounted on a fixed tilt racking system. The racks will sit upon either steel poles driven into the ground or "earth screws" that are similarly screwed into the ground. This minimizes disturbance to the soil and vegetation at the site. The support structures will hold the solar panels at approximately three feet above the ground, allowing snow to slide off the panels and pile up without compromising energy production. At their highest point, the solar panels will sit approximately nine feet above the ground. Racks for the fixed tilt system will be oriented east-west and hold the panels at a fixed angle of approximately 30 degrees. Viens pf. at 3; Exhs. ORS-RV-2, ORS-RV-3.

11. The electrical system consists of groups of solar panels wired in series, each a “string.” The DC power from a few strings runs to the string inverter where it is converted to AC power. There will be approximately 21 string inverters with a maximum output of 500 kW AC. From there, wiring will run from the inverters to the pole-mounted transformers and the interconnection point along Wescott Road. Viens pf. at 8-9; Exh. ORS-RV-2.
12. Underground power will be installed along the proposed access drive, or alongside it as indicated on the site plan, from Wescott Road to the Project area to minimize aesthetic and environmental impacts that would otherwise result from installing poles leading from Wescott Road into the Project. Viens pf. at 7; Exhs. ORS-RV-2; ORS-RV-4.
13. In addition to a new pole location to support the transformers at the point of interconnection along Wescott Road, approximately three (3) utility poles will be replaced to accommodate new three-phase wire running from the corner of Orchard Road and Wescott Road to the Project. Viens pf. at 7; Exhs. ORS-RV-2.
14. The site will be enclosed within a fixed-knot fence with 6-inch vertical spacing that will be 7’ to 8’ high. To blend into the surrounding landscape, fence posts will be wood. The fencing will be secured and kept close to ground level to avoid access by wildlife. Viens pf. at 7; Exhs. ORS-RV-2; ORS-RV-3.
15. The fence and electrical system conform to applicable electric safety, power quality, and interconnection requirements established by the National Electric Code, and the Institute of Electrical and Electronic Engineers and Underwriters Laboratories. Viens pf. at 8.
16. The Project is proposed to be located on part of an old apple orchard that is no longer being used to grow apples. There is little site preparation needed for the Project other than removing selective tree and brush clearing within the Project area as shown on the site plan.

No grading is planned aside from the installation of the access road and equipment pad.
Viens pf. at 5; Exh. ORS-RV-2.

17. There is a residential structure along with a barn on the northern portion of the 126-acre parcel, separated from the Project area by Wescott Road and Orchard Road approximately 1,000' away. The nearest offsite residential structure from the Project lies approximately 400 feet to the West of the Project. The next nearest residence is on the adjoining parcel to the southeast, approximately 900 feet away. There are no residences in the general vicinity to the east of the Project. Viens pf. at 5; Exh. ORS-RV-2.
18. At the end of the Project's useful life, the project equipment will be removed from the site and sold, recycled, or disposed of in accordance with applicable waste regulations. Any stockpiled soils from Project construction will be graded back into the Project parcel and the land will remain viable for whatever uses the landowner chooses. Viens pf. at 16.

B. Section 219a Requirements

19. The Project is a group net-metered 500 kW (AC) solar electric generation project that will operate in parallel with facilities of the electric distribution system. The Project employs a renewable energy resource – solar energy – and its electrical output is intended primarily to offset the electricity requirements of its group members. Viens pf. at 3; Section 219a application.
20. Group members will include the following meters:

Customer Meter #	Location
E14981223	N. Montpelier Road, Plainfield, VT
E15264415	Greatwood Drive, Plainfield, VT
E14981224	N. Montpelier Road, Plainfield, VT
E14829727	N. Montpelier Road, Plainfield, VT

Orchard Road Solar will finalize the group members and identify specific allocations as required under Commission rules prior to Project operations. Viens pf. at 4.

21. The Project will use the “stacking” allocation model. Orchard Road Solar will instruct GMP to allocate credits for the kilowatt hours of electricity generated by the Project each month to the meters set forth above in the following order of priority until the monthly electricity usage, charges and fees for each meter are fully offset and satisfied. Viens pf. at 4.
22. If any group members are added, Orchard Road Solar will provide the Commission and the interconnecting utility with the allocation amounts, meters, and account numbers per Commission rules. The procedure for adding and subtracting meters from the group is at the sole discretion of Orchard Road Solar I, LLC. Viens pf. at 4.
23. The binding dispute resolution process for any disputes is as follows: all disputes between the group members will be settled by the group administrator, Orchard Road Solar I, LLC, in its sole discretion. In no event will Orchard Road Solar require the Public Utility Commission, the Public Service Department, or Green Mountain Power to resolve a dispute within the group net metering system. Viens pf. at 4.
24. The designated contact person for all communications is Rod Viens, groSolar, 205 Billings Farm Road, Building 4, White River Junction, VT 05001. Viens pf. at 4.

Discussion

Pursuant to 30 V.S.A. § 219a(c), Commission Rule 5.108 (effective January 27, 2014) conditionally waives certain requirements of § 248(b) that are not applicable to various types of net metering systems. This Project is a system that would be installed as a new structure and therefore

falls under Commission Rule 5.108(B). The Rule states that the following criteria are conditionally waived:

1. All criteria under 30 V.S.A. § 248(b), with the exception of 30 V.S.A. §§ 248(b)(1) (orderly development), (3)(stability and reliability), (5)(environmental considerations), and (8)(outstanding resource waters).
2. With respect to 30 V.S.A. § 248(b)(5), all criteria and subcriteria, except for compliance with 10 V.S.A. §§ 6086(a)1(A)(headwaters), 1(B)(waste disposal), 1(D)(floodways), 1(E)(streams), 1(F)(shorelines), 1(G)(wetlands), 4(soil erosion), 5(traffic impacts during construction only), 8(aesthetics, historic sites, natural areas), 8(A)(necessary wildlife habitat), and (9)(K)(public facilities). If the system uses biomass as a fuel, compliance shall also be required with 10 V.S.A. § 6086(a)(1)(air pollution).

C. Section 248 Criteria

30 V.S.A. § 248(b)(1) – Orderly Development of the Region

25. The Project will not unduly interfere with the orderly development of the region, with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of municipal legislative bodies, and the land conservation measures contained in the plan of any municipalities. This finding is supported by the findings below.
26. 45-day notice letters were mailed to the Local and Regional bodies, adjoining landowners, the Public Utility Commission, Green Mountain Power, and State Agencies entitled to service on March 30, 2016. Applicant later discovered an error in the application materials in which the closest residence was inadvertently identified as 1,000 feet away when the closest residence was actually about 400 feet away. The landowner of the adjoining property brought this to Applicant's attention and, although not a substantial change, Applicant chose

to reissue the 45-day notice on May 11, 2016 to correct the discrepancy. Viens pf. at 11; Exh. ORS-RV-5.

27. Applicant has met with community members throughout this process to discuss the Project and obtain feedback. On March 10, 2016, Applicant met with the Middletown Springs Selectboard to discuss the Project. On June 2, 2016, Applicant met with Middletown Springs in a special meeting noticed by the Town, with the Selectboard and Planning Commission members in attendance, to hear from local residents and property owners about the Project. Numerous community members attended to hear the proposal and ask questions. Applicant has continued to work with adjoining landowners and Town officials to maintain stakeholder involvement and answer any lingering questions. Viens pf. at 11.
28. The Town was granted intervention in the proceeding, but did not file testimony or exhibits in the proceeding, or take an official position on the Project.
29. The land on which the Project is proposed has not been identified for any land conservation purposes. Exh. ORS-MK-2.
30. Middletown Springs has identified two areas (Highland Conservation Areas and Lowland Conservation Areas) which respectively include important ridgelines and elevations above 1200 feet and areas adjacent to rivers and streams and within flood hazard areas. The Project site is not within either of these areas as depicted on the Future Land Use Plan within the Town Plan. Exh. ORS-MK-2.
31. As shown on the Future Land Use map included in the Town Plan, the proposed Project site is within the “rural district.” Kane reb. pf. at 3.
32. The proposed Project is not located on a ridgeline. The Project is located on an old orchard that is more than 180 feet below the ridgeline, which appears well behind (south and west)

- and above the Project, when viewed from a distance. Kane reb. pf. at 3; Exh. ORS-MK-2; (Owens) Tr. 8/29/17 at 136.
33. Neighbors' expert agrees that the Project is not located in the Highland Conservation Area on the Future Land Use Plan within the Town Plan. (Thomas) 8/29/17 tr. at 251.
 34. The Department's expert also concluded that the Town Plan does not contain any specific policies to preserve scenic resources, and that the Project would not violate any clear written community standard intended to preserve the aesthetics or scenic beauty of the area. Exh. DPS-JO-2.
 35. The Rutland Regional Plan addresses land conservation from a broad perspective. The Future Land Use Plan for the region identifies "Development-Constrained Areas" which are described as having "significant limitations upon current or future development because of conservation easements, public ownership, or severe natural limitations. These include lands owned or overseen by the National Forest Service, the State of Vermont, or land trusts, as well as large tracts of land that are on slopes over 25% grade or are wetlands." This perspective on where land conservation measures should be focused is highly similar to the approach taken in the Middletown Springs Town Plan. The Project site does not fall into this land use designation. Exh. ORS-MK-2.
 36. The RRPC did not intervene in the proceeding and did not take an official position on the application.
 37. The Department's expert concluded that the Regional Plan does not provide clear written community standards on avoiding or mitigating a proposed project from scenic resources, and at most it states that new development should not unnecessarily impact highly scenic landscapes. Based on this review, the Project does not impact any highly scenic landscapes specifically noted in the Regional Plan. Exh. DPS-JO-2.

38. While both the local and regional plans have identified broad areas and generalized statements on land conservation measures, neither specifically identifies the project site nor the area within which it located as part of a formalized conservation strategy or process. Exh. ORS-MK-2.
39. The form of the project, its scale and the potential continued use of remaining lands within the project parcel to retain agricultural function, all limit the impact the Project will have on the orderly development of the region. Exh. ORS-MK-2.
40. The Project represents a land use form that does not preclude long-term reuse of the property following the decommissioning of the facility. Exh. ORS-MK-2.
41. The Project will not create an undue adverse impact on the orderly development of the region. Exh. ORS-MK-2.

Discussion

Section 248(b)(1) states that before the Commission issues a CPG, it shall find that the Project “will not unduly interfere with the orderly development of the region with due consideration having been given to the recommendations of the municipal and regional planning commissions, the recommendations of the municipal legislative bodies, and the land conservation measures of any affected municipality.”

In this case, no party has presented evidence showing that the Project will unduly interfere with, or indeed impact, the development of the region. Significantly, although the Town intervened and the RRPC filed an initial letter regarding the Project, neither the municipal nor the regional planning commissions have offered any official recommendations or position on the Project to the Commission in this proceeding. With respect to the Town and Regional plans, both the Applicant’s expert and the Department’s expert concluded that there are no clear written community standards or specific land conservation measures that would apply to the Project site. Although Neighbors’

expert relies on provisions of the Town Plan applying to the Highlands Conservation District, even he has acknowledged that the Project site is not located in this district on the Town's Future Land Use Plan included in the Town Plan.

With respect to the Regional Plan, the Project site is not located in any area identified as part of a formalized conservation strategy or process. To the extent that Neighbors' expert relies on a section of the Plan entitled "Proposed Regional and Community Standards for Energy Facility Siting & Development," these standards are "proposed" and have not been clearly adopted in the Plan. Moreover, the Commission has very recently issued a CPG for a solar electric generation facility that falls under the provisions of these "proposed" standards, and to which neither the RRPC nor the Commission found any issue. *See In re Otter Valley Solar Farm, LLC*, Docket 8770, Final Order (Mar. 17, 2017) (Finding that "the Project is consistent with the Rutland Regional Plan The Regional Plan does not contain any conservation measures, development-constrained areas, or scenic resources that apply to the Project site."). Furthermore, in that Final Order, the Commission expressly found that "[t]he Regional Plan provides proposed regional and community standards for siting solar electric facilities, although they do not appear to be adopted standards." For Neighbors to now assert that these proposed standards should prevent a project almost a quarter of the size of the Otter Valley Solar Farm Project is inconsistent both with Commission precedent and common sense.

Having given due deference to recommendations of the municipal and regional bodies, the Project will not unduly interfere with orderly development of the region and therefore complies with Criterion (b)(1).

30 V.S.A. § 248(b)(2) – Need for Present and Future Demand for Service

42. Pursuant to Commission Rule 5.108(B), this criterion has been conditionally waived for this Project and no party presented any testimony that would warrant rescinding that waiver in this proceeding.

30 V.S.A. § 248(b)(3) – System Stability and Reliability

43. The Project will not adversely affect system stability and reliability. This finding is supported by the following findings.
44. Applicant has applied for interconnection with GMP and received a formal response that it passed Rule 5.500 criteria and Fast Track analysis for interconnection. Viens pf. at 14; Exh. ORS-RV-6.
45. As determined by GMP, the Project will not have an adverse impact on GMP's system stability or reliability and no further studies are necessary. Viens pf. at 14; Exh. ORS-RV-6.
46. Applicant will execute an interconnection agreement prior to interconnection and commercial operation of the facility. Viens pf. at 14.
47. Some upgrades of the distribution line are required to interconnect the facility. These upgrades consist of the replacement of approximately three (3) existing poles and approximately 1,700' of single phase wire extending west from Orchard Road along Wescott Road to the Project; 3-phase wire will be installed. In addition, a new pole location will support three pole-mounted transformers at the point of interconnection. Viens pf. at 14-15; Exh. ORS-RV-2.
48. Applicant will be responsible for all upgrades required to interconnect the Project. Viens pf. at 14.

30 V.S.A. § 248(b)(4) – Economic Benefit to the State

49. Pursuant to Commission Rule 5.108(B), this criterion has been conditionally waived for this Project and no party presented any testimony that would warrant rescinding that waiver in this proceeding.

**30 V.S.A. § 248(b)(5) – Aesthetics, Historic Sites, Air and Water Purity,
the Natural Environment and Public Health and Safety**

50. The Project will not have an undue adverse effect on aesthetics, historic sites, air and water purity, the use of natural resources, the natural environment, or public health and safety, with due consideration having been given to the criteria specified in 10 V.S.A. § 1424a(d) and § 6086(a)(1) through (8) and 9(K), and greenhouse gas impacts. This finding is supported by the following findings under the appropriate subheadings, below.

10 V.S.A. § 1424a(d) – Outstanding Resource Waters

51. There are no Outstanding Resource Waters in the Project area and therefore the Project will have no adverse impact on Outstanding Resource Waters. Exh. ORS-DB-2.

10 V.S.A. § 6086(a)(1) – Water and Air Pollution

52. Pursuant to Commission Rule 5.108(B), this criterion has been conditionally waived for this Project and no party presented any testimony that would warrant rescinding that waiver in this proceeding.

10 V.S.A. § 6086(a)(1)(A) – Headwaters

53. The Project is located in a headwater as its watershed area is less than 20 square miles. Exh. ORS-DB-2.
54. The Project area is below 1,500 ft in elevation and the watershed for the site is not for public water supplies and does not provide significant recharge to aquifers. The proposed Project will not result in a reduction of the quality of ground or surface waters in the area. Exh. ORS-DB-2.
55. The Project will have no adverse impact on headwater areas. Exh. ORS-DB-2.

