

Agenda Item

#5

DATE: August 18, 2020

TO: Ione City Council

FROM: Jon G. Hanken, City Manager

SUBJECT: Approval of Amendments to the Solar Field Site Lease Agreement and the Power Purchase Agreement to Reflect the Actual Location of the Solar Panels on City Property Located at 9832 Five Mile Drive and Approve a Memorandum of Site Lease.

RECOMMENDED ACTION: Council is being asked to approve amendments to the solar field site lease and the Power Purchase Agreement to reflect the actual location of the solar panels on City property located at 9832 Five Mile Drive and approve a Memorandum of Site Lease

Motion: _____ / _____.

FISCAL IMPACT: None

BACKGROUND: During the construction of the solar field site, the panels were located a little farther south of the original site in order to stay away from the City's dirt pile, which is located on the eastern side of the file and is shown in Exhibit A of the Site Lease Agreement and Exhibit A and B of the Power Purchase Agreement. The Memorandum of Site Lease is a short form of the actual site lease agreement that will be notarized and recorded.

Approving these amendments will accurately reflect the solar site location in our agreements.

Attachments: Copy of Memorandum of Site Lease that we will record (must be notarized)

Copy of Amendment 1 to Site Lease Agreement — replaces exhibit with exhibit showing correct location of system and added land description to another exhibit

Copy of Amendment 1 to Power Purchase Agreement — replaces exhibit with exhibit showing correct location of system and added land description to another exhibit

When recorded return to:
IWSolar, LLC
330 SW 43rd Street
Suite K-225
Renton, WA 98057
Attention: Mr. Todd Grenich

MEMORANDUM OF SITE LEASE

THIS MEMORANDUM OF SITE LEASE (this “**Memorandum**”) is made as of this 21st day of July, 2020 by and between **City of Ione**, as landlord (“Landlord”), and **IWSolar, LLC**, a Delaware limited liability company, as tenant (“Tenant”).

A. Seller and Buyer entered into that certain Site Lease Agreement dated December 4, 2019 (the “Lease”), pursuant to which Tenant leases from Landlord certain real property located on the west side of the Ione Waste Water Treatment Facility located at 9832 Five Mile Dr. Ione, CA 95640 (the “Installation Site”), legally described on Exhibit A attached hereto, for the purpose of Tenant constructing, owning and operating a ground mount photovoltaic system.

B. Unless sooner terminated as provided in the Lease, the initial term of the Lease shall continue for 25 years from the execution of the Lease. Tenant has the right to extend the term of the Lease for three (3) additional periods of five (5) years each. .

C. This Memorandum is a short form of the actual Lease for notice purposes only and is not a complete summary of the Lease. Accordingly, the provisions of this Memorandum shall not be used in interpreting the Lease, nor shall the provisions contained herein be construed to modify the Lease.

D. This Memorandum may be executed in counterparts.

[The remainder of this page is left intentionally blank]

Signed And Acknowledged
In The Presence Of:

LANDLORD:

CITY OF IONE

By: _____

Print Name: _____

Title: _____

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)SS
COUNTY OF)

On _____, before me, _____, Notary Public,
personally appeared _____

_____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

This area for official notarial seal

TENANT:

IWSOLAR, LLC, a Delaware limited liability company

By: _____
Todd Grenich
Manager

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)SS
COUNTY OF)

On _____, before me, _____, Notary Public,
personally appeared _____

_____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

This area for official notarial seal

EXHIBIT A
Legal Description of Installation Site

PARCEL 1

Being all of Parcel E as described in that certain Record of Survey recorded in Book 31 of Maps and Plats at page 2 in the Amador County Recorder's Office on January 12, 1979, being a portion of the Rancho Arroyo Seco within the city limits of the City of Lone, County of Amador, State of California.

PARCEL 2

Being a portion of Parcel A and a portion of Parcel B as described in that certain Record of Survey recorded in Book 31 of Maps and Plats at page 2 in Amador County Recorder's Office on January 12, 1979, being a portion of the Rancho Arroyo Seco within the city limits of the City of Lone, County of Amador, State of California, the portions of Parcel A and Parcel B more particularly described as follows:

BEGINNING at a point on the southwesterly edge of State Highway 104 from which the most northerly corner of said parcel A, monumented on the ground by a 3/4 inch rebar tagged RCE 28543, bears N 67° 09' 28" W, 2,069.28 feet; thence

1. S 66° 57' 59" E along southwesterly edge of State Highway 104, 452.41 feet; thence
2. S 64° 23' 14" E along the southwesterly edge of State Highway 104, 222.21 feet to the beginning of a curve concave in a southwesterly direction; thence
3. Along the arc of the curve and the southwesterly edge of State Highway 104, and said curve having a radius of 1,930 feet, an arc length of 702.53 feet and a chord bearing S 56° 32' 19" E, a distance of 698.65 feet to the end of said curve; thence
4. S 27° 40' 13" W 20.00 feet; thence
5. Continuing along the southwesterly edge of State Highway 104, S 62° 19' 47" E 64.53 feet to the beginning of a curve concave in a southwesterly direction; thence
6. Along the arc of the curve and the southwesterly edge of State Highway 104, said curve having a radius of 1,930 feet, an arc length of 401.55 feet, and a chord bearing S 38° 08' 40" E, a distance of 400.83 feet to end of said curve; thence
7. S 32° 11' 03" E along the southwesterly edge of State Highway 104, 363.88 feet; thence
8. S 33° 49' 15" E along the southwesterly edge of State Highway 104, 340.40 feet to the northeasterly boundary of lot 3 of the Preston Subdivision per Record of Survey recorded in book 31 of Maps and Plats at page 3; thence
9. N 68° 42' 01" W along the northeasterly boundary of said Preston Subdivision, 207.35 feet to a 2 1/4 inch brass cap stamped LS 2956; thence
10. N 81° 58' 26" W along the northeasterly boundary of said Preston Subdivision, 145.20 feet to a 3/4 inch rebar tagged RCE 28543; thence

11. N 40° 29' 13" W along the northeasterly boundary of said Preston Subdivision, 110.19 feet to a 1/2 inch rebar tagged RCE 28543; thence
12. N 70° 50' 41" W along the northeasterly boundary of said Preston Subdivision, 217.15 feet to a 2 1/4 inch brass cap stamped LS 2956; thence
13. S 62° 30' 44" W along the northwesterly boundary of said Preston Subdivision, 217.12 feet to a 1/2 inch rebar tagged RCE 28543; thence
14. S 16° 00' 44" W along the northwesterly boundary of said Preston Subdivision, 217.12 feet to a 3/4 inch rebar tagged RCE 28543; thence
15. S 30° 29' 16" E along the southwesterly boundary of said Preston Subdivision, 217.12 feet to a 2 1/4 inch brass cap stamped LS 2956; thence
16. S 76° 42' 38" E along the southwesterly boundary of said Preston Subdivision, 209.40 feet to a 3/4 inch rebar tagged RCE 28543; thence
17. N 62° 47' 45" E along the southeasterly boundary of said Preston Subdivision, 170.25 feet to a 1/2 inch rebar tagged RCE 28543; thence
18. N 86° 52' 26" E along the southeasterly boundary of said Preston Subdivision, 113.40 feet; thence
19. S 65° 49' 00" E along the southwesterly boundary of lots 26, 27, 28, 29, and a portion of lot 30 of said Preston Subdivision, 265.80 feet to the most northerly corner of lot 1 of Castle View Estates as recorded in Book 5 of Subdivisions at page 34 and monumented on the ground by a 5/8 inch rebar with an aluminum cap stamped LS 3488; thence
20. S 14° 58' 49" W along the northwesterly boundary of said Castle View Estates, 816.26 feet; thence
21. N 78° 00' 00" W, 2,432.17 feet; thence
22. S 12° 00' 00" W, 371.93 feet to the centerline of the proposed Castle View Drive extension; thence
23. N 78° 00' 00" W along said proposed centerline of Castle View Drive 500.00 feet to the centerline intersection of the proposed centerline of Country Club Drive; thence
24. N 15° 00' 00" E along said proposed centerline of Country Club Drive, 1,886.82 feet; thence
25. Leaving Country Club Drive, N 75° 00' 00" W, 637.72 feet to the proposed centerline of Palace Drive; thence
26. N 15° 00' 00" E along said proposed centerline of Palace Drive 354.90 feet to the centerline intersection of the proposed centerline of Sherwood Court; thence
27. S 70° 00' 00" E along said proposed centerline of Sherwood Court, 640.15 feet to the centerline intersection of the aforementioned proposed centerline of Country Club Drive; thence
28. N 15° 00' 00" E along said proposed centerline of Country Club Drive 28.60 feet; thence

29. Leaving Country Club Drive, S 75° 00' 00" E, 638.08 feet; thence
30. N 15° 00' 00" E, 517.21 feet to the point of BEGINNING.

AMENDMENT NO. 1 TO SITE LEASE AGREEMENT

This AMENDMENT NO. 1 TO SITE LEASE AGREEMENT (this “**Amendment**”) is made and entered into this 21st day of July, 2020 by and between **City of Ione**, as landlord (“Landlord”), and **IWSolar, LLC**, a Delaware limited liability company, as tenant (“Tenant”)

PRELIMINARY STATEMENTS

Landlord and Tenant entered into that certain Site Lease Agreement dated December 4, 2019 (the “Lease”), pursuant to which Tenant leases from Landlord certain real property located on the west side of the Ione Waste Water Treatment Facility located at 9832 Five Mile Dr. Ione, CA 95640 (the “Installation Site”).

Unless otherwise defined herein, capitalized terms used herein shall have the meanings given such terms in the Lease.

Pursuant to Section 1.01(b) of the Lease, Tenant leased certain unobstructed portions of the area on the Installation Site, sufficient for the installation of a 362.61 kW, ground mount photovoltaic system (the “System”), in substantially the array attached as Exhibit “A” to the Lease.

As constructed, the size of the System increased to 464.52kW and the location of the Premises was relocated to the east of the initial Premises.

On the site of the initial Premises, there currently exists a stockpile of dirt (“Stockpile”), which made the installation of the System on such property inadvisable.

As executed, the Lease omitted the Legal Description of the Installation Site to be set forth on Exhibit “B” to the Lease.

Landlord and Tenant desire to amend the Lease to, among other things, (a) update the reference to the size of the System to reflect the System as constructed, (b) update and replace Exhibit “A” to the Lease to reflect the final location of the System, (c) update and replace Exhibit “B” to the Lease to reflect the legal description of the Installation Site, (d) update Schedule 1.01(d) to reflect “None”; and (d) reflect the City’s agreement and covenant to cease use of the Stockpile to prevent dust from disrupting the operation and efficiency of the System.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions set forth below, and other valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, Landlord and Tenant acknowledge and agree that the Lease is hereby amended as set forth below.

AGREEMENT

1. **Premises**. Subsection 1.01(b) of the Lease is hereby amended by replacing “362.61 kW” with “464.52kW.”

2. **Premises; Exhibit “A”**. The Lease is hereby amended by replacing Exhibit “A” to the Lease with Exhibit “A” as attached to this Amendment.

3. **Installation Site; Exhibit "B"**. The Lease is hereby amended by replacing Exhibit "B" to the Lease with Exhibit "B" as attached to this Amendment.

4. **Schedule 1.01(d)**. Schedule 1.1(d) to the Lease is hereby amended by inserting the word "None" on such schedule.

5. **Covenant of Landlord Regarding Stockpile; No Obstruction of System**. Landlord hereby acknowledges that pursuant to Section 1.01(b) of the Lease, Tenant is leasing "unobstructed" portions of the Installation Site and that pursuant to Section 4.05 of the Lease the Landlord agreed that access to sunlight is essential to the Lease and agreed not to conduct or permit activities which could impair the System. Landlord's continued use of the Stockpile as a stockpile for soil, dirt or other materials creates dust which can interfere with the System's access to sunlight. Landlord hereby covenants and agrees during the term of the Lease not to use the Stockpile for the stockpiling of soil, dirt or other debris. The location of the Stockpile is identified and labeled on Exhibit "A" as "City Use Dirt Pile". In the event Landlord wishes to remove or disturb the Stockpile, Landlord will provide Tenant with at least 48 hours' prior written notice and obtain Tenant's consent for such removal or disturbance.

6. **Full Force and Effect; Counterparts**. To the extent not inconsistent herewith, all other terms and provisions of the Lease shall remain in full force and effect and are ratified by the parties hereto. On and after the date of this Amendment, the term "Lease" and terms of similar import shall mean the Lease as amended by this Amendment. This Amendment may be executed in any number of counterparts, each of which shall be for all purposes deemed to be an original, and all of which when taken together shall constitute one entire agreement. A facsimile or scanned signature shall be as valid as an original signature.

[Signature page follows]

IN WITNESS WHEREOF, the parties have adopted this Amendment as of the date first written above.

Signed And Acknowledged
In The Presence Of:

LANDLORD:

CITY OF IONE

By: _____

Print Name: _____

Title: _____

TENANT:

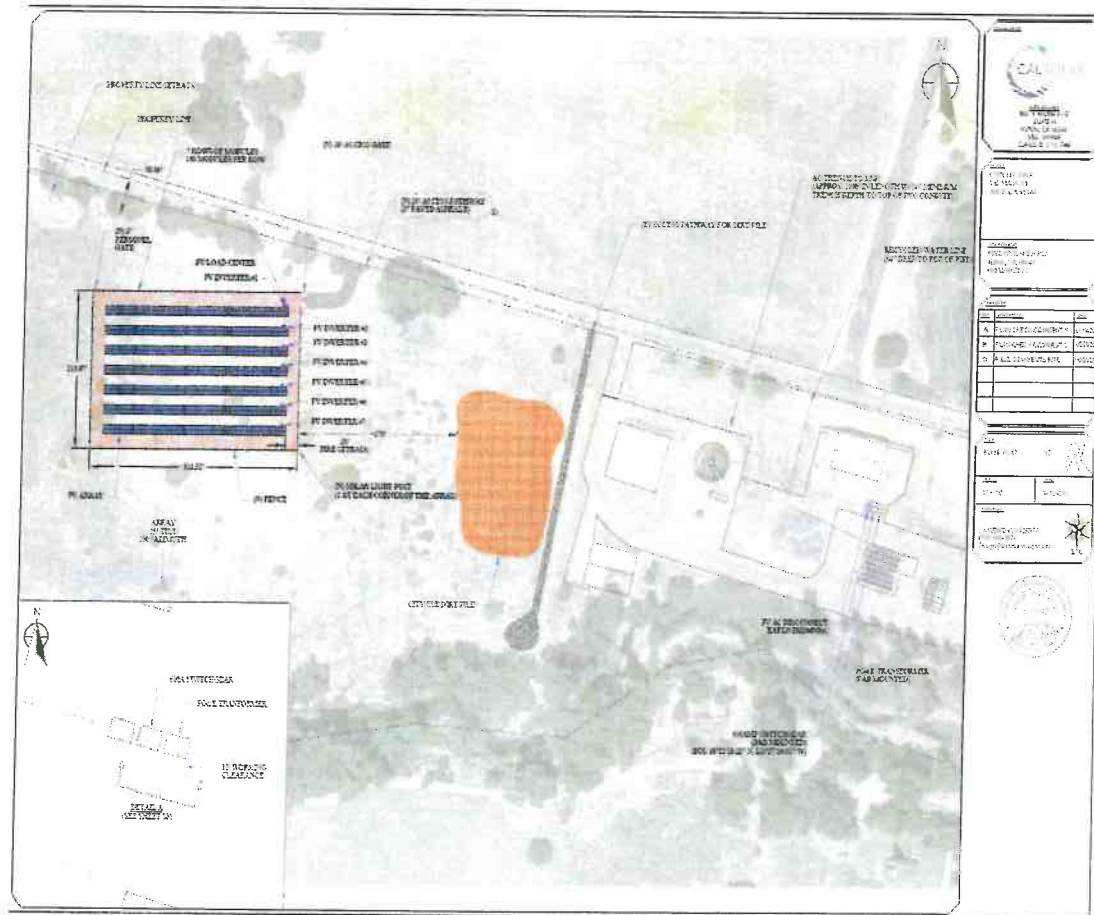
IWSOLAR, LLC, a Delaware limited liability company

By: _____

Todd Grenich
Manager

Solar Array

Solar Array



4837-1359-8147.2

EXHIBIT B
(Replacement of Exhibit "B" as originally attached to Lease)
Legal Description of Installation Site

PARCEL 1

Being all of Parcel E as described in that certain Record of Survey recorded in Book 31 of Maps and Plats at page 2 in the Amador County Recorder's Office on January 12, 1979, being a portion of the Rancho Arroyo Seco within the city limits of the City of Ione, County of Amador, State of California.

PARCEL 2

Being a portion of Parcel A and a portion of Parcel B as described in that certain Record of Survey recorded in Book 31 of Maps and Plats at page 2 in Amador County Recorder's Office on January 12, 1979, being a portion of the Rancho Arroyo Seco within the city limits of the City of Ione, County of Amador, State of California, the portions of Parcel A and Parcel B more particularly described as follows:

BEGINNING at a point on the southwesterly edge of State Highway 104 from which the most northerly corner of said parcel A, monumented on the ground by a 3/4 inch rebar tagged RCE 28543, bears N 67° 09' 28" W, 2,069.28 feet; thence

1. S 66° 57' 59" E along southwesterly edge of State Highway 104, 452.41 feet; thence
2. S 64° 23' 14" E along the southwesterly edge of State Highway 104, 222.21 feet to the beginning of a curve concave in a southwesterly direction; thence
3. Along the arc of the curve and the southwesterly edge of State Highway 104, and said curve having a radius of 1,930 feet, an arc length of 702.53 feet and a chord bearing S 56° 32' 19" E, a distance of 698.65 feet to the end of said curve; thence
4. S 27° 40' 13" W 20.00 feet; thence
5. Continuing along the southwesterly edge of State Highway 104, S 62° 19' 47" E 64.53 feet to the beginning of a curve concave in a southwesterly direction; thence
6. Along the arc of the curve and the southwesterly edge of State Highway 104, said curve having a radius of 1,930 feet, an arc length of 401.55 feet, and a chord bearing S 38° 08' 40" E, a distance of 400.83 feet to end of said curve; thence
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9. N 68° 42' 01" W along the northeasterly boundary of said Preston Subdivision, 207.35 feet to a 2 1/4 inch brass cap stamped LS 2956; thence
10. N 81° 58' 26" W along the northeasterly boundary of said Preston Subdivision, 145.20 feet to a 3/4 inch rebar tagged RCE 28543; thence

Exhibit "B" cont'd

11. N 40° 29' 13" W along the northeasterly boundary of said Preston Subdivision, 110.19 feet to a 1/2 inch rebar tagged RCE 28543; thence
12. N 70° 50' 41" W along the northeasterly boundary of said Preston Subdivision, 217.15 feet to a 2 1/4 inch brass cap stamped LS 2956; thence
13. S 62° 30' 44" W along the northwesterly boundary of said Preston Subdivision, 217.12 feet to a 1/2 inch rebar tagged RCE 28543; thence
14. S 16° 00' 44" W along the northwesterly boundary of said Preston Subdivision, 217.12 feet to a 3/4 inch rebar tagged RCE 28543; thence
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16. S 76° 42' 38" E along the southwesterly boundary of said Preston Subdivision, 209.40 feet to a 3/4 inch rebar tagged RCE 28543; thence
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22. S 12° 00' 00" W, 371.93 feet to the centerline of the proposed Castle View Drive extension; thence
23. N 78° 00' 00" W along said proposed centerline of Castle View Drive 500.00 feet to the centerline intersection of the proposed centerline of Country Club Drive; thence
24. N 15° 00' 00" E along said proposed centerline of Country Club Drive, 1,886.82 feet; thence
25. Leaving Country Club Drive, N 75° 00' 00" W, 637.72 feet to the proposed centerline of Palace Drive; thence
26. N 15° 00' 00" E along said proposed centerline of Palace Drive 354.90 feet to the centerline intersection of the proposed centerline of Sherwood Court; thence
27. S 70° 00' 00" E along said proposed centerline of Sherwood Court, 640.15 feet to the centerline intersection of the aforementioned proposed centerline of Country Club Drive; thence
28. N 15° 00' 00" E along said proposed centerline of Country Club Drive 28.60 feet; thence

Exhibit B, cont'd

29. Leaving Country Club Drive, S $75^{\circ} 00' 00''$ E, 638.08 feet; thence
30. N $15^{\circ} 00' 00''$ E, 517.21 feet to the point of BEGINNING.

**AMENDMENT NO. 1 TO
SOLAR ENERGY POWER PURCHASE AGREEMENT**

This AMENDMENT NO. 1 TO SOLAR ENERGY POWER PURCHASE AGREEMENT (this "**Amendment**") is made and entered into this 21st day of July, 2020 by and between **City of Ione**, as power purchase ("**Buyer**"), and **IWSolar, LLC**, a Delaware limited liability company, as seller ("**Seller**")

PRELIMINARY STATEMENTS

Seller and Buyer entered into that certain Solar Energy Power Purchase Agreement dated December 4, 2019 (the "**PPA**"), pursuant to which Buyer agrees to purchase power produced by a solar energy generation facility (the "**System**") constructed, owned and operated by Seller and located on land owned by Buyer located on the west side of the Ione Waste Water Treatment Facility located at 9832 Five Mile Dr., Ione, CA 95640 (the "**Premises**").

Unless otherwise defined herein, capitalized terms used herein shall have the meanings given such terms in the PPA.

Exhibit A to the PPA sets forth a depiction of the Premises and location of the System. Because of the existence of a stockpile of dirt, soil and other debris, the System was relocated to the east of initial Premises.

Exhibit B to the PPA sets forth a more detailed description of the System. As constructed, the size of the System increased to 464.52kW and the location of the Premises was relocated to the east of the initial Premises.

Exhibit C to the PPA sets forth certain definitions use in the PPA, including, without limitation, a definition of EPC Contract, which as of the date of the PPA was incomplete and missing the date of the EPC Contract.

Buyer and Seller desire to amend the PPA to, among other things, (a) update and replace Exhibit A to the PPA to reflect the final location of the System, (b) update and replace Exhibit B to the PPA to reflect the final System design, (c) update the definition of EPC Contract on Exhibit C to the PPA to reflect the date of the EPC Contract.

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions set forth below, and other valuable consideration, the receipt and sufficiency of which are hereby expressly acknowledged, Seller and Buyer acknowledge and agree that the PPA is hereby amended as set forth below.

AGREEMENT

1. **Premises; Exhibit A.** The PPA is hereby amended by replacing Exhibit A to the PPA with Exhibit A as attached to this Amendment.
2. **Description of the System; Exhibit B.** The PPA is hereby amended by replacing Exhibit B to the PPA with Exhibit B as attached to this Amendment.
3. **Exhibit C; Definition of EPC Contract.** Exhibit C to the PPA is hereby amended by inserting "February 13, 2020" as the date of the EPC Contract.

4. **Full Force and Effect; Counterparts.** To the extent not inconsistent herewith, all other terms and provisions of the PPA shall remain in full force and effect and are ratified by the parties hereto. On and after the date of this Amendment, the term "PPA" and terms of similar import shall mean the PPA as amended by this Amendment. This Amendment may be executed in any number of counterparts, each of which shall be for all purposes deemed to be an original, and all of which when taken together shall constitute one entire agreement. A facsimile or scanned signature shall be as valid as an original signature.

[Signature page follows]

IN WITNESS WHEREOF, the parties have adopted this Amendment as of the date first written above.

