



**Location:** City Hall – Council Chambers  
**Date:** January 28, 2020  
**Time:** 7:00 PM

## City Council Meeting Agenda

Mayor Steve Uffelman, Council Members Jason Beebe, Janet Hutchison,  
Patricia Jungmann, Gail Merritt, Jeff Papke, Teresa Rodriguez and City Manager Steve Forrester

**PLEASE NOTE MEETING TIME CHANGE TO 7:00 PM**

### Call to Order

### Flag Salute

### Additions to Agenda

### Consent Agenda

1. Regular Meeting Brief 1-14-2020

### Visitors, Appearances and Requests

### Council Business

2. Reading of a Proclamation - Year of the Cowboy - Mayor Uffelman
3. Budget Committee Appointments - Mayor Uffelman

### Staff Reports and Requests

4. City Manager Report - Steve Forrester

### Committee Reports

### Ordinances

5. Ordinance No 1257 - Amending Chapter 153 to Update Accessory Dwelling Units Standards and Codes - Josh Smith
6. Ordinance No 1258 - Solid Waste Franchise - Steve Forrester / Jered Reid
7. Ordinance No 1259 - Century Link Franchise - Jered Reid

### Resolutions

8. Resolution No 1422 - Authorizing a Solar Site Lease Agreement - Eric Klann / Jered Reid
9. Resolution No 1423 - Authorizing a Power Purchase Agreement - Eric Klann / Jered Reid

### Visitors, Appearances and Requests

10. Executive Session - Pursuant to ORS 192.660 (2) (i) & 192.660 (8) Performance Evaluation & ORS 192.660 (2) (h) - Litigation

### Adjourn

***Agenda items maybe added or removed as necessary after publication deadline***



**CITY OF PRINEVILLE**  
**Regular Meeting Brief**  
387 NE Third Street – Prineville, OR 97754  
541.447.5627 ph 541-447-5628 fax

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Full Meeting Recordings Available at:  
<http://cityofprineville.com/meetings/>

**City Council Meeting Brief**  
**January 14, 2020**

**Council Members Present:**

Gail Merritt  
Steve Uffelman  
Teresa Rodriguez  
Jeff Papke

Janet Hutchison  
Patricia Jungmann  
Jason Beebe

**Council Members Absent**

None.

**State of the City Address**

1. Mayor Uffelman presented the State of the City Address.

**Additions to the Agenda**

None.

**Consent Agenda**

2. Regular Meeting Brief 12-10-19
3. Tastee Treat Liquor License Application

**Councilor Rodriguez made a motion to approve the Consent Agenda as presented. Motion seconded. No discussion on motion, motion carried.**

**Visitors, Appearances and Requests:**

**Public Appearances**

No one came forward.

**Council Business**

4. **Consideration of a Proclamation – Year of the Cowboy – Mayor Uffelman**

Steve Holliday, Crooked River Round Up Board member came forward and provided background information on all that the Crooked River Round Up has contributed to the community over the last seventy-five (75) years. Mr. Holliday went on to say that it is a huge economic driver; a heritage; what it means to be a cowboy; it is a state of mind and way of life; if a problem arises you figure out a way to fix it without waiting for someone else to fix it; Prineville being considered the cowboy capital; celebrating the Crooked River Round Up all year long with many 75 year anniversary events, beginning with the request of a proclamation to mark 2020 as the Year of the Cowboy.

**Council agreed unanimously to approve the proclamation for reading at the next Council meeting.**

#### **5. CCSD Vaping Cessation Program Funding – Mayor Uffelman**

Mayor Uffelman explained that representatives of the school district asked for funding at the last council meeting and asked if Council agrees that they should provide some level of funding towards their efforts.

Councilor Merritt agreed that they should contribute something.

**Councilor Papke made a motion to contribute \$1,000 to Crook County School District for their Vaping Cessation Program. Motion seconded. There was discussion on motion. All in favor, motion carried.**

#### **6. 2020 Committee Council Appointments – Mayor Uffelman**

Mayor Uffelman explained that he had reached out to council members prior to the meeting to see who would be willing to serve on what committees. Mayor Uffelman read the results of which councilors are serving on each committee.

#### **7. Accessory Dwelling Unit (ADU) Code Update – Josh Smith**

Josh Smith, Planning Director handed out copies of the Planning Commission's recommendation to approve the code update and explained that the county recently updated their code for ADU's.

**Mayor Uffelman opened the public hearing portion of the meeting.**

Jeff Burlington, a Prineville resident had questions regarding if this included mobile homes.

Mr. Smith explained that it does not apply to mobile homes and that there are size, design and materials standards for ADU's and added that he believes the county is updating its code for single wide mobile homes.

No one else came forward.

**Mayor Uffelman closed the public hearing portion of the meeting.**

**Staff Reports and Requests:**

**8. Manager’s Report**

Steve Forrester, City Manager reported: the airport’s new fuel system has been completed; the helibase project is 50% completed; runway 28 might be eligible for FAA funding; the Senior Center rehabilitation pre-bid meeting had seven general contractors attend; staff is having leadership professional development tomorrow and council is welcome to attend; Sergeant Jimmy O’Daniel is attending meeting tonight since the Chief and Captain are in training; we continue to work on the fish passage for the Bowman Dam project; the Railroad reinforced the Madras Highway overpass to accommodate heavier loads; and two manufacturing companies are interested in the Railroad.

There were no questions.

**9. Committee Reports**

Councilor Rodriguez explained the Crook County Natural Resource Committee just completed its first year with the USFS and BLM very involved, and the next meeting is February 12<sup>th</sup>.

Councilor Hutchison attended the December Chamber meeting and they are hosting the World Series Race which is a big deal, and was held in Bend in the past.

Mayor Uffelman attending the CREA meeting that just went through their strategic planning.

**Ordinances:**

**10. Ordinance No. 1256 – Facebook Road Naming (SECOND PRESENTATION) – Josh Smith**

Mr. Smith explained this is the second presentation and there have been no changes since the first presentation.

There were no questions.

**Councilor Merritt made a motion to approve Ordinance No. 1256 for its second presentation. Motion seconded. No discussion on motion. All in favor, motion carried.**



**Resolutions:**

**11. Resolution No. 1421 – Approving Transfer of the Solid Waste Franchise Agreement from Holliday Enterprises to Allied Waste dba Republic Services of Oregon (PUBLIC HEARING) – Jered Reid**

Mr. Forrester provided background information and referred to the email he had sent earlier that included Allied Waste company profile information.

Jered Reid, City Attorney went through the process requirements and additional background.

Ryan Lawler, Republic Services Area Director out of Redmond Washington explained that they employ over 600 people in the northwest.

Jim Hutchinson, Republic Services Area Director of Municipal Sales stated that he acknowledges that they are a new face and name here, they are not a fly by night company. Mr. Hutchinson continued with providing company statistics such as being in 42 states and employing over 36,000 people; how big they are in this region; and they are local here too, including beating barrels. They are also listed as one of the top employers with Forbes.

Kristin Steiner, Central Oregon General Manager introduced herself and listed all the facilities in Central Oregon she oversees and explained no matter what the question is to contact her. She is excited to carry on the local traditions knowing that it is important to the employees as well as them. She explained that they are keeping the employees and that they have passed all of their testing.

Discussions continued regarding length of time in Bend; how the franchise agreement on our side doesn't change and running into local employees that are very happy with the transfer.

**Mayor Uffelman opened the public hearing portion of the meeting.**

No one came forward.

**Mayor Uffelman closed the public hearing portion of the meeting.**

**Councilor Rodriguez made a motion to approve Resolution No. 1421. Motion seconded. No discussion on motion. All in favor, motion carried.**

**Visitors Appearances and Requests:**

No one came forward.

**Adjourn**

**Councilor Rodriguez made a motion to adjourn the meeting. Motion seconded. No discussion on motion. All in favor, motion carried.**

Meeting adjourned at 7:55 P.M.

**Motions and Outcomes:**

Motion:	Outcome	Beebe	Hutchison	Jungmann	Merritt	Papke	Rodriguez	Uffelman
Consent Agenda	PASSED	-	Y	Y	Y	Y	Y	Y
Contribute \$1,000 to Crook County School District for their Vaping Cessation Program	PASSED	Y	Y	Y	Y	Y	Y	Y
Ordinance No. 1256 – Facebook Road Naming <b>(SECOND PRESENTATION)</b>	PASSED	Y	Y	Y	Y	Y	Y	Y
Resolution No. 1421 – Approving Transfer of the Solid Waste Franchise Agreement from Holliday Enterprises to Allied Waste dba Republic Services of Oregon <b>(PUBLIC HEARING)</b>	PASSED	Y	Y	Y	Y	Y	Y	Y
Adjourn Meeting	PASSED	Y	Y	Y	Y	Y	Y	Y

Public Records Disclosure

Under the Oregon public records law, all documents referred to in this session are available at the City’s website. [www.cityofprineville.com](http://www.cityofprineville.com). An electronic copy of the meeting packet is available for download at [www.cityofprineville.com/packets](http://www.cityofprineville.com/packets). A full recording of this meeting is available at [www.cityofprineville.com/meetings](http://www.cityofprineville.com/meetings)

# PROCLAMATION

## *Proclaiming "2020 Year of the Cowboy"*

**WHEREAS,** The Crooked River Roundup was founded in Prineville by Ranchers, Farmers and Local Businessmen in 1945 as a community organization with the goals of preserving the Western Heritage, creating economic well-being for the community and supporting a facility in Prineville for use in the Western Lifestyle.

**WHEREAS,** The members of the Crooked River Roundup are dedicated to upholding and passing to the next generation the ideals of freedom, community and the western way of life.

**WHEREAS,** the Crooked River Roundup has favorably touched many lives, businesses, organizations, and charities over the past 75 years.

**WHEREAS,** The Crooked River Roundup is celebrating its 75th anniversary of it's founding in 2020.

**NOW, THEREFORE, I, Stephen P. Uffelman, Mayor of the City of Prineville, do hereby proclaim the year 2020 as "The Year of The Cowboy" and call upon the people of Prineville to recognize and participate in this special observance.**

**IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the official seal of City of Prineville on this 28<sup>th</sup> Day of January, 2020.**

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Stephen P. Uffelman, Mayor





## STAFF REPORT

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**MEETING DATE:** 1/14/2020

**PREPARED BY:** Joshua Smith

**SECTION:** Ordinance

**DEPARTMENT:** Planning

**CITY GOAL:** Position City for the Future

**SUBJECT:** Amendment to Accessory Dwelling Unit (ADU) standards.

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**REASON FOR CONSIDERATION:** Changes in State law for Oregon Counties.

**BACKGROUND:** See attached Planning Commission recommendation.

**FISCAL IMPACT:** None.

**RECOMMENDATION:** See attached Planning Commission recommendation.





**City of Prineville**  
**DEPARTMENT OF PLANNING & COMMUNITY DEVELOPMENT**  
**PLANNING COMMISSION RECOMMENDATION**

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**File No.:** AM-2019-102  
**Applicant:** City of Prineville  
**Notice to DLCD:** 10/17/2019  
**PC Review:** 10/15/2019  
**Newspaper Notice:** Planning Commission Notice – 11/22/2019  
**Public Hearing:** Planning Commission – 12/03/2019  
**Staff:** Joshua Smith,  
Planning Director  
**Proposal:** Legislative Text Amendment for Accessory Dwelling Units (ADUs).

**Background**

The City of Prineville adopted our current Accessory dwelling language in 2011 by Ordinance 1180. It was updated in 2017 by Ordinance 1229 as part of a larger code update aimed at simplifying and clarifying. Also in 2017, the State legislature passed Oregon Senate Bill 1051 requiring cities and counties of a certain size to allow ADUs. In 2018 HB 4031 corrected an error in the Senate bill. The House Bill limited ADUs in the County to only areas within an Urban Growth Boundary zoned for single family dwellings. The County has passed their code update; therefore, City staff recommended changes to the City code.

**Consistent with Statewide Planning Goals 10 & 14**

Oregon Statewide Planning Goal 10 requires Cities to provide for the housing needs of the State. The City has completed a housing needs analysis that showed a need for housing at a lower income level that ADUs could provide, whether it's for family members, friends or a standard rental. Goal 14 requires Cities to provide orderly and efficient transition from rural to urban land use. By coordinating the code language for use of ADUs within the UGB, the City and County will be providing for that transition.

**PC Conclusions and Recommendation**

The proposed changes should not negatively effect property values or impose new regulations. The code update will clarify the dimensional standards table, remove additional height requirements, add access requirements and allow ADUs in areas of the City that did not allow them before because City services (Water and Sewer) were not available. With the County changing their code to allow such a use without City services within the UGB, its logical to align our codes to prevent a gap in the system where a property annexed into the City but without services could not have an ADU. ADUs without City services would be required to connect to approved well and septic systems that are built to handle the extra capacity. The Planning Commission recommends these updates be adopted City Council.

**EXHIBITS**

Exhibit A - PC recommended changes

  
Marty Bailey, Planning Commission Chair

**ORDINANCE NO. 1257**

**AN ORDINANCE AMENDING CHAPTER 153 OF THE CODE OF PRINEVILLE (“CODE”)  
TO UPDATE DEMENSIONAL STANDARDS AND CODES ASSOCIATED WITH  
ACCESSORY DWELLING UNITS.**

WHEREAS, City of Prineville (“City”) staff compiled amendments to the City’s land use code (Chapter 153 of the Code) for review by the City Planning Commission at one workshops held on October 15, 2019; and

WHEREAS, pursuant to Section 153.252.020 of the Code, required notice was submitted to the Department of Land Conservation and Development and published 10 days prior to the initial public hearing scheduled for December 3<sup>rd</sup>, 2019; and

WHEREAS, on December 3<sup>rd</sup>, 2019, the City Planning Commission held a public hearing and consented to the amendments and recommended the City Council approve the proposed amendments as shown on Exhibit A attached hereto and by this reference made a part hereof; and

WHEREAS, pursuant to Section 153.252.020 of the Code, required notice was published 10 days prior to the City Council hearing of a legislative change scheduled for January 14<sup>th</sup>, 2020; and

WHEREAS, on January 14<sup>th</sup>, 2020 the City Council held a public hearing on the amendments shown on Exhibit A; and

WHEREAS, the City Council’s approved the amendments to the code; and

NOW, THEREFORE, the people of the City of Prineville ordain as follows:

1. That Chapter 153 of the Code of Prineville is amended as shown on Exhibit A

Presented for the first time at a regular meeting of the City Council held on January 28, 2020, and the City Council finally enacted the foregoing ordinance this \_\_\_\_ day of February, 2020.

\_\_\_\_\_  
Stephen P. Uffelman  
Mayor

ATTEST:

\_\_\_\_\_  
Lisa Morgan, City Recorder

**153.036 RESIDENTIAL DIMENSIONAL STANDARDS**

	<b>R-1</b>	<b>R-2</b>	<b>R-3</b>	<b>R-4</b>	<b>R-5</b>
	<b>Limited</b>	<b>General</b>	<b>Low Density</b>	<b>Redevelopment</b>	<b>High Density</b>
<b>Minimum lot area (public water and sewer required)<sup>1, 2</sup></b>					
Accessory Dwelling Unit (ADU)	In conjunction with Single Family Dwelling				Zone Standards
single family dwelling	6,500 sf	5,000 sf	10,000sf	4,000sf	Zone Standards
Two-family dwelling	N/A	7,500 sf	N/A	6,500 sf	Zone Standards
Duplex Lot (not for density purposes)	N/A	3,750 sf	N/A	3,250 sf	Zone Standards
Triplex	N/A	9,000 sf	N/A	8,000 sf	Zone Standards
Fourplex	N/A	10,500 sf	N/A	9,500 sf	Zone Standards
Additional area for each unit over 4	N/A	+1,500 sf	N/A	+1,250 sf	Zone Standards
Townhouse Lot (not for density purposes)	N/A	3,000 sf	N/A	2,500 sf	Zone Standards
Townhouse Multiplex Lot (not for density purposes)	N/A	N/A	N/A	N/A	Zone Standards
Non-residential uses	N/A	Based on requirements of use-and preservation of residential character of neighborhood	N/A	Based on requirements of use and preservation of residential character of neighborhood	Zone Standards
Min. Net Density for Subdivision <sup>3</sup>	3/acre	4/acre	2/acre	6/acre	12/acre
Max. Net Density for Land Division	Calculated based on "Net Density" definition				

<b>Minimum lot area (no public water or sewer available)<sup>4</sup></b>		
Single family dwelling	On existing lots or parcels only with approved water supply and sewage disposal system.	N/A
Accessory Dwelling Unit (ADU)	In conjunction with Single Family Dwelling with approved water supply and sewage disposal system.	N/A

<sup>1</sup> Must have public water and sewer in R-1, R-2, R-4 and R-5 zones but may be community system(s) in R-3 zone.

<sup>2</sup> Unless classified as a multi-family dwelling complex, minimum lot area shall be calculated as the cumulative total square footage required for each type of building on the site.

<sup>3</sup> The City may grant an exception to the minimum density standards based on site specific issues that make such density infeasible such as: steep slopes, floodplain, and wetlands.

<sup>4</sup> Water supplies are reviewed and sewage disposal systems are approved through the Crook County Community Development Department.

**153.080 ACCESSORY DWELLING UNITS & GUEST HOUSES**

(A) An accessory dwelling, or guest house is a small, secondary living unit containing cooking facilities that may include manufactured homes but excludes recreational vehicles (RVs). The additional unit may be a detached unit, a unit attached to a garage, or in a portion of an existing house. An accessory dwelling unit shall not constitute grounds for future land division. The following standards are intended to control the size and number of accessory dwellings on individual lots, so as to promote compatibility with adjacent land uses. Accessory dwellings shall comply with all of the following standards:

(1) Zoning. An accessory dwelling is allowed only if specified in the underlying zone use table. Manufactured homes shall only be used in zones that allow manufactured homes. In the case of a residential use in a commercial zone, the R2 zone standards shall apply.