Waste Disposal – 10 V.S.A. § 6086(a)(1)(B)

56. The operation of the Project will not generate solid wastes, will not involve the injection of waste materials into groundwater or wells, and will not generate sanitary waste or stormwater runoff from new impervious surface that would require treatment pursuant to a Vermont Department of Environmental Conservation (DEC) permit. Goddard pf. at 2.
57. The three Project transformers will be located on a GMP utility pole on Wescott Road. The transformers will utilize non-petroleum oil which biodegrades in the environment in the event of an accidental spill. Goddard pf. at 2.
58. The Project requires approximately 0.72 acres of vegetative clearing as shown on the site plan. The majority of the vegetation is low lying shrubs with medium sized trees scattered throughout the shrubs. Where tree clearing will occur, all trees will be cut flush with the existing grade and stumps will remain in place outside of the fenced area. Cut trees and branches will be ground and used as mulch on site. Goddard pf. at 2; Exh. ORS-RV-2.
59. The total soil disturbance during construction of this Project will be approximately 0.62 acres. This disturbance will be for construction of new infrastructure such as the access

drive, equipment pads, underground utility lines, Project perimeter fence, proposed power poles, construction staging, solar module racking supports and miscellaneous other disturbances in upland areas. Goddard pf. at 3.

60. The Project will not be subject to an Agency of Natural Resources Construction Stormwater General Permit 9020 because less than one acre will be disturbed during construction. Goddard pf. at 3.
61. The proposed 12' wide permanent gravel access drive will be graded and improved with a gravel base from its existing intersection with Wescott Road to the Project site, which is a distance of approximately 175 feet. The finished grade of the new access road will match the existing grade. Goddard pf. at 3.
62. No changes to the topography are proposed. All topsoil that is excavated for construction of the access road will be stockpiled or spread on site for the life of the Project, to be returned to the site upon Project decommissioning. Any short-term temporary stockpiles during construction will be protected from erosion by silt fence and returned to the areas from which they came when the temporary construction improvements are removed. Goddard pf. at 3.
63. Stormwater runoff and erosion control methods that will be used during construction include temporary soil stabilization with mulch within 14 days of initial site disturbance, and permanent stabilization with topsoil, seed and mulch after final grading. Goddard pf. at 3.
64. The Project will be constructed in accordance with the Vermont Standards & Specifications for Erosion Prevention and Sediment Control, 2006. These are established and proven measures, accepted by ANR, to prevent erosion from occurring and treating stormwater runoff effectively before it reaches receiving waters. Implementation of these measures will prevent erosion and protect water quality. Goddard pf. at 4.

65. Construction of the Project will result in approximately 0.07 acres of new impervious surface after construction is complete. The new impervious surface is less than an acre; therefore, no operational phase stormwater management or permit is required. Goddard pf. at 4.

10 V.S.A. § 6086(a)(1)(C) – Water Conservation

66. Pursuant to Commission Rule 5.108(B), this criterion has been conditionally waived for this Project and no party presented any testimony that would warrant rescinding that waiver in this proceeding.

10 V.S.A. § 6086(a)(1)(D) – Floodways

67. The site of the proposed Project is not located within a 100-year flood hazard area (zone A). Exh. ORS-DB-2.
68. The proposed Project is not located within a floodway or a floodway fringe and will not restrict or divert the flow of floodwaters or significantly increase the peak discharge of a river or stream within or downstream from the area of development. Exh. ORS-DB-2.
69. The closest FEMA flood hazard zone and river corridor is approximately 1,400' to the north of the Project and associated with the Poultney River. The Project will have no impact on floodways or river corridors. Exh. ORS-DB-2.
70. The Project will have no impact on floodways or river corridors. Exh. ORS-DB-2.

10 V.S.A. § 6086(a)(1)(E) – Streams

71. There are no surface waters within the Project area. Exh. ORS-DB-2.
72. The closest stream is an unnamed tributary to the Poultney River, approximately 1,300' from the Project. The Project will result in no cutting or clearing of vegetation within 50' of the

top of bank of surface water resources. Therefore, the Project will have no adverse impact on streams. Exh. ORS-DB-2.

10 V.S.A. § 6086(a)(1)(F) – Shorelines

73. The site of the proposed Project is not located on a shoreline of a river, lake or pond. Exh. ORS-DB-2.
74. The closest shoreline is that of the Poultney River, 1500' north of the proposed Project. The Project will not result in any clearing of forest vegetation along the shore of the Poultney River. As a result, the proposed Project will result in no impacts to shorelines. Exh. ORS-DB-2.

10 V.S.A. § 6086(a)(1)(G) – Wetlands

75. The closest mapped Class 2 wetland is approximately 750' to the northeast of the Project area. There are no mapped hydric soils on or in the vicinity of the Project site. Exh. ORS-DB-2.
76. As there are no wetlands on the Project site, the Project will have no adverse impact on wetland resources. Exh. ORS-DB-2.

10 V.S.A. § 6086(a)(2), (3) – Sufficiency of Water; Burden on

Existing Water Supply

77. Pursuant to Commission Rule 5.108(B), these criteria have been conditionally waived for this Project and no party presented any testimony that would warrant rescinding that waiver in this proceeding.

10 V.S.A. § 6086(a)(4) – Soil Erosion

78. Based on the findings made under Waste Disposal, above, the Project will have no undue adverse impact on soil erosion because earth disturbance is very limited. Goddard pf. at 4-5.
79. The Project does not trigger the need for a State of Vermont Construction General Permit as the total soil disturbance during construction of this Project will be approximately 0.62 acres, and appropriate erosion control measures will be implemented following the Vermont Low Risk Site Handbook for Erosion Prevention and Sediment Control, August 2006. Goddard pf. at 4.
80. Further, the Project will have minimal impact on landform cover. The Project proposes only 0.07 acres of proposed new impervious surface on an approximately 5-acre site. The low amount of new impervious surface in conjunction with the proposed re-vegetation of the staging area disturbance will result in the Project having no adverse impact on the capacity of the land to retain water. Goddard pf. at 4.

10 V.S.A. § 6086(a)(5) – Transportation Systems

81. Under Commission Rule 5.108(B), this criterion relates only to the construction phase of the Project.
82. The Project will not cause unreasonable congestion or unsafe conditions with respect to transportation systems. Viens pf. at 15.
83. Access to the site will be via Route 140, Orchard Road, and Wescott Road using the existing point of entry and the extended access drive. During construction, approximately 8 +/- tractor trailers will deliver modules, racking, and inverters to the site via the access point off of Wescott Road. Following initial delivery, construction related traffic will be limited to

more infrequent deliveries for smaller, necessary electrical supplies and workers entering and exiting the site. Viens pf. at 15-16.

84. During operation of the Project, entry to the Project will be limited to maintenance and repairs, and therefore there will be only occasional Project-related traffic that will not cause unreasonable traffic or unsafe conditions. Viens pf. at 16.

10 V.S.A. § 6086(a)(6) – Educational Services

85. Pursuant to Commission Rule 5.108(B), this criterion has been conditionally waived for this Project and no party presented any testimony that would warrant rescinding that waiver in this proceeding.

10 V.S.A. § 6086(a)(7) – Municipal Services

86. Pursuant to Commission Rule 5.108(B), this criterion has been conditionally waived for this Project and no party presented any testimony that would warrant rescinding that waiver in this proceeding.

**10 V.S.A. § 6086(a)(8) – Aesthetics, Historic Sites,
and Rare and Irreplaceable Natural Areas**

87. The Project will not have an undue adverse impact on the scenic or natural beauty of the area, aesthetics, historic sites, or rare and irreplaceable natural areas. This finding is supported by the following findings.

Visual Aesthetics

88. The Project sits on a broad hillside south of Route 140 about 1.5 miles west of the village of Middletown Springs. The site is elevated approximately 190' to 250' above Route 140 and

the Poultney River, which lie in the valley at the base of the hill. A taller mountain range/hillside running north-south sits to the west and serves as a backdrop to the project site. The Project site slopes downward about 60' in grade towards the northeast and Route 140. The land along Route 140 is characterized by open agricultural fields and farmland, with clusters of farm buildings and residential properties. Exh. ORS-MK-2.

89. Due to the topography and existing vegetation, the Project is generally screened from the majority of public vantage points and residences. Exh. ORS-MK-2.
90. There are two areas of high visibility along Route 140 and Wescott Road and several areas of low/intermittent visibility. All other areas of public roadways surrounding the Project should have little to no visibility of the Project. In areas of higher visibility, there is little interrupting vegetation and relatively open views of the Project in the background from Route 140 and in the peripheral fore to middleground from Wescott Road. In areas of relatively low visibility, there is generally existing vegetation that would filter, and partially obscure, the view of the Project providing limited views of portions of the Project. These views would also occur in the background from Route 140 and middleground viewing distance from Orchard Road. Exh. ORS-MK-2.
91. There are several residential properties in the vicinity of the Project that may have views of the Project, predominantly from the opposite hillside north of Route 140. The residential clusters have intermittent views of the Project as the topography and existing vegetation both near the project site and near the residences will interrupt clear views of the Project. In addition, the residences will be looking predominantly at either the rear or sides of the panels from the northern and northeastern vantage points. There is also a seasonal cabin west of the project site on Wescott Road that is approximately 400 feet away from the panels. The cabin is oriented to the northeast towards the valley view, however, the project site including

the panels, transformers, and equipment would be seasonally visible to the east during leaf-off conditions. During the spring and summer months during leaf-out, the project site will be minimally visible. Additionally, there is an undeveloped parcel of land immediately abutting the western project boundary. Exh. ORS-MK-2.

92. The private residences with views of the project from across the valley a substantial distance from the Project. Applicant's expert estimates that Route 140 is approximately 1700 feet from the Project, and residences beyond Route 140 are between 2,600 to 7,000 feet away from the Project. The Department's expert also states that there are a series of private properties located approximately 0.6 to 1.4 miles north/northeast of the Project. (Kane) Tr. 8/28/17 at 177; Exh. DPS-JO-2.
93. The Project will not result in a long-term loss of open space in the region. The Project site is not identified for conservation in the Town or Regional Plans. The components of the Project (panels, fencing, and transformers) can be easily removed and the land restored swiftly. Exh. ORS-MK-2.
94. The Project does alter the existing conditions and use of the site. While the hillside where the Project sits is scenic and the Project is visible for a portion of Route 140 while traveling west, the Project is a small portion of a much broader scenic view of the hillside and range. Existing vegetation both on the project site, in the middleground, and along the roadway help to screen portions of the Project. Exh. ORS-MK-2.
95. The Project impact on Wescott Road and the surrounding properties is greater due to the proximity, but the Project is generally set well back from public views and existing vegetation is being maintained between the Project and the surrounding roads and properties. The Project meets and exceeds the minimum required setbacks from public roads and property

- lines. The panels are a minimum 135' from Wescott Road, 140' from the western property line, and 400' to Orchard Road to the east. Exh. ORS-MK-2.
96. Applicant's initial assessment of the Project viewshed focused on areas accessible to the public, and did not include an assessment from nearby private roads and residences as Applicant did not have permission to enter this areas. Subsequently, a representative of Applicant's expert attended the site visit, which visited several neighboring residences. Additionally, upon request from Neighbors, Applicant's expert created three simulations of views of the Project from private vantages. Kane reb. pf. at 5; Exh. ORS-MK-3.
97. Applicant's expert reviewed the views of the Project from the private residences attended on the site visit, and reaffirmed his assessment that the Project's impact is adverse, but not unduly adverse from these viewpoints. The majority of the residences are located across the valley from the Project, at a significant distance from the Project site, and the Applicant has generally available mitigating steps to improve the harmony of the Project with the surroundings. Kane reb. pf. at 6.
98. The private residential views included in Neighbors' expert's aesthetic review account for less than one percent of the number of housing units in Middletown Springs, as estimated in the Town Plan. Additionally, of the eleven private viewpoints included in Neighbors expert's report, only two represent the view from a residence. (Lawrence) Tr. 8/29/17 at 213-214; Exh. NN-ML-2.
99. Applicant submitted a landscape mitigation plan with the application that would supplement the existing vegetation located both on-site and within the immediate area that already provides some screening of the Project. The mitigation plantings will be field located on site in coordination with the existing orchard trees to remain and in consideration of the views towards the Project. Exh. ORS-MK-2.

100. Applicant's expert concluded that the Project does create an adverse aesthetic impact on the visual resources, but the impact is not unduly adverse. Exh. ORS-MK-2.
101. In his prefiled testimony and report, the Department's expert proposed revisions to Applicant's mitigation plan. With these revisions, the Department's expert also concluded that the Project would have an adverse impact but not an undue adverse aesthetic impact. Owens pf. at 3; Exh. DPS-JO-2.
102. The Project would not violate any clearly written community standard in the Town Plan or Regional Plan on which the potential aesthetic impacts of the Project could be applied. The proposed use is of a scale and form that is visually compatible with the area and represents a land use form that does not preclude long-term reuse of the property following the decommissioning of the facility. Exh. ORS-MK-2.
103. The Project has taken steps, integral to the site selection and design of the facility, which help minimize its visual impact and improve its harmony with the visual context, and a landscape mitigation plan has been proposed to improve the harmony of the Project with respect to its surroundings and provide additional project screening. Exh. ORS-MK-2.
104. Following the Department's recommendations in Mr. Owens' testimony and exhibits, Applicant submitted a revised mitigation planting plan. Exh. ORS-MK-4.
105. During the technical hearing, Mr. Owens made additional recommendations for adjustments to Applicant's revised mitigation planting plan. Specifically, he recommended three changes: 1) reducing the distance of the proposed vegetation plantings on the east side of the Project; 2) increasing planting coverage on the north side of the Project to reduce gaps between plantings; and 3) consulting with the neighboring landowners to the west of the Project to place the proposed plantings on this side in the locations that would most effectively screen the Project. If these measures were adopted, the Department's expert concluded that the

Applicant would have taken all generally available mitigating measures. (Owens) Tr. 8/29/17 at 110-118.

106. The Project has taken generally available mitigating steps that a reasonable person would take to improve the harmony of the Project with its surroundings. Exh. ORS-MK-2.
107. In addition to the mitigation planting plan proposed by Applicant, Applicant considered alternative locations for the Project that would be less visible. Specifically, Applicant considered two sites suggested by Neighbors: one located on the east side of Orchard Road across the street from the current location, and one on the same portion of the parcel as the proposed location but shifted farther to the east. Viens reb. pf. at 1.
108. The first alternative site had been considered by Applicant when initially designing the Project, and was reviewed by ORS's environmental consultant and state wetlands ecologist Zapata Courage from ANR during a site visit to the area. However, Ms. Courage determined the site contained an extensive Class 2 wetland area such that "it would be highly unlikely that a project could avoid or minimize impacts to the wetland in this field, thus a wetland permit would unlikely be issued for construction." Viens reb. pf. at 1-2; Exh. ORS-RV-8.
109. The first alternative site is mapped as primary agricultural soil in the soil map contained in the Town Plan. (Thomas) Tr. 8/29/17 at 300.
110. Applicant estimated that the largest possible project that could be constructed on the first alternative site would be between 100-125 kW, which would not satisfy Applicant's current contractual obligations to offtakers. (Viens) Tr. 8/28/17 at 61, 114.
111. For the second alternative site, Applicant determined that the topography would not support a project in this location. Applicant considered grading in this area, but the extent of ledge made the amount of grading unfeasible. Viens reb. pf. at 2.