Signed And Acknowledged
In The Presence Of:

BUYER:

CITY OF IONE

By: _____

Print Name: _____

Title: _____

SELLER:

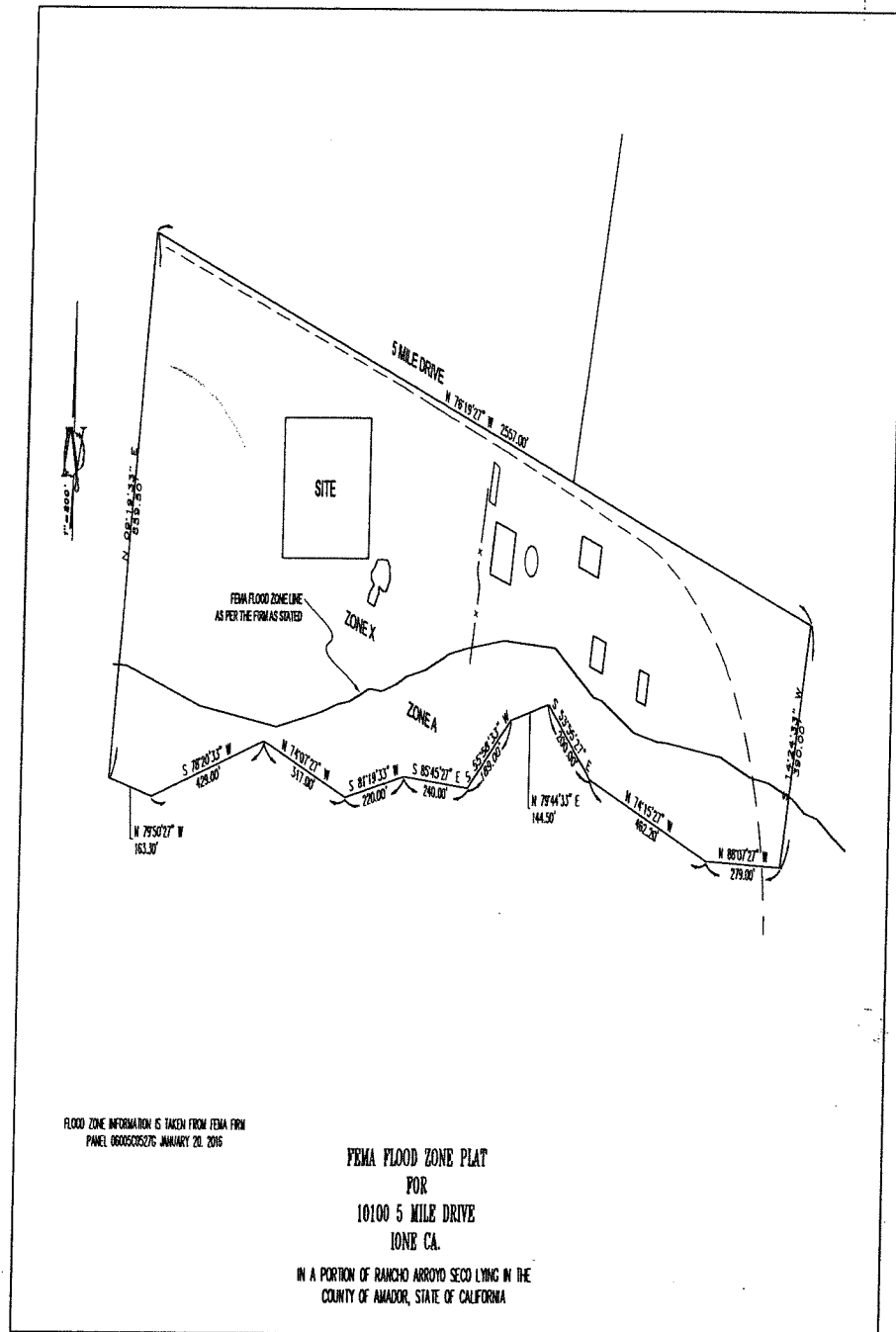
IWSOLAR, LLC, a Delaware limited liability company

By: _____
Todd Grenich
Manager

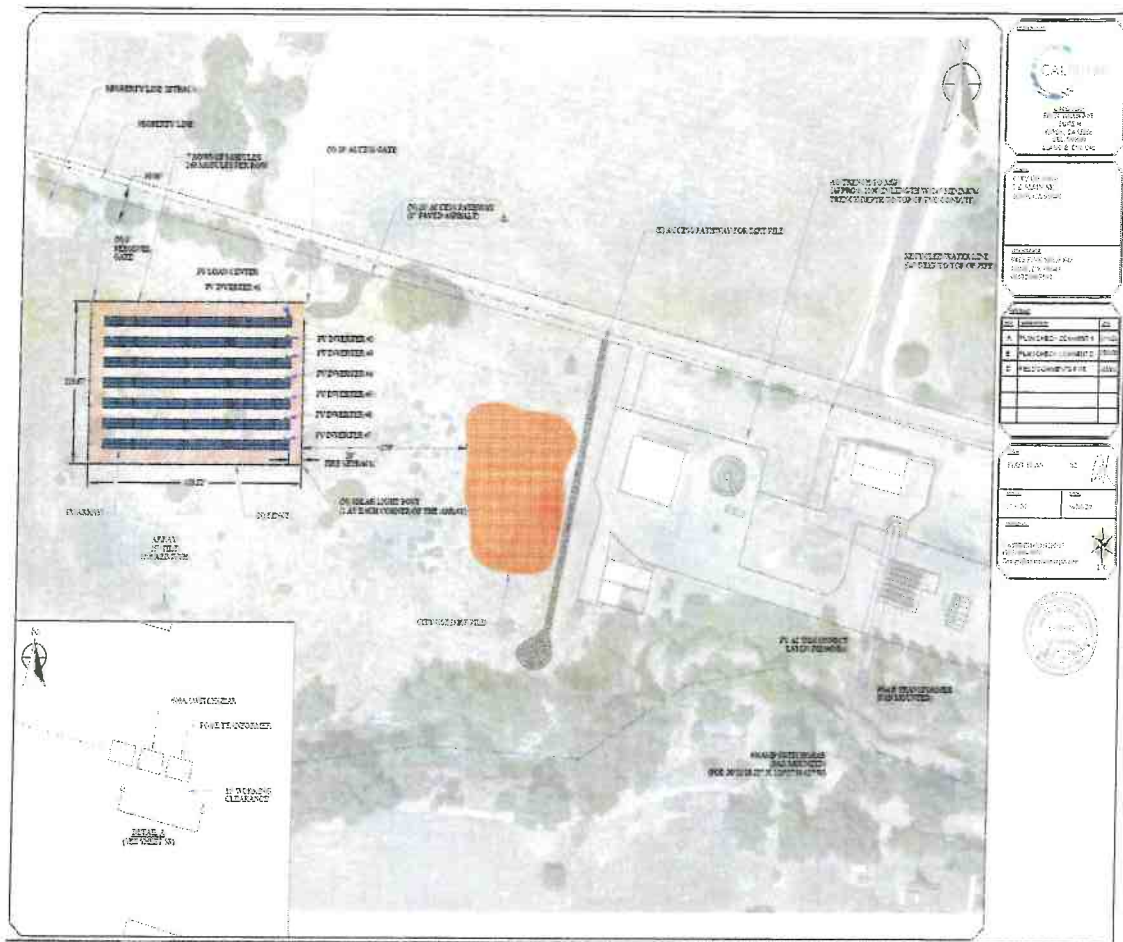
EXHIBIT A
(Replacement of Exhibit A as originally attached to PPA)

Description of Premises

The Premises are located on property owned by the City of Ione located at 9832 Five Mile Dr., Ione, CA 95640.



Solar Array



4822-6710-1635.2

SITE LEASE AGREEMENT

LOCATION: 9832 FIVE MILE DRIVE, IONE, CA 95640

LANDLORD: CITY OF IONE

TENANT: IW SOLAR, LLC

SITE LEASE AGREEMENT

THIS SITE LEASE AGREEMENT (this "Lease") is made as of this _____ day of November 2019, by and between the City of Ione, located in Amador County, California ("Landlord"), with its principal office at City Hall, 1 East Main St. PO Box 398 Ione, CA 95640 and IW Solar, LLC, a Delaware limited liability company ("Tenant") with its principal office at 330 SW 43rd St. Suite K-225 Renton WA 98057. Landlord and Tenant are sometimes referred to individually as a "Party" and collectively as the "Parties."

WHEREAS, Landlord has entered into a Solar Energy Power Purchase Agreement on November __, 2019 ("PPA") with Tenant, pursuant to which Tenant will install and operate a solar energy system ("System") on the West side of the Ione Waste Water Treatment Facility located at 9832 Five Mile Dr. Ione, CA 95640 ("Installation Site"); and

WHEREAS, Landlord has agreed to lease to Tenant, and Tenant has agreed to lease from Landlord, space on the property of the Installation Site for the installation and operation of the System;

NOW THEREFOR, in consideration of the mutual covenants contained in this Lease, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant agree as follows:

ARTICLE I. GRANT AND TERM

Section 1.01 - Premises:

(a) Defined Terms. Capitalized terms not defined in this Lease shall have the meaning set forth in the PPA.

(b) Lease of Premises. Landlord hereby leases to Tenant for the term and upon the covenants set forth in this Lease, certain unobstructed portions of the area on the Installation Site, sufficient for the installation of a 362.61 kW, ground mount photovoltaic system, in substantially the array attached as Exhibit "A" (the "Premises"). This Lease is subject to all applicable planning and zoning ordinances, governmental rules and regulations, and all other encumbrances, restrictions and easements affecting the Installation Site and the terms and provisions of all declarations and reciprocal easement and operating agreements now affecting the Installation Site. The Installation Site is legally described in attached Exhibit "B".

(c) Related Easements. Landlord hereby also grants to Tenant, for the use of Tenant and its agents, employees and contractors retained in connection with the System for a period co-terminus with this Lease, a non-exclusive easement and right of way to access the Premises across or through the roadways located on the Installation Site from time to time as may be reasonably required for (i) the delivery, installation, operation, maintenance and repair of the System; (ii) utility lines, pipes and conduits for the transmission of electricity or otherwise serving the System, in locations to be mutually approved by Landlord and Tenant; and (iii) as may be otherwise reasonably required by Tenant in connection with this Lease and the System; provided, however, that Tenant agrees not to interfere with any other tenants' quiet enjoyment of their premises.

(d) Access to Premises. Landlord shall provide Tenant with reasonable access to the Premises through the common areas of the building as reasonably necessary to allow Tenant to perform the installation work and the other purposes set forth in this Lease and in accordance with the procedure set forth on attached Schedule 1.01(d), including ingress and egress rights to the Premises for Tenant and its employees, contractors and sub-contractors and access to solar panels and conduits to interconnect the System with the Premises' electrical wiring. Landlord shall provide sufficient space for the temporary storage and staging of tools, materials and equipment reasonably necessary during the furnishing, installation, testing, commissioning, deconstruction, disassembly, decommissioning and removal of the System and access for rigging and material handling. In addition, Landlord shall grant Tenant access to the Premises through the common areas of the building as reasonably necessary to allow Tenant to perform the operations and maintenance work, including ingress and egress rights to the Premises for Tenant and its employees, contractors and subcontractors and local electric utility personnel. Tenant shall perform the operations and maintenance work in a manner that minimizes inconvenience to and interference with Landlord and Landlord's guests', customers' and tenants' use of the Installation Site to the extent commercially reasonable.

Section 1.02 – Term:

The term of this Lease shall be for a period of twenty-five (25) Lease Years commencing on the date of full execution hereof ("Term Commencement Date"), and expiring at midnight on the day before the twenty-fifth (25th) anniversary of the Commercial Operation Date (as defined in the PPA), unless sooner terminated in accordance with the provisions of this Lease ("Expiration Date"). The term "Lease Year" as used in this Lease shall be defined to mean each successive twelve (12) month period commencing on the Term Commencement Date, except that the last Lease Year shall end on the date this Lease is terminated.

Section 1.03 – Extension due to a Force Majeure Event:

The term of this Lease shall be extended by and to the extent of any period of time when a Force Majeure Event (as defined below) shall have occurred and be continuing.

Section 1.04 – Option:

Provided Tenant is operating the System and no Tenant Event of Default (hereinafter defined) has occurred and be continuing beyond the expiration of applicable notice and cure periods, Tenant shall have, upon the expiration date of the initial term of this Lease, the right to extend the term of this Lease for three (3) additional periods of five (5) Lease Years each (each an "Option Term") upon the same terms, covenants, conditions and provisions of this Lease, except that the Rent shall be as set forth in Section 2.01. The granting of the Option Term shall be null and void should Tenant be in default under this Lease upon either the Expiration Date or upon the date of exercise of the Option Term by Tenant. In order to exercise the Option Term, Tenant shall provide Landlord with written notice at least one (1) year prior to the Expiration Date (or the end of the current Option Term if Tenant has so extended the initial term). Failure to so provide such notice shall render the Option Term null and void.

Section 1.05 – Termination of Lease:

(a) Purchase of System. Notwithstanding any provision of this Lease to the contrary, if Landlord purchases the System pursuant to the terms of the PPA, then this Lease shall automatically terminate on the date such purchase is completed.

(b) By Tenant Prior to Commencement of Installation of System. Tenant has the right to terminate this Lease prior to installing the System. Tenant shall give Landlord written notice cancelling the Lease. This notice can be given anytime before the Commercial Operation Date (as defined in the PPA) provided that Tenant has not commenced installation of the System. Upon such termination neither Party shall have any further obligations under the terms of this Lease, except for those obligations expressly surviving termination.

(c) Termination of PPA. Upon termination of the PPA, this Lease will automatically terminate subject to Section 10.02 and Section 14.01.

ARTICLE II. RENT

Section 2.01 - Rent:

Commencing on the Term Commencement Date, Tenant shall pay Landlord ten US dollars (\$10.00) for rent of the Premises and the Installation Site for the full term of this Lease ("Rent"). In no case shall Tenant be responsible to pay for any operating expenses in connection with this Lease, including without limitation, costs of management, operation, and maintenance of the Premises or the Property and/or other improvements; management fees and costs; electricity, water, waste disposal, and other utilities costs; costs of maintenance and repairs; costs of capital replacements and improvements; costs of insurance obtained with respect to the Premises, the Property or any other improvements; real property or personal property taxes, and any other costs, charges, and expenses that under generally accepted accounting principles would be regarded as Landlord's management, maintenance and/or operating expenses.

Section 2.02 - Payments by Tenant:

Throughout the term of this Lease, Tenant shall pay to Landlord the Rent, when and as the same shall be due and payable hereunder. All payments and charges required to be made by Tenant to Landlord hereunder shall be payable in coin or currency of the United States of America, at the address indicated in this Lease. No payment to or receipt by Landlord of a lesser amount than the amount required to be paid hereunder shall be deemed to be other than on account of the earliest amount of such obligation then due hereunder. No endorsement or statement on any check or other communication accompanying a check for payment of any amounts payable hereunder shall be deemed an accord and satisfaction, and Landlord may accept such check in payment without prejudice to Landlord's right to recover the balance of any sums owed by Tenant under this Lease.

ARTICLE III. PREPARATION OF PREMISES

Section 3.01 - Tenant's Work:

(a) Tenant's Work. For purposes of this Lease, Tenant's work shall consist of the installation of the System, in accordance with the terms of the PPA. All such work is to be performed by Tenant, at its sole expense, ("Tenant's Work") in accordance with Exhibit "C". All work performed by Tenant shall be subject to Landlord's prior written approval and shall be in accordance with good construction practices, all applicable laws, codes, ordinances, regulations, and insurance requirements and Landlord's reasonable rules and regulations. No material deviations from the final plans and specifications, once approved by Landlord, shall be permitted, unless such deviations are approved by Landlord. Landlord's review of Tenant's plans and specifications shall not constitute the assumption of any responsibility by Landlord for their accuracy or sufficiency, and shall in no event create an express or implied confirmation that Tenant's design and/or working drawings have been prepared in accordance with the requirements of applicable laws, codes, ordinances and regulations. Further, Landlord shall have no responsibility or liability for any loss or damage to any property belonging to Tenant.

(b) Landlord's Consent or Approval. Except as expressly otherwise noted, when Landlord's approval or consent is required under this Lease, Landlord shall not unreasonably withhold, condition or delay such approval or consent.

(c) Inspections and Reports. Tenant shall conduct such inspections as are necessary to determine if the Premises are structurally adequate for the installation of the System without causing structural damage to the Premises. Tenant shall provide to Landlord a copy of all reports that Tenant obtains with respect to the condition of the Premises. Provided that the inspections conducted by Tenant (and the reports related to such inspections) determine that the Premises are structurally adequate for installation of the System, Tenant may proceed with the installation of the System.

Section 3.02 - Alterations by Tenant:

(a) Landlord's Consent to Structural Alterations. Tenant may not make any structural alterations to the Premises without the prior written consent of Landlord which consent may be withheld or granted in Landlord's sole discretion. Any such alterations shall be performed in a good and workmanlike manner and in accordance with applicable legal and insurance requirements and the terms and provisions of this Lease.

(b) Discharge of Liens. If any mechanic's lien is filed against the Premises or the Installation Site as a result of any work or act of Tenant, Tenant, at its expense, shall discharge or bond off the same within ten (10) days after receipt of written notice from Landlord of the filing thereof. If Tenant fails to discharge said mechanic's lien, Landlord may bond or pay without inquiring into the validity or merits of such lien and all sums so advanced shall be paid to Landlord as additional rent.

(c) Required Tenant Insurance. Before commencing any work on the Installation Site, Tenant shall obtain public liability and workers' compensation insurance to cover every contractor to be employed by Tenant, in accordance with the provisions of the PPA, and shall deliver duplicate originals of all certificates of such insurance to Landlord for written approval.

(d) Landlord's Right to Make Emergency Repairs. If, in an emergency, it shall become necessary to make repairs required to be made by Tenant, Landlord may reenter the Premises and proceed to have such repairs

made and pay the costs thereof. Tenant shall pay Landlord the reasonable costs of such repairs pursuant to Section 4.05(e) as additional rent.

ARTICLE IV. CONDUCT OF BUSINESS

Section 4.01 - Use of Premises:

(a) Permitted Use of Premises. Tenant shall use and occupy the Premises for the following purpose only, and for no other purpose whatsoever: installation and operation of the System, in accordance with the terms of the PPA.

(b) License and Permits. If any governmental license or permit shall be required for the proper and lawful conduct of Tenant's business or other activity carried on in the Premises, or if a failure to procure such a license or permit might or would in any way adversely affect Landlord or the Installation Site, then Tenant, at Tenant's expense, shall duly procure and thereafter maintain such a license or permit and submit the same for inspection by Landlord. Landlord shall cooperate with Tenant (at Tenant's expense) to obtain all such licenses or permits, and Landlord shall execute all necessary consents and applications and perform other reasonable ministerial requirements to the extent required. Tenant, at Tenant's expense, shall, at all times, comply with the requirements of each such license or permit.

Section 4.02 - Signs:

Tenant shall not install any signs of any kind or nature on the Premises, except signs related to the operation of the System that are no larger than reasonably necessary for such purpose.

Section 4.03 - Tenant's Warranties:

Tenant warrants, represents, covenants and agrees to and with Landlord, that throughout the term of this Lease it shall: (i) keep the Premises in a neat and clean condition, (ii) pay, before delinquent, any and all taxes, assessments and public charges imposed upon Tenant's business or property, and pay when due all fees of similar nature, (iii) observe all reasonable rules and regulations established by Landlord for tenants in the Installation Site, (iv) observe all restrictive covenants of record which are applicable to the Installation Site, provided the same do not prohibit Tenant's permitted use of the Premises, (v) not use the parking areas or sidewalks or any space outside the Premises for display, sale, storage, or any other similar undertaking, (vi) not use any advertising medium or sound devices inside the Premises which may be heard outside the Premises, or permit any objectionable odors to emanate from the Premises, (vii) employ only such labor in the performance of any work in and about the Premises as will not cause any conflict or controversy with any labor organization representing trades performing work for Landlord, its contractors or subcontractors, (viii) not do any act tending to injure the reputation of the Installation Site as determined by Landlord, and (ix) not commit or suffer to be committed any waste upon the Premises, not place a load upon any floor of the Premises which exceeds the floor load per square foot area which such floor was designated to carry, and not commit or suffer to be committed any nuisance or other act or thing which may disturb the quiet enjoyment of any other occupant or tenant of the Installation Site.

Section 4.04 - Legal Requirements:

Tenant shall at its own expense, comply with all laws, orders, ordinances and with directions of public officers thereunder, with all applicable Board of Fire Insurance Underwriters regulations and other requirements and with all notices from Landlord's mortgagee respecting all matters of occupancy, condition or maintenance of the Premises, whether such orders or directions shall be directed to Tenant or Landlord, and Tenant shall hold Landlord harmless from any and all costs or expenses on account thereof. Tenant shall, with Landlord's reasonable cooperation, procure and maintain all licenses and permits legally necessary for the operation of Tenant's business and allow Landlord to inspect them on request.

Section 4.05 - Landlord's Warranties and Covenants:

(a) Authorization and Validity. The execution and delivery by Landlord of, and the performance of its obligations under, this Lease have been duly authorized by all necessary action (including approval by Landlord's current mortgage lender), do not and will not require any further consent or approval of any other person, and do not contravene any provision of, or constitute a default under, any indenture, mortgage or other material agreement binding on Landlord or any valid order of any court, or regulatory agency or other body having authority to which Landlord is subject. This Lease constitutes a legal and valid obligation of Landlord, enforceable against Landlord in accordance with its terms. To the best of Landlord's knowledge, this Lease, and the construction, installation, operation and maintenance of the System is in compliance with all conditions, covenants and restrictions ("CC&Rs") governing the Installation Site, and Landlord shall obtain (with Tenant's reasonable cooperation) any necessary approvals for the System as required by the Installation Site's CC&Rs.

(b) Landlord's Interest in Premises.

(i) Landlord represents, warrants and covenants that Landlord has lawful title to (or a valid leasehold interest in) the Premises and that throughout the term of this Lease, provided that no Event of Default by Tenant has occurred and be continuing beyond the expiration of applicable notice and cure periods, Tenant shall enjoy quiet and peaceful use, enjoyment and possession of the Premises, free from any claim of any entity or person of superior title thereto, without hindrance to or interference with or molestation of Tenant's quiet enjoyment thereof, and neither Landlord nor any person claiming by, through or under Landlord shall disturb Tenant's quiet and peaceful use, enjoyment and possession of the Premises.

