

SUMMARY OF IMPORTANT TERMS OF THE OPTION FOR EASEMENT AND  
EASEMENT AGREEMENT

Landowner	
Grantee	[Solar Company], its successors and assigns
Property	The real property consisting of parcels _____ located in _____ [Township/City/Village], _____ County, Michigan, more particularly described in <u>Appendix A</u> , together with any improvements located thereon and rights, benefits and easements appurtenant thereto.
Easement Area	Approximately ____ acres of the Property consisting of approximately ____ total acres, more particularly described in <u>Appendix B</u> .
Effective Date	
Option Period	Up to 48 months, commencing on the Effective Date, as further described in Section 2(b).
Option Payments	\$2,500 per year, payable on a quarterly basis, as further described in Section 2(c).
Construction Period	Up to 24 months, commencing on the Exercise Notice date, as further described in Section 5(b).
Construction Period Payment	\$20,000 per year, payable in advance on a quarterly basis, as further described in Section 9 (a).
Operations Period	The period commencing on the Operations Period Commencement Date and expiring on the twenty-fifth (25 <sup>th</sup> ) anniversary of the Operations Period Commencement Date, subject to Grantee's right to extend, as further described in Section 5(b).
Operations Period Payment	A payment of \$2,200 per acre of Easement Area per year, escalating at a rate of 2% per annum during the Operations Period, as further described in section 9(a).

This summary is provided for informational purposes only and the definitions and information contained in the table above is governed by the Agreement (as defined herein).

## OPTION FOR EASEMENT AND EASEMENT AGREEMENT

This Option for Easement and Easement Agreement (the “Agreement”) is made and entered into as of \_\_\_\_\_ 20\_\_, (the “Effective Date”), by and between \_\_\_\_\_ (the “Landowner”) and [Solar Company], a \_\_\_\_\_ limited liability company (the “Grantee”).

WHEREAS, Landowner owns approximately \_\_\_\_ acres of real property located at \_\_\_\_\_ in \_\_\_\_\_ [Township/City/Village], \_\_\_\_\_ County, Michigan, as more particularly described in Appendix A attached hereto (the “Property”);

WHEREAS, Grantee wishes to conduct diligence with respect to developing, designing, installing, and operating a solar-powered electric generation facility and/or an energy storage facility (each as defined more fully herein) on the portion of the Property described in Appendix B attached hereto, such portion of the Property being referred to herein as the “Easement Area”;

WHEREAS, Landowner is willing to grant Grantee the exclusive option to receive an exclusive easement upon, over, under, across and through the entire Easement Area, and Grantee is willing to accept such option and, upon exercise of such option, to grant to Grantee an exclusive easement upon, over, under, across and through the Easement Area for the purposes described herein;

WHEREAS, upon any exercise by Grantee of the option granted by this Agreement, Landowner is willing to grant Grantee certain additional easements upon, over, under, across and through the Property which easements are deemed appropriate by Grantee for the development, construction, operation and maintenance of a solar-powered electric generation facility and/or an energy storage facility (each as defined more fully herein) on the Easement Area;

NOW THEREFORE, in consideration of the premises, the covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landowner and Grantee agree as follows:

SECTION 1. DEFINITIONS. Capitalized terms within this Agreement not otherwise defined herein shall have the meanings as set forth in the Glossary of Terms, attached hereto and incorporated herein.

### SECTION 2. OPTION GRANT AND EXERCISE.

(a) Grant of Exclusive Option. Landowner hereby grants to Grantee an exclusive and irrevocable option for to receive an exclusive easement in gross upon, over, under, across and through the Easement Area (the “Option”), exercisable during the Option Period (as defined below). Until termination of the Option and of all easements granted to Grantee upon exercise of the Option, Landowner shall grant no license, easement, option, leasehold, or other right in or affecting the Easement Area, without Grantee’s written consent.

(b) Option Period. The “Option Period” shall begin on the Effective Date and end (unless terminated pursuant to Section 2(d) below) on the date that is the earlier of (i) 36 months after the Effective Date and (ii) the day immediately preceding the commencement of the Construction Period. Prior to the expiration of the Option Period, Grantee may extend the Option Period for up to two (2) additional periods of six (6) months each, by delivering notice to Landowner at least thirty (30) days prior to the expiration of the then-current Option Period.

(c) Option Payments. As consideration for the Option, during the Option Period, Grantee shall pay to Landowner option payments (collectively, the “Option Payments” and each an “Option Payment”) in the amount of (i) US \$2,500 (the “Initial Option Payment”), due and payable on the date that is forty-five (45) days after the Effective Date and (ii) thereafter, US \$625 per calendar quarter, due and payable on the first day of the applicable calendar quarter. If the Agreement is terminated, Grantee shall have no further obligation to pay any Option Payment that has a due date on or following the date of such termination. The Option Payments shall be non-refundable once paid to Landowner, except as set forth in Section 15 below or to the extent resulting from a Landowner Default under this Agreement. Notwithstanding any provision herein to the contrary, One Hundred and No/100 Dollars (\$100.00) of the Initial Option Payment shall constitute independent consideration (the “Independent Consideration”) for Grantee’s right to terminate this Agreement during the Option Period, regardless of whether or not this transaction closes, and shall wholly earned by Landowner upon Landowner’s execution of this Agreement, and shall not be refundable under any circumstances. Notwithstanding anything to the contrary contained herein, if Grantee fails to make any Option Payment on the due date therefor and does not cure such failure within ten (10) business days after Landowner provides Grantee with written notice of default, then the Option shall terminate and (x) Grantee shall have no obligation to make the Option Payment then due, or any further payments pursuant to this Agreement and (y) Landowner shall retain, as liquidated damages and as Landowner’s sole and exclusive remedy for Grantee’s failure to pay any such Option Payment, all Option Payments previously paid.

**LANDOWNER ACKNOWLEDGES THAT, IN THE EVENT OF A TERMINATION OF THIS AGREEMENT AS A RESULT OF GRANTEE’S FAILURE TO PAY ANY OPTION PAYMENT WHEN DUE, LANDOWNER’S RIGHT TO RETAIN THE AMOUNT OF ALL OPTION PAYMENTS DELIVERED AS OF SUCH DATE SHALL BE LANDOWNER’S SOLE AND EXCLUSIVE REMEDY FOR ANY SUCH FAILURE BY GRANTEE TO PAY ANY OPTION PAYMENT; IT BEING AGREED BY THE PARTIES THAT IN LIGHT OF THE DIFFICULTY THE PARTIES WOULD HAVE IN DETERMINING LANDOWNER’S ACTUAL DAMAGES AS A RESULT OF SUCH A BREACH, SUCH AMOUNT IS A REASONABLE ESTIMATE OF THE EXTENT TO WHICH LANDOWNER WOULD BE DAMAGED BY SUCH A BREACH BY GRANTEE, AND IS NOT A PENALTY.**

\_\_\_\_\_  
Landowner’s Initials

\_\_\_\_\_  
Grantee’s Initials

(d) Grantee Termination Right During Option Period. Grantee may elect, in its sole and absolute discretion, for any reason or for no reason, to unilaterally terminate this Agreement by providing written notice to Landowner on or prior to the expiration of the Option Period.

(e) Exercise of Option. Grantee may exercise the Option by written notice (the “Exercise Notice”) delivered to Landowner at any time prior to the expiration of the Option Period as in effect at such time. If Grantee delivers the Exercise Notice, the Construction Period shall commence on the day that the Exercise Notice is delivered, and this Agreement shall continue in effect until the expiration or sooner termination of the Term.

(f) Grantee’s Rights During Option Period. During the Option Period, Grantee shall not hold any easement interest (other than the Option) or any leasehold interest in the Property or be deemed to be a lessee of the Property, but Grantee:

- (i) may determine the Facility size and the specific location of the Easement Area and of the Additional Easement Parcels by means of one or more survey(s), and following receipt of such survey(s), Landowner agrees that Grantee may unilaterally replace Appendix B and Appendix C to this Agreement and to the Memorandum of this Agreement with updated appendices more particularly defining the boundaries of the Easement Area and the Additional Easement Parcels based on such survey(s) and may unilaterally record an affidavit or amendment to the Memorandum reflecting such updated appendices, provided, however, without the consent of Landowner, the Easement Area shall not be less than [\_\_\_]([\_\_\_]) acres, and thereafter all references in this Agreement to Appendix B and Appendix C shall be deemed to be references to such revised appendices, as applicable; and
- (ii) may use the Easement Area for investigations and tests including determining the feasibility of Facilities, including potential solar energy power production on the Property using studies of sunlight concentration and other meteorological data, extracting soil samples, conducting wildlife and other environmental studies, and conducting transmission feasibility studies. For the avoidance of doubt, during the Option Period, Grantee shall provide Landowner with reasonable advance notice before entering the Easement Area and undertaking the activities described above, and shall obtain Landowner’s advance permission (which may not be unreasonably withheld, conditioned or delayed) to extract soil samples or conduct other invasive testing.