112. Applicant’s expert concluded that even if the Project was able to shift to the east somewhat it could potentially reduce some of the aesthetic impact, but that he did not think it would eliminate the visibility of the Project from locations across the valley. (Kane) Tr. 8/29/17 at 55.
113. The Project would not offend the sensibilities of the average person. Its scale, mass and form are not so out of character that they are offensive nor do they diminish or distract from the scenic qualities of the area. Within the broader landscape, the Project does not alter the existing scenic qualities. Exh. ORS-MK-2.
114. The Department’s expert also concluded that the Project would not be shocking and offensive with the suggested modifications to the revised mitigation planting plan. There are similar materials to the Project in the vicinity of the Project site, including galvanized metal and farm debris, and there are other elements in the landscape such as human development. (Owens) Tr. 8/29/17 at 135-136.
115. Neighbors’ expert acknowledged that there is farm debris and visible electrical and telecom infrastructure that is currently visible in the area of the Project. (Lawrence) Tr. 8/29/17 at 217.
116. Neighbors’ expert also acknowledged that there are other solar panels in the project vicinity. Some neighbors also have solar panels on their homes. (Lawrence) Tr. 8/29/17 at 219; (Sperling & Frielich) Tr. 8/29/17 at 194-195.
117. Based on the above findings, the Project does not create an undue adverse impact to the aesthetics or scenic beauty of the area. Exh. ORS-MK-2.

Discussion

Section 248(b)(5) requires that the Commission find a project “will not have an undue adverse effect on aesthetics” before issuing an CPG. In evaluating visual aesthetics, the

Commission applies a modified version of the *Quechee* test. *In re Petition of Rutland Renewable Energy, LLC*, 2016 VT 50, ¶ 14, 147 A.3d 621 (2016). The first step in the *Quechee* test is a determination of whether the project will have an adverse effect on scenic and natural beauty in the area in which it is located. The parties do not dispute that the Project will have an adverse impact on the scenic and natural beauty of the area.

Having established that the Project will have an adverse impact, the Commission's analysis moves on to the second prong of the *Quechee* test. Under the second prong, an adverse impact on scenic and natural beauty is not undue if three conditions are met:

First, the project must not violate a clear, written community standard intended to preserve the aesthetics or scenic, natural beauty of the area. Second, it must not offend the sensibilities of the average person. Finally, the applicant . . . must take generally available mitigating steps that a reasonable person would take to improve the harmony of the proposed project with its surroundings.

Id. at ¶15.

This Project does not result in an undue adverse aesthetic impact. First, I conclude that the Project does not violate a clear written community standard intended to preserve the aesthetics or scenic beauty of the area. As the Commission has held, “[i]n order for a provision to be considered a clear, written community standard, it must be ‘intended to preserve the aesthetics or scenic beauty of the area’ where the proposed project is located and must apply to specific resources in the proposed project area.” *Petition of Next Generation Solar Farm, LLC*, Docket 8523, Final Order (Jan. 27, 2017). Neither Applicant’s expert nor the Department’s expert found any clear written community standards in the Town or Regional Plans that would be violated by the Project. Neighbors’ expert does not point to any passage that applies to specific resources in the area where the Project is proposed; rather, the passages that Neighbors’ expert points to lack the specificity required to qualify as a clear written community standard. *Id.* (“A clear, written community standard

must be more than ‘general in nature’ and do more than seek ‘to promote good stewardship of scenic resources without identifying specific actionable standards.’ ”); *See also Petition of Georgia Mountain Community Wind, LLC*, Docket 7508, Final Order (Jun. 11, 2010) (finding town and regional plans did not contain clear written community standards where “general scenic resource protection policies contained in these documents are not focused on a particular scenic resource and, in any case, do not offer specific guidance or measures to protect that resource”).

I also conclude that the Project will not offend the sensibilities of the average person. The Project has a limited viewshed; it is visible for a portion of Route 140 while traveling west, but is a small portion of a much broader scenic view of the hillside and range. Existing vegetation both on the Project site, in the middleground, and along the roadway will help to screen portions of the Project, as will the proposed mitigation plantings. Furthermore, the Project’s scale, mass, and form are not so out of character that they are offensive, and similar materials can be found in the vicinity of the Project. Neighbors and Neighbors’ expert acknowledged that there is other solar electric generation infrastructure in the area. Neighbors’ expert also acknowledged that the Neighbors’ analysis only accounted for a very small percentage (less than 1 percent) of the views of Middletown Springs residences. Based on Applicant’s and the Department’s experts’ testimony and exhibits, the majority of residents in Middletown Springs is likely to experience limited views of the Project, generally while traveling on Route 140. Given these facts, I conclude that the average person would not be shocked or offended by the Project.

Finally, I conclude that the Applicant has taken all generally available mitigating steps that a reasonable person would take to improve the harmony of the Project with its surroundings. This includes reviewing alternative sites for the Project, proposing landscape mitigation plantings and revising these proposed plantings to take into account feedback from other parties, and locating the Project approximately 1700 feet from the nearest major traveled roadway. The Department’s expert

testified to three additional recommended modifications to Applicant's revised mitigation plan, which I find reasonable. On the basis of these recommendations, I recommend that the following CPG condition be included in the CPG issued for the Project:

Prior to site preparation or construction, Applicant shall file a second revised Mitigation Planting plan with the Commission incorporating the following changes into the plan proposed in Exhibit ORS-MK-4: 1) reducing the distance of the proposed vegetation plantings on the east side of the Project to the greatest extent possible while not shading the panels, and 2) increasing planting coverage on the north side of the Project to reduce gaps between plantings. In addition, prior to filing the second revised mitigation plan, Applicant shall consult with the neighboring landowners to the west, the Fitzpatricks and Mr. Spitalny, to discuss placement of the proposed mitigation plantings on the western side of the Project. Parties shall have two weeks to submit comments to the Commission on the second revised mitigation plan.

With these recommendations incorporated, Applicant will have taken all generally available mitigating steps that a reasonable person would take to improve the Project with its surroundings.

Given all of the above, I conclude that, with the addition of this proposed CPG condition, the Project will not have an undue adverse impact on aesthetics and the scenic or natural beauty of the area.

Noise

118. The Project will not result in any undue aesthetic impacts due to noise. Goddard pf. at 5; Exh. ORS-SDG-2.
119. Operational noise will be produced by two sources: the inverters and transformers. The maximum sound levels generated by the equipment, based upon the manufacturers' specifications, are as follows: 65 dBA at a 1-meter distance for the 21 (20kW/24kW) inverters and 55 dBA at a 1-meter distance for the 167 kVA pole mounted transformers.

Final inverter selection will be made after permitting and prior to construction, but this noise modeling reflects one of the loudest possible inverter selections that could be made.

Goddard pf. at 5; Exh. ORS-SDG-2.

120. The closest off-site residence is approximately 400 feet from the closest solar module. After combining all transformer and inverter operational noise, and accounting for the attenuation of sound over distance, it is estimated that this Project will produce a maximum noise level at the nearest residence of 32 dBA during daylight hours and 14 dBA during nighttime hours. Goddard pf. at 5; Exh. ORS-SDG-2.

Historic sites

121. The Project will not have an undue adverse impact on historic sites.
122. Applicant discussed the Project with Scott Dillon from the Vermont Division for Historic Preservation (“VDHP”). Scott Dillon visited the site and reviewed for the potential effect on historic sites and archaeologically sensitive areas; none were identified. Viens pf. at 15.
123. VDHP has provided a draft letter summarizing its conclusion that the Project will have no effect on any historic sites. Applicant understands that VDHP intends to submit a final copy of the letter provided to the Public Utility Commission after the application is submitted. Viens pf. at 15; Exh. ORS-RV-7.
124. Following submission of the application, VDHP provided a final letter confirming that the Project would have no adverse effect on any historic sites listed in or eligible for inclusion in the State Register of Historic Places. Exh. ORS-RV-9.
125. Based on VDHP’s determination, the Project will not have an undue adverse effect on any historic resources.

126. No other parties submitted credible evidence indicating that the Project would have an adverse effect on any historic sites listed in or eligible for inclusion in the State Register of Historic Places.

RINA

127. There are no rare and irreplaceable natural areas present within the Project site or the immediate vicinity, and thus the Project will have no impacts on any rare and irreplaceable natural areas. Exh. ORS-DB-2.

10 V.S.A. § 6086(a)(8)(A) – Necessary Wildlife Habitat

128. The Project will not have an adverse impact on necessary wildlife habitat, or rare threatened or endangered species based on the following findings.

129. There are no VT Fish and Wildlife Department mapped white-tailed deer winter habitats in the Project area and field investigation with the VT Fish and Wildlife Department confirmed the absence of deer wintering habitats in the Project area. Exh. ORS-DB-2.

130. The old field comprising the Project site does not provide habitat for the black bear and no sign of black bear was found at the proposed site. Exh. ORS-DB-2.

131. There are no records or occurrences of Rare, Threatened or Endangered species in or directly near the Project site. The closest recorded occurrences of RTE species are approximately 1,500' to the north of the Project site. Exh. ORS-DB-2.

132. The proposed Project will result in minimal clearing (0.7 acres) of old field shrubby vegetation, constituting less than 1% of the available forestland within 1 square mile of the Project. According to VT Fish and Wildlife Department standards, the proposed clearing is minimal in nature and acoustic bat surveys and restrictions on time of year of tree cutting are not necessary. Exh. ORS-DB-2.

133. The Project is not in an area known to provide summer roosting habitat for Indiana bat, no old or abandoned buildings potentially providing roosting habitat for little brown bat are proposed for demolition, and there are no known bat hibernacula or maternity roosts within 1 mile of the Project site. Exh. ORS-DB-2.
134. Given the current site conditions, the Department of Fish and Wildlife Natural Heritage Inventory program has concluded that it is unlikely that an RTE plant species would be present in the Project area. Exh. ORS-DB-2.

30 V.S.A. § 248(b)(5) – Prime Agricultural Soils

135. The proposed Project will primarily be located in an area where soils have not been designated Statewide Agricultural soils with primary significance. Exh. ORS-DB-2.
136. A small area (~3,500 sf) along the northeastern extent of the array and perimeter fence is located within designated Statewide Agricultural designated soils. This small area of designated soils is isolated from the main agricultural field on the north side of Wescott Road. Exh. ORS-DB-2.
137. Per the plans of the Project, these soils will not be removed from the site. The soils will only be minimally displaced by the posts for the solar array support structures and by the piers for the enclosure foundations. Trenches for underground conduit will be excavated and then backfilled with native site material. Exh. ORS-DB-2.
138. There will be no permanent loss of the primary agricultural soils from the Project site. For these reasons, there will be no undue adverse impact on primary agricultural soils. Exh. ORS-DB-2.

10 V.S.A. § 6086(a)(9)(K) – Development Affecting Public Investments

139. The closest public investment to the Project site is Wescott Road, located to the North of the Project. Viens pf. at 16.

140. The Project will not impact or create any adverse burdens on this public investment given the limited and temporary use of the road during construction and operation. Therefore, there will be no adverse burden or endangerment of this public investment. Viens pf. at 16.

30 V.S.A. § 248(b)(5) – Public Health and Safety

141. Pursuant to Commission Rule 5.108(B), this criterion has been conditionally waived for this Project and no party presented any testimony that would warrant rescinding that waiver in this proceeding.

142. Even if this condition were not waived, the Project has been designed such that there will not be undue adverse impacts to public health and safety. See findings above.

30 V.S.A. § 248(b)(5) – Greenhouse Gas Emissions

143. Pursuant to Commission Rule 5.108(B), this criterion has been conditionally waived for this Project and no party presented any testimony that would warrant rescinding that waiver in this proceeding.

30 V.S.A. § 248(b)(6) – Integrated Resource Planning

144. Pursuant to Commission Rule 5.108(B), this criterion has been conditionally waived for this Project and no party presented any testimony that would warrant rescinding that waiver in this proceeding.

30 V.S.A. § 248(b)(7) – Comprehensive Energy Plan

145. Pursuant to Commission Rule 5.108(B), this criterion has been conditionally waived for this Project and no party presented any testimony that would warrant rescinding that waiver in this proceeding.

30 V.S.A. § 248(b)(9) – Waste-to-Energy Facility

146. Pursuant to Commission Rule 5.108(B), this criterion has been conditionally waived for this Project and no party presented any testimony that would warrant rescinding that waiver in this proceeding. In any event, this solar project is not a waste-to-energy facility.

30 V.S.A. § 248(b)(10) – Transmission Facilities

147. Pursuant to Commission Rule 5.108(B), this criterion has been conditionally waived for this Project and no party presented any testimony that would warrant rescinding that waiver in this proceeding.

30 V.S.A. § 248(b)(11) – Woody Biomass Facilities

148. Pursuant to Commission Rule 5.108(B), this criterion has been conditionally waived for this Project and no party presented any testimony that would warrant rescinding that waiver in this proceeding.

IV. Conclusion

Based upon the evidence in the record, I conclude that the Project, subject to the conditions set forth in the Proposed Order and CPG below:

(a) will not unduly interfere with the orderly development of the region with due consideration having been given to the recommendations of the municipal and regional planning commissions, and the recommendations of the municipal legislative bodies;

(b) is a net metering system within the meaning of 30 V.S.A. § 219a(a)(3) and therefore, pursuant to Commission Rule 5.108(B), review of this Project under the criterion of 30 V.S.A. § 248(b)(2) is conditionally waived;

(c) will not adversely affect system stability and reliability;

(d) is a net metering system within the meaning of 30 V.S.A. § 219a(a)(3) and therefore, pursuant to Commission Rule 5.108(B), review of this Project under the criterion of 30 V.S.A. § 248(b)(4) is conditionally waived;

(e) will not have an undue adverse effect on the resources identified in 30 V.S.A. § 248(b)(5) and 10 V.S.A §§ 6086 (a)1(A)(headwaters), 1(B)(waste disposal), 1(D)(floodways), 1(E)(streams), 1(F)(shorelines), 1(G)(wetlands), 4(soil erosion), 8(aesthetics, historic sites, natural areas), and 8(A)(necessary wildlife habitat), and 9(K) (public facilities);

(f) is a net metering system within the meaning of 30 V.S.A. § 219a(a)(3) and therefore, pursuant to Commission Rule 5.108(B), review of this Project under the criterion of 30 V.S.A § 248(b)(6) is conditionally waived;

(g) is a net metering system within the meaning of 30 V.S.A. § 219a(a)(3) and therefore, pursuant to Commission Rule 5.108(B), review of this Project under the criterion of 30 V.S.A. § 248(b)(7) is conditionally waived;

(h) does not involve a facility affecting or located on any segment of the waters of the State that has been designated as outstanding resource waters by the Water Resources Commission;

(i) is a net metering system within the meaning of 30 V.S.A. § 219a(a)(3) and therefore, pursuant to Commission Rule 5.108(B), review of this Project under the criterion of 30 V.S. A. § 248(b)(9) is conditionally waived;

(j) is a net metering system within the meaning of 30 V.S.A. § 219a(a)(3) and therefore, pursuant to Commission Rule 5.108(B), review of this Project under the criterion of 30 V.S.A. § 248(b)(10) is conditionally waived; and

(k) is a net metering system within the meaning of 30 V.S.A. § 219a(a)(3) and therefore, pursuant to Commission Rule 5.108(B), review of this Project under the criterion of 30 V.S.A. § 248(b)(11) is conditionally waived.