(ii) If Landlord sells or otherwise alienates or encumbers the Installation Site or the Premises, Landlord shall give Tenant at least (30) days' prior written notice thereof, which notice shall identify the transferee, the Installation Site or the Premises to be so transferred and the date of transfer. In addition, Landlord shall give notice to the proposed transferee with regard to this Lease, the PPA and ownership of the System not less than thirty (30) days prior to such proposed transfer. Landlord agrees that this Lease and the easements and rights of way granted in this Lease shall run with the Premises and survive any transfer of any of the Installation Site or the Premises. In furtherance of the foregoing, Landlord covenants and agrees that it shall cause any purchaser, lessee, assignee, mortgagee, pledge, lender, lessor (to the extent Landlord's interest in any of the Premises is a leasehold interest) or any other third party who now has or may in the future obtain an interest in the Installation Site or the Premises or any part thereof (or to whom a lien has been granted thereon), to execute and deliver, in recordable form, a non-disturbance and attornment agreement ("NDA") that shall (i) acknowledge and consent to the Tenant's rights in the Premises and the Installation Site, (ii) acknowledge that such third party has no interest in the System and shall not gain any interest in the System by virtue of the Parties' performance or breach of this Lease or any mortgage or encumbrance on the Installation Site or Premises, (iii) provide that so long as no Tenant Event of Default under this Lease has occurred and be continuing beyond the expiration of any applicable grace or cure period provided for hereunder, Tenant's right of peaceable and quiet use, occupancy, enjoyment and possession of the Premises shall not be disturbed by such third party, and (iv) acknowledge that Tenant's rights in the Premises granted hereunder shall run with such Premises throughout the term of this Lease, notwithstanding any sale, lease, transfer, assignment, mortgage, pledge or other alienation or encumbrance by such third party of the Installation Site or the Premises. If such an NDA is not obtained from any existing lessor or for any existing encumbrances on the Installation Site or Premises on or before the Commercial Operation Date, Tenant may terminate this Lease and Landlord shall compensate Tenant for all costs and expenses incurred in the installation and removal of the System. Anything in this Lease to the contrary notwithstanding, this Lease shall not be subordinate to any future lease and any future mortgage shall be subject to the requirements of this Section 4.05(b).

(c) No Interference with System; Protection of System. Landlord represents and warrants to Tenant that, to its actual knowledge, there are no circumstances known to Landlord or commitments to third parties that may damage, impair or otherwise adversely affect the System or its construction, installation or function (including activities that may adversely affect the System's exposure to sunlight). Landlord shall not initiate, conduct or permit activities on, in or about the Premises or the Installation Site that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Landlord shall take commercially reasonable steps to limit access to the Premises to Tenant and Tenant's employees, invitees, agents and representatives. Landlord shall implement and maintain reasonable and appropriate security measures on the Installation Site to prevent Landlord's

employees, invitees, agents and representatives, and other unrelated third parties, from having access to the Premises or the System, and to prevent from occurring any theft, vandalism or other actions that have a reasonable likelihood of causing damage, impairment or otherwise materially adversely affecting the System.

(d) Insolation. Landlord acknowledges and agrees that access to sunlight ("Insolation") is essential to the value to Tenant of the rights granted hereunder and is a material inducement to Tenant in entering into this Lease. Accordingly, Landlord shall not knowingly authorize any interference with Insolation on and at the Premises. Without limiting the foregoing, Landlord shall not construct or permit to be constructed any structure on the Installation Site or Premises that could adversely affect Insolation levels, or permit the growth of foliage that could adversely affect Insolation levels. If Landlord becomes aware of any potential development or other activity on adjacent or nearby properties that could diminish the Insolation to the Premises, Landlord shall advise Tenant of such information and reasonably cooperate with Tenant, at no cost to Landlord, unless such interference is caused by Landlord or its affiliates, officers, agents or employees, in measures to preserve existing levels of Insolation at the Premises. Notwithstanding any other provision of this Lease, the Parties agree that (i) Tenant would be irreparably harmed by a breach of the provisions of this Section 4.05(d), (ii) an award of damages would be inadequate to remedy such a breach, and (iii) Tenant shall be entitled to equitable relief, including specific performance, to compel compliance with the provisions of this Section 4.05(d).

(e) Maintenance of Premises. Landlord, at Landlord's sole cost and expense, shall repair and maintain the exterior of and the public portions of the building (including, without limitation, the structural portions of the building and the Premises to the extent that repairs or maintenance of the Premises shall not result from the installation, operation and maintenance of the System by Tenant) and all building systems servicing the Premises, excluding any such systems or improvements installed by Tenant. Landlord shall give Tenant prompt notice of any damage to or defective condition in any part or appurtenance of the Premises (including electrical, telephone, internet, and water facilities and systems located within or serving the Premises). Tenant shall repair and maintain, at Tenant's sole cost and expense, the Premises in good condition and perform such other work as is otherwise reasonably required by Landlord to the extent that such repairs, maintenance and other work to be performed shall be caused by the installation, operation and maintenance of the System by Tenant. Tenant shall maintain the System in accordance with Section 6.4 of the PPA. Landlord and Tenant shall reasonably cooperate with each other to fulfill their respective obligations under this Section 4.05(e). Notwithstanding anything in this Lease to the contrary, with respect to any Lease Year, Landlord shall pay Tenant the amount equal to Tenant's loss of revenue, if any, under the PPA due to a failure by Landlord to promptly perform its obligations to repair and maintain the Premises under this Section 4.05(e).

(f) Notice of System Outage. Each Party shall notify the other within twenty-four (24) hours following the discovery by it of any material malfunction of the System or interruption in the supply of electricity from the System. Each Party shall designate and advise the other Party of personnel to be notified in the event of such an emergency. Tenant shall correct, or cause to be corrected, the conditions that caused the emergency as soon as reasonably possible in light of the circumstances following the giving of notice to Tenant by Landlord or upon discovery of such emergency by Tenant.

(g) Liens. Subject to the provisions of Section 4.05(b) of this Lease, Landlord represents and warrants to Tenant that there are no liens, security interests or other encumbrances burdening the Premises that will interfere with Tenant's use and operation of the System. Landlord covenants to Tenant that it will not cause, create, incur, assume, permit or suffer to exist any liens (including mechanics', labor or materialman's lien), security interests or other encumbrances on the Premises that will interfere with Tenant's use and operation of the System. If Landlord breaches its obligations under this Section 4.05(g), it shall immediately notify Tenant in writing, shall promptly cause such liens to be bonded, discharged and released of record without cost to Tenant, and shall indemnify Tenant against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in bonding, discharging and releasing such liens. Tenant covenants to Landlord that it will not cause, create, incur, assume, permit or suffer to exist any liens (including mechanics', labor or materialman's lien), security interests or other encumbrances on the Premises. If Tenant breaches its obligations under this Section 4.05(g), it shall immediately notify Landlord in writing, shall promptly cause such liens to be bonded, discharged and released of record without cost to Landlord, and shall indemnify Landlord against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in bonding, discharging and releasing such liens.

(h) Environmental Conditions. To Landlord's knowledge: (i) there is no condition at, on, under or over the Premises or the Installation Site that poses a material hazard to human health or the environment; (ii) there is not now, and has not at any time been any production, use, treatment, storage, transportation or disposal of Hazardous Substances (as defined below) on or under the Premises or the Installation Site; (iii) there has not been any release or threatened release of Hazardous Substances at, on, under, over or from the Premises or the Installation Site or at, on, under, over or from any other property adjacent to the Premises or the Installation Site; (iv) there is not now, and has not at any time been, any Hazardous Substance stored on the Premises or the Installation Site in underground tanks, pits or surface impoundments, nor is there, or has there ever been, any electrical transformer or other electrical equipment containing PCBs on the Premises or the Installation Site and (v) neither Landlord nor any affiliate of Landlord has received any notice, verbal, written or otherwise, from any city, county, state, federal or other governmental or quasi-governmental authority or from any other third party of any violation of any Environmental Law (as defined below) and to Landlord's knowledge, no such violation exists with respect to the Premises or Installation Site.

For purposes of this Section 4.05(h), the following terms have the following meanings:

"Environmental Laws" means collectively any federal, state or local laws, ordinances, regulations, rules, statutes, administrative actions or orders and common law respecting Hazardous Substances.

"Hazardous Substances" means any flammable items, explosives, radioactive materials, hazardous or toxic substances, materials, items or waste or related materials, including without limitation on the generality of the foregoing, any substances, materials, items or waste defined as or included in the definition of the terms "hazardous substances", "hazardous wastes", "infectious wastes", "hazardous materials", or "toxic substances" now or subsequently regulated under any present or future Environmental Law.

(i) Interconnection Point. Landlord represents and warrants to Tenant that there is a suitable electrical interconnection point of sufficient capacity to accommodate the System a designed within 500 feet of each of the planned locations of the System on the Premises.

(j) Ownership of System. Landlord acknowledges and agrees that Tenant or one of its affiliates is the exclusive owner and operator of the System, that all equipment comprising the System shall remain the personal property of Tenant and shall not become fixtures, notwithstanding the manner in which the System is or may be attached to any real property of Landlord. Landlord shall have no right, title or interest in the System or any component thereof, notwithstanding that the System may be physically mounted or adhered to the Premises or structures, buildings and fixtures on the Premises.

ARTICLE V. COMMON AREA

Section 5.01 - Definition:

The term "Common Areas" shall mean the interior and exterior areas and facilities within the Installation Site, which are: (i) not leased to a tenant, or (ii) by nature not leasable to a tenant for the purpose of the sale of merchandise or the rendition of services to the general public. Common Areas shall include but shall not be limited to all parking areas and facilities, roadways, driveways, entrances and exits, truck service ways and tunnels, utilities, water filtration and treatment facilities, retention ponds or basins located within or outside the Installation Site, retaining and exterior walls, sidewalks, open and enclosed malls, outside courts, landscaped and planted areas, escalators, stairways, elevators, service corridors, service areas, loading docks, hallways, public restrooms, community rooms or areas, roofs, equipment, signs and any special services provided by Landlord for the common or joint use and benefit of all tenants in the Installation Site, their employees, customers and invitees.

Section 5.02 – Activity:

During the term of this Lease, Landlord hereby grants to Tenant, subject to Landlord's reasonable rules and regulations promulgated from time to time, the nonexclusive license to use and permit its agents and contractors to use the sidewalks, customer parking areas, the entrance and exit ways designated by Landlord for access and egress to and from the Premises from a public street or highway. Notwithstanding anything contained in this Lease to the

contrary, Landlord shall have the right, at any time and from time to time, without notice to or consent of Tenant, to change the size, location, elevation and nature of the Common Areas, or any part thereof. Subject to any easements and restrictions of record granted or approved by Landlord from time to time, Common Areas shall be subject to the exclusive control and management of Landlord, and Landlord shall have the right, at any time and from time to time, to establish, modify, amend and enforce rules and regulations with respect to the Common Areas and the use thereof. Tenant agrees to abide by and conform with such rules and regulations on notice thereof and to cause its permitted concessionaires, invitees and licensees and its and their employees and agents to do the same.

ARTICLE VI. DESTRUCTION OF PREMISES

Section 6.01 - Continuance of Lease:

If the Premises are partially or totally destroyed by fire or other casualty so as to become partially or totally untenantable, then the damage to the Premises shall be promptly repaired by Landlord, unless Landlord elects not to rebuild or repair the Premises as forth in this Article VI. Landlord shall not be required to repair or replace Tenant's trade fixtures or equipment. If twenty-five percent (25%) or less of the Premises or of the floor area of the Installation Site are damaged or destroyed by fire or other casualty, Landlord shall repair or rebuild the Installation Site and/or the Premises, as the case may be. If more than twenty-five percent (25%) of the Premises or of the floor area of the Installation Site are damaged or destroyed by fire or other casualty, then Landlord may elect that the Installation Site and/or the Premises, as the case may be, be repaired or rebuilt or, at its sole discretion, terminate this Lease by giving written notice to Tenant of its election to so terminate, such notice to be given within ninety (90) days after the occurrence of such damage or destruction. If Landlord is required or elects to repair or rebuild the Premises or the Installation Site as provided in this Article VI, then upon completion of such work by Landlord, Tenant shall either elect (i) to repair or replace the System in a manner and to at least a condition equal to that immediately prior to its damage or destruction or (ii) to terminate this Lease upon thirty (30) days prior notice to Landlord without liability to either Party. Tenant shall be entitled to all proceeds of insurance with respect to the System.

Section 6.02 - Reconstruction:

If (i) all or any portion of the Premises is damaged by fire or other casualty, (ii) this Lease is not terminated in accordance with Section 6.01, and (iii) Tenant elects under Section 8.1 of the PPA to repair or replace the System, then all insurance proceeds for damage to the Premises and Installation Site, however recovered, shall be made available to Landlord for payment of the cost of repairing, replacing and rebuilding the Premises and Installation Site, and all insurance proceeds for damages to the System, however recovered, shall be available to Tenant for the cost of repairing, replacing or rebuilding the System. Landlord shall use the proceeds from the insurance as set forth herein to repair, replace or rebuild the Premises and the Installation Site, such that the Premises and the Installation Site shall be restored to their condition immediately before the occurrence of such casualty. Tenant shall use the proceeds from the insurance required under the PPA to repair, replace or rebuild the System.

ARTICLE VII. CONDEMNATION

Section 7.01 - Eminent Domain:

If twenty-five percent (25%) or more of the Premises are taken or condemned by any competent government authority, then either Party may elect to terminate this Lease by giving notice to the other Party not more than sixty (60) days after the date of which such title shall vest in the authority. In the case of any taking or condemnation, whether or not the term of this Lease shall cease and terminate, the entire award shall be the property of Landlord; provided, however, Tenant shall be entitled to any award as may be allowed for the System, which under the terms of this Lease will not have become the property of Landlord.

ARTICLE VIII. ASSIGNING, SUBLETTING AND ENCUMBERING LEASE

Section 8.01 – Tenant Assignment, Subletting and Encumbering of Lease:

(a) Assignments. This Lease and the rights of Tenant pursuant to it may not be assigned by Tenant without the prior written consent of Landlord, which consent shall not be unreasonably withheld; provided, however, that (i) Tenant may, without Landlord's prior written consent, assign this Lease as set forth in Section 8.01(b) below

and (ii) any assignment will not relieve Tenant of any of its obligations hereunder. Subject to the terms of Sections 8.01(b) and 8.01(c) below, Tenant shall not without the prior written consent of Landlord, which consent shall not be unreasonably withheld, sublet the Premises or any part thereof, or permit the use of the Premises or any part thereof by any persons other than Tenant or Tenant's affiliates and their respective employees, agents, representatives or contractors. Notwithstanding the foregoing or any other provision in this Lease, Tenant shall have the right to assign this Lease to any Party to which Tenant, as Seller under the PPA, may assign the PPA under Section 17.1 of the PPA.

(b) Right to Mortgage. Tenant may, at any time and from time to time, without obtaining Landlord's consent, hypothecate, mortgage, grant or pledge its right, title or interest hereunder to any Leasehold Mortgagee as security for the repayment of any indebtedness and/or the performance of any obligation (a "Mortgage"). As used in this Lease, the term "Leasehold Mortgagee" collectively includes any financial institution or other person or entity that from time to time provides secured financing to Tenant or Tenant's affiliates, and any agent, security agent, collateral agent, indenture trustee, loan trustee, loan participant or participating or syndicated lenders involved in whole or in part in such financing, and their respective representatives, successors and assigns. Landlord agrees to use its commercially reasonable efforts to cooperate with Tenant in Tenant's or Tenant's affiliates' efforts to obtain financing from a Leasehold Mortgagee. If Tenant grants a Mortgage, it shall give notice of the same (including the name and address of the Leasehold Mortgagee) to Landlord; provided, however that the failure to give such notice shall not constitute a default or Event of Default under this Lease but rather shall only have the effect of relieving Landlord from any obligation to such Leasehold Mortgagee until such notice is given. Landlord hereby consents to the recordation of the interest of the Leasehold Mortgagee in the official records of the county in which the Premises are located.

(c) Leasehold Mortgagee Protections. Notwithstanding any other provision of this Lease:

(i) A Leasehold Mortgagee shall have the absolute right to do one, some or all of the following: (i) assign its Mortgage; (ii) enforce its Mortgage; (iii) acquire title (whether by foreclosure, assignment in lieu of foreclosure or other means) to this Lease; (iv) take possession of and operate the System on the Premises and perform Tenant's obligations under the PPA; (v) assign or transfer this Lease to a third party or (vi) exercise any rights of Tenant hereunder or with respect to this Lease. Landlord's consent shall not be required for any of the foregoing; and, upon acquisition of this Lease by a Leasehold Mortgagee or any other third party who acquires the same from or on behalf of the Leasehold Mortgagee, Landlord shall recognize the Leasehold Mortgagee or such other party (as the case may be) as Tenant's proper successor, and this Lease shall remain in full force and effect.

(ii) As a precondition to exercising any rights or remedies as a result of any real or alleged default or Event of Default by Tenant, Landlord shall deliver a duplicate copy of each and every notice of default to each Leasehold Mortgagee (at the last address(es) thereof provided to Landlord) concurrently with delivery of such notice of default to Tenant, specifying in detail the default or Event of Default and the required remedy.

(iii) Each Leasehold Mortgagee shall have the same period of time after receipt of a notice of default to remedy a default or Event of Default, or cause the same to be remedied, as is given to Tenant after Tenant's receipt of a notice of default hereunder, plus, in each instance an additional thirty (30) day period; provided, however, that (a) such thirty (30)-day period shall be extended for the time reasonably required by the Leasehold Mortgagee to complete such cure, including the time reasonably required for the Leasehold Mortgagee to perfect its right to effect such cure and (b) Leasehold Mortgagee shall not be required to cure those Events of Default which are not reasonably susceptible of being cured or performed by Tenant. Each Leasehold Mortgagee shall have the absolute right to substitute itself for Tenant and perform the duties of Tenant hereunder for purposes of curing such default or Event of Default. Landlord expressly consents to such substitution, agrees to accept such performance, and authorizes each Leasehold Mortgagee (and its respective employees, agents, representatives or contractors) to enter upon the Premises to complete such performance with all of the rights and privileges of Tenant hereunder. Landlord shall not terminate this Lease Agreement prior to expiration of the cure periods available to each Leasehold Mortgagee as set forth above. Further, (1) neither the bankruptcy nor the insolvency of Tenant shall be grounds for terminating this Lease as long as all amounts payable by Tenant hereunder are paid by a Leasehold Mortgagee in accordance with the terms hereof.

(iv) A Leasehold Mortgagee or any party who acquires Tenant's interests hereunder pursuant to foreclosure or an assignment in lieu of foreclosure shall not have any obligation under this Lease prior to the time that such Leasehold Mortgagee or other party succeeds to absolute title to the leasehold estate, and such Leasehold

Mortgagee or other party shall be liable to perform obligations under this Lease only for and during the period of time that such Leasehold Mortgagee or other party directly holds such leasehold estate.

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

(vi) Landlord shall not agree to any material modification or amendment to this Lease and (ii) Landlord shall not accept a surrender or termination of this Lease; in each such case without the prior written consent of each Leasehold Mortgagee.

(vi) At Tenant's request, Landlord shall amend this Lease to include any provision that may reasonably be requested by an existing or proposed Leasehold Mortgagee, and shall execute such additional documents as may reasonably be required to evidence such Leasehold Mortgagee's rights hereunder. Further, Landlord shall, within ten (10) days after written notice from Tenant or any existing or proposed Leasehold Mortgagee, execute and deliver to the requesting party an estoppel certificate and such certificate shall effect that Landlord (i) recognizes such entity as a Leasehold Mortgagee under this Lease and (ii) will accord to such entity all the rights and privileges of a Leasehold Mortgagee hereunder.

ARTICLE IX. ATTORNMEN AND FINANCING

Section 9.01 - Attornment:

So long as this Lease is in full force and effect: (a) this Lease shall remain in full force, notwithstanding (i) a default by Landlord under Landlord's mortgage on the Installation Site, or (ii) any bankruptcy or similar proceedings with respect to Landlord, (b) if any such mortgagee shall become possessed of the Premises, Tenant shall be obligated to such mortgagee to pay to it the rentals and other charges due hereunder and to thereafter comply with all the terms of this Lease, and (c) if any mortgagee or purchaser, at a private or public sale shall become possessed of the Premises, Tenant shall, without charge, attorn to such mortgagee or purchaser as its landlord under this Lease. Tenant agrees that in the event of a Landlord Event of Default under this Lease that has occurred and be continuing, any mortgagee or trustee under a deed of trust of Landlord's interest in the Premises shall be permitted (but not required) to enter the Premises for the purpose of correcting or remedying such Event of Default, and Tenant agrees to accept performance by such mortgagee or trustee in lieu of performance by Landlord. Tenant further agrees that, from and after written notice from Landlord of the name and address of any mortgagee or trustee, Tenant will contemporaneously deliver notice to any such mortgagee or trustee of an Event of Default by Landlord under this Lease. Notwithstanding any provision of this Lease, Tenant agrees that no termination of this Lease or abatement or reduction or rent or any other amounts under this Lease shall be effective unless and until such mortgagee or trustee has received notice and fails, within thirty (30) days of the date on which Landlord's cure period expires, to cure the Event of Default of Landlord in question, or if the Event of Default cannot be cured within said thirty (30) days, fails to commence and thereafter diligently prosecute the cure of such Event of Default.

Section 9.02 - Financing:

If the construction lender, land lessor or the permanent lender for the Installation Site requires, as a condition to financing, modifications to this Lease, provided such modifications are reasonable, do not materially adversely affect Tenant and its operation of the System, do not materially alter Tenant's approved working plans and do not increase the Rent and other sums to be paid hereunder, Landlord shall submit to Tenant a written amendment with such required modifications. The amendment will be subject to Tenant's approval, not to be unreasonably withheld, conditioned or delayed.

Section 9.03 - Estoppel:

Tenant or Landlord shall at any time upon not less than ten (10) days' prior written notice from the other execute, acknowledge and deliver, to the extent true and correct, a statement in writing (i) certifying that this Lease is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect) and the date to which the Rent and other charges have been paid and (ii) acknowledging that there are not, to the certifying Party's knowledge, any uncured Events of Default on the part of the other Party, or specifying such uncured Events of Default if any are claimed. Any such statement may be conclusively relied upon by any mortgagee or any prospective purchaser or encumbrancer of the Premises, leasehold estate or the System.

ARTICLE X. DEFAULTS

Section 10.01 - Events of Default:

Subject to the rights of Leasehold Mortgagees as provided in Section 7, each of the following events shall constitute an "Event of Default" by a Party and shall permit the non defaulting Party to terminate this Lease and/or pursue all other appropriate remedies provided by law, provided, however, that Landlord shall not have the right to terminate this Lease within five (5) years following the Commercial Operation Date (as defined in the PPA), and provided, further, that Landlord shall not have the right to terminate this Lease after the fifth anniversary of the Commercial Operation Date, unless Tenant shall have abandoned the Premises or failed to cure a material Event of Default within six (6) months after the delivery of notice by Landlord pursuant to Section 16.02 regarding such Event of Default:

(a) Failure to Pay. The failure or omission by either Party to pay amounts required to be paid thereby when due under this Lease, and such failure or omission has continued for ten (10) days after written notice from the other Party;

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

(c) Bankruptcy. A Party files for protection or liquidation under the bankruptcy laws of the United States or any other jurisdiction or has an involuntary petition in bankruptcy or a request for the appointment of a receiver filed against it, and such involuntary petition or request is not dismissed within one hundred twenty (120) days after filing.

(d) Default under PPA. A default by Landlord as Buyer, or Tenant as Seller, under the PPA if the default under the PPA is not cured within the time period allowed under the PPA.

Section 10.02 - Termination:

(a) System Removal. Upon the expiration of this Lease or the termination of this Lease due to a Tenant Event of Default, Tenant shall remove the System and other personal property of Tenant, as well as any improvements to the Premises, within 180 days after the date on which this Lease terminated or expires. Upon the termination of this Lease (i) due to a Landlord Event of Default or (ii) by Tenant pursuant to Section 1.05(c), Tenant shall remove the System and

other personal property of Tenant, as well as any improvements to the Premises, within a reasonable time not less than 180 days after the date on which this Lease is terminated. After removal of the System, Tenant shall restore the Premises to its previous condition pursuant to Section 14.01 below.

(b) Recovery of Possession. Subject to subsection (a) above, Landlord may proceed to recover possession of the Premises under and by virtue of the provisions of the laws of the jurisdiction in which the Installation Site is located, or by such other proceedings, including reentry and possession, as may be applicable.