**SECTION 3. GRANT OF EASEMENT.** If Grantee delivers the Exercise Notice to Landowner prior to the end of the Option Period, then upon the commencement of the Construction Period pursuant to Section 2(e) and without the need for any further notice or written instrument, Landowner hereby grants, warrants, and conveys to Grantee an exclusive easement in gross upon, over, under, across and through the whole of the Easement Area for the Permitted Uses for the Term. The easement shall be for the exclusive use and benefit of Grantee, its successors and assigns, its subeasement grantees and mortgagees, and all of their utility providers, employees, agents, contractors, invitees, and suppliers, and the easement shall burden

the Easement Area as the servient estate and shall be binding upon Landowner, its successors and assigns, and anyone acquiring, leasing or otherwise having any interest in the Easement Area. Upon commencement of the Construction Period, Grantee shall have quiet and peaceful use and possession of the entire Easement Area for the entire Term without hindrance, interruption, or interference by Landowner or any other person or entity claiming through or under Landowner. The parties agree that the Initial Option Payment shall be deemed to be the consideration for the grant of all easements under this Agreement.

#### SECTION 4. GRANT OF ADDITIONAL EASEMENTS.

(a) In addition to and in connection with the easement granted pursuant to Section 3, Landowner hereby grants the following additional easements to Grantee for the following purposes, across the portions of the Property identified in Appendix C (the “Additional Easement Parcels”), which Appendix C may be replaced unilaterally by Grantee pursuant to Section 2(f):

- (i) A non-exclusive ingress egress easement and right of pedestrian, vehicular and equipment access to any Facility across or through the Property at all times, which is necessary or convenient for ingress and egress to the Easement Area including over the now existing or hereafter constructed roads, lanes, and rights of way on the Property, and (ii) such additional roads as Grantee or anyone else may construct (including rights to maintain, improve, rebuild, relocate or widen the roads) from time to time on any portion of the Property approved by Landowner (which approval shall not be unreasonably withheld, conditioned or delayed, and provided that Landowner shall approve at least one additional road location), in each case for the benefit of a Facility.
- (ii) an exclusive easement for and right to construct, operate, maintain, reconstruct, relocate, remove, and/or repair the electric utility service infrastructure and associated wires, lines and poles and other infrastructure necessary and convenient, above or below ground, to interconnect any Facilities to the electrical distribution system, the location of which will be determined by the local electric distribution company; and
- (iii) an exclusive easement, if required by Grantee, of no greater size than reasonably necessary, to be located at a mutually acceptable location on the Property for temporary construction laydown, and other areas and access rights reasonably necessary to construct, erect, install, expand, modify or remove the Facility. Upon completion of the final construction phase, said easement shall terminate. The term of this easement will run from the Operations Period Commencement Date until the Commercial Operation Date and during the Decommissioning Period of the easement term.
- (iv) An exclusive right and easement to use, capture, convert, and maintain uninterrupted, free, and unobstructed access to solar energy over and across the Property. Landowner may not place or plant any trees, structures or

improvements on the Property [or adjacent land owned by Landowner] that may, in Grantee's sole judgment, impede or interfere with the collection and conversion of solar energy, unless Landowner has received prior written approval from Grantee for any such trees, structures or improvements, and timely approval or denial of such request shall be in Grantee's sole discretion.

- (v) To the extent that Landowner holds or has the right to use any access, utility, transmission, water or other easements, rights of way or licenses over lands in the general vicinity of the Property (the "Landowner Easements") on the date of this Agreement, and such Landowner Easements are being used or could be used for the benefit of the Property or any Facility, then the Landowner Easements are hereby included in this Agreement, and Grantee shall be entitled to make full use of the Landowner Easements to the same extent Landowner could do, if such use is permitted under the terms of the Landowner Easements. Upon the request of Grantee at any time and from time to time, Landowner shall grant to Grantee (in recordable form and containing such terms and provisions as may reasonably be requested by Grantee), for no additional consideration, one or more subeasements in the Landowner Easements and the subeasements shall terminate upon the expiration or termination of this Agreement.

(b) The term of the Additional Easements described in Section (4)(a) shall commence on the commencement of the Construction Period and end upon termination of the Decommissioning Period.

## SECTION 5. TERM.

(a) The Term will consist of a Construction Period and an Operations Period (each as defined below). The "Construction Period" will commence, if at all, on the date provided in Section 2(e) and will end at 11:59 p.m. on the earlier of (i) the date that is twenty-four (24) months after the commencement of the Construction Period and (ii) the day prior to the Commercial Operation Date. The "Operations Period" shall commence, if at all, immediately following the expiration of the Construction Period (the "Operations Period Commencement Date") and end at 11:59 p.m. on the last day of the month in which the twentieth (20th) anniversary of the Commercial Operation Date occurs. Grantee shall have the right to extend the Term for two (2) periods of five (5) years each, by delivering written notice to Landowner of Grantee's intent to exercise the extension option at least ninety (90) days prior to the expiration of the then-current Term. Upon any extension of the Term, Grantee and Landowner, at Grantee's expense, shall prepare and record any amendments to the Memorandum of Option and/or any other documents necessary to evidence and give effect to the extension.

(b) At any time during the Term prior to the Commercial Operation Date, Grantee may elect, in Grantee's sole discretion, to terminate this Agreement upon seven (7) days' notice to Landowner. For the avoidance of doubt, upon any such termination, no further payments shall become due.

## SECTION 6. GRANTEE'S USE OF THE EASEMENT AREA.

(a) During the Term, Grantee, its successors and assigns, its subeasement grantees and mortgagees, and all of their utility providers, employees, agents, contractors, invitees, and suppliers, may use the Easement Area for the Permitted Uses, and may exclude all others from the Easement Area.

(b) During the Decommissioning Period, Grantee shall cease commercial operation of the Facilities, and shall (x) remove all structures, equipment, foundations, security barriers and transmission lines, and all underground foundations, supports, pilings, cables, conduits and other facilities from the Easement Area and dispose of all materials contained in the Facilities in accordance with Applicable Law; and (y) otherwise return the Easement Area to its condition as of the beginning of the Term (ordinary wear and tear excluded) except that the Parties agree that Grantee will not be responsible for replacement of any trees or shrubbery and, further, in the event a roadway or other ingress/egress is constructed, the Grantee is not responsible for removing any constructed access way. This Section 6(c) shall survive any termination of this Agreement.

## SECTION 7. CONSTRUCTION OF FACILITIES.

(a) During the Term, Grantee may construct any Facility as Grantee, in its sole discretion, may determine, provided, however, that such construction shall comply with Applicable Law. Landowner consents to Grantee's location of the Facilities or related facilities or equipment at any location in the Easement Area, including at or near property boundary lines.

(b) Grantee shall give Landowner regular updates on the progress of installing the Facility. After Grantee has determined, in its reasonable judgment, that the Facility has been installed in accordance with all Applicable Laws, and is capable of producing electricity on a continuous basis while exposed to sunlight, Grantee shall notify Landowner that installation of the Facility is complete and shall specify the Commercial Operation Date for the Facility.

(c) Grantee may remove such trees and other vegetation or obstructions, as commercially reasonable, on the Property to obtain solar access to a Facility. Grantee's rights shall include without limitation the right to excavate, grade, level, trench, re-route, remove, restore, repair or replace drain tile on the Easement Area (subject to the limitations of any PA 116 addendum to this Agreement as to only the portion of the Easement Area included in an PA 116 Agreement, if any) or municipally regulated drains (subject to applicable Law), plant pollinator crops on, or otherwise prepare, repair, use or maintain the Easement Area in connection with the Facility, all in Grantee's sole discretion as Grantee may deem desirable or necessary in connection with Grantee's operations.

(d) [Grantee shall pay to Landowner an amount to be negotiated between Landowner and Grantee in good faith for any then-growing crops which are damaged by Grantee during the Construction Period or which cannot be harvested as a result of Grantee's operations during the Construction Period. If the property is fallow or otherwise not growing crops at the time Grantee commences construction of the Facility, no payment shall be due hereunder. For purposes of this section, "crops" shall mean planted and cultivated crops to be harvested from the Property, such as, but not limited to, wheat, corn, milo, hay and alfalfa, but excluding

naturally growing vegetation used solely for onsite livestock grazing or ground cover. Crop damages will be calculated by the following formula:

Price x Yield x Amount of Damaged Acres = Crop Damages.

