

THE UNIVERSITY OF TEXAS SYSTEM

COMMERCIAL LEASE NO. 0000
(Solar Energy Site)

This COMMERCIAL LEASE NO. 0000 (this "Lease") is made and entered into effective as of 00/00/2017 (the "Effective Date") by and between **THE UNIVERSITY OF TEXAS SYSTEM BOARD OF REGENTS** ("Owner") and _____ ("Lessee").

1. **Basic Lease Information**

Premises: **0.000** acres of land, more or less, lying in the _____ of Section **00**, Block **00**, University Lands, _____ County, Texas, as more fully described on **Exhibit "A"** attached to this Lease and incorporated therein for location.

Lease Term: The period commencing on the Effective Date and continuing for a maximum period of _____ (__) years through __/__/__. The term "Lease Term," as used herein, shall include all renewals or extensions hereof unless the context clearly indicates to the contrary, and it shall include the Development Period, the Construction Period, the Operating Period and the Extended Terms, if applicable, all as more fully described below.

Rental: Commencing on the Effective Date and continuing throughout the Lease Term, Lessee shall pay to Owner, in advance and without deduction or setoff, annual Rental payments in accordance with **Schedule 1** attached to this Lease.

Permitted Use: Subject to the terms hereof and the Existing Encumbrances (as hereinafter defined), Lessee shall have the exclusive right to continuously use and occupy the Premises for the purpose of developing, constructing, operating and maintaining the Generating Facility (as defined below), and undertaking activities incidental thereto, including, without limitation, conducting Operations, and for no other purpose or purposes. Lessee shall be entitled to ingress and egress and to use any improvements, if any, now located on the Premises solely for the purposes herein intended. **If regulated fluids are present, including but not limited to hydrocarbons and produced water, they shall be stored or contained above-grade, not in below-grade sumps or tanks.**

Owner's Address: ***For Correspondence and Notices:***

University Lands
P.O. Box 553
Midland, Texas 79702
Attention: James R. Buice
Telephone: (432) 684-4404
Fax: (432) 682-7456

For the payment of Rental and other sums due to Owner:

The University of Texas System
P.O. Box 553
Midland, Texas 79702
Attention: Associate Director Accounting

Owner's Contact Person: Mr. James R. Buice
Telephone: (432) 684-4404
Fax: (432) 682-7456

or such other person as Owner may designate in writing.

Lessee's Address: _____
Company Address
Company Address
Attention: _____
Telephone: (____) ____-____
Fax: (____) ____-____

Lessee's Contact Person: Contact Name
Telephone: (____) ____-____
Cell: (____) ____-____

or such other person as Lessee may designate in writing.

2. **Lease**

a. For and in consideration of the rent and other charges to be paid hereunder and the other covenants and agreements to be performed by Lessee, Owner hereby demises and leases the Premises to Lessee, and Lessee hereby leases the Premises from Owner, for the sole purpose of developing, constructing, operating and maintaining the Generating Facility, commencing on the Effective Date and ending on the last day of the Lease Term unless sooner terminated as herein provided and on the other terms and conditions set out in this Lease. Subject to the further terms of this Lease, Lessee shall have the sole and exclusive right to use and occupy the Premises and to convert all of the solar energy resources on or at the Premises. The rights granted to Lessee hereunder shall include the following easements and related rights:

i. An easement and right over and across the Premises for any audio, visual, view, light, shadow, noise, vibration, electromagnetic interference or other effect of any kind or nature whatsoever resulting, directly or indirectly, from the Generating Facility, including but not limited to rights to cast shadows and reflect glare onto all of Owner's property including any adjoining property, from the Generating Facility and/or any and all other related facilities, wherever located on the Premises; and

ii. An exclusive easement and right to capture, use and convert the solar resources over and across the Premises.

iii. the right to take action on the Premises to prevent measurable diminishment in output due to obstruction of the sunlight across the Premises including but not limited to an easement right to trim, cut down and remove all trees (whether natural

or cultivated), brush, vegetation and fire and electrical hazards now or hereafter existing on the Premises which might obstruct receipt of or access to sunlight throughout the Premises or interfere with or endanger the Generating Facility or the Operations, as determined by Lessee.

b. Notwithstanding anything herein to the contrary in this Lease, any easement granted by Owner to Lessee, whether for access or otherwise, on property outside the Premises shall be negotiated separately from this Lease and is subject to the applicable terms and fees set forth in the then current "Rate and Damage Schedule" available on the University Lands website (www.utlands.utsystem.edu), as such schedule may be amended, modified, superseded and/or replaced from time to time (the "**Rate and Damage Schedule**"). Owner and Lessee acknowledge and agree that the terms, provisions and conditions of the Rate and Damage Schedule are hereby incorporated into this Lease by reference. All payments required to be paid by Lessee pursuant to the Rate and Damage Schedule shall be paid to Owner by Lessee no later than thirty (30) days following written request from Owner. Lessee acknowledges that there are limitations on the term of easements and rights of way that may be granted by Owner pursuant to Chapter 66.46 of the Texas Education Code.

c. All of the uses and purposes permitted Lessee under this Agreement, including, without limitation, use of the Premises, are referred to herein collectively as "**Operations.**"

d. The Lease Term shall include the Development Period, the Construction Period, the Operating Period, and the Extended Term(s), if applicable. The Development Period shall commence on the Effective Date and continue until the earlier of (a) _____ (__) years after the Effective Date or (b) the Construction Commencement Date (defined below) (the "**Development Period**"). During the Development Period, Lessee shall have the right to study the feasibility of solar energy conversion on the Premises ("**Due Diligence Activities**"); provided that Lessee shall provide Owner with reasonable advance notice of the dates Lessee contemplates that Lessee and/or its representatives, agents and contractors are planning to enter upon the Premises for the purpose of conducting Due Diligence Activities. "**Construction Commencement Date**" means the earlier of (1) the day that Lessee specifies it will begin construction of the Generating Facility in a written notice to Owner, or (2) the day that Lessee begins site preparation for the installation of actual solar panels or mounting equipment for solar panels on any property for the Generating Facility. For the avoidance of doubt the following preliminary Due Diligence Activities shall not cause the Construction Commencement Date to occur: environmental studies, solar studies, habitat or species studies, geotechnical studies, surveys, engineering studies, and core sampling, equipment studies, and meteorological studies. If the Construction Commencement Date occurs at any time during the Development Period, then the Lease Term shall automatically (and without the need for any additional documentation) run from the Construction Commencement Date to the date that is _____ (__) years from the Construction Commencement Date (the "**Construction Period**"). During the Construction Period, Lessee shall have the right to do all things necessary to construct a solar energy project on the Property and to exercise its other rights under this Lease. If before the end of the Construction Period Lessee begins using electricity in commercial quantities (excluding use of electricity in commercial quantities in order to test the initial performance of the Generating Facility) or begins selling electricity to a third party power purchaser, offtaker, merchant buyer, spot market buyer, or other third party purchaser from the Generating Facility (excluding sales of energy produced by the Generating Facility in order to test the initial performance of the Generating Facility) (the "**Commercial Operations Date**") then the Lease Term shall automatically (and without the need for any additional documentation) run from the Commercial Operations Date to the date that is _____ (__) years after the Commercial Operations Date (the "**Operating Period**").

e. At any time during the Development Period and prior to the Construction Commencement Date, Lessee may elect, in its sole and absolute discretion, for any reason or for no reason, to terminate this Lease by providing written notice to Owner on or prior to the expiration of the

Development Period; provided, however, in the event Lessee terminates this Lease pursuant to this Paragraph 2(e), Lessor shall have no obligation to refund and Lessee shall remain liable for any amount of Rental paid or due by Lessee prior to the date of termination. Lessee has paid to Owner the sum of One Hundred and No/100 Dollars (\$100.00) as independent consideration (the "**Independent Consideration**"), the receipt and sufficiency of which is hereby acknowledged, for Lessee's right to terminate during the Development Period. The Independent Consideration is in addition to and independent of any other consideration or payment, is wholly earned by Owner upon Owner's execution of this Lease, and is not refundable, or applicable to the Rental, under any circumstances. Upon such termination, except for rights and obligations that expressly survive termination as set forth herein, neither Party shall have any further liability under this Lease.

f. Prior the Construction Commencement Date, Owner reserves all rights to enter and use the Premises (including for hunting as provided in Paragraph 2(l) below) except to the extent Owner's entry or use materially interferes with Lessee's use of the Premises in accordance with this Lease or violates the terms and conditions of this Lease. Prior to the Construction Commencement Date, Lessee's activities on the Premises shall be limited to Due Diligence Activities. After the Construction Commencement Date, subject to Existing Encumbrances as set forth in Section 2(h) hereof, including, without limitation, the rights of operators under oil, gas and mineral leases in existence as of the Effective Date and upon payment by Lessee of the mineral and grazing lease payments provided in Paragraph 18 hereof (i) Owner agrees that it shall not have (or grant any third parties) any right to use the Premises until this Lease terminates or expires, (ii) Owner and any of its other lessees or grantees shall promptly cease all activity on the Premises as of the Construction Commencement Date and (iii) Owner shall lease its minerals associated with the Premises to any third party subject to the requirement that such party waive the right to use the surface of the Property for its operations except in the drill sites and corridors designated in Paragraph 18 hereof. Notwithstanding anything contained herein to the contrary, (x) to the extent that any areas of the Premises are used by Lessee solely for roads and/or overhead transmission lines and located outside any fenced portion of the Generating Facility, Owner shall have the right to use such areas of the Premises in common with Lessee for access or other purposes provided any such use does not interfere with Lessee's use and occupancy of the Premises, and (y) in the event an emergency arises which poses an immediate threat of bodily harm or property damage, Owner may enter the Premises provided that Owner notifies Lessee of the nature of the emergency entry prior to entry, if possible, or after entry, as soon as possible after such entry.