(2) One Unit. A maximum of 1 accessory dwelling unit is allowed per lot or parcel and only in conjunction with a single family home.

(3) Floor Area. The maximum floor area of the accessory dwelling shall not exceed 700 square feet. Size requirements for manufactured homes in section 153.095 do not apply.

(4) Dimensional standards. An accessory dwelling shall not cause a lot to exceed the dimensional standards of the underlying zone.

(5) Parking. In addition to the requirements of the primary residence an accessory dwelling shall provide at least 1 additional off street parking space to city standards.

(6) Access. There shall be a clear and marked pedestrian path of travel from a public or private street to the entrance of the accessory dwelling unit.

(7) Building Materials. Accessory dwellings shall be constructed with materials and detailing that generally match those used on the primary dwelling, except where the approval body requires different materials and/or detailing to promote compatibility with single family dwellings on abutting lots.

(8) Buffering. A minimum 6-foot hedge or fence and/or trees may be required to buffer a detached accessory dwelling from dwellings on adjacent lots when buffering is necessary for the privacy and enjoyment of yard areas by either the occupants or adjacent residents.

(9) Water & Wastewater.

(a) Accessory dwelling units shall connect to the City's water and sewer systems per the City's standards and specifications.

(b) If City services are not available or an existing primary dwelling is not connected, an accessory dwelling may connect to an approved drinking water source and sewage disposal system. The sewage disposal system shall meet all applicable requirements of the Crook County sanitarian and the Oregon Department of Environmental Quality. The applicant shall submit evidence of an approved drinking water source and that the appropriate sewage disposal system permit has been issued.

(10) Building Code. The structure shall comply with the current Building Code.

(11) System Development Charges (SDCs). SDCs shall apply according to City policy.



**153.036 RESIDENTIAL DIMENSIONAL STANDARDS**

	<b>R-1</b>	<b>R-2</b>	<b>R-3</b>	<b>R-4</b>	<b>R-5</b>
	<b>Limited</b>	<b>General</b>	<b>Low Density</b>	<b>Redevelopment</b>	<b>High Density</b>
<b>Minimum lot area (public water and sewer required)<sup>1, 2</sup></b>					
<a href="#">Accessory Dwelling Unit (ADU)</a>	<a href="#">In conjunction with Single Family Dwelling</a>				<a href="#">Zone Standards</a>
single family dwelling	6,500 sf	5,000 sf	10,000sf	4,000sf	Zone Standards
Two-family dwelling	N/A	7,500 sf	N/A	6,500 sf	Zone Standards
Duplex Lot (not for density purposes)	N/A	3,750 sf	N/A	3,250 sf	Zone Standards
Triplex	N/A	9,000 sf	N/A	8,000 sf	Zone Standards
Fourplex	N/A	10,500 sf	N/A	9,500 sf	Zone Standards
Additional area for each unit over 4	N/A	+1,500 sf	N/A	+1,250 sf	Zone Standards
Townhouse Lot (not for density purposes)	N/A	3,000 sf	N/A	2,500 sf	Zone Standards
Townhouse Multiplex Lot (not for density purposes)	N/A	N/A	N/A	N/A	Zone Standards
Non-residential uses	N/A	Based on requirements of use—and preservation of residential character of neighborhood	N/A	Based on requirements of use and preservation of residential character of neighborhood	Zone Standards
Min. Net Density for Subdivision <sup>3</sup>	3/acre	4/acre	2/acre	6/acre	12/acre
Max. Net Density for Land Division	Calculated based on “Net Density” definition				

<b>Minimum lot area (no public water or sewer available)<sup>4</sup></b>					
<del>single family dwelling</del>	<del>N/A</del>	<del>As required</del>	<del>As required</del>	<del>As required</del>	<del>N/A</del>
<a href="#">Single family dwelling</a>	<a href="#">On existing lots or parcels only with approved water supply and sewage disposal system.</a>				<a href="#">N/A</a>
<a href="#">Accessory Dwelling Unit (ADU)</a>	<a href="#">In conjunction with Single Family Dwelling with approved water supply and sewage disposal system.</a>				<a href="#">N/A</a>

<sup>1</sup> Must have public water and sewer in R-1, R-2, R-4 and R-5 zones but may be community system(s) in R-3 zone.

<sup>2</sup> Unless classified as a multi-family dwelling complex, minimum lot area shall be calculated as the cumulative total square footage required for each type of building on the site.

<sup>3</sup> The City may grant an exception to the minimum density standards based on site specific issues that make such density infeasible such as: steep slopes, floodplain, and wetlands.

<sup>4</sup> ~~As necessary to comply with approved~~ [Water supplies are reviewed and sewage disposal systems are approved through the Crook County Community Development Department.](#) ~~(Existing lots only)~~

**153.080 ACCESSORY DWELLING UNITS & GUEST HOUSES**

(A) An accessory dwelling, or guest house is a small, secondary living unit containing cooking facilities that may include manufactured homes but excludes recreational vehicles (RVs). The additional unit may be a detached unit, a unit attached to a garage, or in a portion of an existing house. An accessory dwelling unit shall not constitute grounds for future land division. The following standards are intended to control the size and number of accessory dwellings on individual lots, so as to promote compatibility with adjacent land uses. Accessory dwellings shall comply with all of the following standards:

(1) Zoning. An accessory dwelling is allowed only if specified in the underlying zone use table. Manufactured homes shall only be used in zones that allow manufactured homes. In the case of a residential use in a commercial zone, the R2 zone standards shall apply.

(2) One Unit. A maximum of 1 accessory dwelling unit is allowed per lot or parcel and only in conjunction with a single family home.

(3) Floor Area. The maximum floor area of the accessory dwelling shall not exceed 700 square feet. Size requirements for manufactured homes in section 153.095 do not apply.

(4) Dimensional standards. An accessory dwelling shall not cause a lot to exceed the dimensional standards of the underlying zone. ~~The lot size requirements per dwelling do not apply to accessory dwellings.~~

(5) Parking. In addition to the requirements of the primary residence an accessory dwelling shall provide at least 1 additional off street parking space to city standards.

(6) ~~Building Height~~Access. There shall be a clear and marked pedestrian path of travel from a public or private street to the entrance of the accessory dwelling unit. ~~The building height of any detached accessory dwellings (i.e., separate cottages or above garages) shall not exceed 28 feet.~~

(7) Building Materials. Accessory dwellings shall be constructed with materials and detailing that generally match those used on the primary dwelling, except where the approval body requires different materials and/or detailing to promote compatibility with single family dwellings on abutting lots.

(8) Buffering. A minimum 6-foot hedge or fence and/or trees may be required to buffer a detached accessory dwelling from dwellings on adjacent lots when buffering is necessary for the privacy and enjoyment of yard areas by either the occupants or adjacent residents.

(9) ~~Utilities~~Water & Wastewater.

(a) Accessory dwelling units shall connect to the City's water and sewer systems per the City's standards and specifications.

(b) If City services are not available or an existing primary dwelling is not connected, an accessory dwelling may connect to an approved drinking water source and sewage disposal system. The sewage disposal system shall meet all applicable requirements of the Crook County sanitarian and the Oregon Department of Environmental Quality. The applicant shall submit evidence of an approved drinking water source and that the appropriate sewage disposal system permit has been issued. ~~Accessory dwelling units shall connect to the City's water and sewer systems per the City's standards and specifications. System development charges shall apply according to the City policy.~~

(10) Building Code. The structure shall comply with the current Building Code.

(11) System Development Charges (SDCs). SDCs shall apply according to City policy.

**ORDINANCE NO. 1258**

**AN ORDINANCE ADOPTING CHANGES TO PRINEVILLE CODE SECTIONS  
50.15(B)(1) AND 50.16**

**Whereas**, on January 14, 2020, the City of Prineville City Counsel, following a public hearing, which was publicly noticed, adopted Resolution 1421 approving the transfer of the solid waste franchise agreement from Holliday Enterprises, LLC (“Holliday”) to Allied Waste Transfer Services of Oregon, LLC, dba Republic Services of Oregon (“Republic”).

**Whereas**, Holliday and Republic have executed appropriate transfer documents that were filed with the City Recorder.

**Whereas**, City of Prineville Code Chapter 50 must be amended to appropriately reflect the transfer.

**Whereas**, this Ordinance was available to the public at least one week before its presentation to the City Council.

**Whereas**, the Ordinance requires to be effective immediately and therefore an emergency clause is required.

**NOW, THEREFORE, THE PEOPLE OF THE CITY OF PRINEVILLE DO  
ORDAIN AS FOLLOWS:**

1. Section 50.15(B)(1) and 50.16 are amended to read as shown on Exhibit A attached hereto and by reference made a part hereof.
2. This ordinance is effective immediately.

Presented for the first time at a regular meeting of the City Council held on January 28, 2020, and unanimously passed hereto.

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Stephen P. Uffelman  
Mayor

ATTEST:

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Lisa Morgan, City Recorder

Exhibit A

Matter in **boldfaced** type is new; matter [*italic and bracketed*] is existing language to be omitted.

**Prineville City Code 50.15(B)(1).**

The collection, transportation and reuse of repairable or cleanable discards by a **non-profit** [*private charitable*] organization regularly engaged in the business or activity. [*for example, Neat Repeat or similar organization.*]

**Prineville City Code 50.16**

There is hereby granted to [*Holliday Enterprises, LLC,*] **Allied Waste Transfer Services of Oregon, LLC, dba Republic Services of Oregon** the exclusive right, privilege and franchise to provide service within the city limits [*as of the date of this chapter*] and any area that may hereafter be annexed to the city, and, for that purpose, to utilize the streets of the city.

ORDINANCE NO. 1259

AN ORDINANCE GRANTING A FRANCHISE TO QWEST CORPORATION D/B/A CENTURYLINK QC (F/K/A US WEST COMMUNICATIONS) ON BEHALF OF ITSELF AND ITS OPERATING AFFILIATES ("CENTURYLINK") TO OPERATE AND MAINTAIN A TELECOMMUNICATIONS SYSTEM ("THE SYSTEM") IN THE CITY OF PRINEVILLE, OREGON ("THE CITY").

The City hereby ordains that it is in the public interest to grant CenturyLink a Franchise to operate the System pursuant to the terms and conditions contained herein.

**SECTION 1. Grant of Franchise.** The City hereby grants to CenturyLink the right, privilege and authority to install, construct, maintain, operate, upgrade, repair, relocate and remove its cables and related appurtenances ("Facilities") in, under, along, over and across the present and future streets, alleys and other public ways in the City ("Public Ways", or in the singular "Public Way"), for the purpose of providing telecommunication services to the City's inhabitants and other customers of CenturyLink located within the City's corporate limits.

**SECTION 2. Acceptance by CenturyLink.** Within sixty (60) days after the passage of this Ordinance by the City, CenturyLink shall file an unqualified written acceptance thereof with the City; otherwise the Ordinance and the rights granted herein shall be null and void.

**SECTION 3. Term.** The initial term of this Franchise is ten (10) years commencing on the date of Acceptance by CenturyLink as set forth above in Section 2 and shall thereafter automatically renew from year-to-year unless either party gives advance written notice to the other party at least 120 days prior to expiration of the initial term or subsequent annual term requesting the parties enter into good faith discussions to reach terms of a new agreement.

**SECTION 4. Records Inspection.** CenturyLink shall make available to the City, upon reasonable advance written notice of no fewer than sixty (60) days and not more often than once every two (2) years, such relevant information pertinent only to enforcing the terms of this Ordinance in such form and at such times as CenturyLink can reasonably make available. Subject to applicable laws, any information that CenturyLink provides to the City, except as otherwise provided herein, is confidential and proprietary and shall not be disclosed or used for any purpose other than verifying compliance with the terms of this Ordinance. Except as otherwise provided herein, any such information provided to the City shall be returned to CenturyLink following review, without duplication, unless CenturyLink grants the City written permission to duplicate the information.

**SECTION 5. Non-Exclusive Franchise.** The right to use and occupy the Public Ways shall be nonexclusive, and the City reserves the right to use the Public Ways for itself or any other entity. The City's and other entities' use, however, shall not unreasonably interfere with CenturyLink's Facilities or the rights granted CenturyLink herein.

**SECTION 6. City Regulatory Authority.** The City reserves the right to adopt such additional ordinances and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens consistent with applicable federal and state law. The City agrees to promptly notify CenturyLink of any such changes potentially applicable to this Franchise.

**SECTION 7. Indemnification.** The City shall not be liable for any property damage or loss or injury to or death of any person that occurs as the result of the construction, operation or maintenance by CenturyLink of its Facilities. CenturyLink shall indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of CenturyLink's use of the Public Ways. The City shall: (a) give prompt written notice to CenturyLink of any such claim, demand or lien with respect to which the City seeks indemnification hereunder; and (b) permit CenturyLink to assume the defense of such claim, demand, or lien with legal counsel of CenturyLink's selection. CenturyLink shall not be subject to liability for any settlement or compromise made without its prior written consent. Notwithstanding the other provisions contained herein, CenturyLink shall in no event be required to indemnify the City for any claims, demands, or liens arising from the negligence or wrongful actions or inactions of the City, its officials, boards, commissions, agents, contractors, and/or employees.

**SECTION 8. Insurance Requirements.** CenturyLink, at its cost and expense, will obtain and keep in full force and effect during the term of this Ordinance, the following insurance coverage and their respective minimum limits: (a) workers' compensation insurance within statutory limits; (b) employer's liability insurance with limits of not less than \$1,000,000.00 per occurrence, \$2,000,000.00 in the aggregate; (c) comprehensive general liability insurance within limits of not less than \$3,000,000.00 for bodily injury or death to each person, \$3,000,000.00 for property damage resulting from any one accident, and \$3,000,000.00 for other types of liability; and (d) automobile liability insurance for all owned, non-owned, and hired vehicles that are or may be used by CenturyLink and its employees with a limit of \$1,000,000.00 for each person and \$3,000,000.00 for each accident. Each liability insurance policy CenturyLink is required to obtain and maintain under this Section 8 will name City and its officers, representatives, agents, and employees as additional insureds. CenturyLink will not cancel, modify, and/or reduce in amount or scope the insurance coverage required to be maintained under this Ordinance without first providing City thirty (30) days' prior written notice. All insurance CenturyLink is required to obtain and maintain under this Section 8 will be issued only by insurance companies licensed in Oregon. Prior to City's execution and acceptance of this Ordinance, upon renewal of each insurance policy and at any other time thereafter within thirty (30) days after City's written request, CenturyLink will provide City with certificates evidencing CenturyLink's compliance with this Section 8.

**SECTION 9. Annexation.** When any territory is approved for annexation to the City, the City shall within ten (10) business days provide by certified mail, return receipt requested, postage prepaid, to CenturyLink at the addresses provided in Section 18 hereof: (a) each site address to be annexed as recorded on City assessment and tax rolls; (b) a legal description of the proposed boundary change; and (c) a copy of the City 's ordinance approving the proposed annexation.

**SECTION 10. Plan, Design, Construction and Installation of CenturyLink's Facilities.**

**10.1** All Facilities under authority of this Ordinance shall be used, constructed and maintained in accordance with applicable law.

**10.2** CenturyLink shall, prior to commencing new construction or major reconstruction work in Public Ways or other public places, apply for a permit from the City, which permit shall not be unreasonably withheld, conditioned, or delayed. CenturyLink will provide plans of new facilities to be placed in the Public Ways pursuant to a permit issued by the City. CenturyLink will abide by all applicable ordinances and reasonable rules, regulations and requirements of the City consistent with applicable law, and the City may inspect the manner of such work and require remedies as may be reasonably necessary to assure compliance. Notwithstanding the foregoing, CenturyLink shall not be obligated to obtain a permit to perform emergency repairs or for normal maintenance of its facilities.

**10.3** To the extent practical and consistent with any permit issued by the City, all Facilities shall be located so as to cause minimum interference with the Public Ways and shall be constructed, installed, maintained, cleared of vegetation,

renovated or replaced in accordance with applicable rules, ordinances and regulations of the City.

**10.4** If, during the course of work on its Facilities, CenturyLink causes damage to or alters the Public Way or other public property, CenturyLink shall replace and restore such Public Way or public property at CenturyLink's expense to a condition reasonably comparable to the condition that existed immediately prior to such damage or alteration, normal wear and tear excepted.

**10.5** CenturyLink shall have the right to excavate the Public Ways subject to reasonable conditions and requirements of the City. Before installing new underground facilities or replacing existing underground facilities, CenturyLink shall first obtain a permit from the City in accordance with subsection 10.2 hereof.

**10.6** Nothing in this Ordinance shall be construed to prevent the City from constructing, maintaining, repairing, or relocating its sewers, streets, water mains, sidewalks, or other public property. However, before commencing any work within a Public Way that may affect CenturyLink's Facilities, the City shall give written notice to CenturyLink, and all such work shall be done, insofar as practicable, in such a manner as not to obstruct, injure, or prevent the free use and operation of CenturyLink's poles, wires, conduits, conductors, pipes, and appurtenances.

**10.7** CenturyLink shall not attach to, or otherwise use or commit to use, any pole owned by City until a separate pole attachment agreement has been executed by the parties.

**SECTION 11. Relocation of Facilities.**

**11.1** Relocation for the City. Except in case of an Emergency, within thirty (30) days after City's request, CenturyLink will, at CenturyLink's cost and expense, remove, relocate, change, and/or alter the position or location of any Facilities within the Right-of-Way whenever City has determined that such removal, relocation, change, and/or alteration is necessary for any of the following reasons: (a) an Emergency; (b) the construction, repair, installation, and/or maintenance of any City or other public work or improvement; and/or (c) the operations of City in or upon the Right-of-Way requires the removal, relocation, change, and/or alteration of the Facilities. If an Emergency occurs, CenturyLink will, at CenturyLink's cost and expense, remove, relocate, change, and/or alter the position or location of any Facilities within the Right-of-Way within seventy-two (72) hours after City's request. City acknowledges that an emergency relocation may result in temporary installation.