“Price” for damaged or destroyed crops will be based on the average of the last previous March 1st and September 1st Chicago Board of Trade prices for that crop, or if not listed by the Chicago Board of Trade, other publicly available data for the particular crop.

“Yield” will be the average of the previous two years’ yield of the same crop as the damaged crop according to Farm Services Administration records for the county in which the Property is located (or other commonly used yield information available for the area).

“Amount of Damaged Acres” will be the number of acres and partial acres of the Property that suffered crop damage due to construction of the Facility.]

#### SECTION 8. LANDOWNER ACTIVITIES.

(a) Landowner shall not be required to furnish any services or facilities or to make any repairs or alterations to the Property.

(b) Landowner shall not engage in activities at the Property that will materially impact the topography or soil conditions on the Easement Area, or construct any structures or improvements on the Easement Area or Additional Easement Parcels.

(c) Landowner shall not construct or install, or knowingly permit to be constructed or installed, on any property owned or leased by Landowner any alterations, modifications or improvements to such property which would interfere with or block the access of any Generation Facility to sunlight.

(d) During the Term and the Decommissioning Period, Landowner shall not enter the Easement Area without Grantee’s consent, such consent not to be unreasonably withheld.

(e) During the Option Period, Landowner shall not solicit offers to grant a lease or easement to a third party for the purposes of developing or constructing a solar-powered electric generation facility or for Energy Storage Purposes on the Property, directly or indirectly.

(f) If Landowner is a party to a PA 116 Agreement, or a CRP Contract Conservation Reserve Program contract (“CRP Contract”) with the U.S. Department of Agriculture pursuant to 7 C.F.R. Part 1410 regarding the Property, then Landowner shall provide Grantee with a true and complete copy of such PA 116 Agreement CRP Contract, together with all amendments and modifications, prior to the Effective Date. Landowner shall cooperate with Grantee in completing and submitting documents to obtain any exemptions allowed under PA 116, the Conservation Reserve Program, or any other program, for the use of the Facility on the portions



of the Property covered by a PA 116 Agreement, CRP Contract, or other program. Without limiting the foregoing, Landowner will cooperate with and sign applications for MDARD approval of an amendment to the PA 116 Agreement for solar use, or withdrawal of the Easement Area from the PA 116 Agreement, and will sign the PA 116 Agreement amendment required by MDARD, and a PA 116 amendment to this Agreement, in connection with the same.

## SECTION 9. PAYMENTS.

(a) Amount. In consideration for the easement of the Easement Area during the Term, Grantee agrees to make Payment to the Landowner (i) during the Construction Period in the amount of US \$20,000 of the Easement Area per annum, payable in advance in quarterly installments of US \$5,000 of the Easement Area on the first day of each calendar quarter (except that if the first day of the Construction Period does not fall on the first day of a calendar quarter, the Payment amount for the period commencing on the first day of the Construction Period and ending on the last day of such calendar quarter shall be pro-rated for such partial quarter and shall be paid in arrears together with the Payment for the first full calendar quarter in the Construction Period) and (ii) during the Operations Period, (including any extensions thereof) in the amount of US \$2,200 per acre of the Easement Area per annum, payable in advance in quarterly installments of US \$2,200 per acre of the Easement Area on the first day of each calendar quarter (except that if the first day of the Operations Period does not fall on the first day of a calendar quarter, the Payment amount for the period commencing on the first day of the Operations Period and ending on the last day of such calendar quarter shall be pro-rated for such partial quarter and shall be paid in arrears together with the payment of Payment for the first full calendar quarter in the Operations Period). The Payment during the Operations Period shall increase at a rate of 2% per annum during the Term, including any extensions thereof. The amount of Payment for any partial acre and any partial period shall be prorated.

(b) Decommissioning Period. During the Decommissioning Period, Grantee shall not be obligated to continue to pay Landowner the Payment at the rate specified in Section 9(a), other than any amounts due but not paid related to the period prior to the commencement of the Decommissioning Period.

(c) Payment Method. Payment may be paid by check or wire transfer of immediately available funds. Upon request by Grantee, Landowner shall provide Grantee with account information to which wire transfers may be made. The Payment shall be payable and shall be paid to Landowner without notice or demand. Grantee, at its option, shall have the right to prepay any portion of the Payment. Notwithstanding anything in this Agreement to the contrary, Grantee shall have no obligation to make any payment to Landowner otherwise required under this Agreement until Landowner has returned to Grantee a completed Internal Revenue Service Form W-9. In the event that Landowner assigns, transfers, or sells its interest in the Property, Landowner will provide notice to Grantee and include with such notice a copy of the transfer instrument and contact information for the transferee.

## SECTION 10. TAXES.

(a) Landowner shall be responsible for all taxes assessed against the Property for the Term and any extensions thereof, other than those obligations of Grantee as detailed in Section 10(b). Landowner shall not enter into any new PA 116 Agreement affecting the Easement Area, nor shall it allow the existing expiry date of such an PA 116 Agreement to be extended. Unless in future MCL 211.7dd or MCL 211.34c is amended to include the Facility and/or Battery Facility within the definitions of “qualified agricultural property” or “agricultural operations” or “agricultural improvements,” Landowner agrees that it shall not claim (through affidavit or otherwise) or permit any qualified agricultural exemption for property taxes to be claimed as to the Easement Area pursuant to MCL 211.7ee, and shall rescind any such exemption after the beginning of the Construction Period, on a date not more than ninety (90) days after the Construction Period begins, and shall provide a copy of such rescission to Grantee.

(b) Grantee shall be responsible for the following (collectively, “Grantee Taxes”):

(i) all personal property taxes that are assessed against Facilities during the Term;

(ii) if the Easement Area is assessed as a separate tax parcel, all real estate taxes assessed against the Easement Area during the Term, and if the Easement Area is not assessed as a separate tax parcel, all real estate taxes based on the proportional assessed value assigned to the Easement Area during the Term; and

(iii) any roll-back or recapture real estate property taxes imposed by the applicable taxing authorities due to the Property no longer meeting the definition of “agricultural land” or “agricultural use” resulting from any exercise of the Option by Grantee or Grantee’s use of the Easement Area during the Term as contemplated by this Agreement (including without limitation recapture tax applicable to the qualified agricultural exemption rescission required pursuant to subsection (a) above, under the Agricultural Property Recapture Act, MCL 211.1001 et. seq.); provided, that Landowner and Grantee shall reasonably cooperate to appropriately minimize any such taxes.

(iv) any costs to remove the Easement Area from the Michigan Farmland Preservation Program (formerly known as P.A. 116), if such removal of the Easement Area from the Michigan Farmland Preservation Program (formerly known as P.A. 116) occurs at the request of or as a result of actions of Grantee. Landowner and Grantee agree that during the Option Period, no change in Landowner’s agricultural activities on the Property is required by this Agreement.

(c) Grantee shall pay all Grantee Taxes for which Grantee is directly billed on or before the date such amounts are due, subject however to the right of Grantee to contest all or any portion of Grantee Taxes in accordance with this Agreement and Applicable Law. With respect to any Grantee Taxes which have not been billed directly to Grantee, Landowner shall reasonably calculate such Grantee Taxes based on the tax bill for the Property received by Landowner and the provisions of this Agreement and shall provide Grantee with a written invoice for such Grantee Taxes. Grantee shall pay Landowner, within 10 business days after Grantee’s receipt of the applicable invoice from Landowner, the uncontested amount of such

Grantee Taxes. Landowner will submit copies of tax bills or notices of assessments, appraisals or statements applicable to the Facility to Grantee promptly upon receipt thereof and, to the extent Landowner pays the same directly to the taxing authorities, Landowner will promptly provide evidence of such payment to Grantee.

(d) Each Party may contest in good faith any tax assessments or payments, provided that all payments are made when due and such contest (or appeal, as the case may be) complies with Applicable Law.

(e) If Grantee fails to pay directly or reimburse Landowner for Grantee Taxes hereunder, subject to Grantee's right to contest such Grantee Taxes as set forth herein, Landowner may pay the same and in such event shall be entitled to recover the amount of such Grantee Taxes from Grantee together with interest thereon at a rate equal to the lesser of (i) one and one-half percent (1½ %) per month (eighteen percent (18%) per annum) or (ii) the highest rate allowed under Applicable Law.

(f) If Landowner fails to pay any taxes, judgments or liens that become a lien upon the Easement Area or improvements thereon for which Landowner is responsible hereunder, or fails to pay any obligations secured by a lien or encumbrance on the Property, subject to Landowner's right to contest such taxes as set forth herein, Grantee may pay such amounts and in such event shall be entitled to recover such paid amount from Landowner, together with interest thereon at rate equal to the lesser of (i) one and one-half percent (1½ %) per month (eighteen percent (18%) per annum) or (ii) the highest rate allowed under Applicable Law.