g. This Lease does not demise or lease to Lessee any oil, gas, groundwater, or minerals in place underneath the surface of the Premises or the right to extract and remove the same, which oil, gas, minerals and rights are reserved to, and retained by, Owner.

h. This Lease is subject to any and all existing pipeline, road or utility easements and oil, gas or mineral leases and encumbrances of any nature affecting the Premises or any part thereof, and the rights of the parties thereunder, which are evidenced by documentation filed of record in the Official Public Records of the County where the Premises are located as of the Effective Date or that a true and correct survey as of the Effective Date would reveal (the "**Existing Encumbrances**").

i. Subject to the terms of this Lease and the Existing Encumbrances, Owner warrants that Lessee shall peaceably hold and enjoy the Premises and any and all other rights granted by this Lease for the entire Term without hindrance or interruption by Owner or any other person or entity claiming (whether at law or in equity) by, through or under Owner, so long as an Event of Default by Lessee does not exist and is continuing.

j. In connection with Lessee or its Lenders obtaining leasehold, easement or mortgagee title insurance policies with respect to the Premises, Owner shall, following written request

from Lessee, execute and deliver a title affidavit to the title insurance company in a form reasonably acceptable to Owner and the title insurance company.

k. Notwithstanding anything to the contrary in this Lease, during the Development Period, Owner and its lessees, guests and invitees shall have the right to hunt on the Premises with any firearm or other method, including with high powered rifles and Owner and Lessee agree to cooperate with each other during the Development Period in a manner that will allow Owner and Owner's lessees and their guests and invitees to use the Premises for hunting and all other recreational purposes. In the event that the Construction Commencement Date does take place during any hunting season, Lessee shall contact any such hunting lessees and pay Owner (or at Owner's option, Lessee shall pay Owner's lessee or lessees) for the loss or partial loss of hunting revenue, based on the actual loss to Owner (or Owner's lessee or lessees) as shown by a written and fully executed non-affiliated third party hunting lease, affidavit, or other substantiated written evidence.

3. Rent and Installation Fee.

a. Lessee shall pay to Owner in advance, at Owner's Address or at such other address as Owner may designate by notice in writing to Lessee, Rental in the amount specified in the Basic Lease Information and related **Schedule 1**, without deduction or setoff. The Rental for the first (1st) _____ of the Lease Term is due and payable by Lessee to Owner on or before the Effective Date. Lessee shall have no rights under this Lease until payment of such Rental is made in full to Owner. Thereafter, Rental is due and payable by Lessee to Owner on each _____ during the Lease Term.

b. Within thirty (30) days of the Commercial Operations Date (as defined below), Lessee shall pay to Owner an installation fee in the amount of [_____ Dollars (\$_____)]. In this Lease, unless the context requires otherwise, "Commercial Operations Date" means, with respect to the Generating Facility, the date on which Lessee has issued a notice of commercial operation and has declared that the Generating Facility has been placed into service after any applicable start up and testing, and "Generating Facility" or "Generating Facilities" means the photovoltaic ground mounted solar power generating facilities to be located at the Premises and owned by Lessee, including all improvements, facilities and equipment constructed or installed by Lessee at any time and from time to time, including the following: (i) arrays of photovoltaic solar panels or tracking mirrors, including but not limited to modules, inverters, cables, foundations, panels, mounting substrates, units and all necessary ancillary improvements and equipment providing support or otherwise associated therewith; (ii) overhead and underground electrical collection, transmission and communication lines, cables, transformers, switching stations, energy storage facilities, concrete batch plants, power inverters, meters and protection equipment, cables, junction boxes, telecommunications equipment, switches and electrical substations and related facilities and equipment for the collection, interconnection and transmission of electrical energy and communications; (iii) roads, fences and gates, and other structures and facilities required for ingress and egress for pedestrians, motor vehicles and equipment, and for the efficient development, construction, operation, maintenance and security of the Generating Facility; (iv) any and all equipment and improvements necessary or useful for the ongoing measurement of sunlight and weather; and (v) any other equipment or facilities that are necessary or desirable for Lessee's development, construction, operation, maintenance or security of the Generating Facility, including laydown areas, satellite operation and maintenance and control buildings.

c. Owner shall have the right, annually, personally or through its designated representative, to audit the books and any other records of the Generating Facility at the offices of the Lessee either within the county or counties where the Premises is located or at any mutually agreed location, as necessary for Owner to reasonably verify that the Operating Period Rent has been paid in full. All of the reasonable costs associated with such audit incurred by Owner shall be paid by Owner; *provided, however,*

that if such audit establishes that there has been an underpayment equal to or greater than two percent (2%) of the Operating Period Rent that in the aggregate should have been paid to Owner for any year, then Lessee shall reimburse Owner for all its reasonable and verifiable out-of-pocket costs incurred in the audit. Any underpayment revealed by the foregoing shall be paid to Owner, together with interest pursuant to Section 4, within forty-five (45) days of the completion of the audit.

4. **Late Payments.** If Lessee should fail to pay Owner any sum to be paid by Lessee to Owner hereunder within five (5) days after such payment is due, interest on the unpaid amount shall accrue at a rate of fifteen percent (15%) per annum or the maximum rate allowed by law, whichever is less, from the date payment was due until the date payment is made. Owner may also impose a late charge of Twenty-Five Dollars (\$25.00) or five percent (5%) of the unpaid amount, whichever is greater, to defray Owner's administrative costs incurred as a result of Lessee's failure to timely make such payment, the amount of such costs not being readily ascertainable. Any such late charge shall be in addition to all other rights and remedies available to Owner hereunder or at law or in equity and shall not be construed as liquidated damages or limiting Owner's remedies in any manner. Failure to pay such interest or late charge within ten (10) days after demand shall be an Event of Default hereunder. Following the dishonor of any check presented for payment, Owner shall have the right, at Owner's option, to require all further payments to be made by certified check or money order.

5. **Renewal and Extension.** Lessee shall have the option to extend the Operating Period for _____ (___) consecutive _____ (___) year periods (each an "Extended Term"), commencing upon the expiration of the preceding term and expiring at midnight on the day prior to the _____ (___) anniversary of the commencement of the then current Extended Term, upon the terms and conditions herein set forth. Lessee shall deliver written notice of Lessee's intention to exercise each extension not later than one hundred eighty (180) days prior to the expiration of the initial term or the applicable Extended Term. The Rental applicable to each Extended Term, if applicable, is set forth in Schedule 1 hereto.

6. **Use of the Premises.**

a. **Permitted Use Only.** Lessee may use the Premises only for the Permitted Use specified in the Basic Lease Information, and for no other purpose or purposes without the prior written consent of Owner. Lessee shall operate its business in a reputable manner.

b. **No Unlawful or Disreputable Use.** Lessee shall observe, perform, and comply with all laws, statutes, ordinances, rules, and regulations promulgated by any governmental agency and applicable to Lessee's use of the Premises. Lessee shall not occupy or use the Premises or permit any portion of the Premises to be occupied or used for any use or purpose which is unlawful, in part or in whole, or deemed by Owner to be disreputable in any manner or extra hazardous on account of fire.

7. **Repair, Maintenance, and Improvements.**

a. **DISCLAIMER OF WARRANTIES.** Lessee is fully familiar with the Premises, its condition, state of repair and everything connected therewith from Lessee's own investigation of same. Lessee acknowledges that OWNER HAS MADE NO EXPRESS WARRANTIES WITH REGARD TO THE PREMISES OR ANY OTHER PROPERTY and TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, OWNER HEREBY DISCLAIMS, AND LESSEE WAIVES THE BENEFIT OF, ANY AND ALL IMPLIED WARRANTIES, INCLUDING IMPLIED WARRANTIES OF HABITABILITY, OR FITNESS OR SUITABILITY FOR LESSEE'S PURPOSE.

b. **Maintenance of the Premises.** During the term of this Lease, Lessee shall not cause or permit any party to bring any Hazardous Substance upon the Premises except in compliance with

applicable law, to transport, store, use, generate, manufacture or release any Hazardous Substance in or about the Premises, or to otherwise damage the Premises. Lessee shall be responsible for any violation of the foregoing sentence. Owner shall not be required to make any repairs to or improvements on the Premises during the Lease Term. After the Construction Commencement Date, Lessee shall, at Lessee's sole cost and expense, make all repairs and replacements necessary to keep and maintain the Premises, including improvements thereon, if any, in good condition. At the expiration or other termination of this Lease, Lessee shall surrender the Premises in a condition at least as good as its condition and state of repair as of the Lessee's first possession of the Premises, normal wear and tear and natural deterioration excepted. Lessee shall fill all excavations, level and restore the terrain to as nearly its original condition on the Effective Date of this Lease as is reasonably possible (including complying with the Reseeding Guidelines (as hereinafter defined)), and remove all debris, equipment, and personal property.

c. Installation of Improvements. Except as expressly provided herein, Lessee shall not cause any improvements to be installed on the Premises, except for the installation of unattached, movable trade fixtures, without the prior written consent of Owner, which consent shall not be unreasonably withheld. Owner hereby consents to Lessee's construction and installation of the Generating Facility on the Premises. Lessee shall notify Owner not less than ninety (90) days in advance of the Construction Commencement Date and, together with such notice, Lessee shall provide drawings and other information reasonably requested by Owner regarding the Generating Facility and any other proposed improvements. The drawings and information provided by Lessee to Owner shall include preliminary design drawings for Lessee's erosion control and drainage water management systems (the "Systems"). Owner's written approval of the preliminary design of the Systems shall be required, provided that Owner's approval shall not be unreasonably withheld, conditioned or delayed. Owner has the option to remove any of Owner's structures or improvements from the Premises prior to the Construction Commencement Date. If Owner does not remove Owner's structures and improvements prior to the Construction Commencement Date, then Lessee may do so without compensation or expense to Owner. All construction work done by Lessee (or at its direction) on the Premises shall be performed in a good and workmanlike manner, and in compliance with all governmental requirements. Lessee shall pay all costs for any construction done by it or caused to be done by it on the Premises as permitted by this Lease, and keep the Premises free and clear of all mechanics' liens resulting from construction done by or for Lessee, and shall indemnify Owner and hold Owner harmless against any loss, liability or damage resulting from any such construction work. Within thirty (30) days after the installation of the Generating Facility is complete, Lessee shall deliver to Owner an affidavit of Lessee stating that the Generating Facility has been completed in compliance with the terms of this Lease and that all contractors, subcontractors, laborers and materialmen who have performed work on or furnished materials to the Premises have been paid in full and that all liens therefore that have been or might be filed have been discharged of record or waived or that a bond has been posted for such purpose. All improvements installed by Lessee shall be and remain the property of Lessee.