Section 10.03 - Additional Landlord Remedies and Waivers:

If a Tenant Event of Default shall have occurred and be continuing, Landlord shall have the option, upon ten (10) days written notice to Tenant, to cure said Event of Default for the account of and at the expense of Tenant. No such notice shall be required for emergency repairs.

Section 10.04 - Additional Tenant Remedies:

If a Landlord Event of Default occurs, Tenant shall have the right to seek all remedies available at law and in equity for breach of this Lease, which may include (without duplication) damages suffered by Tenant under the PPA and caused by any Landlord Event of Default.

ARTICLE XI. OWNERSHIP OF IMPROVEMENTS

All improvements constructed or installed by Tenant on the Premises, including the System, are, and shall remain, the property of Tenant and may be removed by Tenant at any time, and Landlord shall have no right, title or interest therein. The Parties agree that all improvements constructed or installed by Tenant on the Premises, including the System, whether prior to the Term Commencement Date or after the same, are hereby severed by agreement and intention of the Parties and shall remain severed from the Premises, shall be considered with respect to the interests of the Parties as the property of Tenant or other party designated by Tenant, and, even though attached to or affixed to or installed upon the Premises, shall not be considered to be fixtures or a part of the Premises and shall not be or become subject to the lien of any mortgage or deed of trust existing or hereafter placed on the Premises by Landlord. Accordingly, Landlord acknowledges that during the Term of the Lease, Tenant or a Leasehold Mortgagee may file a financing statement (FORM UCC-1) which clearly covers the System as personal property only and not as a fixture.

ARTICLE XII. RIGHT OF ACCESS

Section 12.01 - Right of Access:

Landlord may, upon prior notice to Tenant (except in the case of an emergency, in which case no such notice is required), enter upon the Premises for the purpose of inspecting, making repairs, replacements or alterations, and showing the Premises to prospective purchasers, lenders or lessees.

ARTICLE XIII. DELAYS

Section 13.01 – Delays due to a Force Majeure Event:

If Landlord or Tenant is prevented or delayed from performing any of their respective obligations during the term of this Lease because of causes beyond such Party's reasonable control, including strikes, riots, fires, floods, lightning, rain, earthquake, extraordinary wind or other weather events, war, invasion, insurrection, civil commotion, unavailability of resources due to national defense priorities, any act of God, binding orders, actions or inactions of any court or governmental authority, local, state or federal laws, regulations or ordinances, technological impossibility or any other similar or dissimilar cause beyond its reasonable control and not attributable to its neglect (each a "Force Majeure Event"), then the period of such delays shall be deemed added to the time provided in this Lease for the

performance of any such obligation and the breaching Party shall not be liable for losses or damages caused by such delays; provided, however, that this Article shall not apply to the payment of any sums of money required to be paid hereunder. Subject to the foregoing, time is of the essence with respect to all obligations to be performed by the Parties pursuant to the terms of this Lease.

ARTICLE XIV. END OF TERM

Section 14.01 - Return of Premises:

Upon the expiration or termination of this Lease, Tenant shall quit and surrender the Premises to Landlord, in good order, normal wear and tear and Force Majeure Events excepted. Within 180 days after such expiration or termination, Tenant shall, at its expense, remove the System or any part thereof and any related equipment from the Premises, and shall be obligated to return the Premises to the condition they were in prior to Tenant's entry into the Premises and installation of the System, reasonable wear and tear excepted. If Tenant's property remains on the Premises after such 180 day period, Landlord shall be entitled to reasonably remove and dispose of the same, in which latter event Tenant shall, upon demand, pay to Landlord the actual expense of such removal and disposition and the actual, reasonable cost of repair of any and all damage to the Premises resulting from or caused by such removal. Upon the expiration or termination of this Lease, and subject to Tenant's rights under this Section 14.01, Tenant shall execute and acknowledge a quit-claim deed to Tenant's interest in the Premises, in recordable form, in favor of Landlord ten (10) days after written notice and demand therefor by Landlord, and Tenant hereby appoints Landlord its attorney-in-fact, irrevocably, to execute and deliver such quit-claim deed.

Section 14.02 - Holding Over:

If Tenant shall hold possession of the Premises after the expiration of the 180 day period following termination or expiration of this Lease described in Section 14.01, at Landlord's option (i) Tenant shall be deemed to be occupying the Premises as a tenant from month-to-month at double the highest Rent in effect during the term of this Lease or any extensions thereof, or (ii) Landlord may exercise any other remedies it has under this Lease or at law or in equity including an action for wrongfully holding over.

ARTICLE XV. COVENANT OF QUIET ENJOYMENT

Section 15.01 - Covenant of Quiet Enjoyment:

Landlord covenants that if and so long as Tenant pays in full all the Rent and all other charges provided for in this Lease and performs its obligations under this Lease, Tenant shall at all times during the term of this Lease peaceably have, hold and enjoy the Premises, without any interruption or disturbance from Landlord, or anyone claiming through or under Landlord, subject to the terms hereof.

ARTICLE XVI. MISCELLANEOUS

Section 16.01 - Interpretation:

This Lease contains the entire agreement between the Parties with respect to the matters contained in this Lease, and there are no covenants, promises, agreements, conditions, understandings, or warranties or representations, oral or written, between them other than as set forth in this Lease. The Lease or any part of it may not be changed, altered, modified, limited, terminated, or extended orally or by any agreement between the Parties unless such agreement is in writing and signed by the Parties, their legal representatives, successors or permitted assigns. Tenant acknowledges and agrees that neither Landlord nor any representative of Landlord nor any broker has made any representation to or agreement with Tenant relating to the Premises, this Lease or the Installation Site which is not contained in the express terms of this Lease. Landlord and Tenant are business entities having substantial experience with the subject matter of this Lease and have each fully participated in the negotiation and drafting of this Lease. Accordingly, this Lease shall be construed without regard to the rule providing that ambiguities in a document are to be construed against the drafter.

Section 16.02 - Notice:

No notice or other communications given under this Lease shall be effective unless the same is in writing and is delivered in person or mailed by registered or certified mail, return receipt requested, or delivered via a reputable over night courier, addressed: (1) if to Landlord, attention: General Counsel at the address set forth on page 1 of this Lease, or to such other address as Landlord shall designate by giving written notice thereof to Tenant, or (2) if to Tenant, at the address set forth on page 1 of this Lease or such other address as Tenant shall designate by giving written notice thereof to Landlord. Any such notice, statement, certificate, request or demand shall, be deemed to have been given upon receipt or refusal of receipt.

Section 16.03 - Applicable Laws:

All questions and/or disputes with respect to the construction of this Lease and the rights and the liabilities of the Parties shall be determined in accordance with the laws of the State of California. Any and all such disputes shall be filed in the court of competent jurisdiction in the jurisdiction in which the Installation Site is located.

Section 16.04 - Successors:

This Lease shall bind and inure to the benefit of the Parties and their respective permitted legal representatives, successors and assigns.

Section 16.05 - Limitation on Landlord's and Tenant's Personal Liability:

There shall be no personal liability of Landlord or Tenant, their respective officers, partners, employees, shareholders, agents beneficiaries, or any successor in interest with respect to any provisions of this Lease, or amendments, modifications or renewals hereof.

Section 16.06 - Brokers:

Tenant and Landlord warrant and represent to each other that there was no broker or agent instrumental in consummating this Lease. Tenant and Landlord agree to indemnify and hold each other harmless against any claims for brokerage or other commission arising by reason of a breach by a Party of this representation and warranty.

Section 16.07 - Landlord Assignment:

Landlord shall have the right to freely assign this Lease without the consent of Tenant, provided that any such assignee (i) assumes in writing the obligations of Landlord under this Lease and under the PPA and (ii) agrees to be bound by the terms of this Lease and of the PPA. If any transfer or transfers of Landlord's interest in the Premises, including a so-called sale-leaseback, the transferor shall be automatically relieved of any and all obligations on the part of Landlord accruing from and after the date of such transfer, provided that Landlord shall remain liable for all obligations accruing on or before the date of the transfer, upon assignment of the same to the transferee, provided that the interest of the transferor, as Landlord, in any funds then in the hands of Landlord in which Tenant has an interest shall be turned over, subject to such interest, to the then transferee.

Section 16.08 - Relationship of the Parties:

The terms of this Lease shall not be interpreted to mean that Landlord and Tenant are partners or joint ventures.

Section 16.09 – Disputer Resolution; Waiver of Jury Trial:

In the event that there is any controversy, claim or dispute between the Parties arising out of or related to this Lease, or the breach hereof, that has not been resolved by informal discussions and negotiations, Landlord and Tenant shall rely on the terms, provisions and procedures set forth in Article XV of the PPA.

Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the Parties against the other on or in respect of any matter whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant hereunder, Tenant's use or occupancy of the Premises and/or any claim of injury or damage.

Section 16.10 - Invalidity of Particular Provisions:

If any provision of this Lease or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

Section 16.11 - No Waiver:

No failure by Landlord to insist upon the strict performance of any term, covenant, agreement, provision, condition or limitation of this Lease to be kept, observed or performed by Tenant, and no failure by Landlord to exercise any right or remedy consequent upon a breach of any such term, covenant, agreement, provision, condition or limitation of this Lease, shall constitute a waiver of any such breach or of any such term, covenant, agreement, provision, condition or limitation.

Section 16.12 - Intentionally Omitted:

Section 16.13 – Execution in Counterparts:

This Lease may be executed in one or more counterparts, any one or all of which shall constitute but one agreement.

Section 16.14 - Execution of Lease by Landlord:

The submission of this document for examination and negotiation does not constitute an offer to lease, or a reservation of, or an option for, the Premises, and this document shall be effective and binding only upon the execution and delivery hereof by both Landlord and Tenant.

Section 16.15 - Effect of Captions:

The captions or legends in this Lease are inserted for convenient reference or identification of the particular paragraphs or sections. They are in no way intended to describe, interpret, define or limit the scope, extent or interest of this Lease, or any paragraph or provision of this Lease.

Section 16.17 - Recording:

Tenant agrees that it will not record this Lease without the prior written consent of Landlord. Landlord and Tenant agree to execute, and Tenant may record if it so elects, a memorandum of this Lease in the land registry or title records of the county where the Premises are located or other applicable government office. Tenant shall be entitled to, and is hereby authorized to, file one or more precautionary financing statements or fixture filings, naming Tenant as the party of record, in such jurisdictions as it deems appropriate with respect to the System in order to protect its rights in the System or in connection with the grant of a security interest in the System to any of Tenant's lenders.

Section 16.18 - Confidentiality:

Neither Party will disclose any part of this Lease to anyone other than its attorneys, accountants, employees, or lenders who need to know of its content in to enable the Party to perform its duties under this Agreement. Any other disclosure will be a default hereunder.

Section 16.19 - REIT Qualification:

Landlord and Tenant agree that Rent, and all other charges paid to Landlord under this Lease shall qualify as "rents from real property" as defined in Section 856(d) of the Internal Revenue code of 1986, as amended from time to time (the "Code") and as further defined in Treasury Regulation Section 1.856-4 (the "Regulation"). Should the requirements of the Code and/or Regulation be amended so that any amount payable to Landlord under this Lease no longer qualifies as "rents from real property" for the purposes of the Code and associated Regulations, such amount payable to Landlord under this Lease shall, at Landlord's option, be adjusted so that it will qualify as "rents from real property" for the purposes of the Code and Regulation, as amended; provided, however, that any adjustments required pursuant to this provision shall be made so as to produce the equivalent (in economic terms) consideration as was payable prior to such adjustment. Tenant and Landlord shall enter into such amendment or amendments as may be necessary to effect the foregoing and negotiate in good faith with respect to such amendments.

Section 16.20 – Attorney’s Fees:

If either Party commences litigation against the other Party as a result of an Event of Default monetary by such Party, the prevailing Party in such litigation shall be entitled to recover its reasonable attorney’s fees incurred in such litigation from the other Party.

Section 16.21 – No Presumption Against Drafting Party:

The Parties acknowledge that each Party and, if it so chooses, its counsel, have reviewed and revised this Lease and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Lease or any amendments or Exhibits to this Lease.

Section 16.22 – Electronic Execution of Lease:

If a Party returns this Lease (or a portion of this Lease with instructions to insert the portion into the Lease) by facsimile, TIF or pdf, or similar electronic means, the signatures or initials set out on the Lease or portion thereof shall be deemed to be the Party’s original signature or initials.

Section 16.23 - Exhibits and Schedules:

The following Exhibits and Schedules are attached to and made a part of this Lease by this reference:

- | | |
|----------------------------|---|
| a) <u>Exhibit A</u> | - Solar Array |
| b) <u>Exhibit B</u> | - Legal Description of Installation Site |
| c) <u>Exhibit C</u> | - Description of Landlord and Tenant Work |
| d) <u>Schedule 1.01(d)</u> | - Procedure for Access to Premises |

Section 16.24 – Indemnity:

Each Party (the “Indemnifying Party”) agrees to indemnify, defend and hold harmless the other Party and such other Party’s mortgagees, affiliates, officers, employees and agents (the “Indemnified Party”) against any and all losses, damages (including consequential damages), claims, expenses and other liabilities, including, without limitation, reasonable attorneys’ fees, resulting from or arising out of (i) any operations of the Indemnifying Party on the Premises, (ii) any negligent act or negligent failure to act on the part of the Indemnifying Party or anyone else engaged in doing work for the Indemnifying Party, or (iii) any breach or inaccuracy of any representations or warranties made by the Indemnifying Party under this Lease, or (iv) any breach of this Lease by the Indemnifying Party. This indemnification shall survive the termination of this Lease. This indemnification shall not apply to losses, damages, claims, expenses and other liabilities caused by any negligent or deliberate act or omission on the part of the Indemnified Party or its affiliates, officers, employees and agents.

[End of text of Lease; signature and acknowledgement pages for the Lease follow immediately]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed effective the day and year first above written.

Signed And Acknowledged
In The Presence Of:

LANDLORD:

CITY OF IONE

By: _____

Print Name: _____

Title: _____

[IF GOVERNMENTAL ENTITY]
APPROVED AS TO FORM:
[Office of Counsel]

By: _____
Title: _____

Date: _____

TENANT:

IW SOLAR, LLC, a Delaware limited liability company

By: _____

Todd Grenich

President

Acknowledgment of Landlord

STATE OF CALIFORNIA)
)ss:
COUNTY OF AMADOR)

This instrument was acknowledged before me this ____ day of November, 2019, by _____, the _____ of the City of Ione, for and on behalf of said entity..

Notary Public
My commission expires:

Acknowledgment of Tenant

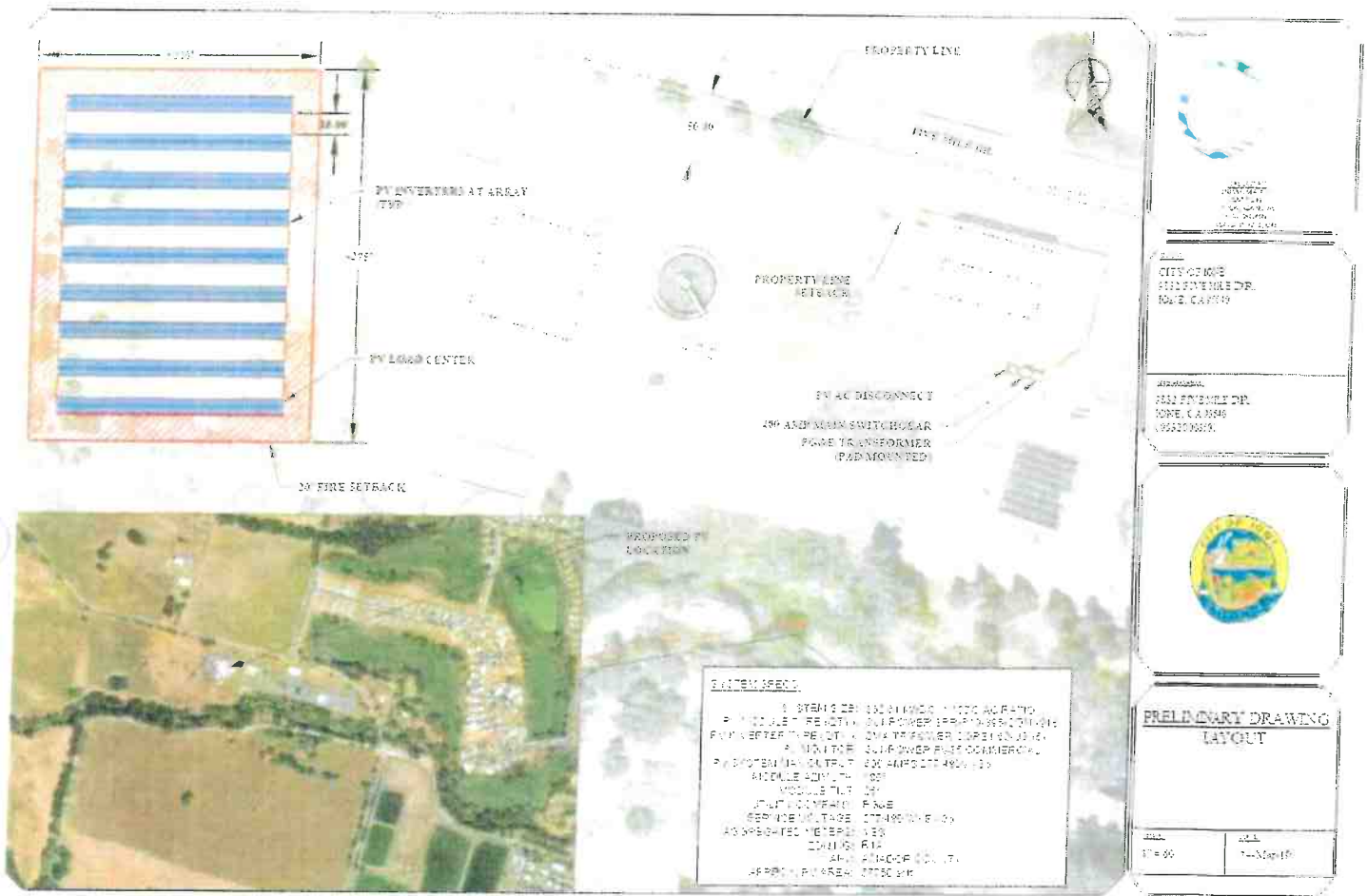
STATE OF _____)
)ss:
COUNTY OF _____)

This instrument was acknowledged before me this ____ day of November, 2019, by Todd Grenich, the President of IW SOLAR, LLC, a Delaware limited liability company, on behalf of the limited liability company.

Notary Public
My commission expires:

EXHIBIT "A"

Solar Array



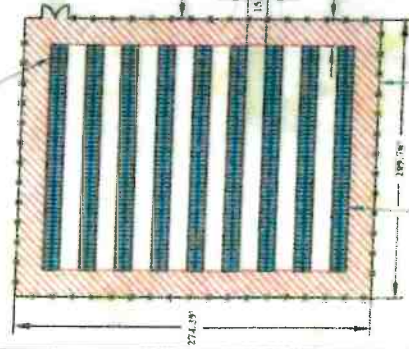


PROPERTY LINE SETBACK

PROPERTY LINE

58.80'

PV INVERTERS &
LOAD CENTER



PV ARRAY

5' FIRE SETBACK

(10) FENCE

CITY USE DIRT PILE



(1) ACCESS PATHWAY FOR DIRT PILE

(8) 15' ACCESS PATHWAY

AS TRENCH TO 180"
APPROX. 80' IN LENGTH BY 12" MINIMUM
TRENCH DEPTH TO TOP OF PILE (CONCRETE)

RECYCLED WATER LINE
(36" DEEP TO TOP OF PIPE)

400 AMP MAIN SERVICE PANEL
PAD MOUNTED
PULSE TRANSFORMER
(750 MOUNTING)

PROJECT NO. 2019-002A

CALCULATED BY: J. L. LEE
5041 N. RIVER AVE
RIVERSIDE, CA 92504
TEL: (951) 504-1234
CELL: (951) 504-1234

CITY OF RIVERSIDE
1832 FIVE MILE RD
RIVERSIDE, CA 92504
951-504-1234

DATE: 10/15/2019
SCALE: 1" = 40'

PROJECT: 1832 FIVE MILE RD
1007, CA 92504

DATE: 10/15/2019
SCALE: 1" = 40'

DESIGNED BY: J. L. LEE
5041 N. RIVER AVE
RIVERSIDE, CA 92504
TEL: (951) 504-1234
CELL: (951) 504-1234

PROJECT: 1832 FIVE MILE RD
1007, CA 92504

DATE: 10/15/2019
SCALE: 1" = 40'

DESIGNED BY: J. L. LEE
5041 N. RIVER AVE
RIVERSIDE, CA 92504
TEL: (951) 504-1234
CELL: (951) 504-1234

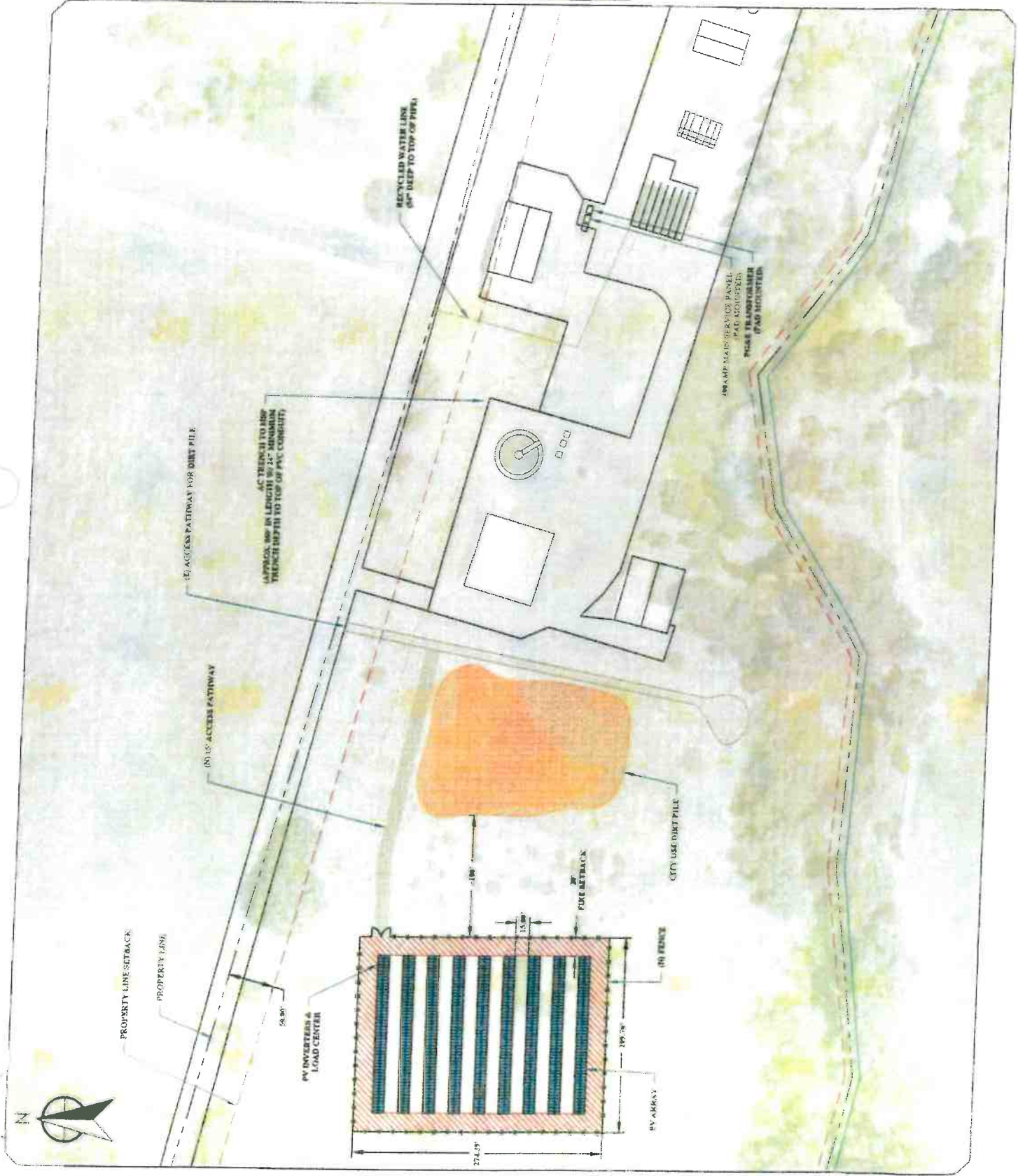


EXHIBIT "B"

Legal Description of Installation Site

EXHIBIT "C"

I. DESCRIPTION OF LANDLORD'S WORK

Notwithstanding anything contained in this Lease to the contrary, Landlord is delivering the Premises in 'As-Is' condition. Tenant acknowledges that Landlord is performing no work within the Premises.