Proposed Order

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Utility Commission (“Commission”) of the State of Vermont that:

1. Construction, operation, and maintenance of the Project shall be in accordance with the plans and evidence as submitted in this proceeding. Any material deviation from these plans or substantial change to the Project must be approved in advance by the Commission. Failure to obtain advance approval from the Commission for a material deviation from the approved plans or substantial change to the Project may result in the assessment of a penalty pursuant to 30 V.S.A. §§ 30 and 247.
2. The net metering system shall comply with applicable existing and future statutory requirements and Commission Rules and Orders.
3. In the event the Certificate of Public Good (“CPG”) is transferred pursuant to Commission Rule 5.100, Section 5.110 (D)(1), the new owner of the system must file the required certificate transfer form with the Commission prior to commencing operation of the system.
4. Pursuant to 30 V.S.A. § 219a(d)(3), the installation of the net metering system shall be completed within one year of the date of the CPG unless otherwise ordered by the Commission.
5. Prior to commencing construction or site preparation, ORS shall obtain all necessary permits and approvals. Construction, operation, and maintenance of the Project shall be in accordance with such permits and approvals.
6. Prior to commencing construction or site preparations, ORS shall file with the Commission, the parties, and the Town of Middletown Springs, a letter stating that it has

fulfilled all requisite CPG conditions, and that it intends to commence construction of the Project.

7. Prior to operation of the Project, ORS shall enter into an Interconnection Agreement with Green Mountain Power Corporation that conforms to the requirements of PSB Rule 5.500. ORS shall be responsible for the cost of GMP's electrical system upgrades reasonably necessary to implement interconnection of the Project, and such other costs appropriately submitted to ORS in accordance with Commission Rule 5.500.
8. Prior to site preparation or construction, Applicant shall file a second revised Mitigation Planting plan with the Commission incorporating the following changes into the plan proposed in Exhibit ORS-MK-4: 1) reducing the distance of the proposed vegetation plantings on the east side of the Project to the greatest extent possible while not shading the panels, and 2) increasing planting coverage on the north side of the Project to reduce gaps between plantings. In addition, prior to filing the second revised mitigation plan, Applicant shall consult with the neighboring landowners to the west, the Fitzpatricks and Mr. Spitalny, to discuss placement of the proposed mitigation plantings on the western side of the Project. Parties shall have two weeks to submit comments to the Commission on the second revised mitigation plan.
9. ORS shall restrict construction activities to the hours between 7:00 A.M. and 7:00 P.M. Monday through Friday and between 8:00 A.M. and 5:00 P.M. on Saturdays. No construction activities shall occur on Sundays or state or federal holidays.
10. At the time the Project permanently ceases to operate, ORS shall restore the site consistent with the testimony provided in this proceeding.

Dated at Montpelier, Vermont, this ____ day of _____, 2017.

_____] PUBLIC UTILITY COMMISSION
] OF VERMONT
_____]
]
_____]

OFFICE OF THE CLERK

FILED:

ATTEST: _____

Clerk of the Commission

LEASE AGREEMENT

[] [], 20[]

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LEASE AGREEMENT

THIS LEASE AGREEMENT (“**Lease**” or “**Agreement**”) is made on this _____ day of [_____] 20[___] (the “**Effective Date**”), by and between **Daniel and Judy Querrey** (the “**Owner**”), and **Orchard Road Solar I**, a limited liability company organized and existing under the laws of the State of Vermont, and its successors and assigns (“**Project Company**,” the Owner and Project Company, each, a “**Party**” and, together, the “**Parties**”).

In consideration of the foregoing recitals, of mutual premises of Owner and Project Company, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner and Project Company agree as follows:

ARTICLE 1. DEFINITIONS AND INTERPRETATIONS

§ 1.1 Definitions

(a) “**Access Easement**” means a right of use, right of access, and easement, over, across, and on the Leased Premises and the Owner Properties for ingress, egress, utility interconnection, including staging, location, installation, operation, maintenance, repair, and removal of Interconnection Facilities, and access to and from the Solar Facilities (whether located on the Leased Premises, on adjacent property, or elsewhere) by means of any existing roads, lanes, or driveways, or by such route or routes as Project Company may designate and construct from time to time.

(b) “**Agreement**” means this Lease Agreement (including all exhibits attached hereto) as the same may be amended, supplemented or otherwise modified from time to time in accordance with the provisions hereof.

(c) “**Commencement of Construction**” shall mean the date during the Development and Construction Period when onsite activities for the installation and construction of the Solar Facility begins.

(d) “**Commercial Operation**” occurs, as determined by Project Company in its good faith and reasonable judgment, when the Solar Facility has successfully completed all performance tests, satisfies the interconnection requirements of the Utility, and is ready to commence the regular delivery of commercial quantities of electrical energy.

(e) “**Commercial Operation Date**” shall have the meaning set forth in § 3.1.2.

(f) “**Comprehensive Arbitration Rules and Procedures**” shall mean such rules and procedures administered by JAMS.

(g) “**Default**” shall have the meaning set forth in § 12.1.1.

(h) “**Development and Construction Period**” is the period of time beginning on the Effective Date and ending on the Commercial Operation Date, unless earlier terminated, during which time Project Company will undertake Site Activities and due diligence activities, including, but not

limited to environmental, archeological, geotechnical review of the Leased Premises; financial review of the Project; permitting; civil design and electrical engineering of the Solar Facility; and electrical interconnection studies and engineering.

(i) “**Easement**” means any of the Access Easement, the Interconnection Easements, the Stormwater Easement, and the Solar Easement.

(j) “**Encumbrances**” has the meaning set forth in § 8.1.

(k) “**Event of Monetary Default**” shall have the meaning set forth in § 12.1.1.

(l) “**Exhibits**” shall mean all those exhibits attached to or made part of this Agreement.

(m) “**Financing Party(ies)**” means as applicable (i) any Person (or its agent) from whom Project Company (or an affiliate of Project Company) leases the Solar Facility, (ii) any Person (or its agent who has made or will make a loan to or otherwise provide financing to Project Company (or an affiliate of Project Company) with respect to the Solar Facility, (iii) any Person (its agent) who has or will invest in, finance, or purchase Project Company or substantially all of the assets of Project Company.

(n) “**Good Industry Practice**” means the practices, methods and acts engaged in or approved by a significant portion of the electric generation industry, or the electric industry, as applicable, during the relevant time period and with respect to the operation and maintenance of generating equipment similar in size and technology to the Solar Facility that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy and expedition. “Good Industry Practice” is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

(o) “**Governmental Approval**” means any federal, state or local registration, filing, notice, permit, authorization or approval given or required by any Governmental Authority to authorize or condition an action by any Person with respect to the Leased Premises or any Easement, including any land-use, environmental, or other permit or approval, final, non-appealable certificates, orders, licenses and other approvals, required by any Governmental Authorities for the Planned Use of the Leased Premises and the Owner Properties, the Solar Facility, the Interconnection Facilities, and the Easements.

(p) “**Governmental Authority**” means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity, or any arbitrator with authority to bind a party at law.

(q) “**Improvement**” shall have the meaning set forth in § 2.4.2.

(r) “**Interconnection Easement**” means the right to use the Owner Properties of locating, accessing, installing, operating, repairing, replacing, and removing interconnection facilities or distribution lines, conduits, culverts, and related equipment, consumables, or housing and related uses, as more fully described in § 2.3. Interconnection Easements may benefit the Project Company or the Utility.

(s) “**Interconnection Facilities**” means electrical interconnection, transmission and/or distribution, and communications lines and related cables, wires, poles, pads, conduit, circuit breakers and transformers, and any and all necessary and proper facilities, fixtures, and additional equipment any way related to or associated with any of the foregoing for the transmission and delivery of electrical energy to the local electrical transmission and/or distribution system. Interconnection Facilities will be deemed to be a part of the Solar Facility.

(t) “**JAMS**” shall mean the mediation services organization known as JAMS.

(u) “**Lease**” means this Lease Agreement or Agreement (including all exhibits attached hereto) as the same may be amended, supplemented or otherwise modified from time to time in accordance with the provisions hereof.

(v) “**Lease Fee**” shall have the meaning set forth in ARTICLE 4.

(w) “**Leased Premises**” shall have the meaning set forth in § 2.1.

(x) “**Legal Requirements**” means all federal, state and local laws, statutes, ordinances, rules, regulations, judgments, Governmental Approvals, and other valid orders of any governmental authority applicable with respect to the activities of Project Company pursuant to this Lease, and all permits, licenses and orders required to conduct any and all such activities contemplated under this Lease.

(y) “**Offtaker**” means [_____] or other, successor [“Buyer”] under the PPA.

(z) “**Operating Term**” has the meaning assigned set forth in § 3.1.2.

(aa) “**Owner Properties**” means the real property and improvements thereon and rights appurtenant thereto owned or controlled by Owner that are composed of the Leased Premises and all real property adjacent to the Leased Premises.

(bb) “**Owner Retained Properties**” means the real property and improvements thereon and rights appurtenant thereto owned or controlled by Owner that do not include the Leased Premises.

(cc) “**Party**” shall mean Owner or Project Company, as used in this Agreement.

(dd) “**Person**” means any individual, sole proprietorship, corporation, partnership, joint venture, limited liability partnership, limited liability company, trust, unincorporated association, institution or other entity, including a Governmental Authority.

(ee) “**Planned Use**” means the use of the Leased Premises for the installation, construction, interconnection, commissioning, operation, maintenance, replacement, and, if applicable, removal of the Solar Facility, including all equipment, facilities and materials, including photovoltaic arrays, DC/AC inverters, wiring, meters, monitoring software, tools, Interconnection Facilities, and other, related or incidental property, and all uses reasonably related thereto, including conducting diligence on the Leased Premises with respect to the Solar Facility (including Project Company Due Diligence, defined below), Interconnection Facilities, and related uses, landscaping, vegetation management, snow removal, roadway construction and maintenance.

(ff) “**PPA**” means the Solar Power Purchase Agreement dated September 28, 20[___] between Project Company and the Offtaker, as the same may be amended and supplemented.

(gg) “**Project**” means the design, installation, construction, interconnection, operation, maintenance, removal, and decommissioning of the Solar Facility and activities related or incidental thereto.

(hh) “**Renewal Term**” shall have the meaning set forth in § 3.1.3.

(ii) “**Solar Easement**” shall have the meaning set forth in § 2.4.

(jj) “**Solar Facility(ies)**” shall have the meaning set forth in the § 2.1.

(kk) “**Stormwater Easement**” shall have the meaning set forth in § 2.5.

(ll) “**Survey**” the survey of the Leased Premises prepared by a registered professional land surveyor attached to **Exhibit A**. [OR “**Survey**” a survey of the Leased Premises prepared by a registered professional land surveyor.]

(mm) “**Term**” shall have the meaning set forth in § 3.1.

(nn) “**Utility**” means [_____].

ARTICLE 2. LEASED PREMISES

§ 2.1 Lease of Leased Premises for Solar Energy Purposes

- (a) For the Term, Owner leases to Project Company, and Project Company leases from Owner, the real property legally described in **Exhibit A** attached hereto (the “**Leased Premises**”) for the Planned Use, including, without limitation, monitoring, testing and evaluating the Leased Premises for solar energy generation, constructing, installing, using, replacing, relocating and removing from time to time, and maintaining and operating, solar energy generating equipment, overhead and/or underground electrical transmission and communications lines, electric transformers, energy storage facilities, telecommunications equipment, power generation facilities and substations to be operated in conjunction with solar energy generating equipment installations, roads, and related improvements, facilities and equipment, including

Interconnection Facilities (collectively, the “**Solar Facility**”), and related uses, including vegetation management, landscaping, roadway and driveway installation and maintenance, and related uses, **TOGETHER** with all right, title and interest of Owner in and to all easements, rights, privileges, and appurtenances to the same or in any wise appertaining thereto, and all right, title, and interest, if any, of Owner in any land lying in the bed of any street, avenue, or alley adjoining the Leased Premises to the center line thereof, together with the rights pursuant to the Access Easement, Interconnection Easements and the Solar Easement, **TO HAVE AND TO HOLD** the aforesaid Leased Premises, Easements, and appurtenant interests unto Project Company for the Term. The “**Leased Premises**” do not include any area of the Owner Retained Properties burdened by any Easement.

- (b) For purposes of this Lease, “solar energy purposes” means converting solar energy into electrical energy, and collecting and transmitting the electrical energy so converted, together with any and all activities related thereto.
- (c) [The general description of the Leased Premises described in **Exhibit A** attached to this Lease on the Effective Date may not be a precise legal description of the Leased Premises; and may not precisely delineate the area(s) on the Owner Retained Properties burdened by any Easement. The Owner and Project Company hereby acknowledge and confirm that, notwithstanding any insufficiency in the legal description attached as **Exhibit A**, the Leased Premises is (and shall remain) bounded by public rights of way sufficient to provide ingress and egress to and from the Solar Facility on the Leased Premises from and to one or more public rights-of-way. The Owner and Project Company further acknowledge and confirm that, notwithstanding any insufficiency in the legal description attached as **Exhibit A**, the parties desire to enter this Lease and to be fully and legally bound by this Lease. Therefore, Owner and Project Company agree that (i) they are thoroughly familiar with the proposed location of the area comprising the Leased Premises, and the areas on the Owner Retained Properties burdened by any Easement; and (ii) upon Project Company obtaining a Survey pursuant to subclause (d) below, the metes and bounds description of the Leased Premises will be substituted for **Exhibit A** pursuant to an amendment to this Lease and such metes and bounds description will become the final legal description of the Leased Premises, and that the Survey will reflect the areas on the Owner Retained Properties burdened by any Easement. The Parties acknowledge and agree that they are legally bound under this Lease pursuant to the depiction of the Leased Premises attached as **Exhibit A** and both Parties will be obligated to perform hereunder based on such depiction of the Leased Premises.
- (d) Prior to the construction of any portion of the Solar Facility on the Leased Premises, Project Company, at its expense, will obtain a survey of the Leased Premises prepared by a registered professional land surveyor (the “**Survey**”)]

§ 2.2 Access Easement

Owner hereby grants to Project Company for the Term a right of use, right of access, and easement (the “**Access Easement**”), over, across, and on the Leased Premises and the Owner Properties for ingress, egress, utility interconnection (including staging, location, installation, operation, maintenance, repair, and removal of Interconnection Facilities), and access to and from the Solar Facilities (whether located on the Leased Premises, on adjacent property, or elsewhere) by means of

any existing roads, lanes, or driveways, or by such route or routes as Project Company may designate and construct from time to time. The Access Easement will include the right to improve existing roads and lanes, or to build new roads or driveways, and will run with the land of the Leased Premises and the Owner Properties, and will inure to the benefit of, and be binding upon, Owner and Project Company, as applicable, and their respective heirs, personal representatives, transferees, successors, and assigns, and all Persons claiming under them. The location and dimensions of the areas burdened by such Access Easement shall be designated by Project Company in its sole discretion, except that Project Company agrees to use commercially reasonable efforts to minimize the interruption of any Owner operations on the Leased Premises and Owner Properties.