d. Removal. Lessee shall be entitled to remove the Generating Facility or any part thereof and any related equipment from the Premises at any time upon reasonable notice to Owner. Upon the expiration or earlier termination of this Lease (whether or not following an Event of Default), Lessee shall peaceably and quietly leave, surrender and return the Premises to Owner. Lessee agrees and hereby covenants to dismantle and remove the Generating Facility in accordance with the Removal Requirements defined below within six (6) months after the date of such expiration or earlier termination (the "Removal Period"), and shall restore the Premises to a condition, to the extent practical, and generally consistent with the conditions that existed as of the Effective Date; and, notwithstanding exercise by Landlord of its remedies following an Event of Default under Section 16(b), Lessee shall have a continuing license to enter the Premises for such purposes during such six (6) month period. Lessee shall pay to Owner Rent for the Premises at the rate that is then in effect immediately prior to the expiration or termination of this Lease pursuant to Schedule 1, from the expiration or earlier termination of this Lease until the removal and restoration work has been completed. Such rent shall be pro-rated

based on the actual number of months Lessee continues to access the Premises for its removal work. In the event that Lessee fails to remove the Generating Facility on or before expiration of the Removal Period, in addition to all other rights and remedies of Owner, Lessee shall pay to Owner holdover rent in the amount of two hundred percent (200%) of the applicable Rent for the last month of the Lease Term on a per diem basis until the Generating Facility is removed. On the Commercial Operations Date, Lessee shall be obligated to obtain and deliver to Owner a commercially reasonable bond or letter of credit securing performance of Lessee's obligation to remove the Generating Facility as provided for above (the "Removal Bond"). The Removal Bond shall be maintained in an amount no less than one hundred ten percent (110%) of the estimated amount of the "Net Removal Costs". The "Net Removal Costs" are equal to the amount by which the cost of removal of the Generating Facility and restoration exceeds ninety percent (90%) of the salvage value of the same. The Net Removal Costs shall be determined at Lessee's expense on the Commercial Operations Date by an independent engineer to be selected by Lessee, subject to the reasonable approval of Owner. To the extent that the Net Removal Costs are zero (or negative), a Removal Bond or letter of credit shall not be required on the part of Lessee. Lessee shall be required to re-evaluate the Net Removal Costs upon request by Owner (not more often than annually) and, if required, secure the Removal Bond or an increase in the Removal Bond, as applicable, annually within thirty (30) days of such determination. Upon the expiration or earlier termination of this Lease, Lessee shall (A) remove from the Premises all facilities associated with the Generating Facility owned, installed or constructed by Lessee thereon as provided above, (B) fill in and compact all trenches or other borings or excavations made by Lessee on the Premises, (C) leave the surface of the Premises free from debris caused by Lessee's activities, (D) plug any water wells that Lessee has used during the Lease Term, (E) reclaim the areas of the Premises disturbed or utilized by Lessee during the Lease Term by leveling, grading, terracing and reseeded all portions thereof, to the extent caused by Lessee, at Lessee's own cost and expense and (F) reseed the areas affected by reduction in accordance with Owner's reseeded guidelines (<http://www.utlands.utsystem.edu/Content/Documents/Operations/SeedMixturesByCounties20080912.pdf>) or as otherwise directed by Owner (the "Re seeding Guidelines") (the "Removal Requirements"). In the event reasonable reseeded coverage (the equivalent of the coverage present on areas of the Premises undisturbed by Lessee) has not been attained within one (1) year of the original application of the re-vegetation process, additional re-seeding shall be made on the areas stipulated and/or reasonably designated as lacking by Owner, provided that, if the parties hereto reasonably determine that the Premises so damaged or destroyed cannot be effectively re-seeded then Lessee shall pay to Owner an amount equal to the per acre amount prescribed by the Rate and Damage Schedule. Notwithstanding anything herein, Lessee shall only be required to remove any facilities located beneath the surface of the Premises (such as, without limitation, footings and foundations) to a depth five feet (5') below the surface of the Premises. Following termination, roads and any operations and maintenance buildings on the Premises shall be left in place except for any roads or operations and maintenance buildings that on the Premises Owner requests in writing be removed. Such notice for road removal shall be provided not later than thirty (30) days after Owner receives written notice of expiration or termination.

e. Personal Property. If Lessee fails to comply with the Removal Requirements within the deadline set forth in Paragraph 7(d), Owner shall have the right to (i) remove from the Premises (without the necessity of obtaining a distress warrant, writ of sequestration or other legal process) all or any portion of Lessee's furniture, fixtures, equipment, and other personal property left on the Premises and place same in storage at any premises within the county in which the Premises is located; (ii) after sixty (60) days' notice to Lessee, sell in any manner deemed reasonable by Owner all or any portion of Lessee's furniture, fixtures, equipment, and other personal property left on the Premises and apply the proceeds first to amounts due and owing to Owner under this Lease and returning the remainder, if any, to Lessee; or (iii) after ten (10) days' notice to Lessee, dispose of all or any portion of Lessee's furniture, fixtures, equipment, and other personal property left on the Premises. In any such event Lessee shall be liable to Owner for costs incurred by Owner in connection with such action and shall indemnify and hold Owner harmless from all loss,

damage, cost, expense and liability in connection with such action. Owner shall also have the right to relinquish possession of all or any portion of such furniture, fixtures, equipment, and other property to any person ("Claimant") claiming to be entitled to possession thereof who presents to Owner a copy of any instrument represented to Owner by Claimant to have been executed by Lessee (or any predecessor of Lessee) granting Claimant the right under various circumstances to take possession of such furniture, fixtures, equipment, or other property, without the necessity on the part of Owner to inquire into the authenticity of said instrument's copy of Lessee's or Lessee's predecessor's signature thereon and without the necessity of Owner making any nature of investigation or inquiry as to the validity of the factual or legal basis upon which Claimant purports to act; and Lessee agrees to indemnify and hold Owner harmless from all cost, expense, loss, damage and liability incidental to Owner's relinquishment of possession of all or any portion of such furniture, fixtures, equipment, or other property to Claimant. The rights of Owner herein stated shall be in addition to any and all other rights which Owner has or may hereafter have at law or in equity. Lessee stipulates and agrees that the rights herein granted Owner are commercially reasonable.

f Fences; Locks. Within sixty (60) days after the Construction Commencement Date, Lessee shall fence the Premises with a fence constructed in accordance with the specifications attached hereto as Exhibit "C". Such fence shall be completed within thirty (30) days after Owner's request and Lessee shall maintain the fence in good condition throughout the Lease Term. Lessee may, at Lessee's expense, replace any lock on any gate or building, if any, on the Premises; provided, however, that in such event Lessee shall immediately provide to a representative of Owner, a key to any lock installed by Lessee on or about the Premises.

g Keeping the Premises Clean. Lessee shall take good care of the Premises, and all Lessee's improvements thereon, and keep the same free from debris and waste at all times. Lessee shall keep the Premises, and all Lessee's improvements thereon, neat and clean at all times, and shall remove from the same all refuse, litter and debris.

h. Utilities. Lessee shall pay promptly before same is due, all electrical and other utility charges, if any, relating to the Premises, the Generating Facility and any other improvements of Lessee on the Premises. Lessee shall cause all accounts for utilities, if any, to be placed in Lessee's name. Owner makes no representation with regard to utility services available to the Premises and shall not be liable for any interruption or failure in utility services arising from any cause whatsoever.

i. Vegetation. Lessee shall comply with all ordinances of applicable governmental entities in connection with the removal of vegetation. Lessee shall obtain approval from Owner for the use of herbicides.

j. Fires. Lessee shall take every reasonable precaution to ensure that Lessee will not cause grass fires or other mishaps.

k. Water and Other Support Materials. Lessee shall not remove any casing or otherwise interfere with any water well or wells that may exist on the Premises without the prior written consent of Owner and any regulatory agency with jurisdiction. The water from any well or wells located on the Premises may only be used on the Premises. The water from any wells or wells located on the Premises shall not be used in any manner or for any purpose off the Premises without the prior written consent of Owner. Owner agrees that Lessee may extract water and caliche (the "Support Materials") from the Premises as needed during construction and for Lessee's Operations; provided, however, that Lessee shall (i) pay to Owner market compensation for the Support Materials in the amount then specified in the Rate and Damage Schedule at the time such Support Materials are extracted, (ii) extract the Support Materials from the Premises at Lessee's sole cost and expense, and (iii) comply with all applicable laws, rules and regulations relating to the extraction of the Support Materials. Prior to the extraction of Support Materials,

Lessee shall acquire or obtain all rights and permits necessary to extract Support Materials, including groundwater rights or groundwater extraction permits sufficient to permit Lessee to extract the amount of Support Materials necessary for construction purposes and its Operations. Owner makes no representations or warranties as to the available quantity or quality of the Support Materials, and Lessee agrees that it shall extract the Support Materials on an "AS IS, WHERE IS" basis.