#### SECTION 11. TITLE; PROPERTY CONDITION; AND LIENS.

(a) Landowner represents and warrants as of the Effective Date that (i) Landowner is the sole owner of the Property in fee simple and has good and marketable title to the Property subject to no liens, easements, options or other encumbrances other than the Existing Encumbrances specified in Appendix D attached hereto, (ii) Landowner and each person signing this Agreement on behalf of Landowner has the full and unrestricted power and authority to execute and deliver this Agreement and grant the Option and convey the easements and other rights granted herein, (iii) Landowner has not granted any options, rights of first refusal, rights of first offer, offers to sell or agreements to purchase all or part of the Property other than to Grantee pursuant to this Agreement, (iv) neither the execution and delivery of this Agreement and the documents referenced herein, nor incurring of the obligations set forth herein, nor the consummation of the transactions herein contemplated, will conflict with or result in a default under, any indebtedness or any contract, deed of trust, loan, agreement, easement or other agreements or instruments pertaining to Landowner or the Property, (v) there are no current, pending or contemplated actions, administrative inquiries or proceedings, suits, arbitrations, claims or proceedings commenced by any person or governmental entity affecting Landowner, the Property or any portion thereof, and (vi) there are no portions of the Property that are currently enrolled in the USDA Conservation Reserve Program or any PA 116 Agreement or any similar local, State or federal program for the preservation of agricultural land.

(b) Landowner further represents and warrants that (i) no release or threatened release of any Hazardous Material has occurred, or is occurring, at, on, under, from or to the Property, and no Hazardous Material is present in, on, under or about, or migrating to or from the Property that could give rise to a claim under Environmental Law and (ii) Landowner has not received notice from any Governmental Authority pertaining to the violation of any law or regulation affecting the Property or any portion thereof, and Landowner has no knowledge of any facts which might be a basis for any such notice.

(c) After the Effective Date, in addition to Existing Encumbrances, and any refinancing of such Existing Encumbrances which does not increase the amount secured by such Existing Encumbrances, Landowner may grant a mortgage on all or part of its interest in the Property if (i) such mortgage is subject to this Agreement and Grantee's rights hereunder; and (ii) the mortgagee enters into an agreement, on terms and conditions reasonably acceptable to Grantee, recognizing the priority of, Grantee's interest in the Property pursuant to this Agreement.

(d) Landowner shall not allow any encumbrances against the Easement Area other than Permitted Encumbrances.

(e) At Grantee's request, Landowner shall use commercially reasonable, good faith efforts to obtain from holders of Permitted Encumbrances such subordinations or non-disturbance agreements as Grantee may reasonably request to protect and secure Grantee's interest in the Easement Area (including Grantee's interest in the Option).

(f) Any equipment and structures included within a Facility shall, to the maximum extent permitted by law, be personal property and not real property or fixtures to real property, and title to any Facility shall be in Grantee or its mortgagees and assigns.

(g) Landowner shall have no right or interest in any of the electric energy produced by a Generation Facility or in any Environmental Attributes, Tax Attributes, or other rights or incentives associated with any Facility.

## SECTION 12. PERMIT APPLICATIONS AND FILINGS.

Landowner shall reasonably cooperate with Grantee to file with such federal, state and local authorities as Grantee deems appropriate (i) one or more applications to obtain any zoning confirmations, zoning approvals, entitlements, special use permits, conditional use permits, site plan approvals, environmental impact reviews, environmental, stormwater, road, grading, right of way, natural resource or other approvals, or variances regarding the Property or portions thereof as may be necessary and/or desirable to develop, construct and operate Facilities on the Easement Area; and (ii) one or more applications to obtain construction, use, operation, or other approvals or permits from any Governmental Authority deemed necessary or desirable by Grantee or occupancy permits for any Facility or any portion thereof. Landowner is not obligated to incur any expense in connection with such efforts. Grantee shall provide Landowner with copies of all applications made and permits obtained in the approval process of any Facility. Landowner, hereby agrees to join, consent and sign necessary applications

prepared by Grantee and authorizes Grantee, its successors and/or assignees to act as its agent and on its behalf in submitting any of the materials contemplated by this paragraph. In connection with the issuance of such permits, and to the extent allowed by (and subject to) Applicable Law, Landowner hereby waives any and all setback requirements, including any setback requirements described in the zoning ordinance of the municipality and/or county in which the Property is located or in any governmental entitlement or permit hereafter issued to Company, with respect to the locations of any Facility to be installed or constructed on the Property or on adjacent properties that are owned by Landowner, if any. [Further, in the event of legal proceedings related to Grantee's use of the Easement Area, except those arising out of the interpretation and/or enforcement of the Agreement, Landowner shall, in all respects, fully cooperate with Grantee in any such proceeding]

### SECTION 13. INSURANCE AND INDEMNITY.

(a) Landowner and Grantee shall each maintain appropriate insurance for their respective interests in, and activities on, the Property and the Facilities through the expiration of the Decommissioning Period. Grantee's and Landowner's liability insurance required herein shall include provisions or endorsements naming or including by way of blanket endorsement the other Party as an additional insured as respects each Party's indemnification obligations outlined in Section 13(c) below and to the extent not provided for in Section 13(c) waving all rights of subrogation against the other Party and including a similar waiver of subrogation on all policies required to be maintained herein.

(b) Without limiting the foregoing, Grantee and Landowner covenant and agree that during the Term each will maintain, at its sole cost and expense, the following insurance, in the amounts and form specified:

Commercial General Liability insurance (including broad form property damage and contractual liabilities or reasonable equivalent thereto) covering in the case of the Grantee its use of the Easement Area and the Facilities and in the case of the Landowner any of its activities on or around the Easement Area and the Facilities against claims for bodily injury or death, property damage and products liability (including completed operations coverage). Such insurance is to be written on an occurrence basis (not a claims made basis) and to be in amounts of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate for each policy year.

(c) TO THE FULLEST EXTENT PERMITTED BY LAW, EACH PARTY (THE "INDEMNIFYING PARTY") SHALL INDEMNIFY, DEFEND AND HOLD THE OTHER PARTY, ITS SHAREHOLDERS, PARTNERS, MEMBERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS AND CONTRACTORS (THE "INDEMNIFIED PERSONS"), HARMLESS FROM AND AGAINST ALL LOSSES INCURRED BY THE INDEMNIFIED PERSONS TO THE EXTENT ARISING FROM, OR OUT OF, ANY CLAIM FOR, OR ARISING OUT OF, ANY INJURY TO OR DEATH OF ANY PERSON OR LOSS OR DAMAGE TO PROPERTY TO THE EXTENT ARISING OUT OF THE INDEMNIFYING

PARTY'S, ITS EMPLOYEES' AND AGENTS' NEGLIGENCE, WILLFUL MISCONDUCT, OR UNLAWFUL CONDUCT.

#### SECTION 14. MAINTENANCE AND UTILITIES.

During the Term and the Decommissioning Period, Grantee shall be responsible for Facility and infrastructure maintenance, operation, land maintenance within the Easement Area, including access road maintenance, snow removal, and all other operation and maintenance activities related to the Facilities. Grantee shall be responsible for all utilities and services related to the Facilities for the Term.

#### SECTION 15. CONDEMNATION.

(a) If any competent authority for any public or quasi-public purpose ("Condemnor") seeks to take or condemn all or any portion of the Easement Area, Landowner and Grantee shall use all reasonable and diligent efforts, each at its own expense, to contest such taking.

(b) If any Condemnor shall condemn all or substantially all of the Easement Area or a Facility, so that the purposes of this Agreement are frustrated, then the interests and obligations of Grantee under this Agreement in or affecting the Easement Area shall cease and terminate upon the earlier of (i) the date that the Condemnor takes physical possession of the Easement Area or the Facility, (ii) the date that Grantee is, in its sole judgment, no longer able or permitted to operate a Facility on the Easement Area in a commercially viable manner, or (iii) the date title vests in the Condemnor. In the event of any such occurrence during the Option Period, the Option Payments previously paid by Grantee shall be immediately returned by Landowner to Grantee (less the Independent Consideration).

(c) The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, which for Grantee will include, where applicable, the value of its easement interests in the Easement Area, the value of the Facilities, moving expenses, prepaid Payments, and business dislocation expenses. Grantee will be entitled to reimbursement for any prepaid Payments on a pro rata basis.