§ 2.3 Interconnection Easements

Owner hereby grants Project Company an Interconnection Easement for Interconnection Facilities on, over and across the Owner Retained Properties, on such portions of the Owner Retained Properties as will be designated to Owner by Project Company, subject to § 6.1. Any such Interconnection Easement will include all of the rights and privileges for Interconnection Facilities as are set forth in this Lease. At the request of Project Company, Owner will grant to the Utility by written instrument in recordable form reasonably acceptable in form and substance to the Utility, an Interconnection Easement and right-of-way over, above, and on the Owner Properties for purposes of locating, installing, operating, repairing, replacing, and removing Interconnection Facilities and any Utility-owned equipment, transmission, or distribution lines, conduits, culverts, and related equipment, consumables, or housing. Any Interconnection Easement in favor of Project Company will endure for the period co-extensive with the Term of this Lease, subject to earlier termination by Project Company by written notice to Owner as set forth herein. Any Interconnection Easement in favor of the Utility will endure for the period required by the Utility, and may be perpetual. Any Interconnection Easement will run with the Owner Properties and inure to the benefit of and be binding upon Owner, the Utility, and the Project Company and their respective transferees, successors, and assigns, and all Persons claiming under them. Project Company will have the right to assign its rights hereunder relating to the construction, operation, repair and/or maintenance of the Interconnection Facilities in favor of the Project Company to a third party that owns, operates and/or maintains electric transmission or distribution systems.

§ 2.4 Solar Easement

Owner acknowledges that the ability of Project Company to use the Leased Premises for the Planned Purpose may be affected by the extent of shading on the Solar Facility (excluding for this purpose only, the Interconnection Facilities).

§ 2.4.1 Open Access to Sun.

Owner hereby grants and conveys to Project Company an exclusive easement on, over and across the Owner Properties for the following: the open and unobstructed access to the sun to the Solar Facility on any of the Owner Properties and to ensure adequate exposure of the Solar Facility to the sun. Project Company may maintain vegetation outside of and surrounding the Leased Premises in a condition that mitigates shading effect on the array, in Project Companies' sole discretion. In addition, Owner hereby grants and conveys to Project Company an exclusive easement prohibiting any obstruction to the open and unobstructed access to the sun (together with the preceding sentence, the "**Solar Easement**") throughout the entire Owner Properties, including the Leased Premises, to and for the benefit of the area existing

horizontally three hundred and sixty degrees (360°) from any point where any Solar Facility is or may be located at any time from time to time (each such point referred to as a “**Site**”) and for a distance from each Site to the boundaries of the Leased Premises, together vertically through all space located above the surface of the Leased Premises, that is, one hundred eighty degrees (180°) or such greater number or numbers of degrees as may be necessary to extend from each point on and along a line drawn along the surface from each point along the exterior boundary of the Leased Premises through each Site to each point and on and along such line to the opposite exterior boundary of the Leased Premises. Project Company may maintain vegetation on, outside of, and surrounding the Leased Premises in a manner to mitigate shading effects on the Solar Facility.

§ 2.4.2 Owner Improvements.

Buildings and other improvements located on the Leased Premises as of the Effective Date will be allowed to remain, and Project Company may not require their removal. Owner may not place or plant any trees, buildings, or improvements (an “**Improvement**”) on, or use or occupy, the Leased Premises after the Effective Date unless Owner has received written approval from Project Company for any such Improvement, occupancy, or use; provided, however, that if any Improvement is required pursuant to Legal Requirements or Governmental Approval, the Owner and Project Company will work together in good faith to agree on the location, dimensions, installation, construction, and maintenance of such improvement so that the Improvement will have as minimal an impact as possible on the operation of the Solar Facility. Project Company may grant or withhold consent in the sole discretion Project Company as to any Improvement that is not required by Legal Requirements or Governmental Approval; and shall be permitted to withhold consent as to any such proposed Improvement that may, in the sole judgment of Project Company, impede or materially interfere with the open and unobstructed access to the sun to any Site or Facility (located either on the Leased Premises or on the Owner Properties). If Owner is required pursuant to any Legal Requirements to install any Improvements at the Leased Premises or on Owner Properties that will adversely affect insolation or the electrical output of the Solar Facility, the Owner shall be required to reasonably compensate Project Company for lost revenues and cost of replacement of the affected Solar Facility.

§ 2.4.3 Purchase of Additional Property.

Owner shall have the right to purchase land adjacent to the Leased Premises and to incorporate any such additional land into the larger Leased Premises to provide additional buffer for the Solar Facility. The Owner will be responsible for maintenance of the additional property at its expense. Owner will not unreasonably disturb or disrupt the Planned Use, including the operation or output of the Solar Facility and, if applicable, shall grant Project Company a Solar Easement over such additional parcel(s).

§ 2.4.4 No Interference.

Owner will not materially interfere with, and will not allow any other party to materially interfere with, the free, unobstructed and open and unobstructed access to the sun, solar speed or solar direction over and across the Leased Premises.

§ 2.5 Stormwater Drainage.

Owner grants to Project Company, for the Term, a right of access and use for storm water and surface water drainage purposes on, over, and under the Owner Properties for the benefit of the Leased Premises (the “**Stormwater Easement**”). The Stormwater Easement will include, without limitation, the right to drain into any storm water retention and/or detention facilities located on the Owner Properties. The Stormwater Easement will include, without limitation, the right to make improvements on the Leased Premises and/or the Owner Properties as reasonably required for such stormwater or drainage purposes.

ARTICLE 3. LEASE TERM

§ 3.1 Term

The “**Term**” of this Lease will be the Development and Construction Period, defined below, together with, the Operating Term and the Renewal Term(s) as and to the extent provided in this Lease; in addition, the rights and obligations of the Parties under this Lease shall continue during the Removal Period, subject to the limitations set forth in § 7.4.1.

§ 3.1.1 Development and Construction Period

The rights of Project Company under this Lease will be in effect throughout the Development and Construction Period. The “**Development and Construction Period**” commences on the Effective Date of this Lease and, subject to § 6.2, expires upon the date (the “**Termination Date**”) that is the earliest to occur of: (a) the commencement of the Operating Term, as set forth in § 3.1.2, (b) the termination of this Lease in accordance with its terms, including pursuant to ARTICLE 5 or ARTICLE 6, or (c) [_____] [____], 20[___] or, if later, the “**Early Termination Date**”/“**Outside Commercial Operation Date**” (as defined in the PPA)]. The Term of this Lease will terminate on the last day of the Development and Construction Period unless the Operating Term commences on the last day of the Development and Construction Period.

§ 3.1.2 Operating Term

The Operating Term shall commence on the date (the “**Commercial Operation Date**”) the Solar Facility achieves Commercial Operation, unless this Lease is terminated before the Solar Facility achieves Commercial Operation in accordance with § 3.1.1. Project Company will deliver written notice to the Owner identifying the Commercial Operation Date within thirty (30) days after the Commercial Operation Date occurs. The Operating Term of this Lease (“**Operating Term**”) will be the period of twenty-five (25) years commencing the Commercial Operation Date, unless terminated earlier in accordance with the terms of this Lease, and subject to the removal rights of Project Company as provided under this Lease.

§ 3.1.3 Renewal Term

Project Company will have the right, at its option, to extend the Operating Term for two (2) additional periods of five (5) years each (each a “**Renewal Term**”) subject to the removal rights of Project Company as provided under this Lease. To exercise its option to renew the Term for a Renewal Term, Project Company must deliver a written extension notice to Owner prior to the expiration of the Operating Term or the then-applicable Renewal Term. The terms of the Lease during the Renewal Term will be the same terms and conditions applicable during the Operating Term, except as specifically provided herein.

§ 3.2 Termination

The occurrence of any of the following events will terminate this Lease, effective the date specified below, subject to the removal rights of Project Company as provided under this Lease:

- (a) The termination of this Lease prior to the Commercial Operation Date as set forth in § 3.1; or
- (b) The written agreement of the Parties to terminate this Lease, in which event the effective date of termination will be as agreed by the Parties; or
- (c) A Default (as defined below) of this Lease by either party and the election of the non-breaching party to terminate the Lease pursuant to ARTICLE 12.

§ 3.3 Survival of Covenants

Owner acknowledges that the covenants, conditions, rights and restrictions in favor of Project Company pursuant to this Lease including, but not limited to, the Interconnection Easements and Solar Easement, and the use by Project Company of and benefit from those covenants, conditions, rights and restrictions, may constitute a portion of the Project and that the covenants, conditions, rights and restrictions in favor of Project Company pursuant to this Lease will not be deemed nominal, invalid, inoperative or otherwise be disregarded while any portion of the Project remains operational.

ARTICLE 4. LEASE FEE

§ 4.1 Payments

Project Company will pay Owner a “Lease Fee” as defined in and according to the payment terms set forth in **EXHIBIT D - PAYMENT TERMS**.

§ 4.2 Taxes and Assessment

§ 4.2.1 Owner Taxes and Assessments.

Owner will pay, when due, any property taxes and assessments levied against the Leased Premises and all personal property taxes and assessments levied against any property and improvements owned by Owner and located on the Owner Properties. If Owner will fail to pay any such taxes or assessments when due, Project Company may, at its option, pay those taxes and assessments and any accrued interest and penalties, and either seek reimbursement from Owner or deduct the amount of its payment from any Lease Fee, rent, or other amount otherwise due to Owner from Project Company.

§ 4.2.2 Project Company Taxes and Assessments.

Project Company will pay all personal property taxes and assessments levied against the Solar Facility when due. Owner and Project Company agree jointly to use commercially reasonable efforts to cause the Leased Premises not to be reclassified from its present tax assessment, including any exemption, as applicable, as a result of this Lease.

§ 4.2.3 Tax Contest.

Project Company may contest the validity or amount of any levied taxes, assessments or other charges for which Project Company is responsible under this Lease as long as such contest is pursued in good faith and with due diligence.

ARTICLE 5. DUE DILIGENCE

§ 5.1 Early Termination

Project Company shall have the right to terminate this Lease under § 5.2.3 if Project Company is unsuccessful in obtaining any Governmental Approval required by any Governmental Authority in connection with the Planned Use of the Leased Premises or the Owner Properties, the Solar Facility, or any Easement. In addition, Project Company shall have the right to terminate this Lease if it receives written notice from Owner under § 5.3 that Owner declines to address Unacceptable Due Diligence Items (defined below). The effective date of any early termination pursuant to this Section shall be as set forth in the termination notice from Project Company to Owner (which, in any event, shall not exceed 90 days after the date such notice is delivered to Owner).

§ 5.2 Due Diligence Review

§ 5.2.1

During the Development and Construction Period, in addition to vegetation management, seeding, and other site preparation or maintenance activities, Project Company may conduct or cause the due diligence review of the Leased Premises and the Owner Properties, including, as appropriate and without limitation, surveying, environmental and cultural resource review, assessment, and inspection, structural analyses, surface tests, title research, and any other such tests, investigations and similar activities as Project Company may deem necessary or desirable (collectively, “**Project Company Due Diligence**”). Nothing in this section shall limit the rights of Project Company under any other provision of this Agreement. Upon the request of Project Company, Owner agrees during the Development and Construction Period to execute such documents or instruments reasonably necessary: (a) for Owner to confirm the Owner’s representations and warranties of title set forth in this Lease; (b) to enable Project Company to record memoranda of easement that conform to the requirements of this Lease and that are presented to the Owner for execution in the appropriate registry of deeds; and (c) to enable the procurement of such Governmental Approvals with respect to the Project as are necessary to enable Project Company to occupy the Leased Premises for the Planned Use by of Project Company. Upon termination of this Lease for any reason, Owner may use or abandon any Governmental Approvals procured by Project Company in Owner’s name with respect to the Owner Properties, including the Leased Premises.

§ 5.2.2

Throughout the Development and Construction Period, Project Company, its agents, and subcontractors shall have the right to enter upon the Owner Properties, upon reasonable prior notice to Owner, to perform Project Company Due Diligence. As soon as practicable after the Effective Date, Owner will provide Project Company true and complete copies of all documents, instruments, and other written materials in the Owner’s possession or control relating to the Leased Premises, including copies of any Governmental Approvals relating to the Leased Premises.

§ 5.2.3

Prior to and during the Development and Construction Period, Project Company either shall secure or shall have secured any required Governmental Approvals with respect to the Planned Use of the Leased Premises by Project Company pursuant to this Lease, including for the construction, interconnection, operation, maintenance, and removal of the Solar Facility at the Leased Premises and any Easements; and Owner shall provide commercially reasonable support to Project Company in connection with obtaining such Governmental Approvals. If Project Company is unable to timely

obtain any such Governmental Approvals, Project Company shall have the right to terminate this Lease upon delivery of written notice to termination to the Owner.

§ 5.3 Notice of Unacceptable Due Diligence Items

§ 5.3.1

Project Company may, in its sole discretion, notify Owner in writing of items identified by the Project Company Due Diligence (collectively, the “**Unacceptable Due Diligence Items**”) that must be remedied or addressed and the time period within which such remedy must occur to enable the Leased Premises to be suitable for the Planned Use. Unacceptable Due Diligence Items include: (1) any Recognized Environmental Conditions (defined below) that exist adjacent to, on, at, or under the Leased Premises; (2) conditions at, under, or around the Leased Premises or the Owner Properties the existence of which unreasonably restricts the ability of the Project Company to install, construct, or operate the Solar Facility on the Leased Premises, including a condition that materially increases the cost to Project Company to install or operate the Solar Facility; or (3) the inability to timely secure and maintain any Governmental Approval with respect to the Solar Project as is necessary to enable Project Company to occupy the Leased Premises and for the Commencement of Construction of the Project to occur. The term “**Recognized Environmental Conditions**” shall mean environmental contamination existing at or around the Leased Premises or the Owner Properties that violates applicable Legal Requirements identified through the Project Company Due Diligence or otherwise.