8. **Compliance with Environmental Laws.** By its exercise of its rights hereunder, Lessee will not (i) cause or permit the Premises, any other property of Owner, or Owner to be in violation of Applicable Environmental Laws (as hereinafter defined); or (ii) do anything or permit anything to be done by Lessee, its contractors, subcontractors, agents or employees that will result in any contamination of soils, ground water, surface water, or natural resources on or adjacent to the Premises resulting from any cause, including but not limited to spills or leaks of oil, gasoline, hazardous materials, hazardous wastes, or other chemical compounds, or will subject the Premises, any other property of Owner, or Owner to any remedial obligations under applicable laws pertaining to health or the environment (such laws as they now exist or are hereafter enacted and/or amended are hereinafter sometimes collectively called "Applicable Environmental Laws"), including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (as amended, hereinafter called "CERCLA"), the Resource Conservation and Recovery Act of 1976, as amended by the Used Oil Recycling Act of 1980, the Solid Waste Disposal Act Amendments of 1980, and the Hazardous and Solid Waste Amendments of 1984 (as amended, hereinafter called "RCRA"), the Texas Water Code and the Texas Solid Waste Disposal Act, as each of said laws may be amended from time to time, assuming disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances, if any, pertaining to Lessee's exercise of its rights hereunder. Lessee agrees to obtain any permits, licenses or similar authorizations for the Generating Facility by reason of any Applicable Environmental Laws that concern or result from the use of the Premises. Lessee will promptly notify Owner in writing of any existing, pending or, to the best knowledge of Lessee, threatened, investigation or inquiry by any governmental authority in connection with any Applicable Environmental Laws concerning the Generating Facility and/or Lessee's use of the Premises. In connection with the Generating Facility, Lessee will not cause or permit the disposal or other release of any hazardous substance or solid waste on or to the Premises or any other property of Owner. In connection with the Generating Facility, Lessee covenants and agrees to keep or cause the Premises and any other property of Owner to be kept free of such hazardous substance or solid waste present due to Lessee's (or Lessee's representatives' or agents') acts or omissions hereunder, and to remove the same (or if removal is prohibited by law, to take whatever action is required by law) promptly upon discovery, at Lessee's sole cost and expense. If Lessee fails to comply with or perform any of the foregoing covenants and obligations, Owner may (without any obligation, express or implied) remove any hazardous substance or solid waste from the Premises or any other property of Owner (or if removal is prohibited by law, take whatever action is required by law) and the cost of the removal or such other action shall be reimbursed by Lessee to Owner. Lessee grants to Owner and its agents, employees, contractors and consultants access to the Premises and the license (which is coupled with an interest and irrevocable) to remove such hazardous substance or solid waste (or if removal is prohibited by law, to take whatever action is required by law) and agrees to reimburse Owner for and to hold Owner harmless from all costs and expenses involved therewith. The terms "hazardous substance" and "release" as used in this Lease have the meanings specified in CERCLA, and the terms "solid waste" and "disposal" (or "disposed") shall have the meanings specified in RCRA; provided, that if either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply hereunder subsequent to the effective date of such amendment and provided further, to the extent that any other federal or state law establishes a meaning for "hazardous substance," "release," "solid waste," or "disposal" that is broader than that specified in either CERCLA or RCRA, such broader meaning shall apply.

9. **Environmental Indemnity.** Lessee agrees to release Owner from, and to reimburse Owner with respect to, any and all claims, demands, losses, damages (including consequential damages claimed by a person or entity other than Owner), liabilities, causes of action, judgment, penalties, costs and expenses (including attorneys' fees and court costs) of any and every kind or character, known or unknown, fixed or contingent, imposed on, asserted against or incurred by Owner at any time and from time to time by reason of, in connection with or arising out of (a) the failure of Lessee to perform any obligation herein required to be performed by Lessee regarding Applicable Environmental Laws, (b) any violation of Applicable Environmental Laws by Lessee, its contractors, subcontractors, agents or employees occurring after Lessee's acquisition of this Lease, (c) the removal of hazardous substances or solid wastes that result from the use by Lessee, its contractors, subcontractors, agents or employees, from the Premises or any other property of Owner (or if removal is prohibited by law, the taking of whatever action is required by law), and (d) any act, omission or event occurring after Lessee's original occupancy/acquisition of this Lease (including, without limitation, the presence on the Premises or release from the Premises of hazardous substances or solid wastes disposed of or otherwise released after Lessee's original occupancy/acquisition of the Premises, resulting from or in connection with the Generating Facility), or otherwise, regardless of whether the act, omission, event or circumstance constituted a violation of any Applicable Environmental Law at the time of its existence or occurrence. Any amount to be paid by Lessee to Owner under Paragraph 8 or this Paragraph 9 shall be paid within thirty (30) days of Lessee's receipt of demand therefor from Owner. Nothing in Paragraph 8 or this Paragraph 9 or elsewhere in this Lease shall limit or impair any rights or remedies of Owner against Lessee or any third party under Applicable Environmental Laws, including without limitation, any rights of contribution available thereunder.

10. **Access by Owner.** Owner and authorized representatives of Owner shall have access to and upon the Premises at reasonable intervals and at reasonable times and upon reasonable notice to Lessee to inspect the Premises. Any such access shall not materially interfere with Lessee's Permitted Use and occupancy of the Premises. This foregoing right of inspection must be on an escorted basis in compliance with Lessee's established site and safety procedures. Owner shall also have the right to enter upon the Premises at any time in the case of emergency or in the event immediate action is required to avert an emergency or damage to the Premises.

11. **Assignment and Subletting; Protection for Lenders.**

a. Lessee shall not have the right to assign any ownership interest in Lessee or assign or sublet any of its rights, duties or obligations under this Lease without the prior written consent of Owner. Notwithstanding the foregoing, Lessee may, without securing Owner's consent, assign any of its rights, duties or obligations under this Lease, provided that (1) any such assignee or its corporate parent is domiciled principally in the United States, has a net worth of at least Thirty Million Dollars (\$30,000,000) and owns and/or operates at least five hundred megawatts (500 MW) of solar projects in the United States and agrees in writing to be bound by the terms and conditions of this Lease (the 500 MW requirement in the preceding clause can be satisfied by the assignee contracting with an asset management or operations and maintenance company for the Generating Facility with such experience), or (2) such assignment is to any of the following: (i) to one or more of Lessee's Affiliates (as defined below); (ii) after the Commercial Operations Date, to any present or future purchaser or lessee of the Generating Facility and/or the power generated by the Generating Facility so long as such person or entity is or has contracted with a Qualified Operator for the operation and maintenance of the Generating Facility; (iii) after the Commercial Operations Date, to any person or entity succeeding to all or substantially all of the assets of Lessee so long as such person or entity is or has contracted with a Qualified Operator for the operation and maintenance of the Generating Facility; (iv) to a successor entity in a merger or acquisition transaction of Lessee's parent company; or (v) pursuant to a collateral assignment to one or more financial institutions or other persons or entities that from time to time provide secured financing to Lessee (including a tax equity financing or a financing by sale-and-

leaseback), collectively with any security or collateral agent, indenture trustee, loan trustee or participating or syndicated lender (each, a "Lender") (whether they are Affiliates of or third parties to Lessee). The phrase "Qualified Operator," as used in this subparagraph, means an entity domiciled principally in the United States with reasonable experience (including through the experience of its officers and employees) in the operation and maintenance of facilities similar to the Generating Facility having a total aggregate managed nameplate capacity of not less than 500MW. Lessee shall notify Owner of any assignment of its rights, duties or obligations under this Lease concurrently with such assignment. The term "Affiliate," as used in this subparagraph, means any business organization or other legal entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified, and for purposes of the foregoing definition, control of a business organization or other legal entity means the power, direct or indirect, to direct or cause the direction of the management and policies of such organization or entity whether by contract or otherwise. Owner hereby consents to recordation of the interest of the Lender in the official records of the county where the Premises are located. No Lender shall have any obligation or liability under this Lease prior to the time that such Lender succeeds to absolute title to Lessee's interest in this Lease. Any Lender shall be liable to perform obligations under this Lease only for and during the period such Lender directly holds absolute title to Lessee's interest in this Lease.

b. Owner and Lessee agree as follows with respect to Lenders:

i. They will not modify this Lease without the prior written consent of each Lender if the modification could reasonably be expected to impair or reduce the security for its lien.

ii. Owner agrees to concurrently notify a Lender in writing who has delivered written notice to Owner (at the address to be designated by Lender) of any act or Event of Default of Lessee under this Lease of which Owner has knowledge that would entitle Owner to cancel, terminate, annul or modify this Lease or dispossess or evict Lessee from the Premises or otherwise proceed with enforcement remedies against Lessee. Lender shall have the same amount of time as Lessee to cure any default by Lessee under this Lease and Owner shall accept such performance as if such performance was done by Lessee itself, provided that in no event shall Lender be obligated to cure any such default.

iii. If within such period a Lender notifies Owner that it must foreclose on Lessee's interest or otherwise take possession of Lessee's interest under this Lease in order to cure a non-monetary default, Owner shall not terminate this Lease and shall permit such Lender a sufficient period of time as may be necessary for such Lender, with the exercise of due diligence, to foreclose or acquire Lessee's interest under this Lease and to perform or cause to be performed all of the non-monetary covenants and agreements to be performed and observed by Lessee. Upon the sale or other transfer of any interest in the rights granted hereunder by any Lender in accordance with the terms hereof, such Lender shall have no further duties or obligations hereunder.

iv. In case of the termination of this Lease as a result of any default or the bankruptcy, insolvency or appointment of a receiver in bankruptcy for Lessee, Owner shall give prompt notice to the Lenders. Owner shall, upon written request of the first priority Lender, made within forty (40) days after notice to such Lender, enter into a new lease with such Lender, or its designee, within twenty (20) days after the receipt of such request. Such new lease shall be effective as of the date of the termination of this Lease by reason of default by Lessee, and shall be for a term equal to the remainder of the Term of this Lease and upon the same terms, covenants, conditions and agreements as contained in this Lease. Upon the execution of any such new lease, the Lender shall (A) pay Owner any past due amounts

which are due Owner from Lessee, (B) pay Owner any and all amounts which would have been due under this Lease (had this Lease not been terminated) from the date of the termination of this Lease to the date of the new lease, and (C) agree in writing to perform or cause to be performed all of the other covenants and agreements set forth in this Lease to be performed by Lessee, including but not limited to the agreement for indemnification, to the extent that Lessee failed to perform the same prior to the execution and delivery of the new lease.

v. Owner consents to Lender's security interest in Lessee's improvements on the Premises.

c. With respect to the provisions of this Paragraph 11, Owner shall only be required to give any notice to or obtain any consents from any Lender for whom Lessee has previously provided Owner written notice and contact information. Lessee shall notify Owner of any assignment of its rights, duties or obligations under this Lease.