**11.2** Relocation for a Third Party. CenturyLink shall, at the request of any person holding a lawful permit issued by the City and/or in support of a Non-Essential Project by City, protect, support, raise, lower, temporarily disconnect, relocate in or remove from Public Ways, as applicable and if possible, any CenturyLink property, provided that the cost of such action is borne by the person requesting it and CenturyLink is given reasonable advance written notice and sufficient time to take the appropriate action. In such situation, CenturyLink may also require advance payment. For purposes of this subsection, "reasonable advance written notice" shall mean no fewer than forty-five (45) days for a temporary relocation, and no fewer than one hundred twenty (**120**) days for a permanent relocation.

**11.3** Alternatives to Relocation. CenturyLink may, after receipt of written notice requesting a relocation of Facilities, submit to the City written alternatives to such relocation. Such alternatives shall include the use and operation of temporary transmitting facilities in adjacent Public Ways. The City shall promptly evaluate such alternatives and advise CenturyLink in writing if one or more of the alternatives are suitable. If requested by the City, CenturyLink shall promptly submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by CenturyLink full and fair consideration. In the event the City ultimately determines that there is no other

reasonable alternative, CenturyLink shall relocate the Facilities as otherwise provided herein. Notwithstanding the foregoing, CenturyLink shall in all cases have the right to abandon the Facilities.

**SECTION 12. Vegetation Management.** CenturyLink shall have the authority to trim trees and other growth in the Public Ways in order to access and maintain the Facilities in compliance with applicable law and industry standards.

**SECTION 13. Payment by CenturyLink.** In consideration of the rights, privileges, and franchise hereby granted, CenturyLink, its successors and assigns, shall pay the City from and after the date of the acceptance of this franchise an amount equal to seven percent (7%) of the monthly recurring revenues received for basic local exchange service within the City for services listed in Appendix A, less net uncollectibles, including any extension of those City limits from time to time. Payment shall be made quarterly on or before sixty (60) days after the end of each calendar quarter. Such payment made by CenturyLink will be accepted by the City from CenturyLink.

**SECTION 14. Revocation of Franchise for Noncompliance.**

**14.1** In the event that the City believes that CenturyLink has not materially complied with the terms of the Franchise, the City shall informally discuss the matter with CenturyLink. If these discussions do not lead to resolution of the problem, the City shall notify CenturyLink in writing of the exact nature of the alleged noncompliance.

**14.2** CenturyLink shall have thirty (30) days from receipt of the written notice described in subsection 14.1 to either respond to the City, contesting the assertion of noncompliance, or otherwise initiate reasonable steps to remedy the asserted noncompliance issue, notifying the City of the steps being taken and the projected date that they will be completed.

**14.3** In the event that CenturyLink does not comply with subsection 14.2, above, unless the parties agree to an extension of the time provided in subsection 14.2, above, the City shall schedule a public hearing to address the asserted noncompliance issue. The City shall provide CenturyLink at least twenty (20) days' prior written notice of, and the opportunity to be heard, at the hearing.

**14.4** Subject to applicable federal and state law, in the event the City, after the hearing set forth in subsection 14.3, determines that CenturyLink is noncompliant with this Ordinance, the City may:

- A. Seek specific performance of any provision which reasonably lends itself to such remedy, as an alternative to damages; or
- B. Commence an action at law for monetary damages or other equitable relief; or
- C. In the case of substantial noncompliance with a material provision of the Ordinance, seek to revoke the Franchise in accordance with subsection 14.5.

**14.5** Should the City seek to revoke the Franchise after following the procedures set forth above, the City shall give written notice to CenturyLink including a statement of all reasons for such revocation. CenturyLink shall have ninety (90) days from receipt of such notice to object in writing and state its reason(s) for such objection. Thereafter, the City may seek revocation of the Franchise at a public hearing. The City shall cause to be served upon CenturyLink, at least thirty (30) days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise. At the designated hearing, the City shall give CenturyLink an opportunity to state its position on the matter, after which the City shall determine whether or not the Franchise shall be revoked. CenturyLink may appeal the City's determination to an appropriate court, which shall have the power to review the decision of the City *de novo*. Such appeal must be taken within sixty (60) days of the issuance of the City's determination. The City may, at its sole discretion, take any lawful action which it deems appropriate to enforce its rights under this Ordinance in lieu of revocation.



14.6 Notwithstanding the foregoing provisions in this Section 14, CenturyLink does not waive any of its rights under applicable law.

**SECTION 15. No Waiver of Rights.** Neither the City nor CenturyLink shall be excused from complying with any of the terms and conditions contained herein by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions. Each party expressly reserves any and all rights, remedies, and arguments it may have at law or equity, without limitation, and to argue, assert, and/or take any position as to the legality or appropriateness of any provision in this Ordinance that is inconsistent with State or Federal law, as may be amended.

**SECTION 16. Transfer of Franchise.** CenturyLink's right, title, or interest in the Franchise shall not be sold, transferred, assigned, or otherwise encumbered without prior notice to and prior approval by the City, such approval not to be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, when said sale, transfer, assignment, or encumbrance is to an entity controlling, controlled by, or under common control with CenturyLink, or for any rights, title, or interest of CenturyLink in the Franchise or Facilities in order to secure indebtedness, or to an entity that acquires substantially all the assets or equity of CenturyLink by sale, merger, consolidation or reorganization, approval by the City shall not be required.

**SECTION 17. Amendment.** Amendments to the terms and conditions contained herein shall be mutually agreed upon in writing by the City and CenturyLink.

**SECTION 18. Notices.** Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing and shall be deemed to have been received upon actual receipt or refusal of delivery if sent by (a) personal delivery, (b) United States Mail, postage prepaid, certified, return receipt requested, or (c) nationally recognized overnight courier, and addressed to the Parties as set forth below:

To City:

City of Prineville  
ATTN: City Recorder  
387 NE Third Street  
Prineville, OR 97754

with a copy to:

Jered Reid  
Law Office of Jered Reid, LLC  
545 NE 7<sup>th</sup> Street  
Prineville, OR 97754

To CenturyLink:

CenturyLink  
ATTN: ROW/NIS Manager  
100 CenturyLink Drive  
Monroe, LA 71203

with a copy to:

CenturyLink

ATTN: Legal Department  
931 14<sup>th</sup> Street  
Denver, CO 80202

**SECTION 19. Severability.** If any section, sentence, paragraph, term or provision hereof is for any reason determined to be illegal, invalid, or superseded by other lawful authority, including any state or federal regulatory authority having appropriate jurisdiction thereof, or unconstitutional, illegal or invalid by any court having appropriate jurisdiction thereof, such portion shall be deemed a separate, distinct, and independent provision, and such determination shall have no effect on the validity of any other section, sentence, paragraph, term or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

**NOW, THEREFORE, THE PEOPLE OF THE CITY OF PRINEVILLE DO ORDAIN AND APPROVE THE AFOREMENTIONED AGREEMENT presented for the first time at a regular meeting of the City Council held on January 28, 2020 and the City Council finally enacted the following Ordinance on this 11<sup>th</sup> day of February, 2020.**

\_\_\_\_\_  
Stephen P. Uffelman  
Mayor

ATTEST:

\_\_\_\_\_  
Lisa Morgan, City Recorder

ACCEPTED BY CENTURYLINK:

QWEST COMMUNICATIONS D/B/A CENTURYLINK QC

BY: \_\_\_\_\_  
Danett Kennedy

TITLE: Senior Manager – DF/ROW \_\_\_\_\_

DATE: \_\_\_\_\_

## Appendix A

### **Service categories included in revenue for calculation of Franchise fee:**

1. Business Local Access—including Flat Rate, Multiparty, and Extended Area Service
2. Business Measured Usage Local Access Service
3. Flat Usage Local Access Trunks
4. Low Income Telephone Assistance Program Local Access
5. Measured Rate Local Access Trunk Usage
6. Message Rate Local Access Trunk Usage
7. Public Access Line (PAL) Service
8. Residential Local Access—including Flat Rate, Multiparty, and Extended Area Service
9. Residential Measured Usage

### **A non-exclusive listing of categories of revenue not representing the retail sale of basic local exchange services, and therefore excluded from the calculation of any fee due to the City:**

1. Proceeds from the sale of bonds, mortgages, or other evidences of indebtedness, securities or stocks;
2. Bad debt write-offs and customer credits
3. Revenue from directory advertising
4. Any amounts collected from customers that are to be remitted to a federal or state agency as part of a Universal Service Fund or other government program, including but not limited to support for the hearing impaired
5. Any amounts collected for taxes, fees, or surcharges and paid to the federal, state or local governments
6. Revenues from Internet access
7. Revenues from digital or other electronic content, such as computer software, music and video downloads
8. Revenues from equipment sales, rentals, installation and maintenance
9. Revenues from any carrier purchased for resale
10. Revenues from private line services not for switched local access service

**RESOLUTION NO. 1422  
CITY OF PRINEVILLE, OREGON**

**A RESOLUTION AUTHORIZING A SOLAR SITE LEASE AGREEMENT WITH  
WESTLAKE SOLAR PANELS, LLC**

**Whereas**, Westlake Solar Panels, LLC (“Westlake”) is in the business of developing, erecting and operating photovoltaic solar generating facilities for the production of electrical energy for sale to utility companies, power marketers, power exchanges and other users; and

**Whereas**, City of Prineville (“City”) owns certain real property (“Property”) located in Prineville, Oregon; and

**Whereas**, Westlake desires to lease the Property and to obtain other rights over the adjoining property owned by City; and

**Whereas**, City and Westlake have negotiated a lease agreement that is attached and incorporated herein; and

**Whereas**, City staff recommends that the attached Solar Site Lease Agreement be approved by City Council.

**Now, Therefore**, the City of Prineville resolves as follows:

1. The Solar Site Lease Agreement is approved.
2. The Mayor and City Manager are authorized and instructed to execute on behalf of the City, the Solar Site Lease Agreement.

Approved by the City Council this \_\_\_\_ day of January, 2020.

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Stephen P. Uffelman, Mayor

ATTEST:

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Lisa Morgan, City Recorder

## SOLAR SITE LEASE AGREEMENT

This SOLAR SITE LEASE AGREEMENT (this “**Agreement**”) is made, dated and effective as of [\_\_\_\_], 2019 (the “**Effective Date**”), between City of Prineville, Oregon (“**Owner**”), and Westlake Solar Panels LLC, a limited liability company formed under the laws of the State of Washington (“**Lessee**”), in light of the following facts and circumstances.

### **RECITALS**

WHEREAS, Lessee is in the business of developing, erecting and operating photovoltaic solar generating facilities for the production of electrical energy for sale to utility companies, power marketers, power exchanges and other users;

WHEREAS, Owner owns certain real property located in Prineville, Oregon, as more particularly described on Exhibit A attached hereto and by this reference made a part hereof (the “**Property**”); and

WHEREAS, Lessee desires to lease the Property and to obtain other rights over the adjoining property owned by Owner (the “**Adjoining Property**”), and Owner desires to grant such lease and rights, on the terms and conditions set forth herein.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual obligations and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, Owner and Lessee (each, a “**Party**” and together, the “**Parties**”) hereby agree as follows:

#### **1. Demise of Leasehold Estate.**

(a) Demise. Owner hereby leases, demises, lets and warrants to Lessee and Lessee hereby leases, hires and takes from Owner, the Property for the purposes described in this Agreement, together with the right to all rents, royalties, credits and profits derived from solar and other energy generation upon, over and across the Property, on the terms provided herein.

(b) Purpose. The foregoing leasehold estate and grant of rents, royalties, credits and profits created by this Agreement (collectively, the “**Leasehold Estate**”) is for the production of energy, including solar energy, and for any and all related or ancillary purposes, and not for any other purpose, and Lessee shall have the exclusive right to use the Property and the unobstructed receipt of and access to sunlight across the Property for solar energy purposes, to convert all of the solar resources of the Property and to derive all profits therefrom. For purposes of this Agreement, “**solar energy**” includes evaluating solar resources, developing solar energy, converting solar energy into electrical energy and collecting and transmitting the electrical energy so converted, together with any and all activities related thereto (“**Development Activities**”), including, without limitation:

(i) determining the feasibility of solar energy conversion and power generation on the Property, including, without limitation, conducting inspections, tests, surveys, engineering, environmental, market and economic feasibility studies, studies of available sunlight and other data, and/or soil studies, and due diligence matters related to any of the foregoing;

(ii) constructing, reconstructing, erecting, installing, improving, replacing, relocating and removing from time to time, and maintaining, repairing, using and operating, any of the following new, existing, additional or repowered improvements, facilities, machinery and equipment (collectively, “**Power Facilities**”): (i) buildings, parking areas, evaporation ponds, cooling towers, water tanks, steam turbine generators, power blocks, and chimney stacks; (ii) solar power generating equipment, solar collectors, solar energy conversion systems and other power generation facilities, of any type or technology (collectively, the “**Solar Equipment**”); (iii) transmission facilities, including without limitation, overhead and underground transmission, distribution or collector lines, circuit breakers, conduits, foundations, footings, towers, poles, crossarms, guy lines, anchors and wires; (iv) overhead and underground control, communications and radio relay systems; (v) substations, interconnection and/or switching facilities and electric transformers; (vi) energy storage facilities; (vii) sunlight measurement, research or development equipment; (viii) water pipelines and pumping facilities; (ix) control, maintenance and administration buildings; (x) utility installations; (xi) safety protection facilities; (xii) laydown areas and maintenance yards; (xiii) roads, road-related structures and erosion control facilities; (xiv) signs and fences; and (xv) other improvements, facilities, machinery and equipment in any way related to or associated with any of the foregoing, on the Property;

(iii) exercising rights of vehicular and pedestrian ingress and egress upon, over and across the Property, for purposes of conducting Development Activities and accessing Power Facilities (whether such Development Activities are conducted, or Power Facilities are located, on the Property, adjacent to the Property or elsewhere) upon, over and across any and all now existing or hereafter constructed access routes or such new or alternative access routes as Lessee shall determine, including the right to construct, reconstruct, install, improve, replace, relocate and remove from time to time, and maintain, repair, use and operate, new, existing or additional routes, including roads, road-related structures and erosion control facilities, on the Property;

(iv) making free use of or otherwise developing any water resources (whether or not potable) or water rights in, on, under, produced from or appurtenant to the Property for use in connection with the Power Facilities, without payment therefor to Owner; provided, however, that (i) Lessee shall not be entitled to use water which is being purchased by Owner unless Lessee reimburses Owner for the actual price paid by Owner therefor and (ii) Lessee’s right to appropriate and take water shall be subject to any applicable state regulations; and

(v) undertaking any other activities, whether accomplished by Lessee or a third party authorized by Lessee, that Lessee reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing purposes.

Without limiting the generality of the foregoing, the Parties recognize that power generation technologies are improving at a rapid rate and that it is possible that Lessee may (although Lessee is not required to) from time to time replace existing Power Facilities on the Property with newer (and potentially larger) Power Facilities which have increased energy capture and efficiency, and Owner hereby consents to any such replacement. Lessee may conduct Development Activities on the Property for the benefit of other projects and property.

(c) Included Rights and Easements. In addition to any and all rights normally afforded a lessee in a commercial land lease circumstance, or as otherwise described herein, the following rights and easements shall be included within the Leasehold Estate. Upon Lessee’s request, Owner shall execute and deliver to Lessee one (1) or more documents in recordable form, satisfactory in form and substance to Owner and Lessee, evidencing the rights and easements granted pursuant to this Section 1(c), and Lessee may cause such documents to be recorded in the official real estate records of the county in which the Property is located.

(i) Sunlight Easement. An exclusive easement for receipt of and access to sunlight and to convert all of the solar resources above the Property to electricity. Any obstruction to the receipt of and access to sunlight throughout the entire area of the Property is prohibited, whether such obstruction is on the Property or on the Adjoining Property. The Parties intend that the easement granted herein shall be construed as a “solar easement,” the terms of such easement being more particularly described in Exhibit B attached hereto and made a part hereof by this reference.

(ii) Power Facility Effects. An easement for any audio, visual, view, light, noise, vibration, electromagnetic or other effect of any kind or nature whatsoever resulting, directly or indirectly, from any Development Activities conducted, or Power Facilities installed, upon the Property or the Adjoining Property, including but not limited to rights to cast shadows and reflect glare onto the Adjoining Property, from the Solar Equipment and/or any and all other Power Facilities, wherever located.

(iii) Clearance Rights. An easement 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 Property which might obstruct receipt of or access to sunlight throughout the Property or interfere with or endanger the Power Facilities or Lessee’s Development Activities, as determined by Lessee.

(iv) Subjacent and Lateral Support. An easement for subjacent and lateral support on the Adjoining Property for Power Facilities located on or in the vicinity of the Property to whatever extent is necessary for the safe construction operation and maintenance of such Power Facilities, as reasonably determined by Lessee. Owner shall not excavate, nor permit excavation, so near the sides of or underneath the Power Facilities as to undermine or otherwise adversely affect their stability.

(v) Utility Lines. An easement over, across and through the Adjoining Property for the installation, maintenance, repair and use of utility lines and equipment, including, without limitation, for water, natural gas and electrical transmission (the “**Utility Easement**”), together with an easement for vehicular and pedestrian ingress and egress upon, over and across the Adjoining Property, for purposes of conducting Development Activities and accessing Power Facilities (whether such Development Activities are conducted, or Power Facilities are located, on the Property, adjacent to the Property or elsewhere) upon, over and across any and all now existing or hereafter constructed access routes or such new or alternative access routes as Lessee shall determine, including the right to construct, reconstruct, install, improve, replace, relocate and remove from time to time, and maintain, repair, use and operate, new, existing or additional routes, including roads, road-related structures and erosion control facilities, on the Adjoining Property.

(vi) Signage. An easement to place signs or advertising related to solar energy on or proximate to Lessee’s Power Facilities.