§ 5.3.2

Within thirty (30) business days after the delivery to Owner of any written notice of Unacceptable Due Diligence Items, Owner shall advise Project Company in writing: (a) that Owner will not mitigate, remedy or otherwise address the Unacceptable Due Diligence Item(s) identified in the notice (it being understood that Owner shall have no obligation whatsoever to remedy or otherwise address any Unacceptable Due Diligence Items); or (b) that Owner will address or remedy the Unacceptable Due Diligence Item(s) identified in the notice within the time period(s) specified in the notice, and, in such written response, Owner will specify the particulars of how Owner will remedy or address such Unacceptable Due Diligence Items within the identified time periods. If Owner advises Project Company that Owner will address an Unacceptable Due Diligence Item, the particulars with respect to the undertaking to remedy the Unacceptable Due Diligence Item, the timing of the undertaking, and the payment of costs relating to the undertaking shall be reflected and agreed by Owner and Project Company in a written “**Remediation Agreement**”, that will be executed and delivered by the Parties, by which the Parties will be bound and on which they may rely. If any Remediation Agreement is with respect to the remedy of any Recognized Environmental Condition, the Remediation Agreement will include Owner's agreement to indemnify Project Company and hold Project Company harmless from and against all damages relating to such Recognized Environmental Condition, and Owner shall retain responsibility for the removal and/or remediation of such Recognized Environmental Conditions. If such Recognized Environmental Conditions materially make infeasible the Commencement of Construction and the Parties confirm such fact in a Remediation Agreement, then the removal and/or remediation of the Recognized Environmental Conditions to the extent Commencement of Construction becomes feasible shall be a condition precedent to Commencement of Construction; and the obligations of Owner under such Remediation Agreement shall continue until such Recognized Environmental Condition has been fully remediated in accordance with all Legal Requirements, rules, and

regulations. If Owner declines by written notice to remove, remediate, address, and/or remedy as is appropriate to mitigate the Unacceptable Due Diligence Item(s) at, around, or under the Leased Premises or if Project Company and Owner cannot agree on the terms of a Remediation Agreement within 30 days after the initial delivery by one Party to the other Party of a draft Remediation Agreement, then the Owner shall be deemed to have declined to address the Unacceptable Due Diligence Items covered by the draft Remediation Agreement, and Project Company may either decide to proceed with this Lease or terminate this Lease, subject to and in accordance with § 5.1.

ARTICLE 6. CONDITIONS PRECEDENT TO COMMENCEMENT OF CONSTRUCTION; CONSTRUCTION PERIOD

§ 6.1 Conditions Precedent to Commencement of Construction

Commencement of Construction by Project Company is subject to the satisfaction of the following conditions precedent: (a)

- (a) Satisfactory completion of Project Company Due Diligence with, the results thereof (including the results of any Owner response to any Unacceptable Due Diligence Items) being sufficient, in the sole judgment of Project Company to confirm the suitability of the Leased Premises for the Planned Use;
- (b) If applicable, Owner's delivery of a Remediation Agreement pursuant to § 5.3 to address and/or remedy any Unacceptable Due Diligence Items as further set forth in § 5.3, and, if any Recognized Environmental Conditions addressed by the Remediation Agreement materially makes infeasible the Commencement of Construction, then the mitigation, removal and/or remediation of the Recognized Environmental Conditions to the extent Commencement of Construction becomes feasible;
- (c) There shall be no conditions, encumbrances, or any other limitations affecting the Leased Premises that would unreasonably interfere with the Planned Use or quiet enjoyment of the Leased Premises by Project Company;
- (d) Receipt of all required Governmental Approvals required by any Governmental Authorities for the Planned Use of the Leased Premises and the Solar Facility by Project Company, including any land-use or environmental permits or approvals, including final, non-appealable certificates, permits, licenses, and other approvals;
- (e) Approval of (i) this Lease and (ii) the Construction Agreement (if any) for the Solar Facility by the Financing Parties;
- (f) Execution of all necessary agreements with the Utility for interconnection of the Solar Facility to the Utility's electric distribution system; and
- (g) Execution, delivery, and recording of any easements, including any Interconnection Easements in favor of the Utility as required for interconnection of the Solar Facility.

§ 6.2 Condition Satisfaction Date

Project Company shall notify the Owner in writing when the conditions precedent set forth in **§ 6.1** have been met and the date of delivery of such notice is referred to as the “**Condition Satisfaction Date**”. If all of the conditions precedent above are not satisfied by the Termination Date, then the Parties will attempt in good faith to negotiate new dates for the satisfaction of the failed conditions. If the Parties are unable to negotiate a new Termination Date, in light of such dates, then Project Company may terminate this Agreement by delivering a written notice of termination to the Owner.

§ 6.3 Construction Period; Construction

The “**Construction Period**” shall commence during the Development and Construction Period on the Commencement of Construction, and shall terminate at 11:59 pm on the date immediately preceding the first day of the Operating Term or the date on which this Lease is terminated prior to the commencement of the Operating Term.

§ 6.4 Permitted Use

During the Construction Period, Project Company may conduct in a good and workmanlike manner, in accordance with all Legal Requirements and Good Industry Practice, surveying, drainage and erosion control activities, clearing, ground leveling, compacting, grading, excavating, drilling, boring, landscaping, and all other installation and construction activities in connection with the generation, distribution, and transmission of energy via solar arrays, panels, and other related equipment, including construction or installation of any access roads and construction of related improvements that may be required pursuant to approval under any certificate, permit, license, or approval from any Governmental Authority or the interconnecting Utility, or any other applicable Legal Requirement. This provision shall not limit any construction related activities outside of the Construction Period deemed necessary or desirable by Project Company in connection with the construction of Solar Facility improvements that may precede or extend beyond the Construction Period.

§ 6.5 Lay-Down Area(s)

Owner hereby grants and conveys to Project Company a limited, exclusive right and license solely during the Construction Period and the period of 180 days thereafter on, over and across the area or areas on the Owner Retained Properties adjacent to the Leased Premises designated by the Project Company for the purpose of lay-down area(s), including for the placement, location, and maintenance of equipment and materials in support of the uses permitted pursuant to § 6.4.

ARTICLE 7. PROJECT COMPANY’S COVENANTS

Project Company covenants, represents and warrants to Owner as follows:

§ 7.1 Mechanics Liens

Project Company will keep the Leased Premises free and clear of all liens and claims of liens for labor, materials, services, supplies, and equipment performed for or furnished to Project Company or in connection with the use of the Leased Premises by Project Company. Project Company may contest any such lien, but will post a bond or utilize other available means to remove any lien that is created during the contested proceeding. Project Company agrees to otherwise remove any lien or encumbrance for which it is responsible pursuant to this paragraph within ninety (90) days of notice to Project Company of the creation of any such lien or encumbrance.

§ 7.2 Permits and Laws

Project Company and its designees will at all times comply with all Legal Requirements applicable with respect to the activities of Project Company pursuant to this Lease and will obtain all Governmental Approvals required with respect to the Planned Uses. Owner will provide commercially reasonable cooperation to Project Company in connection with Project Company's efforts to secure such Governmental Approvals. Project Company will have the right, in its sole discretion, to contest by appropriate legal proceedings brought in the name of Project Company or in the names of both Project Company and Owner where appropriate or required, the validity or applicability to the Leased Premises or Solar Facility of any Legal Requirement now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Owner will cooperate in every reasonable way in such contest, provided Project Company reimburses Owner for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation, to the extent Project Company has approved such expense in advance. Any such contest or proceeding, including any maintained in the name of Owner, will be controlled and directed by Project Company, but Project Company will protect Owner from the failure of Project Company to observe or comply during the contest with the contested Legal Requirement.

§ 7.3 Project Company Improvements

§ 7.3.1 Ownership of Solar Facility and Nature of Property.

The Solar Facility constructed, installed or placed on the Leased Premises by Project Company pursuant to this Lease will be and remain the sole property of Project Company and Owner will have no ownership or other interest in the Solar Facility, including in any Interconnection Facilities, on the Leased Premises or on any Owner Retained Properties. The Solar Facility is and will remain personal property of the Project Company, notwithstanding any present or future common ownership of the Solar Facility and the Leased Premises and or the ownership of certain Interconnection Facilities by the Utility.

§ 7.4 Removal of Improvements of Project Company

§ 7.4.1 Removal by Project Company.

During the period (the "**Removal Period**") commencing the last day of the Term and concluding on the earlier of: (a) the date on which the Solar Facility (excluding, for this purpose, the Interconnection Facilities that are not owned by the Project Company) is removed from the Owner Properties consistent with this provision, and (b) the date that is 270 days after the last day of the Term, the Project Company will remove from the Owner Properties the Solar Facility. The provisions of this Lease will continue in effect during the Removal Period, except that the only use of the Leased Premises will be the removal of the Solar Facility. Without limitation, the Project Company will continue to pay the Lease Fee during the Removal Period, subject to proration based on the total number of days included in the Removal Period. During the Removal Period, Owner grants Project Company access to the Owner Properties for permitted removal activities.

§ 7.4.2 Removal by Owner.

If, as required pursuant to this **§ 7.4**, Project Company fails to remove any of the Solar Facility, including those Interconnection Facilities owned by Project Company, by the last day of the Removal Period, then from and after the last day of the Removal Period, Owner may remove the Solar Facility, including such Interconnection Facilities, from the Owner Properties and

dispose of them in its sole discretion. In such event, Project Company will reimburse Owner for all reasonable costs of removing the Solar Facility (including such Interconnection Facilities) as required by the Lease, less any salvage value received by Owner, within thirty (30) days after receipt of an invoice from Owner.

§ 7.5 Insurance

Project Company will obtain and maintain in force the policies of insurance set forth in § 9.3 during the Term and any Removal Period. Project Company will provide Owner with copies of certificates of insurance evidencing this coverage upon request by Owner.

§ 7.6 Gates and Fences

If necessary and as mutually agreed by the Parties, Project Company may make alterations to any existing fence to secure access to the Leased Premises; alternatively, Project Company may install a new security fence around the perimeter of the Solar Facility. If Owner maintains locks on exterior gates, Owner will provide Project Company with keys or with the combinations to such locks.

ARTICLE 8. OWNER COVENANTS

Owner covenants, represents and warrants to Project Company as follows:

§ 8.1 Title and Authority

Except to the extent otherwise stated in this Lease, Owner is the sole owner of the Leased Premises and the Owner Retained Properties in fee simple and each Person signing the Lease on behalf of Owner has the full and unrestricted authority to execute and deliver this Lease and to grant the leaseholds, easements and other rights granted to Project Company herein. Except as set forth on Exhibit B, there are no encumbrances or liens (including other tenancies) against the Leased Premises (the “**Encumbrances**”). Owner agrees to deliver any documents necessary to correct any title defects and remove any encumbrances, other than the Encumbrances. All Persons having any ownership interest in the Leased Premises are signing this Lease as and on behalf of Owner. When signed by Owner, this Lease constitutes a valid and binding agreement enforceable against Owner in accordance with its terms. Owner expressly waives all existing and future statutory, common law, and other liens on the Solar Facility that Owner may have under Legal Requirements. To the extent that any such lien cannot be waived under Legal Requirements, Owner hereby subordinates such lien to all existing and future liens and security interests in favor of the creditors of Project Company.

§ 8.2 Cooperation to Eliminate Lien Interference

Owner will cooperate with Project Company to obtain non-disturbance and subordination agreements, or such other necessary agreements, from any Person with an Encumbrance or any other lien, encumbrance, mortgage, deed of trust, lease or other exception to Owner’s fee title to the Leased Premises to the extent necessary to eliminate any actual or potential interference by any such lienholder with any rights granted to Project Company under this Lease. Owner will also provide Project Company with such further assurances and will execute or will use good faith and reasonable efforts to procure from third-party beneficiaries of Encumbrances and other liens any estoppel certificates, consents to assignments, non-disturbance and subordination agreements, or additional documents that may be reasonably necessary for recording purposes or requested by Project Company or any of its lenders.

§ 8.3 Governmental Approvals

Owner acknowledges that the ability of Project Company to use the Leased Premises is contingent upon obtaining all Governmental Approvals with respect to the Planned Use to the satisfaction of Project Company in its sole discretion. Owner will also cooperate with Project Company to obtain and maintain during the Term any Governmental Approvals, or other permits or approvals needed for the Solar Facility. If deemed necessary by Project Company, Owner agrees to sign such documents and applications as are required for obtaining and maintaining throughout the Term, any Governmental Approvals with respect to the Planned Use.

§ 8.4 Quiet Enjoyment

As long as Project Company is not in Default of this Lease, Project Company will have the quiet use and enjoyment of the Leased Premises and the rights pursuant to the Easements in accordance with the terms of this Lease without any interference of any kind by Owner, except for such access and use in favor of the Owner as specifically provided in this Agreement, or any Person claiming through Owner. Owner and its activities on the Leased Premises and any grant of rights Owner makes to any other Person will be only as permitted under this Lease. Except as otherwise specifically permitted or provided herein, Owner will not: (a) interfere with any of the rights or activities of Project Company pursuant to this Lease, (b) suffer, permit, or allow interference with any of the rights or activities of Project Company pursuant to this Lease, (c) materially interfere or allow material interference with the solar speed or solar direction over the Leased Premises, and (d) otherwise engage in activities or allow any activities that might impede or decrease the output or efficiency of the Solar Facility. Owner agrees that this Agreement shall run with the land, be binding on all parties claiming an interest in the Leased Premises or to the Owner Retained Properties to the extent of any Easements, and survive any transfer of the Leased Premises, the Owner Retained Properties or any interest therein.

§ 8.5 Exclusivity

Project Company will have the sole and exclusive rights to install and operate the Solar Facility on the Leased Premises, to use the Leased Premises for solar energy purposes and to convert all solar resources of the Leased Premises. In no event during the Term will Owner construct, build or locate or allow others to construct, build, or locate any solar energy facility or similar project on the Leased Premises.

§ 8.6 Responsibility to Maintain

§ 8.6.1 Responsibility of Project Company to Maintain.

During the Term and subject to § 8.5.2, Project Company will, at its sole cost and expense, maintain the Solar Facility in good condition and repair in accordance with Good Industry Practice, ordinary wear and tear excepted. After the construction of the Solar Facility, Project Company will remove any construction debris and will restore the portions of the Leased Premises not occupied by the Solar Facility to substantially the same condition that such portions of the Leased Premises were in prior to the construction of the Solar Facility. The Solar Facility constructed, installed or placed on the Leased Premises by Project Company pursuant to this Lease may be moved, removed, replaced, repaired or refurbished by Project Company at any time. Project Company will maintain the Leased Premises and the Solar Facility. Notwithstanding the requirements of this Section, Project Company will have no

subsurface maintenance or other obligations except to the extent of disturbance or release by Project Company on the Leased Premises.

§ 8.6.2 Owner's Responsibility to Maintain

Owner shall remain responsible for the performance of all obligations on the land within the Leased Premises outside of the area on which the Solar Facility resides that Owner incurred prior to the occupation of the Leased Premises by Project Company and upon which the use of the Leased Premises by Project Company relies. In no case shall Project Company be responsible for the performance of any obligations related thereto. If for any reason caused solely by Owner's action or failure to act, Project Company is prevented from reasonable access to the Leased Premises for the purposes set forth in this Lease, Owner shall take all necessary and reasonable steps to remove any such impediment to access and, if required by Project Company, Owner shall promptly provide an alternate means of access to the Leased Premises that is reasonably acceptable to Project Company. If Owner fails to remove any impediments to access or to provide such alternate means of access reasonably acceptable to Project Company, Project Company shall have the right but not the obligation to take all the necessary and reasonable steps to remove any impediments to access, at Owner's sole cost and expense. In no case shall Project Company be responsible for the performance of any obligations related thereto.