12. **Holding Over.** In the event Lessee occupies the Premises or any part thereof after the expiration or earlier termination of this Lease and after expiration of the Removal Period, unless otherwise agreed in writing by Owner, Lessee shall hold the Premises as a tenant-at-will only at a daily rental equal to two (2) multiplied by the Rental calculated on a per diem basis. In no event shall such holding over constitute or be construed as a renewal or extension of this Lease and, upon the expiration of the Lease Term or the earlier termination of this Lease, Lessee shall immediately surrender the Premises to Owner on demand by Owner.

13. **Insurance and Indemnity.**

a. **Lessee's Insurance.** Lessee, at its sole expense, shall maintain in effect at all times insurance coverages with limits not less than those set forth below with financially responsible insurers licensed to do business in the State of Texas and reasonably acceptable to Owner and under forms of policies reasonably satisfactory to Owner. The requirements contained herein as to types, limits or Owner's approval of insurance coverage to be maintained by Lessee are not intended to and shall not in any manner limit, qualify or quantify the liabilities and obligations assumed by Lessee under this Lease or otherwise provided by law.

Commercial General Liability

Coverage	Minimum Amounts and Limits
General Aggregate	\$2,000,000 (subject to increase to \$5 million after the Construction Commencement Date)
Products & Completed Operations Aggregate	\$1,000,000 (subject to increase to \$2 million after the Construction Commencement Date)
Each occurrence	\$1,000,000 (subject to increase to \$2 million after the Construction Commencement Date)
Personal Injury (Advertising Injury excluded)	\$1,000,000 (subject to increase to \$2 million after the Construction Commencement Date)
Fire Damage, Any One Fire	\$250,000
Medical Payments, Each Person	\$10,000

Umbrella/Excess Liability (only required after the Construction Commencement Date)

Aggregate	\$10,000,000
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Worker's Compensation (only required after the Construction Commencement Date)

Statutory Limits (to the extent exposure exists)

Employer's Liability (only required after the Construction Commencement Date to the extent exposure exists)

Each Accident	\$1,000,000
Disease - Each Employee	\$1,000,000
Disease - Policy Limit	\$1,000,000

Business Auto Liability (only required after the Construction Commencement Date)

Covering all owned (if any), non-owned or hired automobiles, with limits of not less than \$1,000,000 single limit of liability per accident for Bodily Injury and Property Damage.

All policies shall be on a form reasonably acceptable to Owner, endorsed to include the Owner as additional insureds, not modify the separation of insured language in the policy, contain waiver of subrogation language in favor of the Owner, delete the exclusions for liability assumed under the Lease, and contain no modification that would make Lessee's policy excess over or contributory with Owner's liability insurance, and include the following coverages:

- (1) Premises/Operations;
- (2) Independent Contractors;
- (3) Broad Form Contractual Liability;
- (4) Broad Form Property Damage; and

- (5) Personal Injury Liability with employee (except employee Personal Injury to other employees) and contractual exclusions removed.

The limits required above may be satisfied by any combination of primary and excess insurance. All of Lessee's insurance policies shall be endorsed to be primary, with the policies of the Owner being excess, secondary and noncontributing. Lessee shall deliver proof of the insurance coverage required to be maintained by Lessee under this Paragraph 13, represented by evidence of insurance issued by the insurance carrier(s), to Owner prior to Lessee taking possession of the Premises. The evidence of insurance shall specify the additional insured status mentioned above as well as the waiver of subrogation. Such evidence of insurance shall state that Owner will be notified in writing thirty (30) days prior to cancellation, or non-renewal of insurance unless cancellation results from non-payment of premium, in which case ten (10) days' notice shall be provided. In addition, Lessee shall deliver evidence of insurance to Owner as the coverage renews and not more than ten (10) days after the expiration date of any policies.

b. Waiver of Subrogation. To the extent authorized by the laws and Constitution of the State of Texas, each of Owner and Lessee waives any and every claim in its favor against the other during the Lease Term for any and all loss of, or damage to, any of its property located within or on, or constituting a part of, the Premises, which loss or damage is covered by valid and collectible fire and extended coverage insurance policies. These mutual waivers are in addition to, and not in limitation or derogation of, any other waiver or release contained in this Lease with respect to any loss of, or damage to, property of Lessee.

c. Lessee's Failure to Maintain Insurance. If Lessee fails to comply with the foregoing insurance requirements, then Owner may (in addition to having available to it all other remedies provided herein on the occurrence of a default) obtain such insurance, and Lessee shall pay to Owner on demand, as additional rent hereunder, the premium cost thereof plus interest at the lesser of eighteen percent (18%) per annum or the highest lawful rate, from the date of payment by Owner until payment by Lessee.

d. INDEMNITY. LESSEE ACCEPTS THE PREMISES IN THEIR "AS IS" CONDITION ON THE DATE THE LEASE TERM BEGINS. OWNER SHALL NOT BE LIABLE TO LESSEE, OR TO LESSEE'S AGENTS, SERVANTS, EMPLOYEES, CUSTOMERS, CONTRACTORS, VISITORS, LICENSEES, SUBLESSEES, OR INVITEES, AND LESSEE SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS FROM AND AGAINST ANY AND ALL FINES, SUITS, CLAIMS, DEMANDS, LOSSES, LIABILITIES, ACTIONS, AND COSTS (INCLUDING COURT COSTS AND ATTORNEYS' FEES) ("LOSSES") ARISING FROM:

(i) ANY INJURY TO PERSON OR DAMAGE TO PROPERTY CAUSED BY ANY ACT, OMISSION, OR NEGLIGENCE OF LESSEE, LESSEE'S AGENTS, SERVANTS, EMPLOYEES, CUSTOMERS, CONTRACTORS, VISITORS, LICENSEES, SUBLESSEES OR INVITEES,

(ii) LESSEE'S USE OF THE PREMISES OR THE CONDUCT OF LESSEE'S BUSINESS,

(iii) ANY ACTIVITY, WORK, OR THING DONE, PERMITTED, OR SUFFERED BY LESSEE IN OR ABOUT THE GENERATING FACILITY OR THE PREMISES, OR

(iv) ANY BREACH OR DEFAULT IN THE PERFORMANCE OF ANY OBLIGATION ON LESSEE'S PART TO BE PERFORMED UNDER THE TERMS OF THIS LEASE.

The provisions of this Paragraph 13(d) shall survive the expiration or termination of the Lease Term.

e. NON-LIABILITY FOR CERTAIN DAMAGES. OWNER AND OWNER'S AGENTS, CONTRACTORS AND EMPLOYEES SHALL NOT BE LIABLE TO LESSEE OR ANY OTHER PERSON OR ENTITY WHOMSOEVER FOR ANY INJURY TO PERSONS OR DAMAGE TO PROPERTY CAUSED BY THE GENERATING FACILITY OR ANY PORTION THEREOF MALFUNCTIONING OR BEING OUT OF REPAIR, OR BY DEFECT IN OR FAILURE OF EQUIPMENT, PIPES, OR WIRING, OR BY BROKEN GLASS, OR BY THE BACKING UP OF DRAINS, OR BY GAS, WATER, STEAM, ELECTRICITY OR OIL LEAKING, ESCAPING, OR FLOWING INTO THE GENERATING FACILITY OR ANY PORTION THEREOF, OR BY THEFT, ACT OF GOD, PUBLIC ENEMY, INJUNCTION, RIOT, STRIKE, INSURRECTION, WAR, COURT ORDER, REQUISITION OR ORDER OF A GOVERNMENTAL BODY OR AUTHORITY OR ANY SIMILAR MATTER.

f. CRIMINAL ACTIVITY. OWNER HAS NO OBLIGATION TO PROVIDE SECURITY GUARDS OR SECURITY SYSTEMS FOR THE PREMISES. LESSEE, TO THE FULL EXTENT ALLOWED BY LAW, HEREBY WAIVES ANY DUTY OF OWNER TO PROTECT LESSEE FROM THE CRIMINAL ACTS OF THIRD PARTIES.

g. Self Insurance. Lessee may satisfy its obligation to maintain general liability insurance under this Paragraph 13 by means of self-insurance, provided that Lessee submits annually to Owner its published annual report and such report reflects that Lessee has a net worth of no less than Fifty Million Dollars (\$50,000,000).

14. Condemnation. In the event the Premises is taken for any public or quasi-public use under any law or by right of eminent domain, or by private purchase in lieu thereof, this Lease shall terminate, the Rental due hereunder shall abate during the unexpired portion of this Lease commencing on the date physical possession is taken by the condemning authority, and the entirety of the compensation award or payment in lieu thereof shall be the property of Owner except that Lessee is entitled to any amount awarded to compensate for: (i) the removal or relocation of the Generating Facility; (ii) loss of or damage to any portion of the Generating Facility which Lessee cannot remove or is required not to remove; and (iii) Lessee's loss of use or value of this Lease.