(d) Lease and Easements Run with the Land. Owner agrees that this Agreement and the easements and rights granted in this Agreement shall constitute covenants running with the Property and shall be binding upon any successor owner of all or any part of the Property and survive any transfer of the Property.

## 2. Term.

(a) Term. This Agreement shall be for a term (the “**Term**”) commencing on the Effective Date and continuing until the date occurring twenty and one half (20.5) years after the Operations Date. Notwithstanding the foregoing, this Agreement will terminate prior to the end of the Term in the event of a termination under Section 9 of that certain Power Purchase Agreement, dated as of the date hereof, by and between Owner and Lessee.

(b) **Operations Date.** For purposes of this Agreement, “**Operations Date**” shall mean the date the Power Facilities are installed on the Property and begin delivering electricity to a third-party power purchaser.

(c) **Extensions.** Twenty-four (24) months prior to the end of the Term, the Parties will meet to discuss the extension of this Agreement on terms and conditions reflecting the then current market and with such other amendments and additional terms and conditions as the Parties may agree. Neither Party shall be obligated to agree to an extension of this Agreement.

**3. Payments to Owner.** In consideration of the rights granted hereunder, Lessee will pay Owner the amounts set forth in this Section 3.

(a) **Annual Rent.** For each year during the period commencing on the Effective Date and continuing until the expiration or sooner termination of this Agreement, Lessee shall pay Owner an annual rental payment equal to one thousand dollars (\$1,000) (the “**Annual Rent**”). The Annual Rent for each such year shall be payable annually, with such payment due on the first day of each year; provided, however, that the Annual Rent shall be prorated for any year which is a partial year due to the expiration or any earlier termination of this Agreement.

(b) **Late Payments.** If Lessee fails to make any payment to Owner required of it hereunder when due, interest shall accrue on the overdue amount, from the date overdue until the date paid, at a rate equal to the lesser of (i) three percent (3%) per annum plus the prime lending rate as may be published from time to time by *The Wall Street Journal* under the “Money Rates” section, and (ii) the maximum rate permitted by law.

**4. Ownership of Power Facilities.**

(a) **Ownership.** Owner acknowledges and agrees that despite that portions of the Power Facilities may be affixed to the Property, (i) Lessee is and at all times will be the exclusive owner and operator of the Power Facilities, (ii) the Power Facilities shall not be construed to be a fixture and shall be and remain personal property and not real property, (iii) Lessee is the exclusive owner of the electricity generated by the Power Facilities and the Environmental Attributes (as hereinafter defined) and Environmental Incentives (as hereinafter defined) of the Power Facilities, (iv) Lessee will have the sole right to claim any depreciation expense or other tax benefits relating to the Power Facilities, (v) except for the payments described in Section 3 above, Owner shall not be entitled to any compensation, payments, credits, benefits, emissions reductions, offsets, incentives, grants or allowances of any kind, howsoever entitled, attributable to the Power Facilities or the electric energy, capacity or other generator-based products produced therefrom, all of which shall accrue solely to the benefit of Lessee and (vi) the Power Facilities shall not be sold, leased, assigned, mortgaged, pledged or otherwise alienated or encumbered (collectively, a “**Transfer**”) with the fee interest or leasehold rights to the Property or otherwise by Owner or any other person; provided, however, that Lessee may sell, lease, mortgage, pledge, otherwise alienate or encumber, or remove any or all Power Facilities at any time. Owner shall give Lessee at least fifteen (15) days’ written notice prior to any Transfer of all or a portion of the Property identifying the transferee, the portion of Property to be transferred and the proposed date of Transfer. Owner shall require any transferee to acknowledge and consent to the terms of this Agreement and to assume Owner’s obligations under this Agreement in a written agreement in favor of and reasonably acceptable to Lessee.

(b) **Environmental Attributes and Environmental Incentives.** As used herein, “**Environmental Attributes**” means the characteristics of electric power generation at the Power Facilities that have intrinsic value, separate and apart from the generated energy, arising from the perceived environmental benefits of the Power Facilities or energy generated at the Power Facilities, including, without limitation, (i) all



environmental and other attributes that differentiate the Power Facilities or energy generated at the Power Facilities from energy generated by fossil-fuel based generation units, fuels or resources, (ii) characteristics of the Power Facilities that may result in the avoidance of environmental impacts on air, soil or water, such as the absence of emission of any oxides of nitrogen, sulfur or carbon or of mercury, or other gas or chemical, soot, particulate matter or other substances attributable to the Power Facilities or (iii) the compliance of the Power Facilities or energy generated at the Power Facilities with the law, rules and standards of the United Nations Framework Convention on Climate Change (the “UNFCCC”) or the Kyoto Protocol to the UNFCCC or any successor laws, rules or standards or crediting “early action” with a view thereto, or laws or regulations involving or administered by the Environmental Protection Agency or successor administration or any state or federal entity having jurisdiction over a program involving transferability of rights arising from Environmental Attributes. As used herein, “**Environmental Incentives**” means all rights, grants, credits (including tax credits), rebates, benefits, reductions, offsets, and allowances and entitlements of any kind, howsoever entitled or named (including carbon credits and allowances), whether arising under existing or future federal, state or local law, international treaty, trade association membership or the like, arising from the Environmental Attributes of the Power Facilities or the energy generated at the Power Facilities or otherwise from the development or installation of the Power Facilities or the production, sale, purchase, consumption or use of the energy generated at the Power Facilities. Without limiting the foregoing, “Environmental Incentives” includes accelerated depreciation rights, green tags, renewable energy credits, tradable renewable certificates, portfolio energy credits, the right to apply for (and entitlement to receive) incentives under any demand-side management or energy efficiency programs offered by a utility company, a third-party provider, or other incentive programs offered by the state and the right to claim federal income tax credits, if applicable.

**5. Taxes.**

(a) Lessee shall be responsible for and shall timely pay before the same become delinquent, any taxes, assessments or other governmental charges that shall or may during the Term be imposed on the Power Facilities.

(b) Owner shall be responsible for and shall timely pay before the same become delinquent, all real estate taxes, assessments or other governmental charges that shall or may, prior to the Operations Date, be imposed on, or arise in connection with the Property itself. Except as expressly provided in this Section 5, Lessee shall not be responsible for any real estate taxes, assessments or other governmental charges or fees levied against the Property. If Owner should fail to timely pay any taxes, assessments or other governmental charges for which Owner is responsible under this Agreement, then, without limiting Lessee’s other remedies under this Agreement or otherwise, Lessee may (but shall not be obligated to) pay the same, and Owner shall reimburse Lessee, or Lessee may set off against amounts due from Lessee to Owner under this Agreement, all such amounts paid, including any late fees or interest, together with any court costs and reasonable attorneys’ fees incurred by Lessee in connection therewith.

(c) Lessee shall be responsible for and shall timely pay before the same become delinquent, all real estate taxes, assessments or other governmental charges that shall or may, from and after the Operations Date until the expiration or earlier termination of this Agreement, be imposed on, or arise in connection with the Property itself; provided, however, that in no event shall Lessee be responsible for any increase in such real estate taxes, assessments or other governmental charges to the extent arising (by reassessment or otherwise) from a sale of all or any portion of Landlord’s interest in the Property after the Effective Date, and in all events Owner shall be responsible for all such increases and shall pay the same before they become delinquent.

(d) Owner and Lessee agree that all real estate taxes, assessments or other governmental charges applicable with respect to the tax year in which the Operations Date occurs shall be prorated between them in a manner consistent with the Parties obligations under Sections 5(b) and 5(c).

(e) Lessee may contest the legal validity or amount of any taxes, assessments, or other charges for which it is responsible under this Agreement, and may institute such proceedings as it considers necessary. Lessee shall bear all expenses in pursuing such contest or proceeding. With respect to any taxes for which Lessee is responsible that may constitute a lien on the Property, Lessee shall promptly pay such taxes unless the proceeding in which it contests such tax shall operate to prevent or stay the collection of the taxes so contested or unless Lessee removes any such lien by bonding or otherwise. Owner agrees to render to Lessee all reasonable assistance, at no material cost or expense to Owner, in contesting the validity or amount of any taxes, assessments or charges, including joining in the signing of any reasonable protests or pleadings which Lessee may reasonably deem advisable to file.

**6. Lessee's Representations, Warranties and Covenants.** Lessee hereby represents, warrants and covenants as follows:

(a) Insurance. Lessee shall, at its expense, maintain the insurance required pursuant to that certain Power Purchase Agreement, dated as of the date hereof, by and between Owner and Lessee. Certificates of such insurance shall be provided to Owner upon written request.

(b) Indemnity. Lessee shall indemnify Owner against liability for physical damage to property and for physical injuries to Owner or the public, to the extent directly caused by Lessee's construction, operation or removal of Power Facilities on the Property, except to the extent such damage or injury is caused by the negligence or willful misconduct of Owner. The foregoing indemnity shall not extend to property damage or personal injuries attributable to risks of known and unknown dangers associated with electrical generating facilities, such as electromagnetic fields, and Lessee shall in no case be liable for losses of rent, business opportunities, profits or any other consequential damages that may result from the conduct of Lessee's Development Activities on the Property.

(c) Requirements of Governmental Agencies. Lessee, at its expense, shall comply in all material respects with valid laws, ordinances, statutes, orders and regulations of any governmental agency applicable to the Power Facilities. Lessee shall have the right, in its sole discretion, to contest by appropriate legal proceedings, the validity or applicability to the Property or Power Facilities of any law, ordinance, statute, order, regulation, property assessment or the like now or hereafter made or issued by any federal, state, local or other governmental agency or entity. Owner shall not interfere with any such contests, and at Lessee's request (but at no out of pocket expense to Owner) shall cooperate with Lessee in every reasonable way with respect to each such contest. Each such contest or proceeding shall be controlled and directed by Lessee.

(d) Construction Liens. Lessee shall keep the Property free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies or equipment furnished to, the Property in connection with Lessee's use of the Property pursuant to this Agreement; provided, however, that if Lessee wishes to contest any such lien, Lessee shall, within ninety (90) days after it receives written notice of the filing of such lien, remove or bond over such lien pursuant to applicable law.

(e) Hazardous Substances. Lessee shall not violate, and shall indemnify Owner against any violation by Lessee or Lessee's agents or contractors of, any federal, state or local law, ordinance, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any Hazardous Substances (as hereinafter defined) on or under the Property; provided, however, that notwithstanding the foregoing or anything else in this

Agreement, in no event shall Lessee have any liability (i) in connection with the mere discovery of any condition existing on, under, over or about the Property, or (ii) for any matter arising from the negligence or willful misconduct of Owner or its agents.

(f) Lessee's Authority. Lessee has the unrestricted right and authority to execute this Agreement. Each person signing this Agreement on behalf of Lessee is authorized to do so. When signed by Lessee, this Agreement constitutes a valid and binding agreement enforceable against Lessee in accordance with its terms.

(g) No Development Undertaking. Nothing expressly stated or implied in this Agreement or represented to Owner shall be construed as requiring Lessee to undertake construction, installation or operation of any Power Facilities on the Property or elsewhere or prohibit Lessee from removing Power Facilities from the Property, and Lessee makes no representation or warranty as to the likelihood that Power Facilities will be installed upon the Property.

7. Owner's Representations, Warranties and Covenants. Owner hereby represents, warrants, covenants and agrees as follows:

(a) Quiet Enjoyment. Lessee shall have the quiet use and enjoyment of the Property in accordance with the terms of this Agreement without any interference of any kind by Owner or any person claiming by, through or under Owner, subject, however, to the general rights herein reserved by Owner. Owner and its activities on the Property and any grant of rights Owner makes to any other person shall not interfere with any of Lessee's rights or activities pursuant to this Agreement.

(b) Title to Property. Except as disclosed on Exhibit C attached hereto and by this reference made a part hereof, Owner's fee simple title to the Property is free and clear of all liens, encumbrances, easements, leases, mortgages, deeds of trust, security interests, fractured interests, mineral, oil or gas rights, options to purchase, claims and disputes (collectively, "**Liens**"), and there are no tenants on or other parties in possession of the Property. Owner shall fully cooperate with and assist Lessee in obtaining a subordination and/or non-disturbance agreement acceptable to Lessee in all respects from each party holding a Lien (recorded or unrecorded) or in possession of the Property that might interfere with Lessee's rights under this Agreement. A non-disturbance agreement is an agreement between Lessee and the holder of a Lien providing that the holder of the Lien shall not disturb Lessee's possession or rights under this Agreement or terminate this Agreement so long as Owner is not entitled to terminate this Agreement under the provisions of this Agreement. Owner shall not grant, create, allow or suffer any Lien or other encumbrance on title to the Premises, except those matters set forth on Exhibit C.

(c) Condition of Property. To the Owner's knowledge, there are no physical conditions of the Property, nor any other material adverse facts or conditions relating to the Property or any portion thereof, that could delay, interfere with or impair Lessee's operations or the exercise of any of Lessee's other rights under this Agreement, or which could, with the passage of time, the giving of notice or both, have such an effect. Owner has disclosed to Lessee in writing any and all improvements existing on, under, over or about the Property, and no improvements currently exist on, under, over or about the Property that have been constructed or installed without all necessary and proper permits, licenses and approvals.

(d) No Interference. Owner's activities and any grant of rights Owner makes to any person or entity, whether located on the Property or elsewhere, shall not, currently or prospectively, interfere with (i) the construction, installation, maintenance or operation of the Power Facilities, (ii) access over the Property to such Power Facilities, (iii) any Development Activities, or (iv) the undertaking of any other activities permitted hereunder. Without limiting the generality of the foregoing, Owner may not place or plant any trees, structures or improvements on the Adjoining Property after the date of this Agreement which may,

in Lessee's sole judgment, impede or interfere with receipt of or access to sunlight to the Power Facilities, nor shall Owner engage in any other activity that might cause a decrease in the output or efficiency of the Power Facilities.

(e) Siting and Setbacks. Owner consents to Lessee's siting of Power Facilities at any location upon the Property. To the fullest extent applicable and permitted by law, Owner waives enforcement of, and any and all rights it may have to pursue any remedies under, any state, zoning or local rules, ordinances or requirements related to siting of Power Facilities upon the Property, including setback requirements applicable to the Power Facilities from lot lines and improvements, and agrees not to bring any complaint, suit or action or intervene in any investigation or inquiry by any person or entity with respect thereto. Owner agrees to use commercially reasonable efforts to assist, cooperate and participate in any proceeding and/or petition prepared by Lessee in connection with any modification or variance to an existing siting or setback requirement.

(f) Approvals. Lessee may apply for and process, and Owner shall cooperate with Lessee in Lessee's efforts to seek, governmental approvals desired by Lessee for Lessee's intended use of the Property including (i) the granting to Lessee of full authority to seek any and all authorizations, permits, licenses, and approvals necessary for the development of the Property for Lessee's intended use thereof (including, as necessary, rezoning, variance, and/or vacation applications), (ii) the granting to Lessee of full authority to seek any and all authorizations, permits, licenses, and approvals necessary for the division or adjustment (whether by certified survey map, lot line adjustment, or otherwise) of the Property so as to cause the Property to be recognized as a single lawfully subdivided and/or created lot or parcel that is separately conveyable and/or leaseable in accordance with applicable law, and (iii) the execution of consents and applications in connection with Lessee attempting to obtain such governmental permits, licenses, and approvals. Without limiting the generality of the foregoing, (y) Owner shall not oppose, in any way, whether directly or indirectly, any application by Lessee for any permit, approval, or entitlement at any administrative, judicial, legislative, or other level, and (z) so long as this Agreement is in effect, Owner shall not, and shall not permit any other party (other than Lessee) to process any approvals, entitlements or other similar matters relating to the Property with the city or county in which the Property is located or with any other governmental agency without the written consent of Lessee. Without limiting the generality of the foregoing, Owner shall assist and fully cooperate with Lessee, at no out-of-pocket expense to Owner, in complying with or obtaining any other approvals required for the financing, construction, installation, replacement, relocation, maintenance, operation or removal of Power Facilities, including execution of applications for such approvals. Owner shall make available to Lessee copies of all field tiling surveys, plans and other geotechnical and other site assessments, surveys, plans, environmental assessments, reports, test results, correspondence to or from any governmental agency, and other such records of Owner relating to the Property. Without limiting the generality of the foregoing, Owner represents and warrants to Lessee that the Property is a single lawfully subdivided and/or created lot or parcel that is separately conveyable and/or leaseable in accordance with applicable law.

(g) Indemnity. Owner will indemnify Lessee against liability for physical damage to the Property and for physical injuries to Lessee or the public, to the extent caused by Owner's activities on the Property or the Adjoining Property, except to the extent such damage or injury is caused by the operations, activities, negligence or willful misconduct of Lessee. Owner shall take reasonable safety measures to reduce the risk that Owner's activities will cause harm to Lessee or the public.

(h) No Brokers. No brokers' commission, finders' fees or other charges are due any broker, agent or other party in connection with Owner's execution of this Agreement, or if any are now due or shall become due in the future, then Owner shall promptly pay the same from its own funds and shall indemnify, protect, hold harmless and defend Lessee against any and all claims and demands therefor made by any

such broker, finder, agent or other party, or any of their respective successors and assigns or other parties claiming through them.

(i) No Litigation, Violations, or Condemnation. No litigation is pending, and, to Owner's knowledge, no actions, claims or other legal or administrative proceedings are pending, threatened or anticipated with respect to, or that could affect, the Property, this Agreement or Lessee's rights hereunder, nor does Owner know of any basis for any such action. Owner has no knowledge, nor has Owner received any notice, of any violations of law, municipal or county ordinances, or other legal requirements with respect to the Property (or any part thereof) or with respect to the use or occupancy of the Property nor does Owner know of any basis for such violations. No condemnation proceeding is pending or, to Owner's knowledge, threatened with respect to any part of the Property.