#### SECTION 16. ASSIGNMENT—RIGHT OF FIRST REFUSAL.

(a) Grantee will have the right to assign, sell or transfer its interest under this Agreement without the approval or consent of Landowner, to Grantee's parent or member company or any affiliate or subsidiary of, or partner in, Grantee or its parent or member company, or to any Financing Party as security for or in connection with a financing or other financial arrangement related to the Easement Area and/or the Facilities as set forth in Section 17 and to that Financing Party's successors, assigns or transferees, or to any entity which acquires all or substantially all of the Grantee's assets by reason of a merger, acquisition, or other business reorganization. Upon notification to Landowner of such assignment, transfer or sale, Grantee will be relieved of all future performance, liabilities and obligations under this Agreement. Grantee shall have the right to grant subeasements in the Easement Area and/or

Additional Easement Parcels, in whole or in part, without Landowner's consent. Grantee may not otherwise assign this Agreement without Landowner's consent, not to be unreasonably withheld, conditioned or delayed. Any assignment permitted hereunder shall release the assignor for any further obligations under this Agreement including any liabilities accruing after the date of the assignment; provided, that the assignee shall agree to be bound in writing therefor.

(b) Upon any assignment pursuant to this Section 16, Grantee shall provide to Landowner current information regarding the address of the Grantee and all Financing Parties and the term "Grantee" in this Agreement shall refer to the entity that was assigned the rights and obligations of Grantee hereunder.

(c) If Landowner at any time decides to sell all or any part of the Property to a purchaser other than Grantee or subdivide or rezone the Property (excluding the Easement Area, which Landowner shall not subdivide or rezone except with Grantee's prior written approval), Landowner shall promptly notify Grantee in writing, and such sale, subdivision or rezoning shall be subject to this Agreement and Grantee's rights hereunder including without limitation Grantee's easements and the right of first refusal described below. Landowner agrees not to sell, lease or use any areas of the Property or surrounding property for the installation, operation or maintenance of any other solar-powered electric generation facility or for Energy Storage Purposes. Landowner shall not be prohibited from the selling, leasing or use of any of the Property for non-solar-powered electric generation facility use or Energy Storage Purposes if it does not interfere with Grantee's rights under this Agreement.

(d) If at any time after the Effective Date, Landowner makes a bona fide written offer to a third party or receives a bona fide written offer from a third party for the purchase and sale of the Property ("Purchase Offer"), Landowner shall immediately furnish Grantee with a copy of the Purchase Offer, together with a representation that the Purchase Offer is valid, genuine and true in all respects. Grantee shall have the right of first refusal, exercisable within thirty (30) days after it receives such Purchase Offer and representation, to purchase the Property on the terms and conditions of the Purchase Offer but excluding any terms that would prevent or prejudice the Permitted Use or grant rights in the Property to third parties. If Grantee chooses not to exercise this right of first refusal or fails to provide written notice to Landowner within the thirty (30) day period, Landowner may sell the Property pursuant to the Purchase Offer, subject to the terms of this Agreement and Grantee's rights hereunder, to the person or entity that made the Purchase Offer provided that (i) the assignment is on the same terms contained in the Purchase Offer and (ii) the assignment occurs within ninety (90) days of Grantee's receipt of a copy of the Purchase Offer. If such third party modifies the Purchase Offer or the assignment does not occur within such ninety (90) day period, Landowner shall re-offer to Grantee, pursuant to the procedure set forth in this subparagraph 16(b), the purchase on the terms set forth in the Purchase Offer, as amended. The right of first refusal hereunder shall (x) survive any transfer of all or any part of the Property or assignment of all or any part of this Agreement and arise again with each Purchase Offer, whether or not a prior right of first refusal was exercised by Grantee; (y) bind and inure to the benefit of, Landowner and Grantee and their respective heirs, successors and assigns and Grantee's Financing Parties.

## SECTION 17. FINANCING.

(a) Grantee shall have the right to encumber its interests in this Agreement (including its easement in the Easement Area during the Term) by pledge, mortgage, encumbrance, collateral assignment or similar instrument in favor of any person providing financing in respect of a Facility (each, a “Financing Party”).

(b) In the event of a foreclosure or seizure of Grantee’s rights hereunder by a Financing Party, Landowner agrees to permit such Financing Party or its transferee to exercise any and all rights of Grantee hereunder without Grantee consent, so long as such Financing Party or its transferee shall tender performance of Grantee’s obligations under this Agreement from and after the date of any such foreclosure or exercise of rights. Landowner further agrees that Landowner shall not terminate this Agreement or seek to exercise remedies hereunder until it has given each Financing Party sixty (60) days’ notice of and the opportunity to cure any Payment Default by Grantee and one hundred and twenty (120) days’ notice of and the opportunity to cure any Non-payment Default by Grantee hereunder and such Payment Default or Non-payment Default, as applicable, remains uncured after expiration of such period (as adjusted per the below clause (ii)). The cure period for each Financing Party shall begin to run at the later of (i) Financing Party’s receipt of notice of Default from Landowner in accordance with this Section, or (ii) the end of the cure period given to the Grantee in this Agreement.

(c) If the Financing Party elects to cure, but cannot remedy a Non-payment Default in such one hundred and twenty-day (120) period, then such period shall be extended for a reasonable period of time; provided that Financing Party continues to pursue such remedies with reasonable diligence. The commencement and pursuit of a judicial or non-judicial foreclosure proceedings by a Financing Party shall be deemed the commencement of a cure for a Non-payment Default.

(d) In the event that a Default under this Agreement is a result of the bankruptcy of Grantee or is otherwise incapable of being cured by a Financing Party or if this Agreement is rejected in connection with a bankruptcy proceeding by Grantee, then a trustee in a bankruptcy or other such party to such proceeding on behalf of Grantee, within (10) days after a request from a Financing Party, which request has been made within thirty (30) days following said Financing Party’s receipt of written notice of such Default or notice of rejection of the Agreement in a bankruptcy proceeding, Landowner agrees that it will, at Financing Party’s sole option, enter into a new agreement with Financing Party or its nominee upon the same terms and conditions as this Agreement for no additional consideration from a Financing Party. Any such new agreement shall be superior to all rights, liens and interest intervening between the Effective Date and the granting of such new agreement.

(e) Landowner shall promptly after a written request by Grantee, execute and deliver to Grantee (or to such party as Grantee shall designate), a written statement certifying as to whether (x) this Agreement is in full force and effect, (y) the dates through which amounts due to Landowner have been paid, and (z) there are any known defaults or ongoing disputes between Landowner and Grantee.



## SECTION 18. RECORDATION, CONFIDENTIALITY.

(a) The Parties agree that this Agreement shall not be recorded, but the Parties shall execute, notarize and record a Memorandum of Easement/Option for Easement or similar instrument (“Memorandum of Option”) in the form attached hereto in Appendix E. Recordation of the Memorandum of Option shall be at Grantee’s expense. The Parties shall execute, notarize and record an amendment to the Memorandum of Option in each instance as reasonably requested by Grantee or if this Agreement is terminated.

(b) Except as provided in the preceding Section 18(a), Landowner shall maintain in the strictest confidence, for the benefit of Grantee all information pertaining to the identity of Grantee, and the substance or content of this Agreement, including, without limitation, the financial terms of or payments under this Agreement, Grantee’s plans for the use and development of the Property, and the like, unless such information is in the public domain by reason of prior publication through no act or omission of Landowner or its employees or agents. Landowner shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Grantee. Notwithstanding the foregoing, Landowner may disclose such information to Landowner’s lenders, attorneys, accountants and other personal financial advisors, prospective purchasers, appraisers and lenders; or pursuant to lawful process, subpoena or court order requiring such disclosure, provided Landowner in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the written agreement of said party not to disclose the information, which agreement shall run to the benefit of and be enforceable by Grantee. The provisions of this Section 18(b) shall survive the termination or expiration of this Agreement.

## SECTION 19. DEFAULT AND REMEDIES.

(a) If Grantee shall fail to perform any of Grantee’s material obligations under this Agreement and such failure shall remain uncured following the required notice and cure periods as provided below (a “Default”), Landowner shall have the right to terminate this Agreement by notice to Grantee and exercise any other remedies provided in this Agreement or under Applicable Law. A Default may be either a Payment Default or a Non-payment Default. A “Payment Default” shall mean the failure to make timely payments of a financial nature as provided herein (other than any Option Payments). A “Non-payment Default” is any Default other than a Payment Default (other than a Default arising from failure to pay Option Payments). Landowner agrees to simultaneously notify in writing the Grantee and all Financing Parties of Grantee who have given advance notice of their interest in this Agreement to Landowner, of any failure by Grantee to perform any of the Grantee’s obligations under this Agreement, which notice shall be sent to the address set forth herein and as might be subsequently provided to Landowner and shall set forth in reasonable detail the facts pertaining to such failure and specify a reasonable method of cure.