15. Taxes and Assessments. Lessee shall pay all taxes, assessments and charges, general and specific, that may be levied or assessed by reason of Lessee's use of the Premises and improvements and equipment situated thereon, including, without limitation, any and all taxes, assessments, and charges of any nature levied or assessed against Lessee's leasehold interest hereunder or any improvements on the Premises constructed by or belonging to Lessee ("**Lessee's Taxes**"). Lessee shall provide Owner with evidence from the assessing authority of such payments within thirty (30) days after Lessee makes any such payment. Commencing on the earlier to occur of (i) the Effective Date and (ii) the date that the property tax classification of the Premises is changed from its current classification to the property tax classification applicable to a solar facility (the "**Property Tax Reclassification Date**"), Lessee shall pay, prior to delinquency, all increases in taxes and assessments which accrue from and after the Property Tax Reclassification Date (including "roll back taxes" from agricultural exceptions) and are attributable to the construction of the Generating Facility on the Premises (also, "**Lessee's Taxes**"). Owner shall be responsible for, and shall timely pay, all other real property taxes levied against the Premises. Promptly after the Effective Date, Lessee shall cause the Premises to be assigned a separate assessor's tax parcel number, separate and apart from any other property, including, without limitation, property owned by Owner. Lessee shall instruct the taxing authority to send all tax bills concurrently to Owner and Lessee. Lessee shall deliver to Owner evidence that it has paid its share of taxes and assessments prior to delinquency. Should either Owner or Lessee (such Party, the "failing Party"), fail to pay its portion of taxes and

assessments prior to delinquency and provide evidence of such payment to the other party, the other party shall have the right, but not the obligation, to pay the same on behalf of the failing Party, in which event, the failing Party shall reimburse the other party for all amounts paid on the failing Party's behalf within ten (10) business days of demand. In the event Lessee is unable to obtain such separate assessment and Lessee's Taxes are levied in the name of Owner, Lessee agrees to pay and Owner shall promptly reimburse Lessee for Owner's taxes following receipt of written notification and evidence of payment from Lessee. Owner agrees to provide Lessee prompt written notice of the amount of Lessee's Taxes, along with copies of the tax bill and any other relevant documentation received from the taxing authority.

16. **Default and Remedies**

a. **Events of Default**. The following events shall be deemed to be Events of Default by Lessee under this Lease:

i. Lessee shall fail to pay when due any Rental or any other sum payable by Lessee under this Lease, and such failure continues for five (5) days after written notice from Owner, provided that Owner shall not be required to provide notice of non-payment more than twice in any five (5) consecutive year period; or

ii. Lessee shall fail to comply with any other term, provision or covenant of this Lease within thirty (30) days after notice from Owner to Lessee specifying wherein Lessee has failed to comply; provided, however, that if the nature of Lessee's obligation is of such a nature that it cannot reasonably be cured within such 30-day period, Lessee shall not be deemed to be in default so long as Lessee commences curing such failure within such 30-day period and diligently prosecutes same to completion, to a maximum of ninety (90) days; or

iii. Lessee shall do or permit to be done anything that creates a lien upon the Premises other than as contemplated in Paragraph 21(a) hereof and such lien is not removed or bonded around within sixty (60) days after written notice thereof from Owner to Lessee.

b. **Remedies**. Following an Event of Default, subject at all times to Section 11(b)(ii) and (iii), Owner shall have the right to terminate this Lease and/or pursue all other appropriate remedies available at law or equity, except as otherwise provided below. Lessee agrees to pay to Owner on demand the amount of all loss and damage which Owner may suffer by reason of such termination, whether through inability to relet the Premises on satisfactory terms or otherwise, including the following: any unpaid Rental and other sums payable under this Lease that accrued prior to the termination of the Lease; plus the worth at the time of the award (calculated based on the rate of interest set out in Paragraph 4) of the amount by which the unpaid Rental which would have been earned after termination exceeds the amount of such rental loss Lessee proves could have been avoided; plus all other damages suffered by Owner, including without limitation court costs, reasonable attorneys' fees and other costs incurred in connection with the termination of this Lease, expenses of repossession, and expenses of restoring the Premises to a good condition of repair, and interest on all such amounts at the rate set out in Paragraph 4. In no event shall Owner be obligated to reimburse Lessee for any prepaid Rental. Lessee agrees to reimburse to Owner on demand amounts expended by Owner, including reasonable attorneys' fees, in effecting compliance with Lessee's obligations under this Lease.

With respect to any amounts due to Owner hereunder and collected by an attorney after default or through judicial, bankruptcy, or probate proceedings, Lessee shall pay all costs of collection, including reasonable attorneys' fees and all court costs.

No re-entry or taking possession of the Premises by Owner shall be construed as an election on Owner's part to terminate this Lease unless a written notice of such intention is given to Lessee. Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies herein provided or any other remedy provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any Rental or other sums due to Owner hereunder or of any damages accruing to Owner by reason of the violation of any of the terms, provision, and covenants herein contained. Owner's acceptance of Rental following an Event of Default hereunder shall not be construed as Owner's waiver of such Event of Default. No waiver by Owner of any violation or breach of any of the terms, provisions, and covenants herein contained shall be deemed or construed to constitute a waiver of any other violation or default. No payment by Lessee or receipt by Owner of any amount less than the amounts due by Lessee hereunder shall be deemed to be other than on account of the amounts due by lessee, nor shall any endorsement or statement on any check or document accompanying any payment be deemed an accord and satisfaction.

17. **Landlord's Lien.** Owner waives any lien it may have, by operation of law or otherwise, in and to the Generating Facility or to any personal property of Lessee. Owner further agrees to notify any purchaser of the Premises, and any subsequent mortgagee or other encumbrance holder, of the existence of the foregoing waiver of Owner's lien, which shall be binding upon the successors and transferees of Owner, and shall inure to the benefit of the successors and assigns of Lender.

18. **Surface Lease Only.** This Lease is subject to (a) any outstanding oil and gas leases covering the Premises or any part thereof evidenced by documentation filed of record in the Official Public Records of the County where the Premises are located as of the Effective Date, and (b) any and all Existing Encumbrances, and the rights of the parties thereunder. [The road or roads identified on Exhibit "D" attached hereto shall remain open to the public and Owner's lessees, licensees and invitees and shall not be blocked by a gate]. This Lease covers only the surface of the Premises and does not include any part of the mineral estate. The area labeled "Drill Site Area" in Exhibit "E" attached hereto shall be reserved for drill sites and easement corridors for pipelines, roads and other oil field production infrastructure to accommodate future development and production of oil, gas and other minerals, and the drill site areas and easement corridors for pipelines, roads and other oil field production infrastructure shall not be included in the Premises pursuant to Paragraph 1. Notwithstanding anything in this Lease to the contrary, at any time during the Lease Term Lessee agrees to grant and allow easements over the Premises for pipelines, roads and other oil field production infrastructure to Owner and other mineral owners and lessees, so long as (a) such easements do not unreasonably interfere with Lessee's current or planned operations on the Premises and (b) such easements will not be located inside any fenced area of the Premises containing the Generating Facility. Owner will present to Lessee the plat for any proposed easement and Lessee shall have twenty (20) days to approve or disapprove the easement. In the event of Lessee's disapproval of the easement, Lessee shall provide a detailed explanation of how the easement interferes with Lessee's current or planned operations on the Premises or is located inside any fenced area of the Premises containing the Generating Facility. This Lease covers only the surface of the Premises and does not include Owner's interest in minerals in, on, under or that may be produced from the Premises (collectively, the "Mineral Rights"). Owner agrees that during the Lease Term, Owner releases and waives, on behalf of itself and its successors and assigns, all rights of ingress and egress to enter upon the surface of the Premises, and the area located between the surface and 500 feet beneath the surface of the Premises for purposes of exploring for, developing, drilling, producing, transporting, or any other purposes incident to the development or production of the oil, gas or other minerals. The foregoing provision shall be a covenant running with the land binding upon any party owning any interest in or rights to develop or use the Mineral Rights. However, nothing herein contained shall be construed to prevent Owner, its successors and assigns, from obtaining the oil, gas and other minerals by directional drilling under the Premises from well sites located on tracts other than the Premises and provided such directional drilling is located at a minimum depth of 500 feet below the surface of the Premises. The provisions hereof shall be binding upon and inure to the benefit of Owner and Lessee and their respective successors and assigns. Upon five (5) business days' written request from Lessee and to

the extent Owner owns any Mineral Rights, Owner agrees to execute a recordable document containing the terms of this waiver of rights, and Lessee shall have the right to record such document in the real property records of the county in which the Premises is located.

Lessee acknowledges and agrees that, as of the Effective Date, there are one or more grazing leases affecting the Premises. On or before the expiration of the Development Period, Lessee may provide written notice ("**Grazing Notice**") to Owner identifying which grazing lease(s) (or portion of the Premises covered by such grazing lease(s)) that Lessee desires to be terminated. Within thirty (30) days following Owner's receipt of the Grazing Notice described in the immediately preceding sentence, Owner shall cause the termination of such grazing lease(s) (or portion thereof), contingent upon (a) Lessee's payment to the applicable grazing lessee(s) of \$_____ per acre for each acre terminated and (b) at Owner's election, either (i) Lessee's installation at its expense of, or (ii) Owner's installation of and Lessee's reimbursement of Owner within fifteen (15) days of invoice from Owner for, all Grazing Infrastructure (as defined below). As used herein, Grazing Infrastructure shall mean comparable fencing, gates and grazing infrastructure to the extent necessary to enable comparable operations by the grazing lessee as before the termination. No later than thirty (30) days after the Construction Commencement Date, Lessee shall pay Owner the Mineral Rights Waiver fee set forth in Schedule 1 attached to this Lease (prorated to the nearest 1/10 acre) for each acre of the Premises as of the Construction Commencement Date.

19. **Mechanic's Liens.** Lessee shall not permit any mechanic's or materialman's lien or liens to be placed upon the Premises, or any portion thereof, caused by or resulting from any work performed, materials furnished or obligation incurred by or at the request of Lessee, and in the case of the filing of any such lien, Lessee will promptly pay, bond off or obtain the release of same to the reasonable satisfaction of Owner. If Lessee's failure to comply with the provisions of this Paragraph 19 shall continue for sixty (60) days, Owner may, but shall not be obligated to, pay the same or any portion thereof without inquiry as to the validity thereof, and Lessee shall repay any amounts so paid, plus expenses to Owner immediately on demand.