(j) No Conflicting Agreements. Neither the entering into nor the delivery of this Agreement nor the consummation by Owner or Lessor of the transaction contemplated by it will conflict with or constitute a default under or result in a violation of, or require a consent of anyone under (i) any of the provisions of the organizing documents of Owner, or (ii) any agreement, mortgage, encumbrance or any other instrument to which Owner is a party or by which Owner or the Property is bound. Owner is not in default under any contracts, leases, agreements, easements or any other documents or instruments relating to or affecting this Agreement or the Property.

(k) Hazardous Substances. Neither Owner nor any of Owner's predecessor's in interest to the Property, has used, generated, treated, stored, released, discharged, or disposed of (or permitted the use, generation, treatment, storage, release, discharge, or disposal of) Hazardous Substances (as defined below) in, on, over, under, about or at the Property at any time; nor has any such event occurred upon or within the Property. No notification of release of a Hazardous Substance has been filed as to the Property, nor is the Property listed or formally proposed for listing on the National Priority List promulgated pursuant to federal law or on any state list of hazardous substance sites requiring investigation or clean-up. Owner has complied with all reporting requirements under any applicable federal, state, or local environmental laws and there are no existing violations by Owner of any such environmental laws. There are no claims, actions, suits, proceedings, or investigations related to the presence, release, discharge, spillage, or disposal of any Hazardous Substance or contamination of soil or water by any Hazardous Substance pending or threatened with respect to the Property or otherwise against Owner in any court or before any state, federal, or other governmental agency or private arbitration tribunal. No PCB, PCB-contaminated, friable asbestos, or formaldehyde-based insulation items are present at the Property. Owner shall indemnify, protect, defend and hold harmless Lessee from and against any and all losses arising from or related to the breach by Owner of any warranties or representations contained in this subsection. Owner hereby assigns to Lessee, to the extent assignable, all claims, counterclaims, defenses or actions, whether at common law or pursuant to any other applicable federal or state or other laws, if any, that Owner may have against third parties to the extent relating to the existence of Hazardous Substances in, on, over, under, about or at the Property. "**Hazardous Substance**" shall refer to any chemical, compound, material, mixture, by-product, debris, waste, substance or other matter, whether solid, liquid or gas and whether new, used or recycled, now or in the future, defined, listed in, identified, classified pursuant to or otherwise regulated by, any state or federal laws or regulations (including, without limitation, the Comprehensive Environmental Recovery Compensation and Liability Act, 42 U.S.C. 9601 et seq. and the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.) as a hazardous substance, hazardous material, hazardous waste, extremely hazardous waste, restricted hazardous waste, acutely hazardous waste, toxic air contaminant, infectious waste, medical waste, toxic substance, contaminant, pollutant or any other terms or provisions used to define, list, identify, characterize, classify or regulate substances by reason of any characteristics or properties such as ignitability, corrosivity, reactivity, carcinogenicity, toxicity, reproductive toxicity, or "**EP toxicity**," including but not limited to any substance, material or waste that is hydrocarbon-based, petroleum, petroleum-related, or a petroleum by-product, fraction or residue therefrom, a volatile organic chemical, a solvent or other degreasing agent,

whether chlorinated or non-chlorinated, asbestos or asbestos containing material, lead or lead-based paints, flammable, explosive, radioactive, freon gas, methane gas, radon, or a pesticide, herbicide, or any other agricultural chemical, or polychlorinated biphenyls.

(l) Assessments. No assessments have been made against the Property (or any part thereof) that are unpaid (except for non-delinquent property taxes or special assessments), whether or not they have become liens.

(m) No Assumption of Existing Liabilities. Owner agrees that Lessee shall not and does not assume any of the following liabilities, and Owner shall promptly pay and perform, and indemnify, protect, defend and hold harmless Lessee from and against: any liability or obligation of Owner in respect of any state, local, federal, or foreign taxes (whether in the nature of income, transfer, sales, withholding, employee, excise, property, customs, gross receipts, or other taxes or other duties of any kind whatsoever), or penalties, interest, and fines in respect thereof, or any reporting requirement or estimated tax payable with respect thereto, relating to events or transactions occurring on or prior to Effective Date involving Owner or the transaction contemplated hereby; any litigation, investigation, or other proceeding pending or threatened with respect to Owner or the Property on or prior to the Effective Date, or subsequently asserted, which is attributable to facts existing, or events, or omissions occurring on or prior to the Effective Date; and all liabilities or claims of any nature relating directly or indirectly to the Property, whether accrued, absolute, contingent, or otherwise arising out of or relating to (or alleged to arise out of or relate to) any state of facts, omissions, or events existing or occurring on or before the Effective Date (whether known or unknown to Owner or Lessee).

(n) Bankruptcy. Owner has not (i) made a general assignment for the benefit of creditors; (ii) filed any voluntary petition in bankruptcy against it; (iii) received notice of the appointment of a receiver to take possession of all or substantially all of its assets; (iv) received notice of the attachment or other judicial seizure of all or substantially all of its assets; (v) admitted in writing its inability to pay its debts as they come due; or (vi) made an offer of settlement, extension or composition to its creditors generally.

(o) Certain Notifications. Owner shall promptly notify Lessee in writing of, and shall deliver to Lessee, immediately upon receipt, copies of any notices or communications received by Owner relating to: (i) compliance with or violation of laws, ordinances, statutes, orders and regulations applicable to the Power Facilities, the Property or Lessee's Development Activities; (ii) compliance with or violation of laws, ordinances, statutes, orders and regulations relating to Hazardous Substances on the Property; (iii) the filing or threatened filing of any construction or mechanic's lien against the Power Facilities or any interest in the Property, whether or not arising through Lessee; and (iv) any litigation or other proceeding filed or threatened in relation to the Power Facilities, Lessee's Development Activities on the Property, this Agreement, the Property or any interest of Owner or Lessee in the Property or hereunder.

(p) Owner's Authority. Owner is the sole owner of the Property, holds marketable title to such Property and has the unrestricted right and authority to execute this Agreement and to grant to Lessee the rights granted hereunder. All persons having any ownership interest in the Property have signed this Agreement. Each person signing this Agreement on behalf of Owner is authorized to do so, and the execution and delivery of this Agreement and the consummation of the transactions in this Agreement contemplated have been duly authorized by all necessary action on the part of Owner. When signed by Owner, this Agreement constitutes a valid and binding agreement enforceable against Owner in accordance with its terms. Each spouse signing this Agreement agrees that any rights of community property, homestead, dower, contribution, and the like shall be subject and subordinate to the Leasehold Estate and this Agreement. Owner hereby releases and waives all rights under and by virtue of any applicable homestead exemption laws as to the Leasehold Estate and other rights granted hereunder. Owner is not the subject of any bankruptcy, insolvency or probate proceeding.

(q) Authorization. The execution and delivery of this Agreement by Owner and the performance of its obligations hereunder have been duly authorized by all necessary official action. This Agreement is a legal, valid and binding obligation of Owner enforceable against Owner in accordance with its terms.

(r) Continuing Representations and Warranties. Each of Owner's representations, warranties, covenants and agreements set forth in this Agreement shall be true and correct as of the Effective Date, and at all times thereafter during the Term. Owner shall promptly notify Lessee of any change with respect to the Property and any information heretofore or hereinafter furnished to Lessee with respect to the Property, including, without limitation, any change which would make any portion of this Agreement untrue or misleading. Owner agrees to take such actions at its expense as may be necessary to cause the above representations, warranties, and covenants to be true, correct, and satisfied as of the Effective Date and at all times thereafter during the Term; provided, however, if an event or circumstance first occurs after the Effective Date which is neither caused by Owner nor within the reasonable control of Owner and causes any such representation, warranty, or covenant to be untrue, Owner shall be required upon discovery to disclose the same to Lessee in writing but shall not be required to take any other such actions with respect to such event or occurrence under this sentence; provided further, in the event such event or occurrence materially impairs Lessee's ability to conduct its business, Lessee shall have the option to terminate this Agreement by providing written notice of same to Owner within thirty (30) days of Lessee's receipt of Owner's written notice. Owner shall not enter into any transaction, take any action, or by inaction, permit any event to occur, which would result in any of the representations, warranties, and covenants of Owner herein contained not being true, correct, and satisfied at and as of the time immediately after the occurrence of such transaction or event.

## 8. Assignment.

(a) Assignments by Lessee. Lessee shall at all times have the right to sell, assign, encumber, transfer or grant equal or subordinate rights and interests (including, without limitation, co-leases, separate leases, subleases, licenses or similar rights (however denominated)) in, the Leasehold Estate and/or any or all right or interest in this Agreement, or any or all right or interest of Lessee in the Property or in any or all of the Power Facilities that Lessee may now or hereafter install on the Property, to one or more persons (an "Assignee"), in each case without Owner's consent; provided, however, that any and all such transfers shall be subject to all of the terms, covenants and conditions of this Agreement. Lessee shall notify Owner in writing of any such sale, assignment, transfer or grant. Upon Lessee's assignment of its entire interest hereunder as to all or any portion of the Property, or as may otherwise be provided in the applicable sale, assignment, transfer or grant document, Owner shall recognize the Assignee as Lessee's proper successor, the Assignee shall have all of the assigned rights, benefits and obligations of Lessee under and pursuant to this Agreement, and Lessee shall be relieved of all of its obligations relating to the assigned interests under this Agreement that relate to acts or omissions that occur or accrue following the effective date of such sale, assignment, transfer or grant.

(b) Assignments by Owner. The burdens of this Agreement and other rights contained herein shall run with and against the Property and shall be a charge and burden thereon for the duration of this Agreement and shall be binding upon and against Owner and its successors and assigns. Owner shall notify Lessee in writing of any sale, assignment or transfer of any of Owner's interest in the Property, or any part thereof. Until such notice is received, Lessee shall have no duty to any successor Owner, and Lessee shall not be in default under this Agreement if it continues to make all payments to the original Owner before notice of sale, assignment or transfer is received. Owner agrees (i) it will not assign the rights to payments due to Owner under this Agreement except to a successor owner of the Property, (ii) in no case shall Owner sever or attempt to sever the Property's solar energy rights or interests from the Property's fee title, and (iii)

in no case shall Owner convey, assign or transfer or attempt to convey, assign or transfer this Agreement, except to a successor owner of the Property.

(c) **Bifurcation of Agreement.** If Lessee from time to time so requests (including, without limitation, in contemplation of or following a partial assignment under Section 8.1 above), Owner shall promptly bifurcate this Agreement by entering into two or more new lease agreements that provide Lessee with such lease rights as to such portions of the Property as may be designated by Lessee. Each of such new agreements shall (a) contain the same terms and conditions as this Agreement, (b) be for a term equal to the remaining term of this Agreement, and (c) enjoy the same priority as this Agreement over any lien, encumbrance or other interest created by Owner. Further, in the event of an uncured default by Lessee under any such new agreement, such default shall not constitute a cross-default, or otherwise affect, or cause a termination of, any such other new agreement or any rights or interests granted to Lessee under such other new agreement. The portions of the Property covered by each new agreement may or may not be coextensive or contiguous with the other portions of the Property covered by the same agreement.

**9. Mortgagee Protection.** In the event that any mortgage, deed of trust or other security interest in this Agreement or any Power Facilities is entered into by Lessee or an Assignee, including, without limitation, a sale-leaseback (i.e., a transaction in which Lessee sells its interest in the Agreement and/or Power Facilities and then leases those interests back from the purchaser) (a “**Leasehold Mortgage**”), then any person who is the mortgagee or beneficiary of a Leasehold Mortgage, including the purchaser in a sale-leaseback transaction (a “**Leasehold Mortgage**”) shall, for so long as its Leasehold Mortgage is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth in this Section 9. Lessee or any Leasehold Mortgagee shall send written notice to Owner of the name and address of any such Leasehold Mortgagee, as well as any change of the name or address of any Leasehold Mortgagee.

(a) **Leasehold Mortgagee’s Right to Possession, Right to Acquire and Right to Assign.** A Leasehold Mortgagee shall have the absolute right: (a) to assign its security interest; (b) to enforce its lien and acquire title to the Leasehold Estate by any lawful means; (c) to take possession of and operate the Power Facilities, the Leasehold Estate or any portion thereof and to perform all obligations to be performed by Lessee hereunder, or to cause a receiver to be appointed to do so; and (d) to acquire the Leasehold Estate by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer the Leasehold Estate to a third party. Owner’s consent shall not be required for the acquisition of the encumbered leasehold or subleasehold estate by a third party who acquires the same by or subsequent to foreclosure or assignment in lieu of foreclosure.

(b) On or before the Operations Date, Lessee shall establish a reserve fund of twenty thousand dollars (\$20,000) to meet any unpaid obligations of Lessee (the “**Reserve Fund**”). The Reserve Fund shall be held in trust at a bank of Owner’s choosing and shall only be used for payments by a Leasehold Mortgagee of any unpaid obligations of Lessee. Any funds remaining in the Reserve Fund, plus all interest, shall be released to Lessee upon termination of this Agreement.

(c) **Notice of Default; Opportunity to Cure.** As a precondition to exercising any rights or remedies as a result of any alleged default by Lessee, Owner shall give written notice of the default to each Leasehold Mortgagee concurrently with delivery of such notice to Lessee, specifying in detail the alleged event of default and the required remedy. In the event Owner gives such a written notice of default, the following provisions shall apply:

(i) A “monetary default” means failure to pay when due any fee, payment, real property taxes, insurance premiums or other monetary obligation of Lessee under this Agreement; any other event of default is a “non-monetary default.”



(ii) The Leasehold Mortgagee shall have the same period after receipt of notice of default to remedy the default, or cause the same to be remedied, as is given to Lessee after Lessee's receipt of notice of default, plus, in each instance, the following additional time periods: (i) sixty (60) days, for a total of one hundred twenty (120) days after receipt of the notice of default in the event of any monetary default; and (ii) sixty (60) days, for a total of one hundred twenty (120) days after receipt of the notice of default in the event of any non-monetary default, provided that such one hundred twenty (120) day period shall be extended for the time reasonably required to complete such cure, including, without limitation, the time required for the Leasehold Mortgagee to obtain possession of the Property through foreclosure or otherwise, provided the Leasehold Mortgagee acts with reasonable and continuous diligence. The Leasehold Mortgagee shall have the absolute right to substitute itself for Lessee and perform the duties of Lessee hereunder for purposes of curing such defaults. Owner expressly consents to such substitution, agrees to accept such performance, and authorizes the Leasehold Mortgagee (or its employees, agents, representatives or contractors) to enter upon the Property to complete such performance with all the rights, privileges and obligations of the original Lessee hereunder. Owner shall not, and shall have no right to, terminate this Agreement prior to expiration of the cure periods available to a Leasehold Mortgagee as set forth above.

(iii) During any period of possession of the Property by a Leasehold Mortgagee (or a receiver requested by such Leasehold Mortgagee) and/or during the pendency of any foreclosure proceedings instituted by a Leasehold Mortgagee, the Leasehold Mortgagee shall pay or cause to be paid all other monetary charges payable by Lessee hereunder which accrue during said period. Further, Lessee shall authorize any Leasehold Mortgagee, during any such period, to pay from the Reserve Fund any accrued and unpaid monetary charges payable by Lessee hereunder as of the commencement of said period. To the extent that the Reserve Fund is insufficient to meet all accrued and unpaid monetary charges of Lessee as of the commencement of said period, Lessee shall remain liable for those charges and Leasehold Mortgagee shall have no liability for those charges. Following acquisition of Lessee's Leasehold Estate by the Leasehold Mortgagee or its assignee or designee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Agreement shall continue in full force and effect and the Leasehold Mortgagee or party acquiring title to Lessee's Leasehold Estate shall, as promptly as reasonably possible, commence the cure of all defaults hereunder and thereafter diligently process such cure to completion, whereupon Owner's right to terminate this Agreement based upon such defaults shall be deemed waived; provided, however, the Leasehold Mortgagee or party acquiring title to Lessee's Leasehold Estate shall not be required to cure those non-monetary defaults, if any, which are not reasonably susceptible of being cured or performed by such party ("**Non-Curable Defaults**"). Non-Curable Defaults shall be deemed waived by Owner upon completion of foreclosure proceedings or acquisition of Lessee's interest in this Agreement by such party.

(iv) Any Leasehold Mortgagee or other party who acquires Lessee's Leasehold Estate pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Lessee by this Agreement incurred or accruing after such party no longer has ownership of the Leasehold Estate or possession of the Property.

(v) Neither the bankruptcy nor the insolvency of Lessee shall be grounds for terminating this Agreement as long as the rent and all other obligations of Lessee hereunder are paid or performed by or on behalf of Lessee or the Leasehold Mortgagee in accordance with the terms of this Agreement.

(vi) Nothing herein shall be construed to extend this Agreement beyond the Term or to require a Leasehold Mortgagee to continue foreclosure proceedings after the default has been cured. If the default is cured and the Leasehold Mortgagee discontinues foreclosure proceedings, this Agreement shall continue in full force and effect.

(d) New Lease Agreement. If this Agreement terminates because of Lessee's default or if the Leasehold Estate is foreclosed, or if the Agreement is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, Owner shall, upon written request from any Leasehold Mortgagee within ninety (90) days after such event, enter into a new lease agreement for the Property, on the following terms and conditions:

(i) The term of the new lease agreement shall commence on the date of termination, foreclosure, rejection or disaffirmance and shall continue for the remainder of the Term of this Agreement, at the same fees and payments and subject to the same terms and conditions as set forth in this Agreement.

(ii) The new lease agreement shall be executed within thirty (30) days after receipt by Owner of written notice of the Leasehold Mortgagee's election to enter a new lease agreement, provided said Leasehold Mortgagee: (i) pays to Owner all fees and payments and other monetary charges payable by Lessee under the terms of this Agreement up to the date of execution of the new lease agreement, as if this Agreement had not been terminated, foreclosed, rejected or disaffirmed, except that the Leasehold Mortgagee shall only be required to arrange for payment from the Reserve Fund of Lessee's unpaid monetary charges as of the commencement of Leasehold Mortgagee's possession of the Property, and the Leasehold Mortgagee shall not be liable to the extent that the Reserve Fund is insufficient for this purpose; and (ii) performs all other obligations of Lessee under the terms of this Agreement, to the extent performance is then due and susceptible of being cured and performed by the Leasehold Mortgagee; and (iii) agrees in writing to perform, or cause to be performed, all non-monetary obligations which have not been performed by Lessee that are reasonably susceptible of being performed by the Leasehold Mortgagee and would have accrued under this Agreement up to the date of commencement of the new lease agreement. Any new lease agreement granted to the Leasehold Mortgagee shall enjoy the same priority as this Agreement over any lien, encumbrances or other interest created by Owner.