(b) The Grantee shall have the opportunity to cure any Payment Default within thirty (30) days of said notice by paying all then-overdue payments in full together with interest

thereon accruing after the due date therefor at the rate equal to the lesser of (i) one and one-half percent (1½ %) per month and (ii) the maximum rate allowable by Applicable Law.

(c) The Grantee and any Financing Party shall have the opportunity to cure any Non-payment Default within 90 days of said notice or, in the event that a cure might take longer than 90 days because of the nature of the Non-payment Default or because of climatic conditions of the Easement Area, the Grantee shall notify Landowner of the anticipated date for curing of the Non-Payment Default and such 90-day period shall be extended for a reasonable period of time so long as Grantee begins to diligently undertake the cure within the 90-day period.

(d) If Landowner shall fail to perform any of its obligations hereunder (a “Landowner Default”), Grantee may cure such Landowner Default and, if Landowner fails to reimburse Grantee the amounts paid by Grantee to effectuate such cure within ten (10) days after demand, Grantee may offset against any amounts owing to Landowner hereunder any amounts paid by Grantee to cure such Landowner Default together with interest thereon at the rate of six percent (6%) per annum. In addition, in the event of a Landowner Default, Grantee may exercise any other remedies available under this Agreement or Applicable Law, or in equity, including without limitation the right to seek specific performance, injunction or declaratory judgment, without any obligation to post any security. If a Landowner Default occurs during the Option Period, in addition to its other rights and remedies hereunder, Grantee shall have the right to terminate this Agreement and receive a refund of all Option Payments previously paid (less the Independent Consideration), which Landowner shall immediately pay to Grantee.

(e) The Parties acknowledge and agree that Grantee’s access to Property and the easements, covenants and restrictions contained in this Agreement are necessary, fundamental, required and specifically designed to protect the legitimate business interests of Grantee; (b) such easements, covenants and restrictions and access to the Property relate to matters that are of a special, unique, and extraordinary character; and (c) a breach of any such easements, covenants or restrictions will result in irreparable harm and damages to Grantee that cannot be adequately compensated by a monetary award. Accordingly, the Parties expressly agree that in the event of an actual or threatened breach by Landowner of its obligations hereunder, Grantee shall be entitled to a temporary restraining order or an injunction (or both) to specifically enforce the provisions of this Agreement. Further, nothing herein shall be construed as prohibiting compensation to Grantee for such breach or threatened breach, including (but not necessarily limited to) recovery of damages or reasonable attorneys’ fees.

(f) Notwithstanding anything to the contrary herein, neither party shall be liable to the other for incidental, consequential, special, punitive or indirect damages, including but not limited to loss of use or loss of profit or revenue.

## SECTION 20. DECOMMISSIONING.

(a) Upon expiration of the Term or any earlier termination of this Agreement following a Default hereunder by Grantee (after expiration of any applicable cure periods, including those afforded to Financing Parties under Section 17), Grantee shall Decommission any Facility within one hundred eighty (180) days following such expiration or termination

(such period, the “Decommissioning Period”), and Landowner hereby grants Grantee a continuing license to enter the Easement Area and the Additional Easement Parcels for such purposes during the Decommissioning Period. The provisions of this Section 20 shall survive any termination of this Agreement.

(b) Five (5) years prior to the expiration of the Term, Grantee shall retain an independent demolition contractor with solar experience to provide a good faith estimate of the total cost (net of any salvage value of the Facilities) to restore any changes made to the Property by Grantee to condition required by Applicable Law (the “Reclamation Estimate”). Within ten (10) days of its receipt of the Reclamation Estimate, Grantee shall deliver a copy of the Reclamation Estimate to Landowner and shall deliver to Landowner a payment bond or a letter of credit issued by a credit worthy bonding company or financial institution, as applicable for the amount of the Reclamation Estimate; provided that if pursuant to Applicable Law, Grantee has provided to any Governmental Authority other financial assurance for restoration of the Property (the proceeds of which are required to be applied to the restoration of the Property in the event Grantee otherwise fails to do so), such financial assurance provided to such Governmental Authority shall be deemed to satisfy Grantee’s obligations under this Section 20(b). Any payment bond or letter of credit required to be issued to Landowner shall be in the name of Landowner and shall secure Grantee’s obligation to restore the Property to the condition required by Applicable Law. If Grantee provides notice to Landowner exercising its right to renew the Agreement, Grantee’s obligation to provide the Reclamation Estimate and payment bond or letter of credit shall be discontinued and/or deferred until five (5) years prior to the end of such Extended Term.

## SECTION 21. FORCE MAJEURE.

If performance by a Party of this Agreement or of any of its obligations hereunder is prevented or substantially restricted or interfered with by reason of an event of “Force Majeure” (defined below), the affected Party, upon giving notice to the other Party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference. “Force Majeure” means any cause, event or circumstance occurring after the Effective Date that is not reasonably foreseeable and that is beyond the reasonable control of the affected Party and not the result of negligence or fault of such Party, and not avoidable by such Party’s exercise of due diligence, including: (i) acts of god including hurricanes, tornados, floods, washouts, lightning, earthquakes, storm warnings and any other adverse weather conditions which directly result in a party’s inability to perform its obligations, (ii) acts of government or any agency, subdivision or instrumentality thereof having, claiming, or asserting authority or jurisdiction over the subject matter, when any such act of government directly results in a Party’s inability to perform its obligations, (iii) acts of civil disorder including acts of sabotage, acts of war, lockouts, insurrection, riot, mass protests or demonstrations, threats of any of the foregoing, and police action in connection with or in reaction to any such acts of civil disorder, when any such acts of civil disorder directly results in a party’s inability to perform its obligations, and (iv) failures resulting from fires, washouts, mechanical breakdowns of or necessities for making repairs or alterations to transformers, power lines, switching equipment, inverters, machinery, cables, meters or any of the equipment therein or thereon, when any such failure directly results in a Party’s inability to perform its obligations.

SECTION 22. NOTICES.

Notices under this Agreement shall be sent to the addresses set forth below:

LANDOWNER: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

GRANTEE: [Solar Company]

Notices shall be deemed received if sent by certified mail (return receipt requested), courier or nationally recognized overnight delivery service to last known address of the intended recipient. Notices may also be sent by email for which the sending Party receives a confirmation that the email message has been completely transmitted without error (of which auto-replies are insufficient). Email messages received on any day that is not a business day, or after 5:00 p.m. local time on a business day, shall be deemed to have been delivered on the next business day. A Party may change its address for delivery of notices hereunder by notice given in accordance with this Section. Failure of the Grantee to notify the Landowner of an address change for it or any Financing Party shall excuse the Landowner from complying with any notice obligation herein to such changed addresses, provided however that the Landowner will in no event be excused from providing notices required herein to all addresses that Landowner has notice of. Notices will be deemed given upon receipt or upon the failure to accept delivery.

In the event of a change in ownership, transfer or sale of the Property, within ten (10) days of such transfer, Landowner will send the documents listed below to Grantee. In the event Grantee does not receive such appropriate documents, Grantee shall not be responsible for any failure to pay the assignee.

- (a) Old deed to Property
- (b) New deed to Property
- (c) Bill of Sale or Transfer
- (d) New W-9
- (e) New Payment Direction Form
- (f) Full contact information for new Landowner including all phone numbers

SECTION 23. NO PARTNERSHIP.

Landowner does not, in any way or for any purpose, become a partner of Grantee in the conduct of its business, or otherwise, or joint venturer or a member of a joint enterprise with Grantee by reason of this Agreement. Grantee shall bear sole responsibility for payment of any commissions or broker's fees to Grantee's agents, brokers or investors.

## SECTION 24. MISCELLANEOUS PROVISIONS.

(a) Governing Law; Waiver of Jury Trial. This Agreement shall be governed by and construed in accordance with the laws of the state of which the Property is located and without reference to the choice of law principles of such state or any other state. EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS AGREEMENT.

(b) Estoppel Certificates. Within fifteen (15) days following receipt of a request from Grantee or from any existing or proposed Financing Party, Landowner shall execute an estoppel certificate (a) certifying that this Agreement is in full force and effect and has not been modified (or, if the same is not true, stating the current status of this Agreement), (b) certifying to the best of Landowner's knowledge there are no uncured events of default under the Agreement (or, if any uncured events of default exist, stating with particularity the nature of such events of default), and (c) containing any other certifications of factual information as may reasonably be requested. Any such statements may be conclusively relied upon by Grantee and any existing or proposed Financing Party, investor, title company, and any purchaser of a Facility. The failure of Landowner to deliver such estoppel certificate within such time shall be conclusive evidence upon Landowner that this Agreement is in full force and effect and has not been modified, and there are no uncured events of default by Grantee under this Agreement.