20. **Notices.**

a. **Payments.** All Rental and other payments required to be made by Lessee to Owner hereunder shall be payable to Owner at the address set forth in the Basic Lease Information or at such other address as Owner may designate in writing.

b. **Notices.** All notices required by this Lease shall be delivered by hand or sent by United States mail, postage prepaid, certified or registered mail, addressed as set forth in the Basic Lease Information, or at such other address as any of said parties have theretofore specified by written notice delivered in accordance herewith. Any notice or document (excluding Rental and other payments) required to be delivered hereunder shall be deemed to be delivered upon receipt if personally delivered, and whether or not received, when deposited in the United States mail, postage prepaid, certified or registered mail (with or without return receipt requested), addressed as indicated above.

21. **Miscellaneous.**

a. **Right to Mortgage Interest.** Notwithstanding anything herein to the contrary, Lessee may mortgage, pledge or otherwise encumber Lessee's leasehold interest in the Premises and any improvements constructed on the Premises by Lessee; provided, however, that any such mortgage, pledge, or encumbrance shall in no event shall be construed to attach to or encumber in any manner Owner's interest in the Premises under this Lease or Owner's fee interest in the Premises. Lessee shall be entitled to, and is hereby authorized to, file one or more financing statements or notices of security interest in such jurisdictions as it deems appropriate with respect to the Generating Facility in order to protect its rights in the Generating Facility or in connection with the grant of a security interest in the Generating Facility to any Lender. Owner and Lessee shall execute a memorandum of this Lease in the form attached hereto as **Exhibit "F"**, and either Party shall be permitted to record the memorandum of Lease in the Official Public Records of the County where the Premises are located.

b. **Net Lease.** Owner shall not be required to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with this Lease or the financing, ownership, construction, reconstruction, maintenance, operation, or repair of the Premises, the Generating Facility or any other improvements on the Premises.

c. **Board Approval.** This Lease is subject to the approval of the Board of Regents of The University of Texas System.

d. **Compliance with Laws.** Lessee shall, at Lessee's cost and expense, obtain all licenses, permits, authorizations, variances and other entitlements necessary for the construction, installation and operation of the Generating Facility, and shall comply with all governmental laws, ordinances and regulations applicable to the Premises and Lessee's use thereof, including without limitation the following:

i. the Antiquities Code of Texas (Texas Natural Resources Code, Chapter 191) and applicable rules promulgated thereunder by the Antiquities Committee, or its successor. Lessee shall undertake its activities on the Premises in a manner consistent with public policy relating to the location and preservation of archeological sites and other cultural resources in, on, or under public lands, including University Lands. Lessee shall use the highest degree of care and all reasonable safeguards to prevent the taking, alteration, damage, destruction, salvage, or excavation of cultural resources and/or landmarks on University Lands. Upon discovery of an archeological site, Lessee shall immediately give written notice of such discovery to Owner and to the Texas Antiquities Committee, as set out in the Committee's rules. Lessee, its contractors and employees, shall have no right, title, or interest in or to any archaeological articles, objects, or artifacts, or other cultural resources located or discovered on University Lands.

ii. all federal, state, and local laws, regulations, and ordinances relating to Hazardous Materials and all other Applicable Environmental Laws, regulations, and ordinances.

e. **Applicable Law.** This Lease shall be construed and interpreted in accordance with the laws of the State of Texas.

f. **Severability.** In case any one or more of the provisions contained in this Lease shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Lease shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

g. Entire Agreement. This Lease constitutes the sole and entire agreement between the parties pertaining to the subject matter of this Lease and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, including the _____ . There are no conditions, warranties, representations or other agreements between the parties in connection with the subject matter of this Lease (whether oral or written, express or implied, statutory or otherwise) except as specifically set out in this Lease.

h. Binding Nature. This Lease shall be binding upon and shall inure to the benefit of Owner and Lessee, and their respective heirs, successors, assigns, and legal representatives. This provision does not constitute consent by Owner to any assignment or subletting by Lessee.

i. No Merger. If this Lease is a replacement or renewal between the parties, it is the intent of the parties that no merger take place, and that all obligations of the parties with respect to the previous lease will continue and not be affected by the execution of this Lease.

j. Relationship of the Parties. The relationship created hereby shall be the relationship of landlord and tenant and shall not be construed in any manner to constitute a partnership, joint venture, or principal-agent relationship between the parties hereto, and neither party shall have authority to bind the other, except as expressly provided herein.

k. Captions. The captions used herein are for convenience only and do not limit or amplify the provisions hereof.

l. Gender. Words of any gender used in this Lease shall be held and construed to include any other gender and words in the singular number shall be held to include the plural, unless the context otherwise requires.

m. No Worse Treatment. Owner and Lessee agree that if at any time during the Development Period, Lessee, or its affiliates, agents or assigns, extends, or grants more favorable monetary terms to any other owner or owners within a fifty (50) mile radius of the Premises who grant a surface lease or easement to Lessee, or its affiliates, agents or assigns, then Lessee obligates itself to grant those same more favorable terms to Owner within thirty (30) calendar days from the date of execution of the lease containing the more favorable terms. The granting of these favorable terms to Owner shall be retroactive to the Effective Date and the parties shall execute an amendment to this Lease to memorialize the new favorable terms.

n. Estoppel Certificates. Either party, without charge, at any time and from time to time, within twenty (20) business days after receipt of written request by the other party to this Lease, shall deliver a written certificate, duly executed, certifying to such requesting party (or any other person specified by such requesting party):

i. that this Lease is unmodified and in full force and effect, or if it has been modified, that the Lease is in full force and effect as so modified, and identifying any such modification;

ii. whether, to the knowledge of such party, there are then existing any offsets or defenses in favor of such party against the enforcement of any of the terms, covenants and conditions of this Lease and, if so, specifying them, and also whether, to the knowledge of such party, the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and, if not, specifying them; and

iii. the dates to which rent and all other charges under this Lease have been paid.

Any such certificate given under this Lease may be relied upon by the recipient of it, except to the extent the recipient has actual knowledge of facts contrary to those contained in the certificate.

o. **Broker's Commission.** Lessee represents and warrants that it has not dealt with any broker or agent in connection with this Lease and Lessee agrees to indemnify and save Owner harmless from any claims made by any brokers or agents claiming to have dealt with Lessee. Owner represents and warrants that it has not dealt with any brokers or agents in connection with this Lease, and Owner agrees to indemnify and save Lessee harmless from any claims made by any brokers or agents claiming to have dealt with Owner. The terms and provisions of this subparagraph shall survive the expiration of the term or earlier termination of this Lease.

p. **Site Rules.** Lessee shall abide by, and cause Lessee's contractors, affiliates, agents and employees to abide by, the Lease Site Rules attached hereto as **Exhibit "B"**.

q. **Runs With the Land.** Subject only to termination as provided in this Lease, the lease, easements and any restrictions in this Lease shall run with the land affected and shall be binding on, and inure to the benefit of, Owner and Lessee, Lenders, assignees, and their respective successors and assigns, heirs, personal representatives, tenants, or persons claiming through them.

22. **Exhibits; Schedules.** All exhibits and schedules referred to in this Lease or in the Basic Lease Information are listed below and attached hereto and incorporated herein. If there are conflicts between any Exhibit or Schedule and the body of this document, the body of this document will control.

Exhibits:

- Exhibit "A" – Legal Description of Premises
- Exhibit "B" – Lease Site Rules
- Exhibit "C" - Fence Specifications
- Exhibit "D" - Roads to Remain Open
- Exhibit "E" - Drill Sites and Corridors
- Exhibit "F" - Form of Memorandum

Schedule(s):

- Schedule 1 – Rent

IN WITNESS WHEREOF, the parties have executed this Lease to be effective as of the Effective Date.

OWNER:

THE UNIVERSITY OF TEXAS SYSTEM
BOARD OF REGENTS

By: _____
Richard Brantley
Executive Director of University Lands

Approved as to Content:

James R. Buice
University Lands

LESSEE:

By: _____

Name: _____

Title: _____

EXHIBIT "A"

Description of the Premises

EXHIBIT "B"

Lease Site Rules

Lessee and Lessee's personnel, employees, agents and all other personnel of third parties authorized to enter the Premises by Lessee, shall follow the following rules while on the Premises. Owner may bar further access to the Premises to any individual at the reasonable discretion of Owner.

- (a) At no time shall any of employees of Lessee, or any third parties authorized to enter the Premises by Lessee, be authorized to carry firearms, hunt, or use illegal drugs or alcohol on the Premises, or be under the influence of illegal drugs or alcohol, or to remove ground water (except water purchased from Owner). If Lessee encounters archaeological artifacts (including, but not limited to arrowheads, petrified rocks, stones and gems) Lessee shall preserve said materials and notify Owner. Further, at no time shall any of employees of Lessee, or any third parties authorized to enter the Premises by Lessee bring any of the following onto the Premises:
- i. Weapons of any type, including but not limited to, guns, bows and arrows, or sling shots. Lessee shall pay to Owner, upon notice and a written description on the incident giving rise to the incident, compensatory damages of Five Hundred Dollars (\$500) for each violation of this subsection regarding weapons.
 - ii. Animal calling devices.
 - iii. Night hunting paraphernalia.
 - iv. Motorcycles (2, 3 or 4 wheeler) (except all terrain work vehicles not used for recreational purposes but used in connection with construction shall be allowed).
 - v. Fishing equipment or nets.
 - vi. Dogs, cats or other animals.
 - vii. Alcoholic beverages.
 - viii. Illegal drugs or related paraphernalia.

Lessee shall deliver to each of its employees, contractors, guests, agents, or representatives that enter the leasehold written notice of the contents of this paragraph.