(iii) At the option of the Leasehold Mortgagee, the new lease agreement may be executed by a designee of such Leasehold Mortgagee without the Leasehold Mortgagee assuming the burdens and obligations of the Lessee thereunder.

(iv) If more than one Leasehold Mortgagee makes a written request for a new lease agreement pursuant hereto, the new lease agreement shall be delivered to the Leasehold Mortgagee requesting such new lease agreement whose Leasehold Mortgage is prior in lien, and the written request of any other Leasehold Mortgagee whose lien is subordinate shall be void and of no further force or effect.

(v) The provisions of this Section 9 shall survive the termination, rejection or disaffirmance of this Agreement and shall continue in full force and effect thereafter to the same extent as if this Section were a separate and independent contract made by Owner, Lessee and such Leasehold Mortgagee, and, from the effective date of such termination, rejection or disaffirmance of this Agreement to the date of execution and delivery of such new lease agreement, such Leasehold Mortgagee may use and enjoy said Property without hindrance by Owner or any person claiming by, through or under Owner, provided that all of the conditions for a new lease agreement as set forth herein are complied with.

(e) Leasehold Mortgagee's Consent to Amendment, Termination or Surrender. Notwithstanding any provision of the Agreement to the contrary, the parties agree that so long as there exists an unpaid Leasehold Mortgage, this Agreement shall not be modified or amended and Owner shall not accept a surrender of the Property or any part thereof or a cancellation or release of this Agreement from Lessee prior to expiration of the Term without the prior written consent of the Leasehold Mortgagee. This provision is for the express benefit of and shall be enforceable by such Leasehold Mortgagee.

(f) No Waiver. No payment made to Owner by a Leasehold Mortgagee shall constitute an agreement that such payment was, in fact, due under the terms of the Agreement; and a Leasehold Mortgagee having made any payment to Owner pursuant to Owner's wrongful, improper or mistaken notice or demand shall be entitled to the return of any such payment.

(g) Further Amendments. At Lessee's request, Owner shall amend this Agreement to include any provision which may reasonably be requested by a proposed Leasehold Mortgagee; provided, however, that such amendment does not impair any of Owner's rights under this Agreement or materially increase the burdens or obligations of Owner hereunder. Upon request of any Leasehold Mortgagee, Owner shall execute any additional instruments reasonably required to evidence such Leasehold Mortgagee's rights under this Agreement.

## 10. Default and Termination.

(a) Lessee's Right to Terminate. Notwithstanding anything to the contrary set forth in this Agreement, Lessee shall have the right to terminate this Agreement as to all or any part of the Property at any time, with or without cause, effective upon (i) thirty (30) days' prior written notice to Owner from Lessee, and (ii) payment to Owner of a termination fee of One Hundred Dollars (\$100). If such termination is as to only part of the Property, this Agreement shall remain in effect as to the remainder of the Property, and the payments due to Owner pursuant to Section 3 hereof shall be reduced in a pro rata fashion based upon the number of acres within the portion of the Property as to which this Agreement is terminated. In the event this Agreement is terminated by Lessee in accordance with this paragraph, Owner authorizes Lessee to execute and record a notice of termination evidencing such termination.

(b) Performance Notice. Notwithstanding anything to the contrary set forth in this Agreement but subject to Section 9, if Lessee fails to (i) deliver funds or documents as required under this Agreement, (ii) make any payment in a timely manner; or (iii) fulfill any other obligation of any kind or nature of Lessee under this Agreement, such failure shall not be a default by Lessee or grounds for cancellation or termination of this Agreement unless Owner delivers written notice to Lessee of such failure (a "Performance Notice") and Lessee fails to cure such failure (A) with respect to a monetary failure, within sixty (60) days after receipt of a Performance Notice from Owner, or (B) with respect to a non-monetary failure, within sixty (60) days after receipt of a Performance Notice from Owner, or if such a cure cannot reasonably be accomplished within such sixty (60) day period, then within such additional time as reasonably necessary to accomplish such cure, provided that Lessee has commenced such cure within such sixty (60) day period and thereafter diligently prosecutes such cure to completion.

(c) Effect of Termination or Expiration. Upon the termination or expiration of this Agreement, whether as to the entire Property or only as to part, Lessee shall, as soon as practicable thereafter, unless otherwise mutually agreed upon, (a) remove from the Property (or applicable portion thereof) all above surface grade Power Facilities and other personal property owned, located, installed or constructed by or on behalf of Lessee thereon, (b) remove from the Property (or applicable portion thereof) concrete footings, foundations and other fixtures of Lessee to a depth of two (2) feet below the surface grade, (c) cover up all pit holes, trenches and other borings and excavations made by or on behalf of Lessee on the Property (or applicable portion thereof), (d) leave the surface of the Property (or applicable portion thereof) free from debris arising from the foregoing or from the operations or activities of Lessee and (e) otherwise restore any portion of the Property (or applicable portion thereof) disturbed by Lessee to a condition reasonably similar to its original condition, consistent with the uses permitted by this Agreement. Owner shall provide Lessee with reasonable access and rights to the Property during the performance of such removal and other work by Lessee for a period of twelve (12) months following the termination or expiration of this Agreement in order to enable and facilitate the performance of Lessee's duties under this Section 10.3. During such period, Lessee shall not be required to pay the amounts set forth in Sections 3 or 5 or any other

rent. If Lessee fails to remove any Power Facilities within twelve (12) months following the termination or expiration of this Agreement, or such longer period as Owner may provide by extension, Owner may do so, in which case Lessee shall reimburse Owner for reasonable and documented costs of removal and restoration incurred by Owner, net of any amounts reasonably recoverable by Owner with respect to the salvage value of any such Power Facilities.

## 11. Miscellaneous.

(a) Force Majeure. If, after a good faith effort, Lessee is prevented, restricted or delayed from (i) complying with any express or implied covenant of this Agreement; (ii) constructing, or causing construction of, Power Facilities on the Property; (iii) producing or transmitting, or causing to be produced or transmitted, electricity; or (iv) performing any other activity reasonably related to and/or required by this Agreement by reason of war; weather; fire; casualty; terrorism; rebellion; riots; strikes; acts of God; inability to secure materials; any valid order, rule, or regulation of governmental authority (e.g., a third-party contest to any governmental approval or any legal action intended to prevent issuance of a permit or approval); or other events that are beyond the control of the Lessee (collectively referred to as a “**Force Majeure Condition**”), then, while so prevented, restricted or delayed, the Lessee’s obligation to perform hereunder shall be suspended and excused to the extent of prevention, restriction or delay, and the Lessee shall not be liable for damages for failure to comply with such obligation. The term Force Majeure Condition shall also include repowering of the Power Facilities and the termination of any power purchase agreement with respect to the Property, even though such action may be deemed to be within the control of Lessee. For clarity, Lessee shall not be required to pay the amounts set forth in Section 3 or other rent to the extent a Force Majeure Condition prevents, restricts or delays Lessee’s ability to sell and be paid for electricity from the Premises.

(b) Condemnation. All payments made on account of any taking or threatened taking of the Property or any part thereof in condemnation proceedings or by inverse condemnation by a government agency, governmental body or private party under the exercise of the right of eminent domain may be made to Owner, except that Lessee shall be entitled to, and Owner shall request that such condemning authority make payment directly to Lessee of: (i) any removal and relocation costs of the Power Facilities, (ii) any loss of or damage to any Power Facilities, (iii) the loss of use of any portion of the Property by Lessee (including impediments to or interference with the receipt of sunlight) and (iv) Lessee’s lost profits, measured in each case with regard to the effect on the Lessee’s use of the Property and any effect on Lessee’s use of other property. If such condemning authority makes all payments to Owner, then Owner shall forthwith make payment to Lessee of the award to which Lessee is entitled. Lessee shall have the right to participate in any condemnation settlement proceedings and Owner shall not enter into any binding settlement agreement without the prior written consent of Lessee, which consent shall not be unreasonably withheld. Should title to or possession of all of the Property be permanently taken, or should a partial taking render the remaining portion of the Property unsuitable for Lessee’s use (as determined by Lessee), then Lessee may terminate this Agreement upon such vesting of title or taking of possession. If Lessee does not terminate this Agreement as provided in this Section 11(b), the rent and any other charges and other terms of this Agreement shall be equitably adjusted to reflect such taking.

(c) Confidentiality. To the fullest extent allowed by law, Owner shall maintain in the strictest confidence: (i) any information regarding Lessee’s Development Activities and (ii) any other information that is proprietary or that Lessee requests be held confidential, in each such case whether disclosed by Lessee or discovered by Owner (“**Confidential Information**”). Excluded from the foregoing is any such information that is in the public domain by reason of prior publication through no act or omission of Owner. Owner shall not use Confidential Information for its own benefit or publish or otherwise disclose it to others; provided, however, that Owner may disclose Confidential Information to (a) Owner’s personal advisors, (b) any prospective purchaser of the Property or (c) pursuant to lawful process, subpoena or court

order; so long as in making such disclosure Owner advises the person receiving the Confidential Information of the confidentiality thereof and endeavors in good faith to obtain the agreement of said person not to disclose such Confidential Information.

(d) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon Owner and Lessee and, to the extent provided in any assignment or other transfer under Section 8.1 hereof, any Assignee, and their respective heirs, transferees, successors and assigns, and all persons claiming under them, and shall be deemed covenants running with the land and be binding upon the Property. References to Lessee in this Agreement shall be deemed to include Assignees that hold a direct ownership interest in this Agreement.

(e) Memorandum of Lease Agreement. Lessee shall have the right to record a memorandum of this Agreement. Owner shall cooperate with Lessee in such regard and shall execute any reasonable form of memorandum requested by Lessee. In addition, Owner hereby consents to the recordation of the interest of an Assignee in the Property.

(f) Notices. All notices or other communications required or permitted hereunder, including payments to Owner, shall, unless otherwise provided herein, be in writing, and shall be personally delivered, delivered by reputable overnight courier, or sent by registered or certified mail, return receipt requested and postage prepaid, addressed as follows:

If to Owner:

City of Prineville  
387 NE Third Street  
Prineville, Oregon 97754  
Attention: Eric Klann  
Email: eklann@cityofprineville.com

And with a copy to:

Jered Reid  
35 SE C Street, Suite D  
Madras, OR 97741  
jeredwreid@gmail.com

If to Lessee:

Westlake Solar Panels LLC  
1000 2<sup>nd</sup> Ave. #1800  
Seattle, Washington 98104  
Attention: Peter Parker  
Email: [ ]

And with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notices personally delivered shall be deemed given the day so delivered. Notices given by overnight courier shall be deemed given on the first business day following the mailing date. Notices mailed as provided herein shall be deemed given on the third business day following the mailing date. Notices electronically mailed shall only be deemed delivered upon non-automated confirmation by the receiving Party. Any Party may change its address for purposes of this subsection by giving written notice of such change to the other Party in the manner provided in this subsection.

(g) Further Assurances; Cooperation. Without limiting any other obligations of Owner under this Agreement (including, without limitation, Owner's obligations under Section 7(f)), Owner shall fully support and cooperate with Lessee in the conduct of its Development Activities and the exercise of its rights hereunder (including, without limitation, Lessee's efforts to obtain from any governmental authority or any other person or entity any environmental impact review, permit, entitlement, approval, authorization or other rights to sell, assign, transfer or finance any Power Facilities or interest in the Leasehold Estate or under this Agreement or obtain any financing), and Owner shall perform all such acts (including executing and delivering maps, instruments and documents within ten (10) days after receipt of a written request made

from time to time by Lessee) as Lessee may reasonably specify to fully effectuate each and all of the purposes and intent of this Agreement. Without limiting the generality of the foregoing, within ten (10) days after receipt of a written request made from time to time by Lessee, Owner shall: (a) enter into any reasonable amendment hereto (i) to correct an error in this Agreement, (ii) to amend the legal description attached hereto (including by replacing said legal description with a revised description prepared or provided by Lessee's surveyor or title company), (iii) that may be required by any Leasehold Mortgagee or in connection with the transfer by Lessee of any Power Facilities or interest in the Leasehold Estate or under this Agreement or (iv) to cause this Agreement to comply with applicable law; (b) execute and deliver to Lessee any owner's affidavit reasonably requested by any title company or attorney reviewing title to the Property; (c) enter into any reasonable consent and nondisturbance agreement with any Leasehold Mortgagee, stating that Owner shall recognize the rights of the Leasehold Mortgagee and not disturb its possession of the Property so long as it is not in default under this Agreement, and stating such other things as such Leasehold Mortgagee may reasonably request; (d) join in any grants for rights-of-way and leases for electric and other public utilities and facilities and any other electric power purpose (including any power transmission line), together with access, ingress and egress rights, as Lessee may deem necessary or desirable for its development and use of the Property; (e) join with Lessee in the signing of any protest, petition, appeal or pleading that Lessee may deem advisable to file or in requesting any and all zoning changes or any waivers, variances, land use permits and/or approvals, in each case as Lessee may deem necessary or desirable for Lessee's development and use of the Property as contemplated by this Agreement; and (f) if because of the nature of this Agreement Lessee is unable to qualify for any tax credit, renewable energy credit, environmental credit or any other benefit or incentive for renewable energy established by any local, state or federal government associated with the Power Facilities or the Development Activities, amend this Agreement or convert Lessee's interest in the Property to a substantially similar interest that makes Lessee eligible for such credit, benefit or incentive (but only if such amendment does not materially adversely affect Owner's rights or obligations hereunder); and Lessee agrees to pay Owner's reasonable out-of-pocket expenses incurred by Owner in connection with Owner's cooperation pursuant to the foregoing provisions of this Section 11(g). Without limiting the generality of the foregoing, Owner shall not oppose, in any way, whether directly or indirectly, any application by Lessee for any permit, approval or entitlement at any administrative, judicial, legislative or other level.

(h) Estoppel Certificates. Owner shall, within ten (10) days after a written request by Lessee, any Assignee or any Leasehold Mortgagee, execute, acknowledge and deliver to the requesting party such estoppel certificates (certifying as to such matters as may reasonably be requested, including, without limitation, that this Agreement is unmodified and in full force and effect (or modified and stating the modifications), the dates to which the payments and any other charges have been paid, and that there are no defaults existing (or that defaults exist and stating the nature of such defaults)) and/or consents to assignment (whether or not such consent is actually required) and/or non-disturbance agreements as Lessee, any Assignee or any Leasehold Mortgagee may reasonably request from time to time during the term of this Agreement. At Lessee's option, such certificates, consents and agreements may be recorded and Owner consents to such recording.

(i) No Waiver; No Abandonment. No waiver of any right under this Agreement shall be effective for any purpose unless it is in writing and is signed by the Party hereto possessing the right, nor shall any such waiver be construed to be a waiver of any subsequent right, term or provision of this Agreement. Further, (i) no act or failure to act on the part of Lessee shall be deemed to constitute an abandonment, surrender or termination of any interest under this Agreement, except upon recordation by Lessee of a quitclaim deed or release specifically conveying such Leasehold Estate or interest back to Owner, (ii) nonuse of the Agreement or any lease or interest hereunder shall not prevent the future use of the entire scope thereof; and (iii) no use of or improvement to the Property, and no assignment, transfer or grant under Section 8 or otherwise, or use resulting from any such transfer or grant, shall, separately or in the aggregate, constitute an overburdening of this Agreement or any lease or interest hereunder.

(j) No Merger. There shall be no merger of this Agreement, or of the Leasehold Estate created by this Agreement, with the fee estate in the Property by reason of the fact that this Agreement or the Leasehold Estate or any interest therein may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Property and all persons (including, without limitation, each Leasehold Mortgagee) having an interest in this Agreement or in the estate of Owner and Lessee shall join in a written instrument effecting such merger and shall duly record the same.

(k) Entire Agreement. This Agreement, together with its attached exhibits, contains the entire agreement between the Parties with respect to the subject matter hereof, and any prior or contemporaneous agreements, discussions or understandings, written or oral (including any options or agreements for leases, confidentiality agreements, and/or access agreements previously entered into by the Parties with respect to the Property), are superseded by this Agreement and shall be of no force or effect. No addition or modification of any term or provision of this Agreement shall be effective unless set forth in writing and signed by each of the Parties.

(l) Governing Law. The terms and provisions of this Agreement shall be interpreted in accordance with the laws of the state of Oregon without reference to choice of law principles.

(m) Dispute Resolution. The Provisions of Section 23 of the Power Purchase Agreement signed by the Parties on the Effective Date are hereby incorporated by reference and shall have the same effect *mutatis mutandis* as if stated expressly herein.

(n) Interpretation. The Parties agree that the terms and provisions of this Agreement embody their mutual intent and that such terms and conditions are not to be construed more liberally in favor of, or more strictly against, either Party.

(o) Partial Invalidity. Should any term or provision of this Agreement, or the application thereof to any person or circumstance, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. Notwithstanding any other provision of this Agreement, the parties agree that in no event shall the term of the Leasehold Estate or this Agreement be longer than the longest period permitted by applicable law; provided, however, that Lessee shall be entitled to record an instrument preserving the effectiveness or record notice of this Agreement.