II. DESCRIPTION OF TENANT'S WORK

All of Tenant's work shall conform to and comply with, all applicable statutes, ordinances, regulations, and codes. Landlord's approval of plans and specifications shall not constitute an acknowledgment that work done in accordance therewith will so conform, and Tenant shall be solely responsible for corrections in Tenant's Work required by any governmental agency. Tenant shall be subject to the following terms:

1. No approval by Landlord shall be valid unless it is in writing and signed on behalf of Landlord.
2. Tenant is responsible for reimbursing Landlord for Landlord's cost of installing temporary barricades.
3. Tenant is responsible for providing temporary construction trash services in accord with Landlord's onsite representative's criteria or shall reimburse Landlord for temporary trash services at the rate specified in the Tenant Handbook.

III. PROCEDURES AND SCHEDULES FOR THE COMPLETION OF PLANS AND SPECIFICATIONS

A. Commencement of Construction

1. Tenant shall carry all construction to completion with all due diligence in accordance with the PPA.
2. Tenant and/or Tenant's Contractor shall not be permitted to commence construction before it has submitted the following items to Landlord's on-site construction representative:
 - a. Name, address and telephone number of Tenant's General Contractor, with name and telephone number of said contractor's on-site superintendent;
 - b. A list of all subcontractors' names, addresses and phone numbers;
 - c. A copy of Contractor's Materials and Payment bonds;
 - d. A copy of the liability insurance certificate conforming to the requirements and conditions noted below and in the Lease;
 - e. A copy of the Building Permit issued by the applicable governmental authorities and proof of the County Health Department approval, if applicable;
 - f. A copy of the Landlord approved final drawings;
 - g. A proposed schedule of construction work itemized to indicate times of Tenant/Landlord interface of such items, such as electrical and mechanical work through service corridors, deliveries of major items such as concrete for toppings or slabs, fixture delivery, merchandise delivery and other items which may affect Landlord's or any other tenant's work;
 - h. OSHA safety meeting compliance;

B. General Requirements

1. Tenant's plans must conform to the requirements of the State in which the Installation Site is located and all other applicable codes and governing agencies inclusive of the Americans With Disability Act (ADA).
2. Tenant shall not commence Tenant's Work before receipt of Landlord's written approval of the working drawings and specifications. Tenant's Work shall be coordinated with the work being done by Landlord and/or other tenants' of Landlord in order that such work will not interfere with, damage or delay the completion of work by Landlord and/or other tenants' of Landlord.
3. Tenant's Work shall be performed in a first-class, workmanlike manner and shall be in good and usable condition at the date of completion thereof.
4. In any contract or undertaking which Tenant may make with a contractor for work in the leased Premises, provision shall be made for the dismissal from the job of a worker whose work is, in Landlord or Landlord's representative's reasonable judgment, unskilled or otherwise objectionable, and any such worker shall be discharged and Tenant shall exonerate, indemnify and hold Landlord, its agents and employees harmless from any loss, cost, damage or liability incurred by reason of compliance with any such demand.
5. Tenant's Work shall be subject to the inspection and approval of Landlord and Landlord's architect. Landlord shall have the right to stop Tenant's Work whenever necessary to obtain compliance with applicable building and safety codes or the approved Working Drawings and Specifications. Any of Tenant's Work which does not comply with Tenant's approved Working Drawings and Specifications shall be corrected within seven (7) days of notification to Tenant.
6. Tenant shall apply and pay for all required gas and electrical utility meters, as applicable. Tenant should contact the onsite operations director for utility information.
7. Landlord shall have the right to order Tenant or Tenant's contractors who willfully violate any of the within requirements to cease work, and to remove their equipment and employees from the Installation Site.
8. If required by law, Tenant shall cause Tenant's Contractor (Contractor) to obtain a Notice of Commencement form from Tenant and shall serve the Notice upon all subcontractors within ten (10) days of receipt. In addition, Tenant's Contractor shall post and maintain the Notice of Commencement posting at all times at the jobsite. Tenant shall cause Tenant's Contractor to obtain lien waivers from all subcontractors or suppliers who have a contract with Tenant's Contractor or provide services or supplies, or have provided Notices of Furnishing, and shall deliver such lien waivers and Tenant's Contractor's lien waivers to Tenant with each pay request.

F. Close-Out Requirements

Upon the completion of Tenant's construction and fixturing work within the Premises, Tenant shall submit to Landlord, as provided in this Exhibit the following:

1. Evidence of the satisfactory completion by Tenant of the work to be performed by Tenant under the Lease, in accordance with good workmanship and the approved Working Drawings and Specifications therefore;
2. Waivers of lien and sworn statements in such form as may be reasonably required by Landlord, from all contractors, subcontractors and other persons performing labor and/or supplying materials in connection with such work showing that all of said persons have been compensated in full;
3. One (1) set of as-built construction drawings; and
4. A copy of all required service contracts.

SCHEDULE 1.01(D)

PROCEDURE FOR ACCESS TO PREMISES

[TO BE INSERTED]

SUMMARY OF PPA PROVISIONS

- | | |
|------------------------------|---|
| 1. ENERGY SELLER | IW Solar, LLC a Delaware limited liability company (" <u>Seller</u> ") |
| 2. ENERGY SELLER INFORMATION | 330 SW 43 rd St
Suite K-225
Renton, WA 98057 |
| 3. ENERGY BUYER | City of Ione (" <u>Buyer</u> ") |
| 4. ENERGY BUYER INFO | 1 East Main Street
Ione, CA 95640
(209) 274-2412 |
| 5. PREMISES | 9832 Five Mile Dr.
Ione, CA 95640 |
| 6. SOLAR ENERGY SYSTEM | See <u>Exhibit B</u> |
| 7. COMMENCEMENT DATE | Commercial Operation Date as Certified by Seller. |
| 8. INITIAL TERM | 25 Years. |
| 9. EXTENSION TERM | Automatic Extension for three additional terms of five (5) years unless terminated by Buyer not less than 180 days prior to expiration of Initial Term, or for Event of Default. |
| 10. ENERGY PURCHASE | 100% of Energy Output during the Initial Term and Extension Term. |
| 11. ENERGY PAYMENT RATE | See <u>Exhibit D</u> |
| 12. BUYER PURCHASE OPTION | At each of the 10 th , 15 th and the last year of year of the Term or any Extension Term. |
| 13. RISK OF SYSTEM LOSS | Seller carries the risk of Solar Facility Loss. |
| 14. INSURANCE | Commercial general liability insurance with limits not less than \$2,000,000 for injury to or death of one or more persons in any one occurrence and \$1,000,000 for damage or destruction to property in any one occurrence. Worker's compensation and employer's liability insurance, including Stop Gap coverage, in |

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compliance with Applicable Laws with limits of not be less than \$1,000,000.

Insurance against any System Loss, including business interruption insurance, in an amount not less than the full System Loss Amount per Casualty Schedule with loss payable to Seller.

15. MAINTENANCE

Seller shall maintain (or cause to be maintained) the System at its sole cost and expense. Buyer shall grant access to System for Seller and its agents or maintenance contractors for maintenance and repairs at any time.

16. PURCHASE OPTION

Buyer has the right and option to purchase all of the Seller's right, title and interest in and to the System Assets and may be exercised by Buyer (i) during a period of 180 days before the 15th anniversary of the Commercial Operation Date, (ii) during a period of 180 days before the last day of the Initial Term or Extension Term, or (iii) if Buyer has given notice of termination then before the Early Termination Date. Closing of such buyout shall take place within 60 days of the setting of the Purchase Price.

Purchase Price shall be equal to the greater of (a) the Fair Market Value as mutually agreed by the Parties or as determined by an Independent Appraiser, and (b) the Buyout Price (120% of the remaining balance of any debt used to finance the System)

17. DISPUTE RESOLUTION

If a controversy arises, the parties have a 20 business day period to meet, confer, and negotiate in good faith to resolve the issue. During that 20 business day period either party can request utilization of a mediator and the parties shall share costs of the mediator.

In the event that the controversy cannot be settled during that 20 business day period, either party may submit the claim to an Arbitrator who shall have authority to make a final, binding, and non-appealable decision.

NO JURY TRIALS

18. O&M CONTRACT

That certain Operations and Maintenance Agreement between Seller and the Contractor with respect to the System, as more fully set forth in Section 6.3(a) and Exhibit C.

NOTE – THE INFORMATION ABOVE IS MEANT AS AN INFORMATION SUMMARY ONLY, AND IS NOT TO BE CONSIDERED PART OF THE PPA. IN THE EVENT OF ANY CONFLICT BETWEEN THIS SUMMARY OF PPA PROVISIONS AND THE BODY OF THE PPA, THE PROVISIONS CONTAINED IN THE BODY OF THE PPA SHALL PREVAIL.

Remainder of page intentionally blank.

SOLAR ENERGY POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT (this “PPA” or “Agreement”) is made and entered into as of this ____ day of November 2019 (the “Effective Date”), by and between IW Solar, LLC, a Delaware limited liability company (“Seller”) and the City of Ione, located in Amador County, California (“Buyer”). Seller and Buyer are sometimes hereinafter referred to individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS, concurrently herewith, Buyer and Seller are entering that certain Site Lease Agreement (the “Lease”) pursuant to which Seller agrees to lease a portion of Buyer’s premises located at 9832 Five Mile Dr. Ione, CA 95640 (the “Premises”) and more particularly described in Exhibit A attached hereto.

WHEREAS, Seller intends to install, finance, own (or control) and operate a solar energy generation facility (the “System”) as more particularly defined in Exhibit B hereto.

WHEREAS, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, all of the Energy Output generated by the System during the Term in accordance with the terms and conditions of this PPA.

NOW THEREFORE, for good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I DEFINED TERMS; RULES OF INTERPRETATION

1.1 Defined Terms. Capitalized terms used in this PPA shall have the meanings ascribed to them in the Schedule of Definitions and Rules of Interpretation attached hereto as Exhibit C and made an integral part of this PPA by this reference.

1.2 Rules of Interpretation. The rules of interpretation in the Schedule of Definitions and Rules of Interpretation shall apply to this PPA unless expressly provided otherwise.

ARTICLE II TERM

2.1 Term.

(a) The initial term of this PPA (the “Initial Term”) shall commence on the Effective Date and shall be in effect until 00:00 hours Pacific Time on the 25th anniversary of the Commercial Operation Date.

(b) The Term shall automatically extend for three (3) additional periods of five years (such extension, the “Extension Term”), with such Extension Term expiring at 00:00 hours Pacific Time at the end of such five (5) year periods, unless earlier terminated by (i) either Party pursuant

to Section 9.2, or (ii) by Buyer not less than one hundred eighty (180) days prior to the end of the Initial Term.

2.2 Conditions Precedent.

The respective rights and obligations of the Parties under this PPA are expressly conditioned upon the satisfaction in full (or written waiver) of all of the following conditions; provided, however, that each of the Parties shall use its commercially reasonable efforts to satisfy or cause to be satisfied each condition precedent applicable to such Party:

(a) Buyer and Seller shall have confirmed the appropriateness of each of the Premises as a viable site on which to construct and operate a System, including, but not limited to, completing site due diligence and necessary engineering.

(b) Seller and Buyer shall have entered into the Lease providing to Seller real property and access rights and interest that are sufficient for the installation, construction, operation, maintenance and use of the System as contemplated by this Agreement, and Seller shall have received from the landlord or grantor of such rights and interests title reports showing that each Premises is free and clear of liens, security interests, claims, and other encumbrances that might adversely affect the ability of Seller to perform its obligations or enjoy its rights as contemplated in this Agreement or the ability of Seller to install, finance, operate or maintain the System during the Term.

(c) Buyer shall have provided Seller (at no additional cost to Seller or Buyer) with access to the utilities and communications services/infrastructure on each Premises to be used by Seller for the start-up, maintenance, repair, replacement and operation of the System, including: (i) electricity, (ii) water, (iii) gas, (iv) telephone/communications lines, (v) an internet connection at each Premises as described in Section 5.5, and (vi) cellular signal availability, as further described in the Lease. Seller shall have the right to install on each Premises, upon Buyer's approval and at Seller's sole expense, equipment to enable wireless connection of the System to the internet.

(d) Buyer shall have entered into an interconnection agreement to the extent required by the local electric utility;

(e) Seller shall have entered into all applicable contracts required for the System to be placed in service;

(f) Seller shall have obtained all necessary permits, licenses and other approvals required by Applicable Law for entering into this Agreement; and

(g) Seller shall have obtained insurance or proof of insurance, pursuant to the terms of this Agreement.

If the conditions precedent above are not satisfied by December 31, 2020, either Party may terminate this Agreement upon written notice to the non-terminating Party without penalty and without triggering the default provisions of Article 9 or incurring any liability under this

Agreement whatsoever. Alternatively, in the event that such conditions precedent are not satisfied by such date, the Parties may mutually agree to amend this Agreement.

2.3 Notice of Commercial Operation.

Seller shall notify Buyer when the System is capable of Commercial Operation, and shall in such notice certify to Buyer the Commercial Operation Date.

2.4 Removal of System at End of Term.

Except as otherwise provided herein, Seller shall be entitled, within 180 days following the end of the Term, and at Seller's sole cost and expense, to remove the System from the Premises. Seller and its agents, consultants, and representatives shall have access at all reasonable times to the Premises and the System for purposes of such removal. The Seller is responsible to repair any and all damage caused by the removal of the System.

2.5 Survival.

Effective as of any termination of this PPA, the Parties will no longer be bound by the terms and conditions of this PPA, except (a) to the extent necessary to enforce any rights and obligations of the Parties, including payment obligations, arising under this PPA prior to termination of this PPA, (b) as provided in Section 14.1(b), and (c) that the obligations of the Parties under this PPA with respect to indemnification will survive the termination of this PPA and will continue (but only with respect to claims for indemnification based upon events or circumstances occurring or arising on or before the termination of this PPA) for a period of three (3) years following any termination of this PPA. Section 2.4 (Removal of System at End of Term) shall survive the termination of this PPA.

ARTICLE III

PURCHASE AND SALE; DELIVERY; GOVERNMENTAL CHARGES

3.1 Purchase and Sale of Energy.

Commencing on the Commercial Operation Date and continuing throughout the remainder of the Term, Seller shall make available to Buyer, and Buyer shall take delivery of, at the Delivery Point, all of the Energy produced by the System. Neither Party shall seek to change any of the rates or terms of this Agreement by making a filing or application with any local, state or federal agency with jurisdiction over such rates or terms or exercise any rights a Party may have, if any, to seek changes to such rates or terms during the Term of this Agreement.

3.2 Price for Energy Output.

Buyer shall pay Seller for the Energy Output, as metered at the Metering Device, at the applicable Energy Payment Rate as set forth on Exhibit D. The payment to be made by Buyer to Seller shall equal the Energy Output for the relevant period multiplied by the Energy Payment Rate for such period.

3.3 Test Energy.

Prior to the Commercial Operation Date, Seller shall make available to Buyer and Buyer shall take delivery of, at the Delivery Point, any Test Energy produced by the System. Buyer shall pay Seller for the Test Energy at a rate equal to 80 percent of the Energy Payment Rate that would otherwise be applicable on the Commercial Operation Date.

3.4 Title and Risk of Loss.

Subject to Seller's right to resell any excess electricity, title to and risk of loss of the Energy Output will pass from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver the Energy Output to Buyer at the Delivery Point free and clear of all liens, security interests, claims, and other encumbrances.

3.5 Governmental Charges.

(a) Sales Taxes. Buyer shall be responsible for and pay all Governmental Charges imposed directly on Buyer in connection with or relating to the delivery and sale of Energy Output or Environmental Attributes by Seller to Buyer, whether imposed before, upon or after the delivery of Energy Output to Buyer at the Delivery Point.

(b) Efforts to Minimize. Both Parties shall use reasonable efforts to administer this PPA and implement its provisions so as to minimize Governmental Charges. In the event any of the sales of Energy or Environmental Attributes hereunder are to be exempted from or not subject to one or more Governmental Charges, promptly upon Seller's request therefore, Buyer shall provide Seller with all necessary documentation to evidence such exemption or exclusion.

(c) Property Taxes. Buyer shall be responsible for paying (or reimbursing Seller for paying) any and all property taxes that may be at any time during the Term (or during the construction of the System) imposed or levied on or assessed against Seller as a result of the Lease or this Agreement, or otherwise in connection with the Premises (or any portion thereof), including any incremental property taxes that result from a reassessment or re-evaluation of the value of the Premises (or a portion thereof) as a result of the installation of the System. Seller shall forward to Buyer reasonably promptly after Seller's receipt thereof any and all statements or invoices for any such property taxes to enable Buyer to pay such taxes to the applicable taxing authority on or before the applicable due date. If Seller at any time pays any such property taxes, Seller shall provide to Buyer a copy of the relevant statement or invoice and reasonable evidence of payment, and Buyer shall, not later than ten days after receipt thereof, reimburse Seller in full for such payment. In furtherance of the foregoing, Buyer shall indemnify and hold harmless Seller from and against any and all Losses resulting from or arising out of Buyer's breach of its obligations under this Section 3.5(c). For avoidance of doubt, this Section 3.5(c) does not apply to personal property taxes that may be imposed on or levied against Seller (or any other owner of the System) solely with respect to the personal property constituting the System, and Seller (or any such other owner thereof) shall remain responsible for payment of such taxes, if any.

ARTICLE IV
ENVIRONMENTAL ATTRIBUTES

4.1 Title to Environmental Attributes.

Notwithstanding the purchase and sale of Energy pursuant to Section 3.1, All Environmental Attributes relating to the System or the Energy Output shall remain the property of Seller. Seller shall have all right, title, and interest in and to any and all Environmental Attributes that relate to the Energy Output during the Term, and Buyer shall have no right, title or interest in or to any such Environmental Attributes.

4.2 Reporting of Ownership of Environmental Attributes.

Buyer shall not report to any Person that any Environmental Attributes relating to the Energy Output belong to any Person other than Seller. Because the right to claim the use of renewable energy follows the Environmental Attributes, Buyer shall not make any public statement to the effect that it is using "renewable energy" and will coordinate its statements concerning the System with Seller so as to preserve the Environmental Attributes relating to the System and the Energy Output and Seller's title to those Environmental Attributes.

ARTICLE V CONSTRUCTION AND INSTALLATION OF THE SYSTEM

5.1 Installation.

Subject to Section 5.2, Seller will enter into the EPC Contract with the Contractor and shall cause the System to be designed, engineered, installed and constructed substantially in accordance with the terms of this Agreement and the Lease. Buyer shall have the right to review all construction plans. Seller shall procure all materials and equipment for the installation of the System and maintain the same at the Premises. Subject to the terms of the Lease and to the extent commercially practical, Seller shall perform the installation of the system in a manner that minimizes inconvenience to and interference with Buyer. Notwithstanding the foregoing, in the event that Seller determines in its sole discretion that it is unable to install or interconnect the System at the Premises, it shall be under no obligation to do so, and this Agreement shall terminate and be of no further force and effect upon written notice from Seller to Buyer to that effect.

5.2 Permits and Approvals.

Seller shall be responsible for and bear all costs associated with applying for and obtaining all permits, licenses and approvals required for the installation, operation, and maintenance of the System. Notwithstanding the foregoing, Buyer agrees to assist Seller (at no cost to Buyer) in obtaining all necessary permits, licenses and approvals in connection with the installation, operation and maintenance of the System, including but not limited to the submission of applications for interconnection of the System with the local electric utility and applications for the resale of excess power to the local utility. Buyer shall not make any material changes to its electrical equipment at the Premises after the date on which any applicable utility interconnection application is submitted unless any such changes, individually or in the aggregate, would not adversely affect the approval by such utility of such interconnection. Should the local electric utility or the local inspector fail to approve the interconnection of the System with respect to the Premises or require equipment in addition to the equipment set forth in Exhibit B in connection with the Premises, Seller may terminate this Agreement immediately subsequent to notification from the local utility. The Parties shall not be obligated to proceed with the installation of the System if the applicable utility or inspector approvals are conditioned upon material upgrades to

the existing electrical infrastructure and neither Party elects to provide for such upgrades. If the local electric utility or local inspector notifies Seller or Buyer after a substantial portion of the System has been installed that additional interconnection facilities or upgrades to existing facilities would be required, Seller and Buyer shall cooperate in good faith to determine a reasonable allocation of the incremental related costs, including the method for Buyer's payment of the same, which may be by means of one or more lump sum payments or an adjustment of the Energy Payment Rate.

5.3 Energy Delivery.

The Commercial Operation Date shall be the date that Seller has given written notice to Buyer that the deliveries of Energy have commenced, provided that Buyer is under no obligation to accept energy delivered to the Premises unless and until the following have occurred:

- (a) Seller shall have obtained a certificate of final completion for the installation of the System;
- (b) Seller shall have obtained satisfactory evidence of insurance coverage for the System;
- (c) Seller shall have obtained receipt of third party cost certification for the installation of the System;
- (d) Seller shall have certified to Buyer that the System is complete and available for commercial operation; and
- (e) all permits and licenses required to be obtained under Applicable Law in connection with the operation of the System shall have been obtained and be in full force and effect.

Notwithstanding anything to contrary, Seller shall not have any liability to Buyer for delays to the Commercial Operation Date.

5.4 Buyer Cooperation and Responsibilities.

Buyer will cooperate with Seller and any third parties with whom Seller contracts by providing access to the Premises during working hours without unreasonable restrictions. Buyer shall cooperate with Seller in obtaining and maintaining all permits and licenses required for Commercial Operations as further described in Section 5.2.

5.5 Buyer to Provide Data Connection.

Buyer shall provide, at Buyers expense, an Internet connection or phone line (specifications to be agreed upon) at the Premises to allow Seller to continuously and remotely monitor the System's performance.