§ 8.7 Environmental Matters

§ 8.7.1 Project Company

During the Term, Project Company will not use, store, dispose of, or release on the Leased Premises or cause or permit to exist or be used, stored, disposed of or released on the Leased Premises as a result of the operations of Project Company, any substance which is defined as a "hazardous substance", "hazardous material", or "solid waste" in any Legal Requirement, except in such quantities as may be required in the operations Project Company is permitted to conduct on the Leased Premises and only if such use is in full compliance with all Legal Requirements.

§ 8.7.2 Owner

Prior to the Effective Date, Owner has not and has not permitted or suffered any other Person to have used, stored, disposed of, or released on the Leased Premises and from and after the Effective Date, Owner will not use, store, dispose of or release on the Leased Premises or cause or permit to exist or be used, stored, disposed of or released on the Leased Premises as a result of Owner's operations, any substance which is defined as a "hazardous substance", "hazardous material", or "solid waste" in any Legal Requirement, except in such quantities as may be required in the operations Owner is permitted to conduct on the Leased Premises and only if such use is in full compliance with all Legal Requirements. Owner represents and warrants to Project Company that, as of the date hereof, (i) there is no "hazardous substance", "hazardous material", or "solid waste" on, in or under the Leased Premises in violation of any Legal Requirements; (ii) the Owner possesses and is in compliance with all environmental Governmental Approvals applicable to the Leased Premises; (iii) there are no outstanding claims or disputes concerning the Leased Premises or any Governmental Approvals relating to the Leased Premises; (iv) and there are no covenants, conditions, restrictions, Encumbrances, or other private restrictions encumbering the Leased Premises which in any way limit or otherwise restrict the use of the Leased Premises as contemplated by this Lease.

§ 8.8 Access by Owner to the Leased Premises

During the Term of this Agreement, Owner shall not enter on the area of the Leased Premises occupied by the Solar Facility, except in the case of an emergency without the consent of Project Company, such

consent not to be unreasonably withheld, conditioned or delayed. Owner may enter the such area of the Leased Premises without the consent of Project Company in the event of an emergency provided that Owner promptly notifies Project Company of such entry and the nature of the emergency. Owner shall request permission to access the Leased Premises upon five (5) business days advanced notice whenever the Owner desires to access the area of the Leased Premises occupied by the Solar Facility, unless there is an emergency which requires immediate access.

ARTICLE 9. INDEMNIFICATION; INSURANCE; DAMAGE

§ 9.1 Liability of Project Company

Project Company assumes sole responsibility and liability to all Persons related to the possession, occupancy, and use of the Leased Premises by Project Company and will defend, indemnify, and hold Owner harmless against all liability and claims of liability for injury or damage to person or property from any cause on or about the Leased Premises, excluding claims of liability or damage to person or property to the extent due to Owner or Owner's use of the Leased Premises, or related to claims occurring prior to the Term of this Lease.

§ 9.2 Owner's Liability

Owner assumes sole responsibility and liability to all Persons related to Owner's possession, occupancy, and use of the Leased Premises and the Owner Retained Properties (whether prior to, during, or after the Term), and will defend, indemnify, and hold Project Company harmless against all liability and claims of liability for injury or damage to person or property from any cause on or about the Leased Premises or Owner Retained Properties, excluding claims of liability or damage to person or property to the extent due to Project Company or its use of the Leased Premises.

§ 9.3 Insurance

At all times after the Effective Date and during the Term, as such Term may be terminated or extended, Owner and Project Company shall, each at its own expense, maintain a policy or policies of comprehensive general liability insurance with respect to the respective activities of each with the premiums thereon fully paid on or before due date, affording minimum protection of not less than \$1,000,000 combined single limit coverage of bodily injury, property damage or combination thereof.

§ 9.4 Damage or Destruction

In the event of significant damage or destruction of the Leased Premises and/or the improvements of Project Company thereto, such that repair and restoration cannot reasonably be accomplished within 180 days, consistent with the use permitted under this Lease, Project Company may terminate this Lease upon written notice to the Owner, in which event the Lease shall be promptly terminated and neither Party shall have any further liability hereunder; provided, however, that (a) all unsatisfied obligations of the Parties accrued through the early termination date shall survive until satisfied (or waived), and (b) without limiting subclause (a), the Parties' rights and obligations under **§ 7.4** shall survive in accordance with such provision.

ARTICLE 10. ASSIGNMENT

§ 10.1 General Assignment

§ 10.1.1 General Limitation on Assignment.

Except as contemplated by § 10.1.2, neither Owner nor Project Company shall have the right to assign its rights or delegate its obligations under this Lease without the prior written consent of the other Party.

§ 10.1.2 Exceptions.

Project Company may assign or otherwise convey its rights, in whole or in part, under this Lease to a Financing Party or to a successor by merger or acquisition, or to a subsidiary or affiliate of the Project Company without the prior written consent of the Owner. Any other assignment or transfer by Project Company shall require written consent of the Owner, which shall not be unreasonably withheld. Further, Owner may transfer the fee interest in any portion of the Leased Premises or the Owner Retained Properties (such transferred property, the “**Transferred Property**”), so long as Owner shall assign and delegate the Lease to the successor in fee title to such Transferred Property, and shall assure that such Transferee assumes the obligations of Owner under this Lease as to the Transferred Property and provides quiet enjoyment to the Project Company to the Transferred Property to the extent provided or required pursuant to this Lease. In addition, Owner shall give notice to Project Company of any transfer of Transferred Property (and any related assignment and delegation) prior to such transfer. To the extent that Owner fails to provide timely notice of any such transfer and assignment to Project Company, Owner shall assume liability for any payment-related default under this Lease that is attributable to Owner’s failure to notify Project Company of such assignment. Further, if Owner assigns this Lease or any portion of this Lease as permitted hereby or with the consent of Project Company, such assignment shall require Owner’s assignee to accept such assignment (and any related delegation), and, if required, to accept assignment of any additional agreements required with regard to Project Company’s financing arrangements, including but not limited to a consent to the financing arrangements then in effect and an acknowledgement of the applicable Financing Party(ies).

§ 10.2 Collateral Assignment

In addition to the assignment rights under **§ 10.1**, Project Company shall have the right to effect, and Owner hereby consents to, the collateral assignment of the right, title and interest of Project Company in and to this Agreement to a Financing Party for the purposes of financing the Solar Facility.

ARTICLE 11. FINANCING ARRANGEMENTS; MORTGAGE

§ 11.1 Financing Arrangements

Project Company may mortgage, pledge, grant security interests, assign, or otherwise encumber its interests in this Agreement to any Financing Party. Owner acknowledges that Project Company will obtain construction financing for the Solar Facility from a third party Financing Party and that Project Company may either obtain term financing secured by the Solar Facility or sell or assign the Solar Facility to a Financing Party or may arrange other financing accommodations from one or more financial institutions and may from time to time refinance, or exercise purchase options under, such transactions. Owner acknowledges that in connection with such transactions Project Company may secure the obligations of Project Company by, among other collateral, an assignment of this Agreement and a first security interest in the Solar Facility. In order to facilitate such necessary sale, conveyance, or financing, and with respect to any lender or lessor, or other Financing Party, as applicable, Owner agrees as follows:

(a) Consent to Collateral Assignment. Owner hereby consents to both of the sale of the Solar Facility to a Financing Party and the collateral assignment to the Financing Party of the right, title and interest of Project Company in and to this Agreement;

(b) Rights of Financing Party. Notwithstanding any contrary term of this Agreement:

(1) Step-In Rights. The Financing Party, as owner of the Solar Facility, or as collateral assignee of this Agreement, shall be entitled to exercise, in the place and stead of Project Company, any and all rights and remedies of Project Company under this Agreement in accordance with the terms of this Agreement. The Financing Party shall also be entitled to exercise all rights and remedies of owners or secured parties, respectively, generally with respect to this Agreement and the Solar Facility;

(2) Opportunity to Cure Default. The Financing Party 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 Project Company thereunder or cause to be cured any default of Project Company thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Financing Party to cure any default of Project Company under this Agreement or (unless the Financing Party has succeeded to the interests of Project Company under this Agreement) to perform any act, duty or obligation of Project Company under this Agreement, but Owner hereby gives it the option to do so;

(3) Exercise of Remedies. Upon the exercise of remedies, including any sale of the Solar Facility by the Financing Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Project Company to the Financing Party (or any assignee of the Financing Party as defined below) in lieu thereof, the Financing Party shall give notice to Owner of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement provided, however, that any transferee or assignee shall have experience operating solar energy facilities similar to the Solar Facility;

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

(c) Right to Cure.

(1) Cure Period. Owner will not exercise any right to terminate or suspend this Agreement unless it shall have given the Financing Party 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 Financing Party 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 Project Company default reasonably cannot be cured by the Financing Party within such period and the Financing Party commences and continuously pursues cure of such default within such period, such period for cure will

be extended for a reasonable period of time under the circumstances, such period not to exceed an additional ninety (90) days. The Parties' respective obligations will otherwise remain in effect during any cure period.

- (2) Continuation of Agreement. If the Financing Party or its assignee (including any purchaser or transferee), pursuant to an exercise of remedies by the Financing Party, shall acquire title to or control of the assets of Project Company and shall, within the time periods described in § 11.1(3)(a) 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, then such Person shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

§ 11.2 Financing Party a Third Party Beneficiary

Owner agrees and acknowledges that Financing Party is a third-party beneficiary of the provisions of this **ARTICLE 11**.

§ 11.3 Subordination and Non-Disturbance.

Owner shall obtain not later than thirty (30) days following the execution of this Agreement, a Non-Disturbance Agreement, as defined below, from its existing mortgagee(s), ground lessors and master lessors, if any, of the Leased Premises. At Owner's option, this Agreement shall be subordinate to any future master lease, ground lease, mortgage, deed of trust or other security interest (a "**Mortgage**") by Owner which from time to time may encumber all or part of the Leased Premises, any Owner Properties burdened by an Easement granted pursuant to this Lease, or right-of-way; provided, however, as a condition precedent to Project Company being required to subordinate its interest in this Agreement to any future Mortgage covering the Leased Premises, Owner shall obtain a non-disturbance and attornment agreement for the benefit of Project Company in the form reasonably satisfactory to Project Company, and shall recognize the right of Project Company to remain in occupancy of and have access to the Leased Premises as long as Project Company is not in Default of this Agreement beyond applicable notice and cure periods.

ARTICLE 12. DEFAULT

§ 12.1 Events of Default

A "**Default**" means an Event of Monetary Default, as described below, or an Event of Non-Monetary Default, as described below:

§ 12.1.1 Monetary Default

It will be an "**Event of Monetary Default**" if either Party fails to pay any amounts due under ARTICLE 4 of this Lease and the failure is not cured by the non-defaulting Party within sixty (60) days after notice of the failure is given to the Defaulting Party.

§ 12.1.2 Nonmonetary Default

It will be an "**Event of Non-Monetary Default**" if either Party fails to abide by any other material term or condition in this Lease, and the failure is not cured by the defaulting Party within one hundred eighty (180) days after notice of the failure is given by the non-defaulting Party, or, if such failure to abide by any other material term or condition in this Lease cannot

reasonably be cured within one hundred and eighty days (180) then length of time necessary to effect cure as long as the defaulting party is making diligent efforts to cure during that time.

§ 12.2 Remedies

If there is a Default, the non-defaulting Party may terminate this Lease or pursue other remedies available at law or equity.

§ 12.2.1 Termination

The non-defaulting Party may terminate this Lease by providing written notice to the defaulting Party. Upon the termination, Project Company will peaceably surrender the Leased Premises to Owner and remove the Solar Facility from the Leased Premises at the expense of Project Company, as set forth in § 7.4.

§ 12.2.2 Specific Performance

Owner acknowledges and agrees that should Owner breach any of its obligations hereunder or otherwise fail to permit Project Company to exercise any of the rights and privileges granted herein, damages would be difficult to calculate and money damages would not be sufficient to compensate Project Company for such breach, and therefore, Owner agrees that Project Company will have the right to seek specific enforcement of this Lease. In that event, Owner agrees that Project Company has no adequate remedy at law, and that an order of specific performance may be granted in favor of Project Company.

§ 12.3 Damages

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS LEASE, NEITHER PARTY WILL BE ENTITLED TO, AND EACH OF OWNER AND PROJECT COMPANY HEREBY WAIVES, ANY AND ALL RIGHTS TO RECOVER, CONSEQUENTIAL, INCIDENTAL, AND PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER ARISING, WHETHER IN CONTRACT, IN TORT, OR OTHERWISE, UNDER OR WITH RESPECT TO ANY ACTION TAKEN IN CONNECTION WITH THIS LEASE.

ARTICLE 13. MISCELLANEOUS

§ 13.1 Notices

Whenever this Lease requires either party to give notice to the other, the notice will be given in writing and delivered by certified mail, return receipt requested, to the party at the address set forth below:

If to Owner:

If to Project Company:
[_____]
c/o groSolar, 9175 Guilford Road, Suite 202

Columbia, MD 21046
Attention: CEO

With a copy to :
Global Resource Options, Inc.
205 Billings Farm Road, Building 4
White River Junction, VT 05001
Attention: General Counsel
Email: Counsel@groSolar.com

§ 13.2 Cooperation

Each of the Parties, without further consideration, agrees to execute and deliver such additional documents and take such action as may be reasonably necessary to carry out the purposes and intent of this Lease and to fulfill the obligations of the respective parties. If, at any time during the Term, Project Company deems it to be necessary or desirable to meet legal or regulatory requirements, Project Company may request that Owner re-execute a new lease substantially in the form of this Lease with a term equal to the Term remaining as of the date of execution of the new lease, and Owner will execute and enter into the new lease with Project Company or its designee. In the event of inaccuracies or insufficiencies in the legal description of the Leased Premises, this Lease will be amended to correct the inaccuracies or insufficiencies.

If under Legal Requirements the holder of a leasehold interest in the nature of that held by Project Company under this Lease becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal governmental authority, then, at the option, Owner and Project Company will amend this Lease or replace it with a different instrument so as to convert the interest of Project Company in the Leased Premises to a substantially similar interest that makes Project Company eligible for such tax credit, benefit or incentive.

§ 13.3 Confidentiality

Subject to applicable Legal Requirements, Owner will maintain in the strictest confidence, for the benefit of Project Company and any assignee or transferee of Project Company, all information pertaining to the financial terms of or payments under this Lease, the site or product design, methods of operation, methods of construction, power production or availability of the Solar Facility, and the like, whether disclosed by Project Company, any assignee or transferee, or discovered by Owner, unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Owner or its employees or agents; or (ii) was already known to Owner at the time of disclosure and which Owner is free to use or disclose without breach of any obligation to any Person. Owner will not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Project Company, any assignee or transferee. Notwithstanding the foregoing, Owner may disclose such information to Owner's lenders, attorneys, accountants and other personal financial advisors solely for use in connection with their representation of Owner regarding this Lease; any prospective purchaser of the Leased Premises who has made a written offer to purchase or otherwise acquire the Leased Premises that Owner desires to accept; or pursuant to lawful process, subpoena or court order requiring such disclosure, provided Owner in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the written agreement of said party not to disclose the information, which

agreement will run to the benefit of and be enforceable by Project Company and any assignee or transferee of Project Company. The provisions of this Section 10.8 will survive the termination or expiration of this Lease.