(p) Other General Provisions. Except with respect to the rights conferred hereunder upon Leasehold Mortgagees (which Leasehold Mortgagees and their respective successors and assigns are hereby expressly made third party beneficiaries hereof to the extent of their respective rights hereunder), the covenants contained herein are made solely for the benefit of the Parties and their respective successors and assigns, and shall not be construed as benefiting any person or entity who is not a Party to this Agreement. Neither this Agreement nor any agreements or transactions contemplated hereby shall be interpreted as creating any partnership, joint venture, association or other relationship between the Parties, other than that of landowner and lessee. Lessee's shareholders, directors, officers, partners and members shall not have any personal liability for any damages arising out of or in connection with this Agreement. The use of the neuter gender includes the masculine and feminine, and the singular number includes the plural, and vice versa, whenever the context so requires. The terms "include", "includes" and "including", as used herein, are without limitation. Captions and headings used herein are for convenience of reference only and do not define, limit or otherwise affect the scope, meaning or intent hereof.

(q) Counterparts; Facsimiles or PDF. This Agreement may be executed and recorded in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. Each Party shall be entitled to rely upon executed copies of this Agreement transmitted by facsimile or electronic "PDF" to the same and full extent as the originals.

*[signature page follows]*



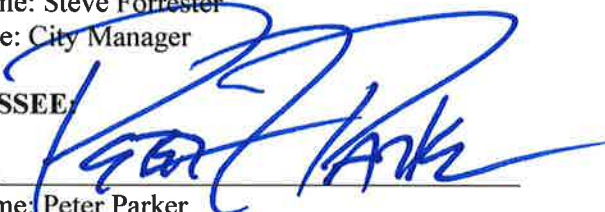
IN WITNESS WHEREOF, Owner and Lessee, acting through their duly authorized representatives, have executed this Agreement with the intent that it be effective as of the Effective Date, and certify that they have read, understand and agree to the terms and conditions of this Agreement.

**OWNER:**

By: \_\_\_\_\_  
Name: Stephen P. Uffelman  
Title: Mayor

By: \_\_\_\_\_  
Name: Steve Forrester  
Title: City Manager

**LESSEE:**

By:  \_\_\_\_\_  
Name: Peter Parker  
Title: CFO/COO

**EXHIBIT A**

The Property

**[Note to draft: Prineville to provide]**

As described in the [Warranty Deed] for land situated in Prineville, Oregon:

## **EXHIBIT B**

### Solar Easement

- (1) The dimensions of the solar easement shall be coextensive with all space directly above all or any portion of the Property, and shall include, without limitation, all vertical or horizontal angles through which direct sunlight may be accessed or received on or above the Property by any Power Facilities erected thereon. The solar easement shall apply to all times of day and all dates of the year.
- (2) No vegetation, structures, or other objects shall be permitted to impair or otherwise obstruct the passage of sunlight through the solar easement.
- (3) Except with respect to a termination upon the termination or expiration of the Lease, the solar easement may be revised or terminated only with the written consent of Lessee.

**EXHIBIT C**

Title Matters

**[Note to draft: Prineville to confirm]**

None

**RESOLUTION NO. 1423  
CITY OF PRINEVILLE, OREGON**

**A RESOLUTION AUTHORIZING A POWER PURCHASE AGREEMENT WITH  
WESTLAKE SOLAR PANELS, LLC**

**Whereas**, City of Prineville (“City”) and Westlake Solar Panels, LLC (“Westlake”) have entered into a certain Solar Lease Agreement for real property owned by City (“Property”); and

**Whereas**, City desires to make a portion of the Property available to Westlake for the construction, operation, and maintenance of a photovoltaic solar generating facility, and to purchase from Westlake the electric energy produced by the project; and

**Whereas**, Westlake, desires to develop, design, construct, own and operate the project located on City’s property, and sell to City the electric energy produced by the project; and

**Whereas**, City and Westlake have negotiated a power purchase agreement that is attached and incorporated herein; and

**Whereas**, City staff recommends that the attached Power Purchase Agreement be approved by City Council.

**Now, Therefore**, the City of Prineville resolves as follows:

1. The Power Purchase Agreement is approved.
2. The Mayor is authorized and instructed to execute on behalf of the City, the Power Purchase Agreement.

Approved by the City Council this \_\_\_\_ day of January, 2020.

---

Stephen P. Uffelman, Mayor

ATTEST:

---

Lisa Morgan, City Recorder

**POWER PURCHASE AGREEMENT**

Dated as of

[ ], 2019

between

**CITY OF PRINEVILLE,**  
as Host

and

**WESTLAKE SOLAR PANELS LLC,**  
as Provider

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## POWER PURCHASE AGREEMENT

This Power Purchase Agreement (“Agreement”) is entered into as of [\_\_\_\_], 2019 (the “Effective Date”), by and between Westlake Solar Panels LLC, a limited liability company formed under the laws of the State of Washington (“Provider”), and City of Prineville, Oregon (“Host”) (each a “Party”, and together, the “Parties”)

### RECITALS

WHEREAS, Host and Provider have entered into that certain Solar Lease Agreement dated as of the date hereof (the “Site Lease”).

WHEREAS, Host has site control of the property described in Exhibit A of the Site Lease, located in Prineville, Oregon, and desires to make a portion of such property available to Provider for the construction, operation and maintenance of a photovoltaic solar generating facility, and to purchase from Provider the electric energy produced by the project.

WHEREAS, Provider, desires to develop, design, construct, own and operate the project located on Host’s property, and sell to Host the electric energy produced by the project.

### AGREEMENT

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

1. **Definitions.** Certain capitalized terms used in this Agreement have the meanings set forth in the attached GLOSSARY OF TERMS.

2. **Term.**

(a) **Term.** This Agreement shall be for a term (the “Term”) commencing on the Effective Date and continuing until the date occurring twenty and (20) years after the Commercial Operation Date. Notwithstanding the foregoing, this Agreement will terminate prior to the end of the Term in the event of a termination under the provisions this Agreement or the provisions of the Site Lease.

(b) **Extensions.** Twenty-four months prior to the end of the Term, the Parties will meet to discuss the extension of this Agreement on terms and conditions reflecting the then current market for solar generated electricity and with such other amendments and additional terms and conditions as the Parties may agree. Neither Party shall be obligated to agree to an extension of this Agreement.

3. **[Reserved].**

4. **Planning, Installation and Operation of Project.**

(a) **Site Assessment and Planning.** During the period prior to the Commercial Operation Date, Provider shall have the right, at its own expense, to assess the suitability of the Premises for the Project and shall act diligently in conducting such assessment. The assessment shall include the right to inspect the physical condition of the structures on which the Project will be located; to apply for any building permits or other governmental authorizations necessary for the construction of the Project; to arrange



interconnections with the Local Electric Utility; to apply to any other governmental agencies or other persons for grants or other determinations necessary for the construction of or receipt of revenues from the Project; or to make any other investigation or determination necessary for the financing, construction, operation or maintenance of the Project.

(b) Termination of Development Activities. At any time prior to the Commercial Operation Date, Provider shall have the right to cease development of the Project on the Premises, for any reason, subject to agreement of Host, such agreement which shall not be unreasonably withheld. If Provider gives Host notice of such determination, this Agreement shall terminate effective as of the delivery of such notice without any further liability of the Parties to each other, provided that (i) Provider shall remove any equipment or materials which Provider has placed on the Site; (ii) Provider shall restore any portions of the Site disturbed by Provider to its pre-existing condition; (iii) the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the delivery of the notice; and (iv) the confidentiality provisions of Section 14, the indemnity obligations under Section 15 hereof, and the dispute resolution provisions of Section 23 hereof shall continue to apply notwithstanding the termination of this Agreement.

(c) Commencement of Construction, Modification of Design. At any time prior to the Commercial Operation Date, upon at least ten (10) Business Days notice to Host, Provider shall have the right to commence installing the Project on the Premises.

(i) As of the date hereof, Provider anticipates that the Project shall consist of the components and shall have the designs set forth in Exhibit E attached hereto.

(ii) Notwithstanding subsection (i) above, Provider has the right to modify the design of the Project, including the selection of the components in the Project, subject to the agreement of Host, such agreement which shall not be unreasonably withheld. However, such changes shall not result in the Project exceeding the nameplate capacity, building footprint, location and height set forth in Exhibits D and E, without Host's approval.

(d) Construction Commencement Deadline. If Provider has not commenced the installation of the Project on the Premises within 365 days of the Effective Date (not including any days in which a Force Majeure Event existed), Host may terminate this Agreement by delivering notice to Provider of its intention to terminate this Agreement, and the Agreement shall terminate twenty-one (21) days after Provider's receipt of such notice; provided, that if Provider commences installation of the Project within such twenty-one (21) day period, this Agreement shall not terminate and provided further that delays in the delivery of equipment that are outside of Provider's control shall not be counted toward the twenty-one (21) day period. After Host notice provided under the provisions of this Section 4(d), Provider shall make steady progress toward completion of the Project with no subsequent delay greater than forty-five (45) days without the consent of Host. Upon any termination in accordance with this Section 4(d) neither Party shall have any further liability to the other with respect to the Project, provided that (i) Provider shall remove any equipment or materials that Provider has placed on the Site; (ii) Provider shall restore any portions of the Site disturbed by Provider to their condition prior to the commencement of construction; (iii) the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the delivery of the notice; and (iv) the confidentiality provisions of Section 14, the indemnity obligations under Section 15 hereof, and the dispute resolution provisions of Section 23 hereof shall continue to apply notwithstanding the termination of this Agreement.

(e) Contractors. Provider shall use licensed contractors to perform the work of installing, operating, and maintaining the Project. Provider intends to use Installer to perform such work, but may use

other contractors, for all or a portion of such work, subject to the reasonable approval of Host. Provider shall advise Host of the Installer prior to commencement of the work on the Site. Provider shall be responsible for the conduct of Installer and its subcontractors, and Host shall have no contractual relationship with Installer or its subcontractors in connection with the work on the Project. Provider shall ensure that Installer maintains insurance applicable to the Installer's activities that satisfy the requirements in Exhibit F.

(f) Status Reports. Provider shall give Host regular updates, on a reasonable schedule requested by Host, on the progress of installation of the Project and shall notify Host of when Provider will commence testing of the Project. Host shall have the right to have its representatives present during the construction and testing process, but subject to reasonable written rules and procedures as may be established by Provider and Installer. After Provider has determined, in its reasonable judgment, that the Project meets the requirements of the Local Electric Utility, has been installed in accordance with all Applicable Laws, and is capable of producing electricity on a continuous basis, Provider shall notify Host that installation of the Project is complete and shall specify the Commercial Operation Date for the Project, which may be immediately upon delivery of such notice to Host. All electricity produced by the Project prior to the Commercial Operation Date shall be delivered to Host after appropriate safety testing and Host shall pay for such electricity at the rate applicable to the first Operations Year.

(g) Standard of Operation. Provider shall design, obtain permits, install, operate, and maintain the Project so as to keep it in good condition and repair, in compliance with all Applicable Laws and in accordance with the generally accepted practices of the electric industry, in general, and the solar generation industry, in particular. Such work shall be at Provider's sole expense. The Provider and its designees shall have Access Rights twenty-four (24) hours a day, seven (7) days a week to perform such work. Provider shall, and shall cause its contractors to, keep the Site reasonably clear of debris, waste material and rubbish, and to comply with reasonable safety procedures established by Host for conduct of business on the Site.

(h) Hazardous Materials. Provider and Installer are not responsible for any Hazardous Materials encountered at the Site except to the extent introduced by Provider. Upon encountering any Hazardous Materials, Provider and Installer will stop work in the affected area and duly notify Host and, if required by Applicable Law, any Governmental Authority with jurisdiction over the Site. Upon receiving notice of the presence of suspected Hazardous Materials at the Site, Host shall take all measures required by Applicable Law to address the Hazardous Materials discovered at the Site. Host may opt to remediate the Site so that the Project may be installed on the Site, or determine that it is not economically justifiable or is otherwise impractical to remediate the Site, in which case Host and Provider may agree upon a different location for the Project whereupon such replacement location shall be the Site for purposes of this Agreement, such replacement site to be mutually and reasonably acceptable to both parties. Provider and Installer shall be obligated to resume work at the affected area(s) of the Site only after Host notifies Provider and Installer that Host has complied with all Applicable Laws, and a qualified independent expert provides written certification that (i) remediation has been accomplished as required by Applicable Law and (ii) all necessary approvals have been obtained from any Governmental Authority having jurisdiction over the Project or the Site. Host shall reimburse Provider for all additional costs incurred by Provider or Installer in the installation of the Project resulting from the presence of and/or the remediation of Hazardous Materials, including demobilization and remobilization expenses. Notwithstanding the preceding provisions, Host is not responsible for any Hazardous Materials introduced to the Site by Provider or Installer, nor is Host required to remediate an affected area if such remediation is deemed to be economically unjustifiable or otherwise impractical.

(i) Site Security. Host will provide security for the Project to the extent of its normal security procedures, practices, and policies that apply to all commercial properties owned by the Host, including the

Project. Host will advise Provider immediately upon observing any damage to the Project. Upon request by Provider, such as Provider receiving data indicating irregularities or interruptions in the operation of the Project, Host shall, as quickly as reasonably practicable, send a person to observe the condition of the Project and report back to Provider on such observations.

(j) System Shut Down. Provider may shut down the Project at any time in order to perform required emergency repairs to the Project. At other times, Provider shall give Host notice of the shutdown as may be reasonable in the circumstances. Provider shall not have any obligation to reimburse Host for costs of purchasing electricity that would have been produced by the Project but for such shutdown. Provider shall not schedule shutdowns during peak periods of electric generation and periods when peak energy and demand prices are charged by the Local Electric Utility, except as may be required in accordance with prudent electric industry safety practices in the event of equipment malfunction.

## 5. Sale of Electric Energy.

(a) Sale of Electricity. Beginning on the Commercial Operation Date, subject to the terms and conditions of this Agreement, Provider shall sell to Host and Host shall buy from Provider all electric energy produced by the Project and delivered by Provider to Host at the Point of Delivery, whether or not Host is able to use all such electric energy. Host may require Provider to temporarily shut down the Project for safety reasons or any other reason, in which case Host shall reimburse Provider for energy that otherwise would have been delivered in accordance with Section 10(a) (Host Requested Shutdown). The Point of Delivery of the electric energy shall be as indicated in Exhibit E. Title to and risk of loss with respect to the energy shall transfer from Provider to Host at the Point of Delivery.

(b) Delivery of Electricity. The electric energy from the Project shall be delivered from Provider to Host at the specifications set forth in Exhibit E and otherwise in compliance with all requirements of the Local Electric Utility.

(c) Limits on Obligation to Deliver. Provider does not warrant or guarantee the amount of electric energy to be produced by the limits on Project for any hourly, daily, monthly, annual or other period. Provider is not a utility or public service company and does not assume any obligations of a utility or public service company to supply Host's electric requirements. Provider is not subject to rate review by governmental authorities.

(d) Meter Testing. Provider shall install one or more meter(s) at the Project, as Provider deems appropriate, to measure the output of the Project at the Point of Delivery. Provider shall install an Interval Data Recorder (IDR) with industry standard telemetry at the Project. Provider shall conduct tests of the meters at such times as it deems appropriate in accordance with industry standards, but not less than once in any two (2) year period. Host shall pay for any independent testing of the meter(s) in excess of such minimum testing schedule that Host deems necessary, except if, after such testing, the meter is shown to be in error in Provider's favor by more than 2%, Provider shall pay for the cost of such test and shall make corresponding adjustments to the records of the amount of electrical energy provided by the Project delivered based on the period that is half-way in between the date of this testing and the last testing date of the meter. If there is an error of less than or equal to 2% no billing adjustments will be made. In the event there is an error of greater than 2%, Provider shall adjust the next invoice to be provided to Host under Section 6(b) hereof, to either charge the Host additional amounts for energy produced over the stated meter amount during the applicable period at the applicable rate or provide Host a credit against future billing for energy produced under the stated meter amount during the applicable period, provided, however, that any

deficiencies or credits not theretofore applied or satisfied at the expiration or earlier termination of the Term shall be settled in cash.

**6. Payment and Billing.**

(a) Rates. Host shall pay Provider for electricity produced by the Project at the rates set forth in Exhibit A attached hereto.

(b) Billing. Host shall pay for the electricity produced by the Project monthly in arrears. Promptly after the end of each calendar month, Provider shall provide Host with an invoice setting forth the quantity of electricity produced by the Project in such month, the applicable rates for such, and the total amount due, which shall be the product of the quantities and the applicable rates.

(c) Invoice Delivery. Invoices shall be in writing and shall be either (i) delivered by hand; (ii) mailed by first-class, registered or certified mail, return receipt requested, postage prepaid; (iii) delivered by a recognized overnight or personal delivery service; (iv) transmitted by facsimile (such transmission to be effective on the day of receipt if received prior to 5:00 pm local time on a Business Day or in any other case as of the next Business Day following the day of transmittal); or (v) transmitted by email if receipt of such transmission by email is specifically acknowledged by the recipient (automatic responses not being sufficient for acknowledgement) and with a hard copy to follow, addressed as follows:

City of Prineville  
387 NE Third Street  
Prineville, Oregon 97754  
Attention: Billing Department

(d) Payment. Host shall pay each invoice within thirty (30) days of receipt of the invoice. Payments shall be made by electronic funds transfer to an account designated by Provider or by Direct Deposit of funds into Provider's bank account. Provider shall designate the account in the invoice or in a written notice delivered to Host. Any amounts not paid when due, including any amounts properly disputed and later determined to be owing, shall accrue interest on the unpaid amount at the rate equal to the lesser of (i) 1% per month, compounded monthly or (ii) the highest rate allowed by applicable law.

(e) Disputed Invoices. If Host objects to all or a portion of an invoice, Host shall, on or before the date payment of the invoice is due, (i) pay the undisputed portion of the invoice, and (ii) provide an itemized statement of its objections setting forth in reasonable detail the basis for its objections. If Host does not object prior to the date payment of any invoice is due, Host shall be obligated to pay the full amount of such invoices but Host may subsequently object to such invoice and, if such objection proves to be correct, receive a refund of the disputed amount; provided, however, that Host may not object to any invoice more than eighteen (18) months after the date on which such invoice is rendered.