(c) Rules of Interpretation. Section headings are for convenience only and shall not affect the interpretation of this Agreement. References to sections are, unless the context otherwise requires, references to sections of this Agreement. The words "hereto", "hereof" and "hereunder" shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The word "person" shall include individuals; partnerships; corporate bodies (including to corporations, limited partnerships and limited liability companies); non-profit corporations or associations; governmental bodies and agencies; and regulated utilities. The word "including" shall be deemed to be followed by the words "without limitation".

(d) Entire Agreement/Amendment. This Agreement contains the entire agreement of the Parties and there are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may only be modified or amended in writing signed by both Parties.

(e) Severability. If any non-material part of this Agreement is held to be unenforceable, the rest of the Agreement will continue in effect. If a material provision is determined to be unenforceable and the Party which would have been benefited by the provision does not waive its unenforceability, then the Parties shall negotiate in good faith to amend the Agreement to restore to the Party that was the beneficiary of such unenforceable provision the benefits of such provision.

(f) Waiver. The failure of either Party to enforce any provisions of this Agreement shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

(g) Binding Effect. The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives, successors and permitted assigns. The burdens of the easements and all other rights granted to Grantee in this Agreement shall run with and against the land as to the Property, shall be a charge and burden on the Property, and shall be binding upon and enforceable against Landowner and all heirs, legal representatives, successors, assigns, permittees, licensees, lessees, employees and agents of Landowner.

(h) No Assurance as to Development. The Landowner hereby agrees and acknowledges that the Grantee makes no representations, warranties, commitments or guarantees of any kind as to the likelihood of the Grantee successfully developing, financing and/or constructing a Facility on the Easement Area and the Landowner receiving Payment hereunder. The Landowner makes no representation, warranties or guarantees of any kind as to the suitability of the site for Grantee's intended use.

(i) Cooperation. The Parties acknowledge that the performance of each Party's obligations under this Agreement may often require the assistance and cooperation of the other Party. Each Party therefore agrees, in addition to those provisions in this Agreement specifically providing for assistance from one Party to the other, that it will at all times following the Effective Date, reasonably cooperate with the other Party.

(j) Due Diligence and Authorization. Throughout the Option Period and Term, Landowner shall cooperate with Grantee, in Grantee's due diligence investigation and with Grantee's efforts to obtain any governmental approvals, permits or entitlements for the Property, at no cost to Landowner, including, without limitation, Grantee's efforts to obtain any conditional or other use permits or entitlements and/or complete any rezoning process required by the County or any associated municipality for the Facilities. Without limiting Landowner's obligations under any other provision of this Agreement, Landowner shall cooperate with Grantee to obtain a non-disturbance agreement, relocation agreement or other title curative agreement from any person or entity with a lien, encumbrance, mortgage, easement or other problematic exception to Landowner's title to the Property as requested by Grantee in order to facilitate development and financing of the Facility on the Property, as well as affidavits and estoppel certificates reasonably requested by Grantee or a financing party. Landowner shall also cooperate with Grantee and execute applications or other documents reasonably requested by Grantee in connection with any applications for environmental incentives, financial incentives, tax incentives and abatements, governmental approvals, permits, entitlements, and any subdivision of the Property that may be required in order for Grantee to easement the Property pursuant to the Agreement. Grantee shall have no obligation to complete its incentive application or entitlement/zoning process if Grantee elects not to proceed with the Option and may abandon that process at any time without liability to Landowner with respect thereto. During the Option Period, Landowner shall not modify the Property in a manner that might interfere with the flow

of solar energy onto the Property or the construction of a solar energy project or the Project thereon.

(k) Business Days. Any payment or other obligation which is due to be performed on or before a day which is not a business day in the state in which the Easement Area is located shall be paid on the next succeeding business day. A “business day” shall be any day other than a Saturday, Sunday or any other day when national banks located in the state where the Property is located are not open for business.

(l) Mechanics Liens. Grantee will not permit any mechanic's or construction lien or liens to be placed upon the Property or any building or improvement thereon during the Term or Decommissioning Period for work done on behalf of Grantee and in case of the filing of such lien Grantee will promptly pay same or post a bond to remove such lien from the land records. If Grantee fails to remove such bond within thirty (30) days after written notice thereof from Landowner to Grantee, Landowner shall have the right and privilege at Landowner's option of paying the same or any portion thereof without inquiry as to the validity thereof, and Grantee shall reimburse Landowner promptly upon demand for any amounts so paid, including expenses and interest.

(m) No Merger. There shall be no merger of the easement and any other estate of interest in the Property, whether owned by the Grantee or anyone else.

(n) Waiver of Landowner's Liens. Landowner waives any and all lien rights it may have, statutory or otherwise, concerning any Facility or any portion thereof. Any Facility shall be deemed personal property of Grantee for purposes of this Agreement, regardless of whether any portion is deemed real or personal property under Applicable Law, and Landowner consents to Grantee's right to remove all or any portion of any Facility from time to time in Grantee's sole discretion and without Landowner's consent.

(o) Counterparts. This Agreement may be executed in counterparts, which shall together constitute one and the same agreement. Facsimile or PDF signatures shall have the same effect as original signatures and each Party consents to the admission in evidence of a fully-executed facsimile or photocopy of this Agreement in any court proceedings between the Parties.

*[The remainder of this page has been intentionally left blank.  
Signatures appear on next page]*

IN WITNESS WHEREOF, this Agreement is entered into by the Parties as of the Effective Date.

**LANDOWNER**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GRANTEE**

[Solar Company]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## GLOSSARY OF TERMS

As used herein, the following terms shall have the meanings set forth beside them:

“Additional Easement(s)” shall mean those portions of the Property as described in Section 4, which boundaries Grantee shall determine during the Option Period by means of a survey as specified in Section 2(f).

“Additional Easement Parcels” is defined in Section 4(a).

“Applicable Law” means any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding injunction, registration, license, franchise, permit, authorization, or guideline issued by a Governmental Authority that is applicable to a Party to this Agreement or the transaction described herein.

“Battery Facilities” is defined in the definition of “Energy Storage Purposes”.

“Commercial Operation” shall occur for all Facilities when (i) Grantee has obtained all necessary licenses, permits and approvals under Applicable Law for the installation and operation of all Facilities on the Easement Area, (ii) all Facilities have been connected to the local electricity distribution system, (iii) all Facilities are ready and able to generate and supply electricity, and (v) if applicable and to the extent required, the local electric distribution company has approved interconnection with the electricity distribution system to allow regular operation of all Facilities.

“Commercial Operation Date” means the date, to be designated in accordance with Section 7(b), hereof, that all Facilities shall have achieved Commercial Operation.

“Condemnor” is defined in Section 15(a).

“Construction Period” is defined in Section 5(a).

“CRP Contract” is defined in Section 8(f).

“Decommission” or “Decommissioning”: means performance of the activities described in Section 6(b).

“Decommissioning Period” is defined in Section 20.

“Default” is defined in Section 19(a).

“Easement Area” means area described on Appendix B hereto, as such Appendix B may be revised pursuant to Section 2(f).

“Environmental Attributes” means renewable energy certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, certificates, products, or valuations attributed to a Facility and its displacement of conventional energy generation, or any other entitlement (other than Tax Attributes) pursuant to

any federal, state, or local program applicable to renewable energy sources, whether legislative or regulatory in origin, as amended from time to time.

“Energy Storage Purposes” means: (i) assessing the feasibility of, and if Grantee, without obligation and within its sole discretion, so elects, (ii) erecting, constructing, reconstructing, replacing, relocating, removing, operating, maintaining and using utility scale energy storage facilities including storage facilities utilizing battery technology along with all necessary ancillary improvements and equipment providing support or otherwise associated therewith (the “Battery Facilities”).

“Environmental Law” means any federal, state or local law, ordinance or regulation promulgated thereunder relating to the generation, manufacture, production, use, storage, release, discharge, disposal, transportation or presence of any Hazardous Material.

“Exercise Notice” is defined in Section 2(e).

“Existing Encumbrances” mean those liens, encumbrances, exceptions or other title matters with respect to the Property set forth in Appendix D attached hereto.

“Facility” or “Facilities” means either (i) the solar powered electric generating facility with an anticipated generating capacity of approximately [ ] megawatts DC, (ii) Battery Facilities, or (iii) both (i) and (ii), and all cases, inclusive of all related equipment and structures, including but not limited to inverters, transformers, transmission, collection and communications lines, cables, switching stations, substations, telecommunications equipment, and other facilities for interconnection with the local electricity distribution company and utilities and signage, gates, fences, foundations, mounting units and other machinery, equipment and improvements, to be installed by Grantee on the Easement Area in accordance with this Agreement.

“Financing Party” is defined in Section 17(a).

“Force Majeure” is defined in Section 21.