ARTICLE VI OWNERSHIP; MAINTENANCE OF SYSTEM; COVENANTS

6.1 Ownership of System by Seller.

Seller (or Seller's assignees with respect to the System) shall own the System, and shall be entitled to own, claim and retain any and all federal, state, or local tax benefits associated with the ownership of the System, including any federal income tax credits or grants, as well as any and all state or local incentives for the installation of solar energy facilities or the production of electricity from renewable energy sources. Notwithstanding the System's presence on the Premises, Buyer shall not directly or indirectly cause, create, incur, assume or suffer to exist any Encumbrance on or with respect to the System or any interest therein. If Buyer breaches its obligations under this Section 6.1, and without limitation of any of Seller's rights at law or equity, it shall immediately notify Seller in writing and shall promptly cause such Encumbrance to be discharged and released of record without cost to Seller.

6.2 Lease of Premises.

Pursuant to the terms and conditions of the Lease being entered into concurrently herewith, the Parties acknowledge and agree that Seller is leasing the portion of Buyer's Premises upon which the Systems is located.

6.3 Maintenance of System by Seller; Production Guarantee from O&M Provider; Access.

(a) Maintenance and O&M Provider. Seller shall maintain, or cause to be maintained, the System in good condition and repair in accordance with applicable contractor, subcontractor and vendor warranties and guarantees and manufacturer's instructions and specifications, all Applicable Laws and applicable standards, and the applicable requirements of the insurance policies maintained by Buyer (copies of which to be provided to Seller) with respect to the System, and the terms of this PPA. Seller shall operate and maintain the System consistent with any applicable requirements of the roof warranty covering the Premises and shall at its sole expense use commercially reasonable efforts to remove snow accumulation on the solar arrays. Seller further agrees to enter into the O&M Contract with Contractor and that any replacement operations and maintenance ("O&M") provider shall be of national reputation, be experienced as a solar energy O&M services contractor and shall provide a production guarantee.

(b) Seller Access. Seller and its agents, consultants, and representatives shall have access at all reasonable times (including under emergency conditions) to the Premises and the System, all System operations, and any documents, materials and records and accounts relating thereto for purposes of inspection and maintenance of the System. During any inspection or maintenance of the System, Seller, and its agents, consultants and representatives shall comply with Buyer's reasonable safety and security procedures, and Seller and its agents, consultants and representatives shall conduct such inspection and maintenance in such a manner as to cause minimum interference with Buyer's activities and the activities of Buyer's tenants.

6.4 Shading; Load Configuration.

(a) Shading. Buyer shall not alter, and shall not cause or permit any interference with (including any activities causing any increase in levels of dust or accumulations of dust), the System's insulation and access to sunlight as such access exists as of the Effective Date. At all times during the Term, Buyer shall ensure that Shading of the System's solar arrays does not

exceed the Shading as it exists on the Effective Date. Buyer represents to Seller that there are no circumstances known to Buyer and no commitments to third parties that may damage, impair, or otherwise adversely affect the System Assets or their function by blocking sunlight to, or reducing the insolation at, the System.

(b) Load Configuration. Buyer acknowledges that materially altering the existing load configuration to the System's meter could adversely affect the System or its function; Buyer covenants that it shall not materially alter such load configuration to the Metering Devices. Buyer covenants to maintain signage on the Metering Devices at all times during the Term, requesting that Seller be contacted before Buyer performs any change to the load configuration.

6.5 Substitution of Premises; Temporary Disruption.

(a) Movement of Generating Facilities; Substitute Sites. If Buyer (i) ceases to conduct operations at the Premises, (ii) vacates the Premises, (iii) transfers title to the Premises, or (iv) otherwise desires to remove all or a portion of the System from the Premises, then Buyer shall provide substitute premises (the "Substitute Premises") for installation, operation and maintenance of the System. Further, if a Force Majeure event occurs at any time during the Term, then at Seller's option, Buyer shall provide a Substitute Site in accordance with the provisions hereof in order to prevent recapture or other prejudice to any tax credits, rebates or other incentives intended to be received by Seller hereunder. Notwithstanding this Section 6.5(a), substitute premises proposed by Buyer shall not qualify as a Substitute Site unless: (i) the new location is within the same service territory of the applicable utility; (ii) the relocation of the System to the new location is reasonably estimated by Seller to take less than 90 calendar days; and (iii) the new location is reasonably acceptable to Seller. Buyer shall provide at least 60 days' written notice to Seller prior to the date on which it desires to effect such substitution.

(b) Removal and Reinstallation Costs. Buyer shall be responsible for all Removal Costs and associated costs of reinstallation of such System to operate as before; provided, however, that Buyer shall not be responsible for such costs in the event the System is relocated to a Substitute Site due to a Force Majeure event. Additionally, Buyer shall pay to Seller, in addition to other amounts set forth in this Section 6.5(b), a monthly payment (prorated as needed) equal to the sum of (i) the average monthly power purchase invoiced in accordance with Section 3.2 for the preceding 12 months, or however long such System has been in Commercial Operation if less than 12 months, and (ii) the rebates from the utility that would have been received by Seller based on such average monthly power purchase. Buyer shall pay such monthly payments (prorated as needed) for the period of time during which such System is not in Commercial Operation due to the movement or replacement. If the Substitute Site has inferior insolation as compared to the Site being abandoned or replaced, Seller shall have the right to make an upward adjustment to the kWh Rates for such Substitute Site so that Buyer's payments to Seller are the same as if the relocated System were located at the Premises being abandoned or replaced. Seller shall utilize commercially reasonable efforts in expeditiously moving or replacing the System to the Substitute Site.

(c) Temporary Removal of Generating Facilities Requested by Buyer. If temporary removal of a System is required due to work at the Premises undertaken by Buyer unrelated to the System, Buyer is responsible for all Removal Costs and associated costs of reinstallation and must

proceed diligently as outlined in the Site Lease between the Parties. Upon completion of the work at such Premises undertaken by the Buyer, Buyer shall promptly notify Seller that such work has been completed. Upon receiving such notice, Seller shall utilize commercially reasonable efforts to restore expeditiously the System at the Premises to Commercial Operation. In the event that Seller fails to utilize commercially reasonable efforts to restore expeditiously the System, Buyer shall not be liable for any payments to Seller due to the suspension of Commercial Operation of such System. During any period while a System is off-line in connection with a temporary removal under this Section 6.5(c), Buyer shall pay Seller a monthly payment (prorated as needed) equal to the sum of (i) the average monthly power purchase invoiced in accordance with Section 3.2 for the preceding 12 months, or however long such System has been in Commercial Operation if less than 12 months, and (ii) the rebates from the utility that would have been received by Seller based on such average monthly power purchase. Buyer shall pay such monthly payments (prorated as needed) for the period of time during which such System is not in Commercial Operation due to the temporary removal. Buyer shall notify Seller at least 30 days in advance of any activity that may render any System inoperable.

ARTICLE VII METERING DEVICE AND METERING

7.1 Metering Equipment.

A Metering Device shall be installed, and the Seller shall provide, install, own, operate and maintain the Metering Device.

7.2 Measurements.

Readings of the Metering Device shall be conclusive as to the amount of Energy Output; provided that if the Metering Device is out of service, is discovered to be inaccurate pursuant to Section 7.3, or registers inaccurately, measurement of Energy Output shall be determined in the following sequence: (a) by estimating by reference to quantities measured during periods of similar conditions when Metering Device were registering accurately; or (b) if no reliable information exists as to the period of time during which such Metering Device was registering inaccurately, it shall be assumed for correction purposes hereunder that the period of such inaccuracy for the purposes of the correction under Section 7.3 was equal to (i) if the period of inaccuracy can be determined, the actual period during which inaccurate measurements were made; or (ii) if the period of inaccuracy cannot be determined, one-half of the period from the date of the last previous test of such Metering Device through the date of the adjustments, provided, however, that, in the case of clause (ii), the period covered by the correction under this Section 7.3 shall not exceed six months.

7.3 Testing and Correction.

(a) Buyer's Right to Conduct Tests. Each Party and its consultants and representatives shall have the right to witness any Metering Device test to verify the accuracy of the measurements and recordings of the Metering Device. Seller shall provide at least twenty (20) calendar days' prior written notice to Buyer of the date upon which any such test is to occur. Seller shall prepare a written report setting forth the results of each such test, and shall, at the request of Buyer, provide Buyer with copies of such written report not later than thirty (30) calendar days after completion

of such test. Seller shall bear the cost of the annual testing of the Metering Device and the preparation of the Metering Device test reports.

(b) Standard of Metering Device Accuracy; Resolution of Disputes as to Accuracy. The following steps shall be taken to resolve any disputes regarding the accuracy of the Metering Device:

(i) If either Party disputes the accuracy or condition of the Metering Device, such Party shall so advise the other Party in writing.

(ii) Seller shall, within fifteen (15) calendar days after receiving such notice from Buyer or issuing such notice to Buyer, advise Buyer in writing as to Seller's position concerning the accuracy of such Metering Device and Seller's reasons for taking such position.

(iii) If the Parties are unable to resolve the dispute through reasonable negotiations, then either Party may request a test of the Metering Device.

(iv) If the Metering Device is found to be inaccurate by not more than two percent (2%), any previous recordings of the Metering Device shall be deemed accurate, and the Party disputing the accuracy or condition of the Metering Device under Section 7.3(b)(i) shall bear the cost of inspection and testing of the Metering Device.

(v) If the Metering Device is found to be inaccurate by more than two percent (2%) or if such Metering Device is for any reason out of service or fails to register, then (a) Seller shall promptly cause any Metering Device found to be inaccurate to be adjusted to correct, to the extent practicable, such inaccuracy, and (b) the Parties shall estimate the correct amounts of Energy delivered during the periods affected by such inaccuracy, service outage or failure to register as provided in Section 7.2. If as a result of such adjustment the quantity of Energy Output for any period is decreased (such quantity, the "Energy Deficiency Quantity"), Seller shall reimburse Buyer for the amount paid by Buyer in consideration for the Energy Deficiency Quantity, and shall bear the cost of inspection and testing of the Metering Device. If as a result of such adjustment the quantity of Energy Output for any period is increased (such quantity, the "Energy Surplus Quantity"), Buyer shall pay for the Energy Surplus Quantity at the Energy Payment Rate applicable during the applicable Contract Year, and shall bear the cost of inspection and testing of the Metering Device.

ARTICLE VIII

LOSS, DAMAGE OR DESTRUCTION OF SYSTEM; INSURANCE; FORCE MAJEURE

8.1 System Loss.

(a) Seller's Risk. Subject to Buyer's obligation to indemnify Seller set forth in Section 12.1, Seller shall bear the risk of any System Loss.

(b) Partial Loss. In the event of any System Loss that, in the reasonable judgment of Seller, results in less than total damage, destruction or loss of the System, this PPA will remain in full force and effect and Seller has the option, at Seller's absolute and sole discretion and sole cost

and expense, to repair or replace the System as quickly as practicable. Seller shall be entitled to all proceeds of insurance with respect to the System.

(c) Total Damage. In the event of any System Loss that, in the reasonable judgment of Seller, results in total damage, destruction or loss of the System, Seller shall, within twenty (20) Business Days following the occurrence of such System Loss, notify Buyer whether Seller is willing, notwithstanding such System Loss, to repair or replace the System. In the event that Seller notifies Buyer that Seller is not willing to repair or replace the System, this PPA will terminate automatically effective upon the delivery of such notice, and Seller shall be entitled to all proceeds of insurance with respect to the System, provided, however, that proceeds paid on account of damage to the Premises shall be paid to Buyer.

8.2 Insurance.

(a) General Conditions. Prior to the commencement of work on the construction and installation of the System, each Party shall secure and thereafter maintain the insurance described in this Section 8.2 covering each Party's operations and activities on the Premises and goods or services provided pursuant to this Agreement. Each Party shall keep such required insurance coverage in force at all times during the Term, or any extension, during any warranty period, and for 1 year after termination of the Agreement. The required insurance must be underwritten by an insurer licensed to do business in the State of California and rated by A.M. Best Company as "A" VIII or better. Each policy must contain a valid provision or endorsement substantially to the effect of the following: "Should any of the above-described policies be canceled or should any coverage be reduced before the expiration date thereof, the issuing company shall endeavor to send written notice to Buyer. Written notice must be sent 30 days before cancellation or reduction unless due to non-payment of premiums for which notice must be sent 10 days prior." If any policy is in excess of a deductible or self-insured retention, the insured Party must notify the other Party of this. The insured Party is responsible for the payment of any deductible or self-insured retention. Each Party shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

(b) Proof of Insurance. Each Party shall provide a copy of this Agreement to its insurance agent or broker and provide a certificate of insurance from the insurer for each coverage required by this Section 8.2, which certificate shall be evidence of the insurance coverage required by this Section 8.2.

(c) Additional Insured. Each Party's insurers shall name the other Party as an additional insured with respect to the general liability and excess/umbrella liability insurance required by this Section 8.2.

(d) Waiver of Subrogation. For all coverages, the Party's insurer shall waive subrogation rights against the other Party.

(e) Property Insurance. Buyer shall maintain all risk physical damage insurance on the Premises including the System in an amount equal to the full replacement value thereof and naming Seller "and/or its assigns" as the loss payee.

(f) General Liability. Each Party shall maintain general liability coverage with limits of \$1,000,000 for each occurrence claim, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations for each occurrence, and \$2,000,000 policy aggregate.

(g) Excess/Umbrella Liability. Each Party shall maintain excess or umbrella coverage with limits of \$4,000,000.

(h) Additional Provisions.

(1) For general liability and excess/umbrella liability, the policies must provide the following:

(A) If any aggregate limit is reduced by 25% or more by paid or reserved claims, the affected insured Party shall notify the other Party within 10 days and reinstate the aggregates required;

(B) Unlimited defense costs in excess of policy limits;

(C) Contractual liability covering the indemnification provisions of the Agreement;

(D) A severability of interests provision;

(E) Waiver of exclusion for lawsuits by one insured against another;

(F) A provision that coverage is primary; and

(G) A provision that coverage is non-contributory with other coverage or self-insurance provided by the insured Party.

(2) For general liability and excess/umbrella liability, if the policy is a claims-made policy, then the retroactive date must be on or before the date of this Agreement.

The provisions of this PPA shall not be construed so as to relieve any insurer of its obligation to pay any insurance proceeds in accordance with the terms and conditions of valid and collectible insurance policies. The liability of the Parties shall not be limited by insurance.

8.3 Performance Excused by Force Majeure.

To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this PPA and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable (and in any event within five (5) Business Days after the Force Majeure first prevents performance by the Claiming Party), then the Claiming Party will be excused from the performance of its obligations under this PPA (other than the obligation to make payments then due or becoming due with respect to performance

prior to the Force Majeure, and except as otherwise provided in Section 8.1); provided, however, Buyer shall not be excused from its performance obligations if the Force Majeure event consists of Buyer relocating, terminating its operations at the Premises or otherwise winding down its operations and facilities at the Premises (other than as a result of acts of God, war or natural disaster), any such event shall require Buyer to exercise its right of termination and pay the applicable termination value as provided in Section 9.4. The Party affected by Force Majeure will use commercially reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations; provided, however, that neither Party is required to settle any strikes, lockouts or similar disputes except on terms acceptable to such Party, in its sole discretion. Except as otherwise provided in Section 8.1, the non-Claiming Party will not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

ARTICLE IX EVENTS OF DEFAULT; REMEDIES

9.1 Events of Default.

An "Event of Default" means, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

- (a) the failure to make, when due, any payment required under this PPA if such failure is not remedied within ten (10) Business Days after written notice;
- (b) the failure to perform any material covenant or obligation set forth in this PPA (except to the extent constituting a separate Event of Default), if such failure is not remedied within sixty (60) days after receipt of written notice;
- (c) such Party becomes Bankrupt;
- (d) such Party fails to provide or maintain in full force and effect any required insurance, if such failure is not remedied within ten (10) Business Days after receipt of written notice from the Non-Defaulting Party to the Defaulting Party;
- (e) Landlord (as defined in the Lease) sells, assigns, mortgages or otherwise transfers its interests in all or a portion of the Premises without prior written notice to Seller and the buyer, assignee, mortgagee or other transferee thereof does not agree pursuant to an instrument in writing to be bound by the terms of the Lease (and the Event of Default under this Section 9.1(e) shall be an Event of Default with respect to Buyer for the purposes of this Agreement); or,
- (f) default by Landlord (as defined in the Lease) under the Lease, which could reasonably be expected to interfere with the operation, maintenance or use of the System for more than thirty (30) days (and the Event of Default under this Section 9.1(e) shall be an Event of Default with respect to Buyer for the purposes of this Agreement).

9.2 Remedies for Event of Default.

If at any time an Event of Default with respect to a Defaulting Party has occurred and is continuing, the other Party (the "Non-Defaulting Party") will, without (except as otherwise provided in Section 9.3) limiting the rights or remedies available to the Non-Defaulting Party under this PPA or Applicable Law, have the right:

(a) by notice to the Defaulting Party, to designate a date, not earlier than the date such notice is effective and not later than thirty (30) Business Days after the date such notice is effective, as an early termination date ("Early Termination Date") in respect of this PPA;

(b) to withhold any payments due to the Defaulting Party under this PPA; and

(c) to suspend performance due to the Defaulting Party under this PPA. In the event that the Non-Defaulting Party designates an Early Termination Date, this PPA will terminate as of the Early Termination Date.

9.3 Buyer Rights Upon Termination for Default.

In the event that Buyer is the Non-Defaulting Party, and that Buyer elects to terminate this PPA as provided in Section 9.2, Buyer will be entitled, in its sole and absolute discretion, either to:

(a) require that Seller remove the System (or to remove and have stored the System at Seller's sole cost and expense if Seller fails to remove the System within sixty (60) calendar days after the Early Termination Date), or

(b) exercise the Purchase Option provided in Section 13.1. Buyer's election of either remedy provided in this Section 9.3 does not prevent Buyer from seeking any damages and remedies at law or in equity provided by the laws of the State of California.

9.4 Seller Rights Upon Termination for Default; Liquidated Damages.

(a) Liquidated Damages. If Seller is the Non Defaulting Party, and Seller elects to terminate this PPA as provided in Section 9.2, Seller will be entitled to all damages and remedies, at law or equity provided by the laws of the State of California; provided, that in the event of any termination by Seller pursuant to this Section 9.4, Buyer shall pay to Seller the greater of (a) the Termination Value of the appropriate year as set forth in Exhibit E plus Removal Costs, as applicable, and (b) the difference between (1) the contracted amount anticipated to be paid by Buyer pursuant to Section 3.2 hereunder over the Initial Term (but only inclusive of Environmental Attributes if and to the extent the Buyer or its affiliates interfere with Seller's energy production thereby depriving Seller of the benefit of such Environmental Attributes) and (2) the actual revenues received by Seller from wholesale or retail sale of the System's energy output using commercially reasonable efforts. Buyer acknowledges and agrees that (A) the production of energy output by the System during the Initial Term and the purchase by Buyer of all such energy output during the Initial Term are essential to the success of Seller, in particular to prevent recapture or other prejudice to any Environmental Attributes intended to be received by Seller

hereunder, and that (B) the amounts of the Termination Values for the Initial Term are therefore appropriate and justified.

(b) Additional Remedies of Seller. Buyer further acknowledges and agrees that if Buyer during the Initial Term (i) terminates, gives notice to Seller that it is terminating, threatens to terminate, or takes any other actions in support of terminating or attempting to terminate, this Agreement, (ii) causes any portion of the System to shut down and cease production and delivery of energy output due to Buyer's alteration of the load configuration on the Metering Device for any portion of the System without the prior written consent of Seller or as permitted by this Agreement, (iii) removes any portion of the System or any System Assets from the Premises without the prior written consent of Seller or (iv) refuses to take delivery of any of the energy output produced by the System, Seller shall be entitled to reimbursement of and to recover from Buyer all reasonable attorney's fees and costs, whether or not suit is filed in enforcing or attempting to enforce this Agreement.

(c) All Remedies Cumulative. All remedies provided for herein shall be cumulative and not exclusive, and shall be in addition to any other remedies available to Seller for any breach of this Agreement.

9.5 Closeout Setoffs.

Either Party will be entitled, at its option and in its discretion, to set off, against any amounts due and owing from the other Party under this PPA or the Lease, any amounts due and owing from the other Party under this PPA or the Lease.

9.6 Remedies Cumulative.

Except as provided in Sections 9.3 and 9.4, the rights and remedies contained in this Article 9 are cumulative with the other rights and remedies available under this PPA or at law or in equity.

9.7 Unpaid Obligations.

The Non-Defaulting Party shall be under no obligation to prioritize the order with respect to which it exercises anyone or more rights and remedies available under this PPA. Notwithstanding anything to the contrary herein, the Defaulting Party shall in all events remain liable to the Non-Defaulting Party for any amount payable by the Defaulting Party in respect of any of its obligations remaining outstanding after any such exercise of rights or remedies.

ARTICLE X INVOICING AND PAYMENT

10.1 Invoicing and Payment.

All invoices under this PPA will be due and payable not later than thirty (30) calendar days after receipt of the applicable invoice (or on the next Business Day). Each Party will make payment by mutually agreeable methods, to the account designated by the other Party.

Any amounts not paid by the applicable due date will accrue interest at the Late Payment Interest Rate until paid in full.

10.2 Disputed Amounts.

A Party may in good faith dispute the correctness of any invoice (or any adjustment to any invoice) under this PPA at any time within six (6) months following the delivery of the invoice (or invoice adjustment). In the event that either Party disputes any invoice or invoice adjustment, such Party will nonetheless be required to pay the full amount of the applicable invoice or invoice adjustment (except any portions thereof that are reasonably believed to be inaccurate or are not reasonably supported by documentation, payment of which amounts may be withheld subject to adjustment as hereinafter set forth) on the applicable payment due date, except as expressly provided otherwise elsewhere in this PPA, and to give notice of the objection to the other Party. Any required payment will be made within five (5) Business Days after resolution of the applicable dispute, together with interest accrued at the Late Payment Interest Rate from the due date to the date paid.

10.3 Records and Audits.

Each Party will keep, for a period not less than (3) years after the expiration or termination of any Transaction, records sufficient to permit verification of the accuracy of billing statements, invoices, charges, computations and payments for such Transaction. During such period each Party may, at its sole cost and expense, and upon reasonable notice to the other Party, examine the other Party's records pertaining to Transactions during such other Party's normal business hours.

ARTICLE XI REPRESENTATIONS AND WARRANTIES; BUYER ACKNOWLEDGEMENT

11.1 Representations and Warranties.

Each Party represents and warrants to the other Party that:

(a) the execution, delivery and performance of this PPA are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

(b) subject to all conditions precedent described herein, this PPA and each other document executed and delivered in accordance with this PPA constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the applicable court;

(c) it is acting for its own account, and has made its own independent decision to enter into this PPA, and is not relying upon the advice or recommendations of the other Party in so doing;

(d) it is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this PPA;

(e) it understands that the other Party is not acting as a fiduciary for or an adviser to it or its Affiliates; and

(f) that the various charges and fees contained in this PPA are the result of arms' length transactions, or, to the extent that such charges and fees are not the result of arms' length transactions, represent market rate charges and fees and that the cost to the Seller is equivalent to fair market value.

11.2 Additional Buyer Representations.

Buyer represents and warrants that:

(a) it or its permitted successors or assigns will continue to own or lease the Premises through the Term plus an additional period sufficient to enable Seller to remove the System in accordance with Section 2.4;

(b) none of the electricity to be generated by the System will be used to generate energy for the purpose of heating a swimming pool.

11.3 Additional Seller Representations.

Seller represents and warrants that it is not an electric public utility or electrical corporation under California law.

11.4 Buyer Acknowledgement Regarding Inapplicability of Bankruptcy Code Section 366.

Buyer acknowledges and agrees that, for purposes of this PPA, Seller is not a "utility" as such term is used in Section 366 of the Bankruptcy Code, and Buyer agrees to waive and not to assert the applicability of the provisions of Section 366 in any bankruptcy proceeding wherein Buyer is a debtor.