§ 13.4 Choice of Law

The law of the state where the Leased Premises are located shall govern this Agreement without giving effect to conflict of laws principles.

§ 13.5 Arbitration and Attorneys' Fees

Any dispute arising from or relating to this Agreement shall be arbitrated in [_____] or Baltimore, MD. The arbitration shall be administered by JAMS in accordance with its Comprehensive Arbitration Rules and Procedures, and judgment on any award may be entered in any court of competent jurisdiction. If the Parties agree, a mediator may be consulted prior to arbitration. The prevailing party in any dispute arising out of this Agreement shall be entitled to reasonable attorneys' fees and costs.

§ 13.6 Parties Bound

This Lease sets forth the entire agreement between Owner and Project Company with respect to the leasing of the Leased Premises. It is binding upon and inures to the benefit of these parties and, in accordance with the provisions of this Lease, their respective successors in interest. This Lease may be altered or amended only by written notice executed by Owner and Project Company or their legal representatives or, in accordance with the provisions of this Lease, their successors in interest.

§ 13.7 Severability

Each provision hereof will be valid and will be enforceable to the extent not prohibited by law. If any provision hereof or the application thereof to any Person or circumstance will to any extent be invalid or unenforceable, the remaining provisions hereof, or the application of such provision to Persons or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby.

§ 13.8 Full Agreement, Modification, Invalidity, Counterparts, Captions

This Agreement, together with any Exhibits, completely and exclusively states the agreement of the parties regarding its subject matter and supersedes all prior proposals, agreements, or other communications between the parties, oral or written, regarding its subject matter. This Agreement may be modified only by a writing signed by both Parties. If any provision of this Agreement is found unenforceable or invalid, such unenforceability or invalidity shall not render this Agreement unenforceable or invalid as a whole. In such event, such provision shall be changed and interpreted so as to best accomplish the objectives of such unenforceable or invalid provision within the limits of Legal Requirements. This Agreement may be executed in any number of separate counterparts and each counterpart shall be considered an original and together shall comprise the same Agreement. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement.

§ 13.9 Recording

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Owner and Project Company will execute in recordable form and Project Company will then record a memorandum of this Lease and Easements in the form attached hereto as **Exhibit C**. Owner hereby consents to the recordation of the interest of an assignee in the Leased Premises. In addition, if requested by Project Company, Owner will execute and deliver one or more instruments in recordable form granting the easements herein granted and Project Company will record such instruments once so executed and delivered; provided that Project Company shall enjoy the easement rights herein granted whether or not separate easement grants are executed, delivered, or recorded.

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IN WITNESS WHEREOF, the parties are executing and delivering this Lease as of the Effective Date.

<p>Owner:</p> <p>Signature: _____</p> <p>Signature: _____</p> <p>STATE _____ OF _____ COUNTY OF _____, SS.</p> <p>On this ___ day of _____, 201__, personally appeared _____ known to me, or satisfactorily proven to be the person who is the signatory to the foregoing, and made oath that the foregoing instrument, subscribed by him is true.</p> <p>Before me, _____ Notary Public</p> <p>STATE _____ OF _____ COUNTY OF _____, SS.</p> <p>On this ___ day of _____, 201__, personally appeared _____ known to me, or satisfactorily proven to be the person who is the signatory to the foregoing, and made oath that the foregoing instrument, subscribed by her is true.</p> <p>Before me, _____ Notary Public</p> <p>My commission expires: _____</p>	<p>Project Company: [_____]</p> <p>Signature: _____</p> <p>Printed Name: _____</p> <p>Title: _____</p> <p>STATE _____ OF _____ COUNTY OF _____, SS.</p> <p>On this ___ day of _____, 201__, personally appeared _____ known to me, or satisfactorily proven to be the person who is the signatory to the foregoing, and made oath that the foregoing instrument, subscribed by him is true.</p> <p>Before me, _____ Notary Public</p> <p>My commission expires: _____</p>
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EXHIBIT A - DESCRIPTION OF PREMISES

Approximately \-acres composed of three parcels, more particularly described as follows:

Which Leased Premises is depicted on the ALTA Land Title Survey dated [_____] prepared by [_____] attached hereto (the "Survey") [to be attached].

]

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EXHIBIT B - ENCUMBRANCES

EXHIBIT C - MEMORANDUM OF LEASE (INCLUDING EASEMENTS)

Subject to revision upon finalization of Lease.

THIS MEMORANDUM OF LEASE AND EASEMENTS (“**Memorandum of Lease**”) is entered into this ___ day of [____], 20[___] by and between [____] (the “**Owner**”), and [____], a limited liability company organized and existing under the laws of the State of [____], and its successors and assigns (“**Project Company**”).

RECITALS:

A. Owner and Project Company have entered into a certain Lease Agreement (the “**Lease Agreement**”) dated [____] ___, 20[___] (the “**Effective Date**”), whereby Owner has agreed to lease to Project Company certain real property in [____], [____]County, [____] and being more particularly described in **Schedule A** attached hereto and made a part hereof (the “**Leased Premises**”), and grant to Project Company access, interconnection, insulation, and stormwater easement rights (collectively, “**Easements**”), over, under, above, and across the premises of Owner adjacent to the Leased Premises (the “**Owner Retained Properties**”).

B. The parties wish to give notice of the existence of such Lease Agreement.

IN CONSIDERATION of the sum of One and 00/100 Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. **Lease; Planned Use.** Owner and Project Company have entered into the Lease Agreement as of the Effective Date to lease and demise the Leased Premises for solar energy purposes and to grant the Easements (defined below). Pursuant to the Lease Agreement, Project Company has the exclusive right to use the Leased Premises for solar energy generation purposes, to install, construct, commission, operate, maintain, and remove solar electricity generation facilities, including interconnection facilities (collectively, the “**Solar Facility**”), and related purposes, including due diligence, investigation, vegetation management, landscaping, access, construction,

commissioning, maintenance, communications, security, repair, replacement, and removal, together with certain rights with respect to the Owner Retained Properties pursuant to the Easements, all as more fully described in the Lease Agreement. Solar energy generation purposes means converting solar energy into electrical energy and collecting and transmitting the electrical energy so converted, together with any and all activities related thereto.

2. **Lease Term.** The “**Term**” of Lease Agreement includes the “**Development and Construction Period**,” which commences on the Effective Date and expires on earliest of the commencement of the Operating Term (defined below), or the date the Lease Agreement is terminated in accordance with its terms (e.g. – upon default); and the “**Operating Term**,” which is the [twenty-five-year period] that shall commence on the date when the Solar Facility installed on the Leased Premises achieves Commercial Operation (the “**Commercial Operation Date**”) so long as the Commercial Operation Date occurs before the date (the “**Termination Date**”) that is the earliest to occur of: (x) the termination of this Lease in accordance with its terms, and (y) [] [], 20[] except as specified in the Lease Agreement, and up to two (2) “**Renewal Terms**” of five (5) years each, also subject to early termination in accordance with the Lease Agreement. Project Company will deliver written notice to the Owner identifying the Commercial Operation Date within thirty (30) days after the Commercial Operation Date occurs. Also, if the Lease Agreement is terminated after all or any portion of a Solar Facility is constructed on the Leased Premises, the Project Company shall retain access to the Leased Premises for a period of up to 270 days following termination solely for the purpose of removing the Solar Facility in accordance with the terms of the Lease Agreement.

3. **Ownership.** Owner will have no ownership and other interest in any Solar Facility installed on the Leased Premises by Project Company and Project Company may remove any portion of, or all of, the Solar Facility at any time.

4. **Easements.** The Access Easement, Interconnection Easements, the Solar Easement, and the Stormwater Easement (all as defined below) are collectively referred to as the “**Easements**.”

(a) **Access Easement.** Owner grants to Project Company, for the Term an “**Access Easement**” over, across and on the Owner Retained Properties for ingress to and egress, including utility interconnection, to and from the Leased Premises or the Solar Facility, including the right to install, improve, and maintain access roads, driveways, and lanes. The Access Easement will include the right to improve existing roads and lanes, or to build new roads and access-ways, and will run with and bind the Owner Retained Properties, and will inure to the benefit of and be binding upon Owner and Project Company, as applicable, and their respective heirs, personal representatives, invitees, transferees, successors and assigns, and all Persons claiming under them. The location and dimensions of the areas burdened by the Access Easement will be located by Project Company in its sole discretion, except that Project Company agrees to use commercially reasonable efforts to locate the Access Easement areas so as to minimize the interruption of Owner’s operations on and use of the Owner Retained Properties.

(b) Interconnection Easements. Owner grants to Project Company an “**Interconnection Easement**” for the installation, improvement, maintenance, and removal of interconnection facilities relating to the Project Company’s Solar Facility on, over and across the Owner Retained Properties, on such portions of the Owner Retained Properties as will be designated to Owner by Project Company. At the request of Project Company, Owner will grant to the local distribution utility (“**Utility**”) by written instrument in recordable form reasonably acceptable in form and substance to such Utility an easement over, above, and on the Leased Premises and the Owner Retained Properties for purposes of locating, installing, operating, repairing, replacing, and removing interconnection facilities and other Utility-owned equipment, transmission, or distribution lines, conduits, culverts, and related equipment, consumables, or housing (such easement granted to the Utility, also an “**Interconnection Easement**”). The term of the Interconnection Easements in favor of Project Company will be the same as the Term; and the term of the Interconnection Easements in favor of the Utility may be perpetual.

(c) Solar Easement. Owner grants and conveys to Project Company an exclusive easement on, over and across the Owner Retained Properties for the following: the open and unobstructed access to the sun to any Solar Facility and to ensure adequate exposure of such Solar Facility to the sun (the “**Solar Easement**”). Project Company may maintain vegetation outside of and surrounding the Leased Premises in a condition that mitigates shading effect on the Solar Facility, in Project Company’s sole discretion. The Solar Easement will be for the benefit of the area existing horizontally three hundred and sixty degrees (360°) from any point where any Solar Facility is or may be located on the Leased Premises at any time from time to time (each such point referred to as a “**Site**”) and for a distance from each Site to the boundaries of the Leased Premises, together vertically through all space located above the surface of the Leased Premises, that is, one hundred eighty degrees (180°) or such greater number or numbers of degrees as may be necessary to extend from each point on and along a line drawn along the surface from each point along the exterior boundary of the Leased Premises through each Site to each point and on and along such line to the opposite exterior boundary of the Leased Premises. During the Term, Owner may not place or plant any trees, buildings or improvements (an “**Improvement**”) on the Leased Premises or the Owner Retained Properties within the areas burdened by the Solar Easement (or any other Easement), unless Owner has received written approval from Project Company for any such Improvement. Project Company may grant or withhold consent in the discretion of Project Company; and shall be permitted to withhold consent as to any proposed Improvement that may, in the sole judgment of Project Company, impede or materially interfere with the open and unobstructed access to the sun to any Site or solar facility (located either on the Leased Premises or on the Owner Retained Properties). Owner will not materially interfere with, and will not allow any other party to materially interfere with, the free, unobstructed and open and unobstructed access to the sun, solar speed or solar direction over and across the Leased Premises.

(d) Stormwater Easement. Owner grants to Project Company, for the Term, a right of access and use for storm water and surface water drainage purposes on, over, and under the Owner Properties for the benefit of the Leased Premises (the “**Stormwater Easement**”). The

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On this ___ day of _____, 201__, personally appeared _____ known to me, or satisfactorily proven to be the person who is the signatory to the foregoing, and made oath that the foregoing instrument, subscribed by her is true.

Notary Public

[Project Company Signature Page Follows]

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Schedule A
TO MEMORANDUM OF LEASE AGREEMENT
Legal Description of Leased Premises

EXHIBIT D - PAYMENT TERMS

I. Development and Construction Period

- (a) *Option Agreement Payments.* The payments by Project Company pursuant to the Option Agreement shall be the consideration for Project Company's rights pursuant to the Lease for the period from the Effective Date through _____.
- (b) *Development and Construction Period Lease Fee.* If the Development and Construction Period has not ended by _____, then on _____ [next calendar day], in consideration of Project Company's rights pursuant to the Lease, the Project Company will pay to the Owner a "Lease Fee" of \$_____ [per month or single, fixed payment] as consideration for the rights of the Project Company through the last day of the Development and Construction Period, subject to proration as provided in paragraph I(c).
- (c) *Proration of Development and Construction Period Lease Fee.* If the Operating Term commences prior to _____, then the "Proration Amount" (defined below) shall be applied as a credit to reduce the Lease Fee payable for the first 12-month period of the Operating Term beginning on the Commercial Operation Date. The "**Proration Amount**" shall be equal to: (i) the amount of the Lease Fee for the Development and Construction Period paid by the Project Company, multiplied by (ii) the number of days in the Operating Term from the Commercial Operation Date through _____, divided by (iii) _____. Such Proration Amount shall be applied to reduce the first annual Lease Fee payment due for the Operating Term, if applicable.

II. Operating Term

- (a) *Lease Fee for Operating Term.* Subject to paragraph I(c), for each period of 12 consecutive months during the Term commencing the Commercial Operation Date (each a "**Lease Year**"), Project Company shall pay to Owner an annual **Lease Fee** equal to _____ US Dollars (\$_____ USD) per acre of Leased Premises, subject to reduction of the Lease Fee due for the first Lease Year by any Proration Amount.
- (b) *Calculation of Lease Fee; Leased Premises Area.* The area of the Leased Premises shall be [_____ acres] OR [determined based on the Survey of the Leased Premises procured by the Project Company as part of Project Company Due Diligence]. The areas underlying any easement benefitting the Leased Premises, including the Easements, shall not be included within the Leased Premises for any purpose, including for the purpose of calculating the Lease Fee.
- (c) *Changes to Lease Fee.* [Include only if applicable.]

- (d) *Taxes.* The Lease Fee shall be inclusive of any real property tax or other taxes and assessments, except as otherwise specified pursuant to the Lease.
- (e) *Lease Fee for Renewal Terms.* [Include only if Lease Fee changes for Renewal Terms.] The annual Lease Fee for the first Renewal Term, described in § 3.1.3, shall be _____ US Dollars (\$_____ USD) per acre and the Lease Fee for the second Renewal Term, described in § 3.1.3, shall be _____ US Dollars (\$_____ USD) per acre.
- (f) *Payment of Lease Fee.* The Lease Fee (subject to reduction for any Proration Amount) shall be payable in advance on the Commercial Operation Date for the first Lease Year, and on each anniversary of the Commercial Operation Date for the Lease Year beginning on such anniversary. If the Term ends on a day other than the anniversary of the Commercial Operation Date, without limitation as to any Lease Fee due for any Removal Period, the annual Lease Fee paid for the Lease Year in which the termination occurs shall be pro-rated and refunded.
- (g) *Removal Period.* The Lease Fee payable for any Removal Period will equal (i) the annual Lease Fee for the Lease Year in which the Lease is terminated or expired, *multiplied by* (ii) the total number of days in the Removal Period, *divided by* (iii) 365. The Lease Fee payable for any Removal Period will be paid no later than thirty (30) days after the last day of the Removal Period.