“Governmental Authority” means any international, national, federal, state, municipal, county, regional or local government, administrative, judicial or regulatory entity, and includes any department, commission, bureau, board, administrative agency or regulatory body of any government.

“Hazardous Material” means any flammable explosives, asbestos, asbestos containing materials, radioactive materials, hazardous wastes, petroleum, including crude oil or any fraction thereof, polychlorinated biphenyls, corrosive, reactive, ignitable, toxic, reproductive toxic, carcinogenic or any other substances, materials, wastes, products, chemicals or compounds which are controlled or regulated by any federal, state or local law, rule or regulation, regardless of quantity or levels and whether injurious by themselves or in combination with other materials.

“Indemnified Persons” is defined in Section 13(c).

“Indemnifying Party” is defined in Section 13(c).

“Independent Consideration” is defined in Section 2(c).

“Initial Option Payment” is defined in Section 2(c).

“Landowner” is defined in the Preamble.

“Landowner Default” is defined in Section 19(d).

“Landowner Easements” is defined in Section 4(a)(v).

“Losses” means any and all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs, and expenses (including all attorney’s fees and other costs and expenses incurred in defending any such claims or matters or in asserting or enforcing any indemnity obligation).

“MDARD” means Michigan Department of Agriculture and Rural Development or its successor agency.

“Memorandum of Option” is defined in Section 18(a).

“Non-payment Default” is defined in Section 19(a).

“Operations Period” is defined in Section 5(a).

“Operations Period Commencement Date” is defined in Section 4(a)(iii).

“Option” is defined in Section 2(a).

“Option Payment” is defined in Section 2(c).

“Option Period” is defined in Section 2(b).

“PA 116” means the Michigan Farmland and Open Space Preservation Program (formerly known as P.A. 116), being MCL 324.361010 et. seq., as amended.

“PA 116 Agreement” means a Farmland Development Rights Agreement pursuant to PA 116 applicable to the Easement Area.

“Parties” means Landowner and Grantee and “Party” means either Landowner or Grantee.

“Payment Default” is defined in Section 19(a).

“Permitted Encumbrances” mean the Existing Encumbrances and any additional mortgages granted by Landowner in accordance with Section 11(c) hereof.

“Permitted Uses” means the use of the Easement Area and Easements for the development, installation, construction, interconnection, maintenance, operation, repair, replacement and decommissioning of a Facility and for the production, delivery and sale of electricity produced by a Facility or stored by Battery Facilities, and associated Environmental Attributes, and for

undertaking any other lawful use or activities from time to time in any way associated with the Facility or Battery Facilities or related improvements.

“Property” means the real property described in Appendix A attached hereto, which includes the Easement Area and the Additional Easement Parcels.

“Purchase Offer” is defined in Section 16(d).

“Reclamation Estimate” is defined in Section 20(b).

“Payment” means the payments to be made in accordance with Section 9 hereof.

“Tax Attributes” means investment tax credits (including any grants or payments in lieu thereof) and any tax deductions or other benefits under the Internal Revenue Code or applicable federal, state, or local law available as a result of the ownership and/or operation of a Facility or the output generated by a Facility (including, without limitation, tax credits (including any grants or payments in lieu thereof) and accelerated and/or bonus depreciation).

“Grantee” is defined in the Preamble.

“Grantee Taxes” is defined in Section 10(b).

“Term” is defined in Section 5.

APPENDIX A

PROPERTY DESCRIPTION

Property located in \_\_\_\_\_ [Township/Village/City], \_\_\_\_\_ County, Michigan described as:

Common Address:

Parcel ID:

Legal Description: To Be Populated by Landowner

## APPENDIX B EASEMENT AREA

An indicative Easement Area(s) of approximately \_\_\_\_\_ acres are highlighted below to serve as a starting point in determining the final system design and location. Acreage associated with the Easement Area for the Operations Period may increase or decrease based on final system design.

### **Notes:**

1. This Exhibit may be replaced by a land survey and/or construction drawings of the Easement Area once received by the Grantee.
2. Any setback of the Easement Area from the Property's boundaries shall be the distance required by the applicable governmental authorities.
3. Width of access road shall be the width required by the applicable governmental authorities.
4. Any type, number, mounting positions, and locations of equipment are illustrative only. Actual types, number, mounting positions, and locations of equipment may vary from what is shown above.

## APPENDIX C

### ADDITIONAL EASEMENT PARCELS

[To be populated by Summit Ridge as needed]

**Notes:**

1. This Exhibit may be replaced by a land survey and/or construction drawings of the Easement Area once received by the Grantee.
2. Any location of the easement improvements, signage, gates, boundaries, or access to public rights of way shall be the distance required by the applicable governmental authorities.
3. Width of access road shall be the width required by the applicable governmental authorities.

APPENDIX D  
EXISTING ENCUMBRANCES  
(including Fee Mortgages)



APPENDIX E  
MEMORANDUM OF OPTION

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**[Recordable Memorandum of Option to follow]**

## MEMORANDUM OF EASEMENT/OPTION FOR EASEMENT

This Memorandum of Easement/Option for Easement is entered into on this \_\_\_ day of, \_\_\_\_\_ 20\_\_\_ by and between \_\_\_\_\_, having a mailing address of \_\_\_\_\_ (hereinafter referred to as “Landowner”) and [Solar Company] (hereinafter referred to as “Grantee”).

1. Landowner and Grantee entered into a certain Option For Easement and Easement Agreement (“Agreement”) on the \_\_\_ day of \_\_\_\_\_ 20\_\_\_ (the “Effective Date”), pursuant to which Landowner has granted to Grantee an exclusive and irrevocable option to (a) receive an exclusive easement in gross upon, over, under, across and through certain real property more particularly described on Exhibit 1 attached hereto (the “Property”) for the purpose of installing, operating and maintaining either (i) a solar-powered electric generation facility (a “Generation Facility”), an energy storage facility (a “Storage Facility”, and collectively with a Generation Facility, “Facilities”), or (iii) both a Generation Facility and a Storage Facility, and (b) obtain certain additional easements for access and servicing the Generation Facility. All of the foregoing are set forth in the Agreement.

2. The term of the option commences on the Effective Date and continues for a period of up to 36 months following the Effective Date (unless earlier terminated) (the “Option Period”). If Grantee exercises the option to receive easements upon, over, under, across, and through the Property under the Agreement, the exclusive easement in gross (plus the grant of additional easements) shall automatically commence upon such exercise and shall continue for a period of up to twenty-two (22) years on the terms and conditions of the Agreement. In addition, Grantee shall have the right to extend the easement (and the grant of easements) for two (2) additional five (5) year periods, pursuant to the terms and conditions of the Agreement. Without limiting the generality of the foregoing, if Grantee exercises the option to receive an easement upon, over, under, across, and through the Property, Landowner grants to Grantee the exclusive right to install, operate and maintain the Facilities on the Property (and to exclude others from the Property) and the exclusive right to convert and capture the free and unobstructed flow of sunlight over the Property and generate electricity therefrom using the Generation Facility. The Agreement also contains a right of first refusal of Grantee to purchase the Property. The method of determining the price under the right of first refusal is contained in the Agreement.

3. This Memorandum of Option is not intended to amend or modify, and shall not be deemed or construed as amending or modifying, any of the terms, conditions or provisions of the Agreement, all of which are hereby ratified and affirmed. In the event of a conflict between the provisions of this Memorandum and the provisions of the Agreement, the provisions of the Agreement shall control. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and permitted assigns, subject to the provisions of the Easement.

A Real Estate Transfer Tax Valuation Affidavit is being filed in connection with the recording of this Memorandum.

**[Signatures to Follow]**

**GRANTEE:**  
[Solar Company]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**GRANTEE ACKNOWLEDGMENT**

State of Michigan )  
 ) ss:  
County of \_\_\_\_\_ )

On the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me personally appeared \_\_\_\_\_, and acknowledged under oath that he/she is a duly authorized person for [Solar Company], a \_\_\_\_\_ limited liability company, the limited liability company named in the attached instrument, and as such was authorized to execute this instrument on behalf of the limited liability company.

\_\_\_\_\_  
Notary Public: \_\_\_\_\_  
\_\_\_\_\_ County \_\_\_\_\_  
Acting in the County of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

[Grantee's Signature Page to the Memorandum]



Prepared by and when  
recorded return to:  
[Solar Company]

[Landowner's Signature Page to the Memorandum]

**EXHIBIT 1**

**DESCRIPTION OF THE PROPERTY**

[Insert Project Name]

Property located in \_\_\_\_\_ [Township/Village/City], \_\_\_\_\_ County, Michigan described as:

Common Address:

Parcel ID Number: \_\_\_\_\_

Legal Description: To be provided by Landowner

APPENDIX F

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