ARTICLE XII INDEMNITY; LIMITATIONS

12.1 Indemnity.

(a) Indemnification by Seller. Seller hereby agrees to indemnify and hold harmless Buyer and its officers, directors, managers, principals, affiliates, agents and representatives from and against any and all Losses resulting from or arising out of the acts or omissions or negligence of Seller or its affiliates, agents, officers, employees, contractors or representatives to the extent causing damage to the Premises, any other property of Buyer or persons at the Premises.

(b) Indemnification by Buyer. Buyer hereby agrees to indemnify and hold harmless Seller and its officers, directors, managers, principals, affiliates, agents and representatives from

and against any and all Losses resulting from or arising out of (i) any misrepresentation, breach of warranty or breach or nonfulfillment of any covenant or agreement of Buyer contained in this Agreement, the Lease or any certificate, schedule, exhibit, agreement or instrument delivered to Seller by or on behalf of Buyer pursuant to the provisions of this Agreement or the Lease, or the matters that are the subject of any such misrepresentation, breach, or nonfulfillment, or (ii) the acts or omissions of Buyer or its affiliates, agents, officers, employees, contractors or representatives in connection with Buyer's performance of its obligations under this Agreement or the Lease or the operation of the System.

(c) Indemnification Procedures.

(1) Promptly after receipt by an indemnified party under Section 12.1(a) or 12.1(b) of notice of the commencement of any Proceeding against it, such indemnified party will, if a claim is to be made against an indemnifying Party under such Section, give notice to the indemnifying Party of the commencement of such claim, but the failure to notify the indemnifying Party will not relieve the indemnifying Party of any liability that it may have to any indemnified party, except to the extent that the indemnifying Party demonstrates that the defense of such action is prejudiced by the indemnifying Party's failure to give such notice.

(2) If any Proceeding referred to in Section 12.1(c)(1) is brought against an indemnified party and it gives notice to the indemnifying Party of the commencement of such Proceeding, the indemnifying Party will be entitled to participate in such Proceeding and, to the extent that it wishes (unless the indemnifying Party is also a party to such Proceeding and the indemnified party determines in good faith that joint representation would be inappropriate) to assume the defense of such Proceeding with counsel satisfactory to the indemnified party and, after notice from the indemnifying Party to the indemnified party of its election to assume the defense of such Proceeding, the indemnifying Party will not, as long as it diligently conducts such defense, be liable to the indemnified party under this Section 12 for any fees of other counsel or any other expenses with respect to the defense of such Proceeding, in each case subsequently incurred by the indemnified party in connection with the defense of such Proceeding, other than reasonable costs of investigation. If the indemnifying Party assumes the defense of a Proceeding, (A) no compromise or settlement of such claims may be effected by the indemnifying Party without the indemnified party's consent unless (i) there is no finding or admission of any violation of Applicable Laws or any violation of the rights of any person and no effect on any other claims that may be made against the indemnified party, and (ii) sole relief provided is monetary damages that are paid in full by the indemnifying Party; and (B) the indemnified party will have no liability with respect to any compromise or settlement of such claims effected without its consent. If notice is given to an indemnifying Party of the commencement of any Proceeding and the indemnifying Party does not, within 20 days after the indemnified party's notice is given, give notice to the indemnified party of its election to assume the defense of such Proceeding, the indemnifying Party will be bound by any determination made in such Proceeding or any compromise or settlement effected by the indemnified party. In the event it is ultimately determined that the indemnified party was not entitled to indemnification under this Section 12, or under any other provision of this Agreement, and the indemnifying Party has nonetheless assumed the defense of such asserted liability, then the indemnified party shall, at such time as it is ultimately determined that the indemnified party was not entitled to indemnification, reimburse the indemnifying Party for the

costs and expenses, including reasonable attorneys' and expert witness' fees, incurred by the indemnifying Party in connection with such assumption.

(3) Notwithstanding Section 12.1(c)(2), if an indemnified party determines in good faith that there is a reasonable probability that a Proceeding may adversely affect it or its Affiliates other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the indemnified party may, by notice to the indemnifying Party, assume the exclusive right to defend, compromise, or settle such Proceeding, but the indemnifying Party will not be bound by any determination of a Proceeding so defended or any compromise or settlement effected without its consent (which may not be unreasonably withheld).

(4) A claim for indemnification for any matter not involving a third-party claim may be asserted by notice to the Party from whom indemnification is sought.

(d) Exclusion. Any Party's indemnity obligation provided for in this Section 12 does not apply to Losses proximately caused solely by the negligence or malfeasance of the other Party or its affiliates, agents, officers, employees, contractors or representatives.

(e) Insurance. Insurance coverage requirements specified in the Agreement in no way lessen or limit the liability of the Parties under the terms of this foregoing provision. The Parties shall obtain, at their own expense, any additional insurance deemed necessary for their protection in the performance of the Agreement.

ARTICLE XIII SYSTEM PURCHASE AND SALE OPTIONS

13.1 Grant of Purchase Option.

For and in consideration of the payments made by Buyer under this PPA, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, Seller hereby grants Buyer the right and option to purchase all of Seller's right, title and interest in and to the System Assets on the terms set forth in this PPA (the "Purchase Option"). The Purchase Option shall be irrevocable by Seller and may be exercised by Buyer in accordance with this Article (i) during period of 180 days before the 15th anniversary of the Commercial Operation Date, (ii) during a period of 180 days before the last day of the Initial Term or any Extension Term, or (iii) if Buyer has given notice of termination under Section 9.2, then before the Early Termination Date contemplated by that notice (each, a "Purchase Option Term"). In the event that Buyer exercises the Purchase Option, the closing of such buyout by Buyer from Seller of the System shall be take place within 60 days of the setting of the Purchase Price.

13.2 Buyer Request for Appraisal of System Value.

Not later than the end of the applicable Purchase Option Term, Buyer shall have the right to provide a notice to Seller requiring a determination of the Purchase Price (as defined below) in accordance with Section 13.4.

13.3 Selection of Independent Appraiser.

Within twenty (20) Business Days after Seller's receipt of a notice provided under Section 13.2, Seller and Buyer shall mutually agree upon an Independent Appraiser. If Seller and Buyer do not agree upon the appointment of an Independent Appraiser within such twenty (20) Business Day period, then at the end of such twenty (20) Business Day period Seller and Buyer shall notify each other in writing of their respective designation of three proposed Independent Appraisers. Seller and Buyer shall each within five (5) Business Days of receipt of such notice strike two of the proposed Independent Appraisers designated by Seller and Buyer, respectively, and shall provide notice thereof to the other party. The remaining two proposed Independent Appraisers shall, within two (2) Business Days of each party's notice, select one of themselves to perform the valuation and provide notice thereof to Seller and Buyer, provided that if either Seller or Buyer still objects to the valuation being performed by such selected Independent Appraiser, then, within two (2) Business Days of the selection notice, such two proposed Independent Appraisers shall select a third Independent Appraiser (who may be one of the Independent Appraisers originally designated by the Parties or another Independent Appraiser) and such third Independent Appraiser shall perform the duties of the Independent Appraiser as set forth herein. Such selection shall be final and binding on Seller and Buyer. If no agreement is made as to the selection of an Independent Appraiser, either Party may apply for the judicial appointment of such Independent Appraiser.

13.4 Determination of Purchase Price

(a) Preliminary Determination. The Independent Appraiser shall, within twenty (20) Business Days of appointment, make a preliminary determination of the Purchase Price in accordance with Section 13.5 (the "Preliminary Determination").

(b) Final Determination. Upon making such Preliminary Determination, the Independent Appraiser shall provide such Preliminary Determination to Seller and Buyer, together with all supporting documentation that details the calculation of the Preliminary Determination. Seller and Buyer shall have the right to object to the Preliminary Determination within twenty (20) Business Days of receiving such Preliminary Determination. Within ten (10) Business Days after the expiration of such twenty (20) Business Day period, the Independent Appraiser shall issue the Independent Appraiser's final determination (the "Final Determination") to Seller and Buyer, which shall specifically address the objections received by the Independent Appraiser and whether such objections were taken into account in making the Final Determination. Except in the case of fraud or manifest error, the Final Determination of the Independent Appraiser shall be final and binding on the Parties.

13.5 Calculation of Purchase Price.

The purchase price (the "Purchase Price") for the System shall be equal to the greater of (a) the Fair Market Value as mutually agreed by the Parties upon Buyer's exercise of the Purchase Option or as determined by an Independent Appraiser in accordance with the procedure set forth in this Article and (b) the Buyout Price.

13.6 Costs and Expenses of Independent Appraiser.

Seller and Buyer shall each be responsible for payment of one half of the costs and expenses of the Independent Appraiser.

13.7 Exercise of Purchase Option

(a) Exercise Period and Exercise Notice. Buyer shall have twenty (20) Business Days from the date of the Final Determination, or, if Buyer and Seller have mutually agreed upon a Purchase Price, the date that the Parties agree upon a Purchase Price (such period, the "Exercise Period"), to exercise the Purchase Option, at the Purchase Price set forth in the Final Determination or as mutually agreed upon by the Parties. Buyer must exercise its Purchase Option during the Exercise Period by providing a notice (an "Exercise Notice") to Seller. Once Buyer delivers its Exercise Notice to Seller, such exercise shall be irrevocable.

(b) Buyer's Right to Inspect. Seller shall, upon at least three (3) Business Days' prior written notice from Buyer to Seller at any time during the Exercise Period, make the System Assets, including records relating to the operations, maintenance, and warranty repairs, available to Buyer for its inspection during normal business hours.

13.8 Terms of System Purchase.

On the Transfer Date (a) Seller shall surrender and transfer to Buyer all of Seller's right, title and interest in and to all System Assets and shall retain all liabilities arising from or related to the System Assets prior to the Transfer Date, (b) Buyer shall pay the Purchase Price, by certified check, bank draft or wire transfer and shall assume all liabilities arising from or related to the Solar System Assets from and after the Transfer Date, and (c) both Parties shall execute and deliver a bill of sale with respect to the System Assets providing for a conveyance of the System Assets free and clear of any liens, security interests or other encumbrances created by or through Seller.

13.9 Transfer Date.

The closing of any sale of the System (the "Transfer Date") pursuant to this Article will occur no later than sixty (60) calendar days following the date on which the Independent Appraiser issues the Final Determination. On the Transfer Date, Seller shall assign to Buyer any then-existing warranties, and, at Buyer's request, any equipment, maintenance, operations or supply contracts pertaining to the System or its operation. The closing of the sale will be conditioned upon the receipt of third party and governmental consents required to permit the transfer to Buyer (which each Party will use commercially reasonable efforts to obtain).

ARTICLE XIV CONFIDENTIALITY

14.1 Confidentiality.

(a) Limits on Disclosure of Confidential Information. Neither Party will use any Confidential Information for any purpose except such Party's performance under this PPA. Furthermore, to the maximum extent permitted by applicable law, neither Party will disclose any Confidential Information to any third party other than the Party's or the Party's Affiliates' officers,

employees, lenders, counsel, accountants or advisors (collectively, "Representatives"), who have a need to know such information and who have agreed to keep such terms confidential or are otherwise bound by confidentiality obligations at least as restrictive as those contained herein, provided, however, that a Party may disclose Confidential Information in order to comply with the requirements of any Applicable Law or regulation or any exchange, control area or independent system operator rule, tariff or agreement or in connection with any judicial or regulatory proceeding or request by a governmental authority, provided further, however, that each Party will use reasonable efforts to prevent or limit any such disclosure.

(b) Duration of Confidentiality Obligation. The obligations of the Parties under this Article will survive for a period of two (2) years from and after the termination of this Agreement.

ARTICLE XV DISPUTE RESOLUTION AND ARBITRATION

15.1 Notice of Dispute/Negotiated Resolution.

(a) Duty to Meet and Confer; Mediation. In the event that there is any controversy, claim or dispute between the Parties arising out of or related to this PPA, or the breach hereof, that has not been resolved by informal discussions and negotiations, either Party may, by written notice to the other, invoke the formal dispute resolution procedures set forth herein. The written notice invoking these procedures shall set forth in reasonable detail the nature, background and circumstances of the controversy, claim or dispute. During the twenty (20) Business Day period following said written notice, the Parties shall meet, confer and negotiate in good faith to resolve the dispute. Either Party may, during said twenty (20) Business Day period, request the utilization of the services of a professional mediator, and the other Party or Parties to this dispute shall cooperate with such request and share the reasonable costs of such mediator.

(b) Arbitration. In the event that any controversy, claim or dispute between the Parties hereto arising out of or related to this PPA, or the breach hereof, cannot be settled or resolved amicably by the Parties during the twenty (20) Business Day period of good faith negotiations provided for above, then either or any Party hereto may submit said controversy, claim or dispute for arbitration before a single neutral arbitrator in accordance with the provisions contained herein and in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("AAA Rules"); provided, however, that notwithstanding any provisions of such AAA Rules, the parties to the arbitration shall have the right to take depositions and obtain discovery regarding the subject matter of the arbitration, as provided by applicable law, as and to the extent that the arbitrator deems fair and reasonable. The arbitrator shall determine all questions of fact and law relating to any controversy, claim or dispute hereunder, including but not limited to whether or not any such controversy, claim or dispute is subject to the arbitration provisions contained herein. The arbitrator shall have no authority to award any relief, which could not be awarded by a court applying the laws of the State of California. The decision of the arbitrator shall be final, binding, and non-appealable except for fraud or lack of jurisdiction.

(c) Notice. Any Party desiring arbitration shall serve on the other Party or Parties and the San Francisco Office of the American Arbitration Association (or nearest American Arbitration Association ("AAA") office thereto), in accordance with the AAA Rules, its Notice of Intent to

Arbitrate ("Notice of Intent to Arbitrate"). The Notice of Intent to Arbitrate shall be served within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statutes of limitations.

(d) Single Neutral Arbitrator. A single, neutral arbitrator shall be selected by the Parties, who is generally familiar with the factual and legal issues that relate to the purchase and sale of electrical energy generated by solar energy facilities on the basis of power purchase agreements. In the event that the Parties are unable to agree on a neutral arbitrator, then one shall be selected in accordance with the AAA Rules. The arbitration proceedings provided hereunder are hereby declared to be self-executing, and it shall not be necessary to petition a court to compel arbitration.

(e) Joinder. If a controversy, claim or dispute arises between the Parties which is subject to the arbitration provisions hereunder, and there exists or later arises a controversy, claim or dispute between the Parties and any third party, which controversy, claim or dispute arises out of or relates to the same transaction or series of transactions, said third party controversy, claim or dispute shall be consolidated with the arbitration proceedings hereunder; provided, however, that any such third party must be a party to an agreement with any of the Parties which provides for arbitration of disputes thereunder in accordance with rules and procedures substantially the same in all material respects as provided for herein or, if not, must consent to arbitration as provided for hereunder.

(f) Location. All arbitration proceedings shall be held in Sacramento, California, unless otherwise required by the AAA.

(g) Entry of Judgment. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

15.2 Acknowledgment of Arbitration.

EACH PARTY UNDERSTANDS THAT THIS PPA CONTAINS AN AGREEMENT TO ARBITRATE WITH RESPECT TO ANY DISPUTE OR NEED OF INTERPRETATION PERTAINING TO THIS PPA. AFTER SIGNING THIS PPA, EACH PARTY UNDERSTANDS THAT IT WILL NOT BE ABLE TO BRING A LAWSUIT CONCERNING ANY DISPUTE THAT MAY ARISE AND THAT IS COVERED BY THE ARBITRATION PROVISION. INSTEAD, EACH PARTY AGREES TO SUBMIT ANY SUCH DISPUTE TO IMPARTIAL ARBITRATION AS SET FORTH IN THIS PPA.

ARTICLE XVI NOTICES

16.1 Notices.

All notices, requests, statements or payments ("Notices") will be made to the addresses and persons specified below. All Notices will be made in writing except where this PPA expressly provides that notice may be made orally. Notices required to be in writing will be delivered by hand delivery, overnight delivery, facsimile, or e-mail (so long as a copy of such e-

mail notice is provided immediately thereafter in accordance with the requirements of this Section by hand delivery, overnight delivery, or facsimile). Notice by facsimile will (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it will be deemed received on the next Business Day). Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. Notice by e-mail will be deemed to have been received when such e-mail is transmitted, so long as a copy of such e-mail notice is delivered immediately thereafter by hand delivery, overnight delivery, or facsimile. When Notice is permitted to be provided orally, notice by telephone will be permitted and will be deemed to have been received at the time the call is received. A Party may change its address by providing notice of the same in accordance with the provisions of this section.

Buyer: City of Ione

1 East Main Street
Ione, CA 95640

Seller: IW Solar, LLC

c/o EcoPower Development LLC
330 SW 43rd St., Suite K #225
Renton, WA 98057

ARTICLE XVII ASSIGNMENT; BINDING EFFECT

17.1 Assignment; Binding Effect.

Neither Party may, without the prior written consent of the other (which consent will not be unreasonably withheld or delayed), assign, pledge or transfer all or any part of, or any right or obligation under, this PPA, and any such assignment or transfer without such consent will be null and void. Notwithstanding the foregoing, (a) Seller may make an assignment of its rights and obligations under this Agreement to an Affiliate of Seller (provided that such assignment shall not release Seller from its obligations hereunder without the consent of Buyer); (b) changes in control (whether by merger, consolidation or sale of all or substantially all of Seller's equity interests, capital stock or assets) of Seller shall not be deemed an assignment of this PPA; and (c) Seller shall be entitled to assign its rights and interests in this PPA for collateral purposes in connection with any equity, lease or debt financing of Seller or Seller's Affiliates.

17.2 Cooperation with Financing.

Buyer acknowledges that Seller will be financing the development, acquisition, construction, commissioning, ownership, operation and/or use of the System and Buyer agrees that it shall cooperate with Seller and its financing parties in connection with such financing of the System, including (a) the furnishing of such information, (b) the giving of such certificates, and

(c) providing such opinions of counsel and other matters as Seller and its financing parties may reasonably request; provided that the foregoing undertaking shall not obligate Buyer to materially change any rights or benefits, or materially increase any burdens, liabilities or obligations of Buyer, under this PPA (except for providing notices and additional cure periods to the financing parties with respect to Events of Defaults with respect to Seller as a financing party may reasonably request).

17.3 Financing Party Default Rights. Notwithstanding any contrary term of this Agreement:

(a) Exercise of Rights and Remedies of Seller. Seller's financing provider, as collateral assignee, shall be entitled to exercise, in the place and stead of Seller, any and all rights and remedies of Seller under this Agreement in accordance with the terms of this Agreement. Such financing provider shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the System.

(b) Right to Cure. Seller's financing provider 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 Seller thereunder or cause to be cured any default of Seller thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires such financing provider to cure any default of Seller under this Agreement or (unless the Lender has succeeded to Seller's interests under this Agreement) to perform any act, duty or obligation of Seller under this Agreement, but Buyer hereby gives it the option to do so.

(c) Exercise of Remedies. Upon the exercise of remedies under its security interest in the System, including any sale thereof by Seller's financing provider, whether by judicial proceeding or under any power of sale contained therein, or any assignment from Seller to such financing provider (or any Qualified Assignee of such financing provider as defined below) in lieu thereof, such financing provider shall give notice to Buyer of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement.

(d) Rejection and New Agreement. Upon any rejection or other termination of this Agreement pursuant to any process undertaken with respect to Seller under the United States Bankruptcy Code, at the request of Seller's financing provider made within 90 days of such termination or rejection, Buyer shall enter into a new agreement with such financing provider or its Qualified Assignee having substantially the same terms and conditions as this Agreement.

(e) Qualified Assignee. For purposes of this Section 17.3, a "Qualified Assignee" must be a business organization with at least 2 years of experience in the operation, maintenance and management of commercial solar generating systems.

17.4 Right to Cure.

(a) Financing Party's Right to Cure. Buyer will not exercise any right to terminate this Agreement unless it shall have given Seller's financing provider(s) prior written notice of its intent to terminate this Agreement, as required by this Agreement, specifying the condition giving rise to such right, and Seller's financing provider shall not have caused to be cured the condition giving rise to the right of termination within 30 days after such notice or (if longer) the periods provided

for in this Agreement; provided that if such Seller default reasonably cannot be cured by Seller's financing provider(s) within such period and such financing provider 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 additional 30 days. The Parties' respective obligations will otherwise remain in effect during any cure period.

(b) Effect of Cure. If Seller's financing provider or its Qualified Assignee (including any transferee), pursuant to an exercise of remedies by such financing provider, shall acquire control of Seller's assets and shall, within the time periods described above, cure all defaults under this Agreement existing as of the date of such change in control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such person or entity shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

ARTICLE XVIII MISCELLANEOUS

18.1 Governing Law/Venue; No Immunity.

This PPA will be governed by and construed under the laws of the State of California without giving effect to principles of conflicts of laws. Venue for any litigation arising from this Agreement shall only be proper in a state or federal court located in Amador County, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court. To the extent that any Party (including any assignees of any Party's rights or obligations under this Agreement) may be entitled to claim for itself, or any of its assets, revenues or properties, immunity from service of process, suit, the jurisdiction of any court, attachment (whether in aid of execution or otherwise) or enforcement of a judgment (interlocutory or final) or any other legal process, and to the extent that in such jurisdiction there may be attributed to itself, or any of its assets, revenues or properties, such immunity (whether or not claimed), each Party hereby irrevocably and unconditionally waives such immunity.

18.2 Appropriations Covenant. Buyer agrees that, in any fiscal year during the Term, Buyer will prepare and submit to the appropriate Governmental Authority a request for an appropriation of a sufficient amount to fund all payments required to be made by Buyer hereunder in such fiscal year in the fiscal budget for such year. It is the present intention and expectation of Buyer and such Governmental Authority to appropriate such funds or cause such funds to be appropriated as contemplated hereunder, within the limits of available funds and revenues, but this declaration of intent shall not be binding upon such Governmental Authority in any future fiscal year, except to the extent of any previously appropriated funds. If Buyer does not submit a request for appropriation or receive an appropriation of an amount sufficient to fund all payments required be made by Buyer under this Agreement in such fiscal year, Buyer agrees that it shall not enter into any other agreement with any third party to provide the electricity that Seller has agreed to supply under this Agreement.

18.3 Entire Agreement; Amendments.

This PPA (including the exhibits, any written schedules, supplements or amendments) constitutes the entire agreement between the Parties, and shall supersede any prior

oral or written agreements between the Parties, relating to the subject matter hereof. Any amendment, modification or change to this PPA will be void unless in writing and signed by both Parties.

18.4 Non-Waiver.

No failure or delay by either Party in exercising any right, power, privilege, or remedy hereunder will operate as a waiver thereof. Any waiver must be in a writing signed by the Party making such waiver.

18.5 Severability.

If any part, term, or provision of this PPA is determined by an arbitrator or court of competent jurisdiction to be invalid, illegal, or unenforceable, such determination shall not affect or impair the validity, legality, or enforceability of any other part, term, or provision of this PPA, and shall not render this PPA unenforceable or invalid as a whole. Rather the part of this PPA that is found invalid or unenforceable will be amended, changed, or interpreted to achieve as nearly as possible the same objectives and economic effect as the original provision, or replaced to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision, within the limits of Applicable Law or applicable court decisions, and the remainder of this PPA will remain in full force.

18.6 No Third Party Beneficiaries.

Nothing in this PPA will provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind.