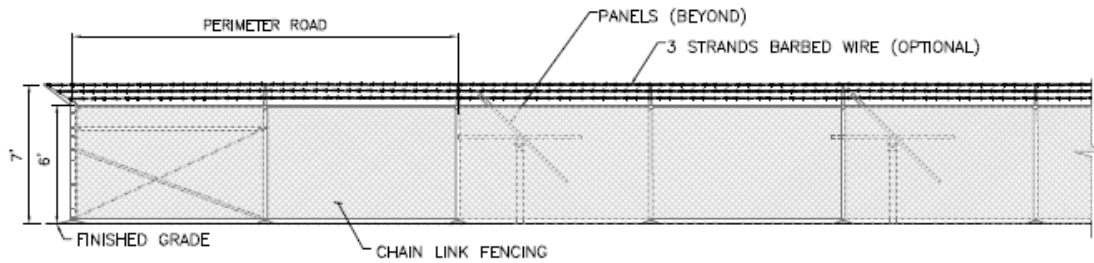
- (b) Lessee will employ prudent precautions to prevent fires, including avoiding the build-up of plant material under vehicles. In the event a grass fire is started, Owner shall be promptly notified.
- (c) Lessee shall keep Owner's lands adjacent to the Premises clean and free of all trash and litter which may emanate from Lessee or Lessee's employees, agents, contractors or invitees operations on the Premises, and if Lessee does not do so within ten (10) days' notice from Owner, Lessee agrees to pay Owner's costs of picking up such litter and trash

on adjacent lands plus an administrative charge of twenty percent (20%) of such costs. Under no circumstances will Lessee bury or burn any trash or debris on the Premises.

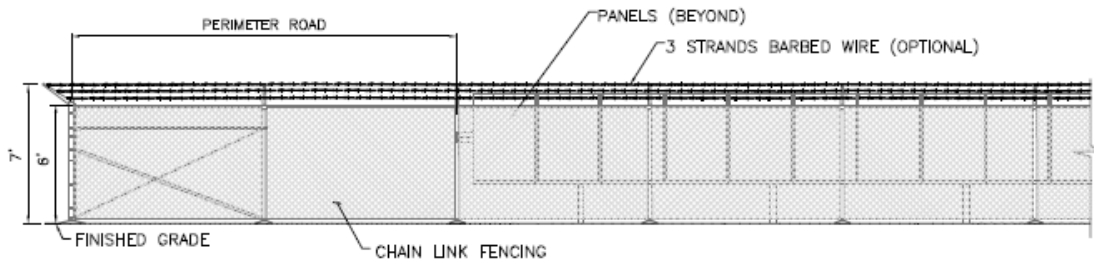
- (d) Lessee and Lessee's employees, contractors, agents and any individual allowed onto the Premises by Lessee will confine their activities on the Premises to the designated access routes and to the areas upon which operations are then being conducted and Lessee shall not use the Premises to access adjacent property not owned by Owner unless Lessee has an independent right to access the adjacent property not owned by Owner..
- (e) This Lease does not cover or include any right or privilege of hunting, fishing or other recreational activities on the Premises.
- (f) The following speed limits shall be strictly observed while using roads on the Premises: 25 miles per hour. Upon written notice, and after the first occurrence of speeding, Owner shall have the right to demand a fine not to exceed One Hundred Dollars (\$100.00) if Owner can demonstrate that these limits were violated.
- (g) No rocks any larger than four (4) inches in diameter shall be left at surface level if the same were uncovered in construction of the improvements, building roads or installing electric and communication lines.
- (h) All gathering and communication cables shall follow roads to the extent commercially reasonable. Lessee shall maintain all cable routes to minimize erosion and all such cables (except for cables located within twenty (20) feet of a generating unit) shall be buried at least forty (40) inches below surface level.
- (i) At any time Lessee is conducting clearing operations, installing improvements and/or engaging in construction activities, Lessee shall place a 24-hour security guard at the entrance of the Premises. Owner will provide the name or names of security guard companies allowed on the Premises and retain the right to approve or disapprove any security personnel so hired.
- (j) Lessee will maintain approaches, gates, fences, cattle guards, ranch roadways and other improvements used or damaged in connection with Lessee's operations in a good state of repair and will promptly cause to be repaired and restored any damage to the surface or improvements of the Premises occasioned by or resulting from Lessee's operations.
- (k) Lessee shall maintain the Premises in a good ecological condition, removing all unused equipment, unused electric lines and poles, cables, structures, including concrete foundations, parts thereof and debris.
- (l) Lessee or its contractors shall provide its employees with portable toilet facilities during construction.
- (m) Lessee shall not have the right under this Lease to construct or maintain housing for its employees, agents, contractors and/or subcontractors on the Premises.

EXHIBIT "C"

Fence Specifications



1 NORTH OR SOUTH – TYPICAL SITE PERIMETER ELEVATION
SCALE: NTS



2 EAST OR WEST – TYPICAL SITE PERIMETER ELEVATION
SCALE: NTS

EXHIBIT "D"

[Roads to Remain Open]

EXHIBIT "E"

[Drill Sites and Corridors]

EXHIBIT "F"

Form of Memorandum of Commercial Lease

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Attention : [_____]

(Space above this line for Recorder's use only)

MEMORANDUM OF
COMMERCIAL LEASE

A. On _____, 201__ (the "Effective Date"), THE UNIVERSITY OF TEXAS SYSTEM BOARD OF REGENTS ("Owner"), and _____ ("Lessee") have entered into a Commercial Lease (the "Agreement") which by its terms grants to Lessee an exclusive lease on, over and across certain real property which is more particularly described in Exhibit A attached to this Memorandum and incorporated by this reference (the "Property"), for the following uses: developing, constructing, operating and maintaining a solar-powered electric generating facility, and related improvements, equipment and facilities.

B. The term of the Agreement commences on the Effective Date and continues for a period of _____ (__) years following the Effective Date (unless earlier terminated) (the "Option Period"). Pursuant to the terms of the Agreement, Lessee has the right to extend the term of the Agreement for _____ (__) additional periods of _____ (__) years each.

C. Owner and Lessee desire to enter into this Memorandum of Commercial Lease (this "Memorandum") which is to be recorded in order that third parties may have notice of the interests of Lessee in the Property and of the existence of the rights granted to Lessee in the Property as part of the Agreement.

D. All capitalized terms used but not defined herein shall have the meanings assigned to them in the Agreement. This Memorandum is subject to all of the terms, covenants and conditions provided in the unrecorded Agreement and in no way modifies the provisions of the Agreement. Should there be any inconsistency between the terms of this Memorandum and the Agreement, the terms of the Agreement shall prevail. This Memorandum may be executed in any number of counterparts, each of which when executed and delivered shall be an original, and each such counterpart shall, when combined with all other such counterparts, constitute one agreement binding on the parties hereto.

[SIGNATURE PAGES FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Memorandum as of the date set forth above.

Owner:

THE UNIVERSITY OF TEXAS
SYSTEM
BOARD OF REGENTS

Date: _____

By: _____
Richard Brantley
Executive Director of University
Lands

Approved as to Content:

James R. Buice
University Lands

Lessee:

By: _____

Name: _____

Title: _____

STATE OF _____

§
§
§

COUNTY OF _____

This instrument was ACKNOWLEDGED before me on the _____ day of _____, 201__, by Richard Brantley, the Executive director of University lands, the University Texas System, on behalf of The University of Texas system Board of Regents.

[S E A L]

My Commission Expires:

Notary Public - State of _____

Printed Name of Notary Public

Exhibit A to Memorandum
DESCRIPTION OF PROPERTY

Schedule 1

Rent Schedule

Rental During Development and Construction Periods

Development Period: \$_____ per acre.

Construction Period: \$_____ per acre.

The Rental for the first (1st) year of the Development Period is due and payable in advance by Lessee to Owner on or before the Effective Date. The Rental for the _____ years of the Development Period is due on or before each respective anniversary of the Effective Date. The Rental for the Construction Period is due and payable in advance by Lessee to Owner on or before the commencement of the Construction Period.

Rental During the Operating Period and any extension

The greater of (i) the annual rent payment shown for such Operating Period Lease Year on Schedule 1-A attached hereto, due and payable in advance by Lessee to Owner on or before each year of the Operating Period and (ii) the percentage of the Gross Revenues (defined below) shown for each such Operating Period Lease Year on Schedule 1-A attached hereto received from the operation of the Generating Facility ("Percentage Rental"). Percentage Rental, if greater than the annual rent payment, shall be paid annually in arrears and shall be due within forty five (45) days of the end of each calendar year. Along with each Percentage Rental payment for the Operating Period, Lessee will submit a detailed statement showing how the payment, if any, for Percentage Rental was determined.

"Gross Revenues" means the aggregate total revenue actually received by Lessee during the applicable period of time, from the sale of electrical energy generated and sold from the Generating Facility or any battery or storage facility located on the Premises. Electrical energy generated and sold excludes parasitic and other losses of electrical energy generated, including electrical energy used to power the Generating Facility, or lost in the course of transforming, shaping, transporting or delivering the electricity and no amount shall be included in Gross Revenues attributable to such parasitic, other losses. "Gross Revenues" do not include revenues: (a) from (i) production tax credits, investment tax credits, other tax benefits and credits, and any reimbursement thereof, (ii) the sale, lease, sublease, assignment, transfer or other disposition, whether directly or indirectly, of the Generating Facilities or any other of Lessee's improvements, trade fixtures or chattels (or any interest therein), (iii) the transfer or sale, whether directly or indirectly, of all or a part of the membership interests in Lessee or any of its affiliates, (iv) any rental or other payment received in exchange for Lessee's assigning, subleasing, mortgaging or otherwise transferring all or any interests

of Lessee in this Agreement, (v) the sale, modification or termination of any obligation under a power purchase contract, or (vi) sales of electrical energy for which payment is not received (including because of a default by the purchaser thereof); (b) as reimbursement or compensation for transmission, distribution or delivery costs or the cost of network upgrades or interconnection costs paid by Lessee; or, (c) received from any power purchaser that are not payments for electrical energy generated by the Generating Facility located on the Premises that are not specifically made in lieu of revenues from the normal operation of the Generating Facilities.