18.7 No Recourse to Affiliates.

This PPA is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, member, Affiliate, lender, director, officer or employee of the other Party for performance or non-performance of any obligation hereunder, unless such obligations were assumed in writing by the Person against whom recourse is sought.

18.8 Relationships of Parties.

This PPA shall not be interpreted to create an association, joint venture, or partnership between the Parties nor to impose any partnership obligation or liability upon either Party.

18.9 Attorneys' Fees.

If any action, arbitration, judicial reference or other proceeding is instituted between the Parties in connection with this Agreement, the losing Party shall pay to the prevailing Party a reasonable sum for attorneys' and experts' fees and costs incurred in bringing or defending such action or proceeding (at trial and on appeal) and/or enforcing any judgment granted therein. The prevailing Party shall be determined by the trial of fact based upon an assessment of which

Party's major arguments or positions taken in the proceedings could fairly be said to have prevailed over the other Party's major arguments or positions on major disputed issues.

18.10 Counterparts.

This PPA may be executed in several counterparts, each of which is an original and all of which together constitute one and the same instrument. A signature on a copy of this PPA received by either Party by facsimile is binding upon the other Party as an original. Both Parties agree that a photocopy of such facsimile may also be treated by the Parties as a duplicate original.

18.11 Further Assurances.

The Parties shall do such further acts, perform such further actions, execute and deliver such further or additional documents and instruments as may be reasonably required or appropriate to consummate, evidence, or confirm the agreements and understandings contained herein and to carry out the intent and purposes of this PPA.

18.12 Estoppel Certificates.

From time to time, upon written request by either Party (or its financing provider(s)), the other Party shall provide within 10 days thereafter an estoppel certificate attesting, to the knowledge of the other Party, of such requesting Party's compliance with the terms of this Agreement or detailing any known issues of noncompliance. If the other Party fails to deliver such requested document to the requesting Party within such 10 day period, then the requesting Party may make an additional written demand for such requested document and if the other Party does not deliver the requested document within 10 days following such additional written demand from the requesting Party, then such failure shall constitute an event of default under this Agreement.

18.13 Construction of Agreement.

This Agreement and any ambiguities or uncertainties contained herein shall be equally and fairly interpreted for the benefit of and against all Parties to this Agreement and shall further be construed and interpreted without reference to the identity of the Party or Parties preparing this document, it being expressly understood and agreed that the Parties participated equally in the negotiation and preparation of this Agreement or have had equal opportunity to do so. Accordingly, the Parties hereby waive the legal presumption that the language of the contract should be interpreted most strongly against the Party who caused the uncertainty to exist. The captions used herein are for convenience only and are not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

18.14 Exhibits and Schedules.

Any and all exhibits and schedules referenced herein and/or attached hereto are hereby incorporated into this Agreement by reference.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of this ____ day of November 2019.

BUYER

City of Ione

By: _____

Its: _____

[IF GOVERNMENTAL ENTITY]
APPROVED AS TO FORM:
[Office of Counsel]

By: _____
Title:

Date: _____

SELLER

IW Solar, LLC, a Delaware limited liability company

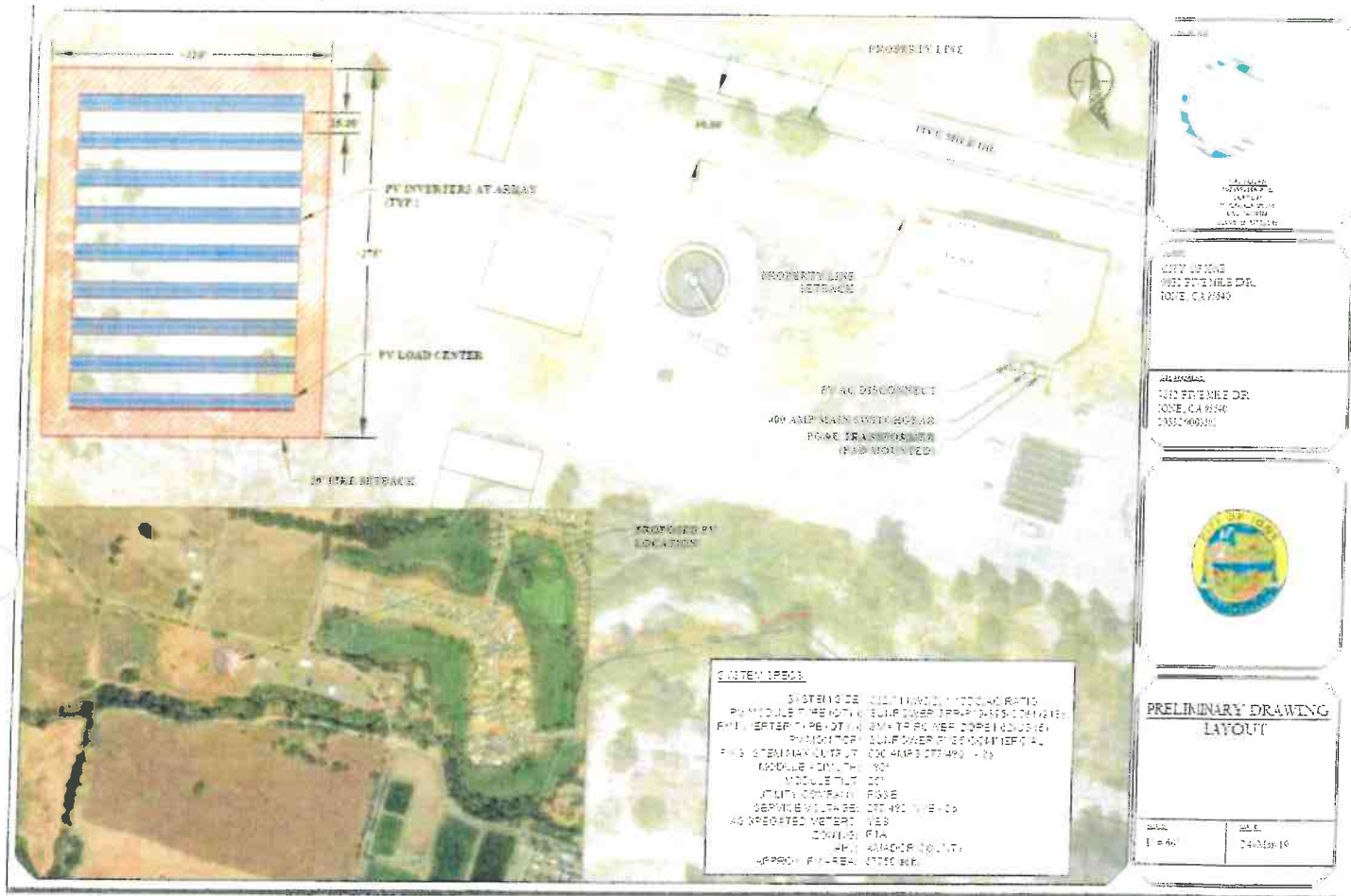
By: _____

Todd Grenich

President

EXHIBIT A
DESCRIPTION OF PREMISES

The Premised are located on property and facilities owned by the City of Ione located at 9832 Five Mile Dr., Ione, CA 95640



See attached design



EXHIBIT C
SCHEDULE OF DEFINITIONS AND RULES OF INTERPRETATION

1. Definitions. The definitions provided below and elsewhere in this PPA will apply to the defined terms used in this PPA:

"AAA Rules" shall have the meaning ascribed to such term in Section 15.2.

"Affiliate" means, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity.

"Applicable Law" means, with respect to any governmental authority, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, governmental approval, consent or requirement of such governmental authority, enforceable at law or in equity, along with the interpretation and administration thereof by any governmental authority.

"Bankrupt" means that a Party or other entity (as applicable): (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within 30 days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (viii) causes or is subject to any event with respect to it which, under the Applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

"Bankruptcy Code" means the United States Bankruptcy Code.

"Basic PPA Provisions" means the Basic PPA Provisions set forth above Article I of this PPA.

"Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.

"Buyout Price" means an amount equal to 120% of the remaining balance of any debt used to finance the System.

"Commercial Operation" means that the System is ready for regular, daily operation, has been connected to the Premises electrical system, and is capable of producing Energy Output.

“Commercial Operation Date” means the first day on which the System is ready for Commercial Operation as certified in writing by Seller to Buyer.

“Confidential Information” means any non-public confidential or proprietary information of a Party or its Affiliates or any of its or their Representatives relating to this PPA and the System and revealed to the other Party or its Affiliates or any of its or their Representatives during the Term.

“Contract Year” means the consecutive 12 months period commencing on the Commercial Operation Date.

“Contractor” shall mean California Solar Innovators Inc. a California Corporation.

“Costs” means any fees, expenses and/or obligations incurred by either Party in connection with this Agreement or breach thereof by the other Party.

“Delivery Point” means the agreed location or locations where Energy is to be delivered and received under this PPA.

“Early Termination Date” shall have the meaning ascribed to such term in Section 9.2.

“Encumbrance” means any mortgage, pledge, encumbrance, assessment, security interest, lease, lien, adverse claim, levy, charge, option, right of first refusal, restriction of any kind, or any conditional sale contract, title retention contract or other agreement to give any of the foregoing.

“Energy” means electric energy (three-phase, 60-cycle alternating current, expressed in kilowatt-hours).

“Energy Deficiency Quantity” shall have the meaning ascribed to such term in Section 7.3(b)(v).

“Energy Output” means the amount of electrical energy generated by the System and delivered to Buyer at the Delivery Point, as metered in whole kilowatt-hours (kWh) at the Metering Device. The Energy Output delivered to Buyer at the Delivery Point shall be deemed to be equal to the energy measured at the Metering Device.

“Energy Payment Rate” shall have the meaning ascribed to such term in Exhibit D.

“Energy Surplus Quantity” shall have the meaning ascribed to such term in Section 7.3(b)(v).

“Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the System, and its displacement of conventional energy generation. Environmental Attributes include but are not limited to renewable energy credits (however entitled) recognized under the law of the state of California, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) nitrous oxide, hydrofluoro carbons, perfluoro carbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Buyer to report the ownership of accumulated Green

Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Buyer's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on MWh basis and one Green Tag represents the Environmental Attributes associated with one (1) MWh of energy. Environmental Attributes do not include: (i) any energy, capacity, reliability or other power attributes from the System; (ii) production or investment tax credits associated with the construction or operation of the energy projects, Treasury grants made pursuant to Section 1603 of the American Recovery and Reinvestment Act and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation; or (iii) emission reduction credits encumbered or used by the System for compliance with local, state, or federal operating and/or air quality permits.

"EPC Contract" shall mean that certain Engineering, Procurement and Construction Agreement, dated as of [____], 2019, between Seller and the Contractor.

"Event of Default" shall have the meaning ascribed to such term in Section 9.1.

"Exercise Notice" shall have the meaning ascribed to such term in Section 13.7(a).

"Exercise Period" shall have the meaning ascribed to such term in Section 13.7(a).

"Extension Term" shall have the meaning ascribed to such term in Section 2.1(b).

"Federal Energy Regulatory Commission" shall mean the United States Federal Energy Regulatory Commission, or any successor agency.

"Force Majeure" means any event or circumstance that prevents a Party from performing its obligations under this PPA, which event or circumstance (i) is not within the reasonable control, or the result of the negligence, of the Claiming Party, and (ii) by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure will not be based on (i) Buyer's inability economically to use Energy purchased hereunder, or (ii) Seller's ability to sell Energy at a price greater than the price of Energy under this PPA. Economic hardship or lack of funds for any reason (including as a result of lack or insufficiency of appropriations) of either Party shall not constitute Force Majeure.

"Full Insurable Value" means the full replacement value of the System.

"Governmental Authority" means any (a) nation, state, county, city, town, village, district, or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign, or other government; (c) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal); (d) multi-national organization or body; or (e) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature.

"Governmental Charges" means all applicable federal, state and local taxes (other than taxes based on income or net worth), governmental charges, emission allowance costs, duties, tariffs, levies, licenses, fees, permits, assessments, adders or surcharges (including public purposes charges and

low income bill payment assistance charges), imposed or authorized by a governmental authority, independent system operator, utility, transmission and distribution provider or other similar entity, on or with respect to the Energy or this PPA.

"Independent Appraiser" means an individual who is a member of a national accounting, engineering or energy consulting firm qualified by education, experience and training to determine the value of solar generating facilities of the size and age and with the operational characteristics of the System. Except as may be otherwise agreed by the Parties, the Independent Appraiser shall not be (or within three years before his appointment have been) a director, officer or an employee of, or directly or indirectly retained as consultant or adviser to, Seller or any Affiliate of Seller or Buyer.

"Initial Term" shall have the meaning ascribed to such term in Section 2.1(a).

"Installation Term" shall have the meaning ascribed to such term in Section 5.1.

"Late Payment Interest Rate" means, for any date, the lesser of (i) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under "Money Rates" on such day (or, if not published on such day, on the most recent preceding day on which published), plus two percent (2%) and (ii) the maximum rate permitted by Applicable Law.

"Lease" means the Site Lease Agreement dated concurrently herewith by and between the Parties.

"Loss" means any loss, liability, claim, damage, expense (including costs of investigation and defense and reasonable attorneys' fees), interest, or diminution of value, whether or not involving a third-party claim.

"Metering Device" means any and all meters at or before the Delivery Point needed for the registration, recording, and transmission of information regarding the Energy generated by the System and delivered to the Delivery Point.

"Non-Defaulting Party" shall have the meaning ascribed to such term in Section 9.2.

"Notice of Intent to Arbitrate" shall have the meaning ascribed to such term in Section 15.2.

"Notices" shall have the meaning ascribed to such term in Section 16.1.

"O&M Contract" shall mean that certain Operations and Maintenance Agreement between Seller and the Contractor with respect to the System.

"Performance Assurance" means collateral in form and substance reasonably acceptable to the requesting Party, including but not limited to cash, bank letter of credit, or other security.

"Person" means an individual, general or limited partnership, corporation, municipal corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, limited liability company, or any other entity of whatever nature.

"Preliminary Determination" shall have the meaning ascribed to such term in Section 13.4.

“Premises” shall have the meaning ascribed to such term in the first recital of this Agreement, as further described in Exhibit A.

“Proceeding” means any action, arbitration, audit, hearing, investigation, litigation, or suit (whether civil, criminal, administrative, investigative, or informal) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

“Purchase Price” shall have the meaning ascribed to such term in Section 13.5.

“Qualifying Facility” is a generating facility which meets the requirements for Qualifying Facility status under the Public Utility Regulatory Policies Act of 1978 and part 292 of FERC’s Regulations (18 C.F.R. Part 292), and which has obtained certification of its Qualifying Facility status either through an application filed with FERC or through self-certification.

“Removal Costs” means all costs associated with the removal of the System and all System Assets from the Premises, including repairing any damage to the Premises required by such removal.

“Representatives” shall have the meaning ascribed to such term in Section 14.1(a).

“Schedule of Definitions and Rules of Interpretation” shall have the meaning ascribed to such term in Section 1.1.

“Shading” means the extent (expressed as a percent of total area) of aggregate physical obstruction per hour between the Generating Facilities’ solar arrays and the sun between the hours of 9:00 a.m. and 5:00 p.m. local time.

“System” means the solar electric generating facility that produces the Energy Output sold and purchased under this PPA. The System is more particular described in Exhibit B.

“System Assets” means each and all of the assets of which the System is comprised, including Seller’s solar energy panels, mounting systems, inverters, integrators and other related equipment installed on the Premises, electric lines required to connect such equipment to the Delivery Point, protective and associated equipment, improvements, and other tangible and intangible assets, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the System.

“System Loss” means loss, theft, damage or destruction of the System or System Assets, or any other occurrence or event that prevents or limits the System from operating in whole or in part, resulting from or arising out of any cause (including casualty, condemnation or Force Majeure) other than (i) Seller’s negligence or intentional misconduct, (ii) Seller’s breach of maintenance obligations under the PPA, or (iii) normal wear and tear of the System.

“Term” means the Initial Term and any Extension Term.

“Transaction” means any transaction between the Parties under the terms of the PPA or the Lease or any other agreements, instruments, or undertakings between the Parties.

“Transfer Date” shall have the meaning ascribed to such term in Section 13.9.

“USD” means United States Dollars.

2. Rules of Interpretation. In this PPA, unless expressly provided otherwise:

- (a) the words “herein,” “hereunder” and “hereof” refer to the provisions of this PPA and a reference to a recital, Article, Section, subsection or paragraph of this PPA or any other agreement is a reference to a recital, Article, Section, subsection or paragraph of this PPA or other agreement in which it is used unless otherwise stated;
- (b) references to this PPA, or any other agreement or instrument, includes any schedule, exhibit, annex or other attachment hereto or thereto, and references to this PPA include the Basic PPA Provisions;
- (c) a reference to a paragraph also refers to the subsection in which it is contained, and a reference to a subsection refers to the Section in which it is contained;
- (d) a reference to this PPA, any other agreement or an instrument or any provision of any of them includes any amendment, variation, restatement or replacement of this PPA or such other agreement, instrument or provision, as the case may be;
- (e) a reference to a statute or other law or a provision of any of them includes all regulations, rules, subordinate legislation and other instruments issued or promulgated thereunder as in effect from time to time and all consolidations, amendments, re-enactments, extensions or replacements of such statute, law or provision;
- (f) the singular includes the plural and vice versa;
- (g) a reference to a Person includes a reference to the Person’s executors and administrators (in the case of a natural person) and successors, substitutes (including Persons taking by novation) and permitted assigns;
- (h) words of any gender shall include the corresponding words of the other gender;
- (i) “including” means “including, but not limited to,” and other forms of the verb “to include” are to be interpreted similarly;
- (j) references to “or” shall be deemed to be disjunctive but not necessarily exclusive, (i.e., unless the context dictates otherwise, “or” shall be interpreted to mean “and/or” rather than “either/or”);
- (k) where a period of time is specified to run from or after a given day or the day of an act or event, it is to be calculated exclusive of such day; and where

a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of such day;

(l) a reference to a Business Day is a reference to a period of time commencing at 9:00 a.m. local time on a Business Day and ending at 5:00 p.m. local time on the same Business Day;

(m) if the time for performing an obligation under this PPA expires on a day that is not a Business Day, the time shall be extended until that time on the next Business Day;

(n) a reference to (i) a month is a reference to a calendar month and (ii) a year is a reference to a calendar year;

(o) where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding meanings;

(p) a reference to time is a reference to the time in effect in Amador County on the relevant date;

(q) if a payment prescribed under this PPA to be made by a Party on or by a given Business Day is made after 2:00 pm on such Business Day, it is taken to be made on the next Business Day; and

(r) if any index used in this PPA at any time becomes unavailable, whether as a result of such index no longer being published or the material alteration of the basis for calculating such index, then Seller and Buyer shall agree upon a substitute index that most closely approximates the unavailable index as in effect prior to such unavailability. If the base date of any such index is at any time reset, then the change to the index resulting therefrom shall be adjusted accordingly for purposes of this PPA.

EXHIBIT D
Energy Payment Rate

A Fixed Rate 25 Year Tariff of USD \$0.1275/kWh

EXHIBIT E
Termination Value

<i>Year</i>	<i>Termination Value</i>
1	\$1,500,000
2	\$1,462,500
3	\$1,425,938
4	\$1,390,289
5	\$1,355,532
6	\$1,321,644
7	\$1,288,602
8	\$1,256,387
9	\$1,224,978
10	\$1,194,353
11	\$1,164,494
12	\$1,135,382
13	\$1,106,998
14	\$1,079,323
15	\$1,052,340
16	\$1,026,031
17	\$1,000,380
18	\$975,371
19	\$950,986
20	\$927,212
21	\$904,032
22	\$881,431
23	\$859,395
24	\$837,910
25	\$816,962

EMPLOYMENT AGREEMENT

THIS AGREEMENT, made and entered into effective January 1, 2020 by and between the CITY OF IONE, a municipal corporation, hereinafter called "City" and Jon G. Hanken, hereinafter called "Manager," both of whom understand as follows:

WITNESSETH

WHEREAS, City desires to continue the employment of, as the City Manager of the City of Ione, as provided by Government Code section 34852 and Ione Municipal Code Chapter 2.10; and

WHEREAS, it is the desire of the City Council of the City of Ione, hereinafter called "Council," to provide certain benefits, establish certain conditions of employment and to set working conditions of said Manager; and

WHEREAS, Manager desires to accept continued employment as City Manager of said City;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

Section 1. Duties

City hereby agrees to employ Manager as City Manager of the City of Ione to perform the functions and duties specified in the City Code and the Government Code of the State of California, and to perform other legally permissible and proper duties and functions as the Council shall from time to time assign.

A. Manager shall perform his duties to the best of his ability in accordance with the highest professional and ethical standards of the profession.

B. Manager shall not engage in any activity that is or may become a conflict of interest, prohibited contract, or which may create an incompatibility of office as defined under California law.

C. Manager may perform teaching, writing, or consulting services or other such outside employment so long as those activities are not performed on City equipment or interfere with Manager's obligations under this Agreement.

D. Manager shall work such hours as necessary to perform the duties of City Manager. However, Manager may reduce his hours of employment to 80% of standard which will be reflected in the compensation during the term of this Agreement.

Section 2. Termination

Manager hereby expresses his intent to remain as Manager for a period of one (1) year. The term of Manager's employment shall commence January 1, 2020 and terminate on December 31, 2020 unless earlier terminated by either party, or upon the retention of a new City Manager, whichever first occurs.

Section 3. Salary

City agrees to pay Manager for his services rendered pursuant hereto an annual base salary of \$84,000 payable in installments at the same time as other employees of City are paid.

Section 4. Holidays and Benefits

A. Manager shall be entitled to the same holidays as other management employees of the City of Ione, as established annually by the City Council. The City currently observes ten (10) holidays plus two (2) floating holidays.

B. In addition to a PERS retirement as addressed in Section 6 herein, Manager shall also be entitled to participate in the health, dental, vision, disability, and life insurance plans generally offered to employees of the City of Ione as described in the duly enacted Employee Handbook. City shall pay \$1,250 per month toward the health, dental, and vision coverage for Manager and his eligible dependents and the Manager-only life insurance. Additionally, if Manager is covered by another insurance plan and elects not to participate in a plan available through the City of Ione, there shall be no "in-lieu" payment to Manager.

Section 5. Retirement

Manager continues to be enrolled in the Public Employees' Retirement System of the State of California (PERS) in the 2% @ 62 "New Member" tier with the City to pay the employer portion of the PERS payment and Manager to pay the employee portion of the PERS payment. Manager may participate in the City's deferred compensation program, upon eligibility. There is no City match for contributions to the deferred compensation program.

Section 6. Leave

A. Sick Leave - Manager will accrue six and 67/100 (6.67) hours of sick leave per month for an annual total of eighty (80) hours. Unused sick leave may accrue to a maximum total of six hundred and forty (640) hours at which time sick leave will not accrue until such time as it is reduced below the maximum amount. Sick leave shall not be paid out on separation from employment.

B. Bereavement Leave - The City will provide Manager with up to three (3) days (in-state) or five (5) days (out-of-state) paid bereavement leave in the event of a death in the employee's immediate family. For purposes of this section, "immediate family" is defined as the employee's spouse, parent, child, or sibling; the employee's spouse's parent, child, or sibling. The term "spouse" includes a registered domestic partner.

Section 7. Dues and Subscriptions

Depending upon the City's financial condition and budget constraints, the City agrees to consider providing funding in the budget to pay, in whole or in part, the Manager's ICMA dues for Manager's continued professional participation, growth, and advancement, and for the good of City.