**7. Supplemental Power, Net Metering and RECs.**

(a) Back-up and Supplemental Electricity. Except as otherwise provided herein, throughout the Term, Host shall be responsible for obtaining all of its requirements for electric energy in excess of the amounts produced by the Project. Provider shall have no obligation to obtain or pay for such supplemental or back-up electricity.

(b) Net Metering & Utility Credits. Host shall be responsible for submitting a net metering application and related documents to the Local Electric Utility for the Project. Provider shall be responsible for any application fees associated with such net metering application. Subject to prior review and approval, Provider shall be responsible for any additional fees or upgrades associated with such net metering application. At any time that electric production from the Project is greater than Host's requirements at such time, Host shall nevertheless pay Provider for all of the electricity produced by the Project at the rates and in the manner provided in this Agreement.

(c) Interconnection. Host shall be responsible for arranging the interconnection of the Project with Host's distribution system in a manner that includes bi-directional or "net metering" and shall execute an interconnection agreement with the Local Electric Utility in connection with the Project. Subject to prior review and approval, Provider shall be responsible for any additional fees or upgrades associated with such interconnection agreement.

(d) Ownership of Tax Attributes. Provider (and/or Financing Party, if applicable) shall be the owner of any Tax Attributes that may arise as a result of the operation of the Project and shall be entitled to transfer such Tax Attributes to any person. Host shall provide reasonable assistance to Provider in preparing all documents necessary for Provider to receive such Tax Attributes, and if Host is deemed to be the owner of any such Tax Attributes, Host shall assign the same (or the proceeds thereof) to Provider. If Host receives any payments in respect of such Tax Attributes, it shall promptly pay them over to Provider.

(e) Environmental Attributes. Provider shall be the owner of any Environmental Attributes that may arise as a result of the operation of the Project and shall be entitled to transfer such Environmental Attributes to any person. Host shall provide reasonable assistance to Provider in preparing all documents necessary for Provider to receive such Environmental Attributes, and if Host is deemed to be the owner of any such Environmental Attributes, Host shall assign the same (or the proceeds thereof) to Provider. If Host receives any payments in respect of such Environmental Attributes, it shall promptly pay them over to Provider. If Host exercises its right to purchase the Project, Host shall become the owner of any Environmental Attributes arising after the date of purchase.

(f) Intentionally deleted.

(g) Provider Is Not A Utility. Neither Party shall assert that Provider is an electric utility or public service company or similar entity that has a duty to provide service, is subject to rate regulation, or is otherwise subject to regulation by any governmental authority as a result of Provider's obligations or performance under this Agreement.

## **8. Permits, Ownership of Project, Liens, Mortgages.**

(a) Permits. Provider shall pay for and obtain all approvals from governmental entities necessary for the construction and operation of the Project, including land use permits, building permits, demolition and waste disposal permits and approval.

(b) System Ownership. Except as provided in Section 9, Provider or Financing Party shall be the legal and beneficial owner of the Project at all times. The Project is personal property and shall not attach to or be deemed a part of, or fixture to, the Site. The Project shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Host covenants that it will place all persons having an interest in or lien upon the real property constituting the Premises, on notice

of the ownership of the Project and the legal status or classification of the Project as personal property. Host and/or Provider shall make any necessary filings to disclaim the Project as a fixture of its respective Premises and Site in the appropriate Land Registry to place all interested parties on notice of the ownership of the Project by Provider.

(c) Liens. To the extent permitted by Applicable Law, each Party shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien, (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature, including claims by governmental authorities for taxes (collectively referred to as "Liens" and each, individually, a "Lien") on or with respect to the interests of the other in the Site, the Premises, and the Project, and in the Access Rights granted hereunder. Provider shall, to the extent allowed under Applicable Law, have Installer and its subcontractors execute lien waivers with respect to any mechanic's or materialman's lien against Host's interest in the Site. If permitted under Applicable Law, Host will post notices of non-responsibility to notify Installer and others that Host is not responsible for work performed on the Project. Each Party shall promptly notify the other of the imposition of a Lien on the property interests of the other Party, and shall promptly discharge such lien, provided however, that a Party may seek to contest the amount or validity of any Lien affecting the property of the other Party, provided it timely complies with all procedures for contesting such Lien, posts any bond or other security necessary under such procedures, and if such procedures do not require the posting of security, the Party establishes for the benefit of the other Party a deposit, letter of credit, or other security acceptable to the other Party to indemnify the other Party against any Loss which could reasonably be expected to arise if such Lien is not removed or discharged.

(d) Non Disturbance Agreements. Host shall pay for and obtain all consents required for it to enter into and perform its obligations under this Agreement from its lenders, landlord, tenants, and any other persons with interests in the Site. If there is any mortgage or fixture filing against the Premises which could reasonably be construed as prospectively attaching to the Project, Host shall promptly upon request of Provider, provide an acknowledgement and consent from such lienholder, in form and substance reasonably acceptable to Financing Party, stating that the ownership of the Project remains in Provider and further acknowledging that the Project is personal property of Provider and agreeing not to disturb the rights of Provider in the Project and under this Agreement. If Host is the fee owner of the Premises, Host consents to the filing of a disclaimer of the Project as a fixture of the Premises in the Land Registry. If Host is not the fee owner, Host will obtain such consent from such owner of the Premises. Such acknowledgment and consents, or acceptable notices thereof, shall be recorded, at Host's expense, in the appropriate Land Registry. Host may in the future mortgage, pledge, and grant security interests in all or a portion of the Site and the improvements thereon, provided the mortgagee or other grantee of the encumbrance acknowledges this Agreement, the Project, the Access Rights granted hereunder, and the priority of Provider's (and/or Financing Party's) rights in the Project and the Access Rights.

## **9. Purchase Options; Removal at End of Term.**

(a) Purchase Options. Host shall have the right to purchase the Project from Provider at either (i) the start of sixteenth (16th) year after the Commercial Operation Date for the then Fair Market Value of the Project, or (ii) the expiration of the Term for the then Fair Market Value of the Project. No earlier than twelve (12) months prior to the right to purchase the Project and no later than nine (9) months prior to the expiration of such right, Host shall notify Provider of its intent to exercise the option. Within ninety-one (91) days of its receipt of such notice, Provider shall give Host its appraisal of the Fair Market Value of the Project at the applicable time (either at year sixteen (16) or at the end of the Term), as prepared by a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry acting reasonably and in good faith to determine the Fair Market Value of the Project. Host may,

but is not obligated to, accept such appraisal. If Host does not accept such appraisal within fifteen (15) days of receiving the appraisal from Provider, the Parties shall meet to discuss the appraisal. If they are unable to reach agreement within twenty (20) days of the Host's receipt of the appraisal from Provider, the right to purchase the Project at the applicable time (either at year sixteen (16) or at the end of the Term) pursuant to this Section 9 will expire. For the avoidance of doubt, in the event that the right to purchase the Project at the start of year sixteen (16) expires after such twenty (20) day period, such expiry will not cause the expiry of the right to purchase the Project at the end of the Term.

(b) Transfer of Ownership. Upon Host's notice that it elects to exercise either option set forth in Section 9(a) above, Provider shall prepare and deliver to Host a set of records on the operation and maintenance history of the Project, including a summary of known defects. Upon payment of the purchase price, Provider shall deliver, or cause to be delivered, to Host a bill of sale conveying the Project to Host. Such bill of sale shall not contain any warranties other than a warranty against any defects in title arising through Provider. Provider shall use all reasonable efforts to transfer any remaining manufacturer's warranties on the Project, or portions thereof, to Host. Upon payment of the purchase price and delivery of the bill of sale pursuant to this Section 9(b), this Agreement will terminate.

(c) Operation & Maintenance After Sale. Prior to the effective date of Host's purchase of the Project under Section 9(a), Host and Provider shall discuss entering into an operation and maintenance agreement under which Provider shall perform all or a portion of the operation and maintenance requirements of the Project following Host's purchase of the Project. However, neither Party shall be under an obligation to enter into such an agreement.

(d) Decommissioning. If Host does not exercise either option set forth in Section 9(a) above, then Provider, at its expense, shall promptly decommission and remove the Project following the expiration of the Term. Provider shall not be obligated, however, to remove any support structures for the Project which are affixed to Host's structures or any below grade structures, including foundations and conduits, or any roads. Host grants Provider and its representatives reasonable vehicular and pedestrian access across the Site to the Premises for purposes of decommissioning the Project. In exercising such access and performing the decommissioning, Provider shall reasonably attempt to minimize any disruption to activities occurring on the Site. Host will provide Provider adequate storage space on the Site convenient to the Premises for materials and tools used during decommissioning. Provider shall be responsible for providing shelter and security for stored items during de-commissioning and removal. Host further agrees that its normal security measures, practices, and policies which apply to its own Premises shall also apply to the Project. During decommissioning, Provider will comply with all Applicable Laws.

(e) No Survival of Purchase Option. The options for Host to purchase the Project under Section 9(a) shall not survive the termination of this Agreement.

## **10. Shutdowns, Relocation; Closure or Sale of Site.**

(a) Host Requested Shutdown. Host from time to time may request Provider to temporarily stop operation of the Project for a period no longer than thirty (30) days, such request to be reasonably related to Host's activities in maintaining and improving the Site. During any such shutdown period (but not including periods of Force Majeure), Host will pay Provider an amount equal to the sum of (i) payments that Host would have made to Provider hereunder for electric energy that would have been produced by the Project during the period of the shutdown; and (ii) revenues from Environmental Attributes and Tax Attributes that Provider would have received with respect to electric energy that would have been produced by the Project during the period of the shutdown. Determination of the amount of energy that would have

been produced during the period of the shutdown shall be based, during the first Operations Year, on estimated levels of production and, after the first Operations Year, based on actual operation of the Project during the same period in the previous Operations Year, unless Provider and Host mutually agree to an alternative methodology.

(b) Provider Safety Shutdown. In addition to the right of Provider to shut down the Project for maintenance as provided in Section 4(j), Provider may shutdown the Project if Provider, in the exercise of reasonable judgment, believes Site conditions or activities of persons on the Site, which are not under the control of Provider, whether or not under the control of Host, may interfere with the safe operation of the Project. Provider shall give Host notice of a shutdown immediately upon becoming aware of the potential for such conditions or activities. Provider and Host shall cooperate and coordinate their respective efforts to restore Site conditions so as to not interfere with the safe operation of the Project and to reduce, to the greatest extent practicable, the duration of the shutdown. In the event of such a shutdown, Host shall be deemed to have acted under Section 10(a) to shut down the Project, and shall pay Provider the amounts described in Section 10(a) with respect to the period of the shutdown, except that Host shall not be required to pay such amounts relative to any time period prior to Provider's notice of the shutdown or during any Force Majeure Event. If a shutdown pursuant to this Section 10(b) continues for one hundred and eighty (180) days or longer, Provider may terminate this Agreement and require Host to pay the Early Termination Amount.

(c) Premises Shutdown; Interconnection Deactivated. In the event Premises are closed as a result of an event that is not (i) a Force Majeure Event or (ii) caused by or related to any unexcused action or inaction of Provider, Host shall nevertheless continue to pay Provider for all electricity that could be produced by the Project on the Premises and delivered to the Point of Delivery. If an interconnection with the Local Electric Utility becomes deactivated for reasons that are not (i) a Force Majeure Event or (ii) caused by or related to any unexcused action or inaction of Provider, or (iii) caused by an action by a third party outside of the Host's control, such that the Project is no longer able to produce electricity or transfer electricity to its Premises or to the Local Electric Utility, Host will pay Provider an amount equal to the sum of (A) payments that Host would have made to Provider hereunder for electric energy that would have been produced by the Project following such closure; and (B) revenues from Environmental Attributes that Provider would have received with respect to electric energy that would have been produced by the Project following such closure. Determination of the amount of energy that would have been produced following such closure shall be based, during the first Operations Year, on the estimated levels of production and, after the first Operations Year, based on actual operation of the Project in the same period in the previous Operations Year, unless Provider and Host mutually agree to an alternative methodology. If a shutdown pursuant to this Section 10(c) continues for one hundred and eighty (180) days or longer, Provider may terminate this Agreement and require Host to pay the Early Termination Amount.

(d) Sale of Site. In the event Host transfers (by sale, lease or otherwise) all or a portion of its interest in the Site, Host shall remain primarily liable to Provider for the performance of the obligations of Host hereunder notwithstanding such transfer. However, if no Host Event of Default has occurred and is continuing and the transferee is acceptable to Provider and Financing Party in their sole discretion and executes agreements assuming this Agreement in form and substance satisfactory to Provider and Financing Party in their sole discretion, Host may be released from further obligations under this Agreement.

## 11. Taxes.



(a) Income Taxes. Provider shall be responsible for any and all income taxes associated with payments from Host to Provider for electric energy from the Project. Provider (and/or Financing Party), as owner of the Project, shall be entitled to all Tax Attributes with respect to the Project.

(b) Sales Taxes. Host shall be responsible for all taxes, fees, and charges, including sales, use, and gross receipts taxes, imposed or authorized by any Governmental Authority on the sale of electric energy by Provider to Host. Host shall timely report, make filings for, and pay any and all such taxes assessed directly against it and shall reimburse Provider for any and all such taxes assessed against and paid by Provider.

(d) Tax Contests. Each Party has the right to contest taxes in accordance with Applicable Law and the terms of encumbrances against the Site. Each Party shall use all reasonable efforts to cooperate with the other in any such contests of tax assessments or payments. In no event shall either Party postpone during the pendency of an appeal of a tax assessment the payment of taxes otherwise due except to the extent such postponement in payment has been bonded or otherwise secured in accordance with Applicable Law.

(e) Payment of Delinquent Taxes. In the event either Party fails to pay any taxes that may become a lien upon the other Party's property, such Party may pay such amounts and in such event shall be entitled to recover such paid amount from the other Party, together with interest thereon at the rate of one percent (1%) per month, compounded monthly.

(f) Reimbursement Deadline. Any reimbursement of taxes owing pursuant to this Section 11 shall be paid within twenty (20) Business Days of receiving an invoice therefor from the Party who paid the taxes.

## 12. Insurance.

(a) Coverage. Host and Provider shall each maintain the insurance coverage set forth in Exhibit F in full force and effect throughout the Term.

(b) Insurance Certificates. Each Party shall furnish current certificates indicating that the insurance required under this Section 12 is being maintained. Each Party's insurance policy provided hereunder shall contain a provision whereby the insurer agrees to give the other Party thirty (30) days written notice before the insurance is cancelled or materially altered.

(c) Certain Insurance Provisions. Each Party's insurance policy shall be written on an occurrence basis and shall include the other Party as an additional insured as its interest may appear. A cross liability clause shall be made part of the policy. Each Party's insurer shall waive all rights of subrogation against the other Party except in the case of such Party's negligence or willful misconduct.

(d) Insurance Providers. All insurance maintained hereunder shall be maintained with companies rated no less than A- as to Policy Holder's Rating in the current edition of Best's Insurance Guide (or with an association of companies each of the members of which are so rated).

### 13. Cooperation

The Parties acknowledge that the performance of each Party's obligations under this Agreement will frequently require the assistance and cooperation of the other Party. Each Party therefore agrees, in addition to those provisions in this Agreement specifically providing for assistance from one Party to the other, that it will at all times during the Term cooperate with the other Party and provide all reasonable assistance to the other Party to help the other Party perform its obligations hereunder.

### 14. Press Releases and Confidentiality.

(a) Press Releases. The Parties acknowledge that they each desire to publicize information about this Agreement and the Project. The Parties therefore agree that each may make independent press releases about entering into this Agreement, the size and location of the Project, and the identity of the other Party, without the prior written consent of the other Party, so long as only Provider has the exclusive right to claim that (i) electric energy provided to Host was generated by the Project, (ii) Provider is responsible for the reductions in emissions of pollution and greenhouse gases resulting from the generation of such electric energy, and (iii) Provider is entitled to all credits, certificates, registrations, etc., evidencing or representing any of the foregoing except as otherwise expressly provided in this Agreement. Both Parties have exclusive control over the content of their respective websites. Any press release will be reviewed and approved by both Parties within twenty-four (24) hours. After twenty-four (24) hours for review either Party may issue the press release. Both Parties will review and agree to all media announcement and marketing publications before release.

(b) Limits on Disclosure of Confidential Information. Subject to the exceptions set forth below in Section 14(c), each Party agrees that, (i) without the consent of the other Party, it shall not disclose any Confidential Information received from the other Party to any other person and (ii) it shall use any Confidential Information received from the other Party only for the purpose of fulfilling its obligations under this Agreement. Notwithstanding the foregoing, the Parties may, and shall, disclose any information required to be disclosed under rules, regulations and contracts implementing the Tax Attributes required to be disclosed by any Governmental Authority under Applicable Law or pursuant to a validly issued subpoena or required filing.

(c) Permissible Disclosures. Provider may provide this Agreement, and any correspondence, notices and other information related to this Agreement to any person or entity who has provided or who is interested in providing construction or permanent financing, or any refinancing thereof, to Provider in connection with the Project. In addition, if either Provider or Host, or if any other entity in possession of Confidential Information provided by Provider or Host, is required by Applicable Law, validly issued subpoena, required filing, or the rules of any stock exchange, to disclose any Confidential Information, such party may make disclosure as so required; provided, however, Provider or Host shall (i) prior to making any disclosure, or knowing of any intended third party disclosure, notify the other Party of the requested disclosure, and (ii) shall use its reasonable efforts to cooperate with the other Party in any efforts to minimize the extent of the Confidential Information disclosed and the persons to whom disclosed, subject, in all events, to Applicable Law.

(d) Enforcement of Confidentiality Provisions. Each Party acknowledges that it may be impossible to measure the damages which may result from a breach of this Section 14 and agrees that the provisions of this Section 14 may be required to be specifically performed and each Party shall have the right to obtain preliminary and permanent injunctive relief to secure specific performance of the terms of

this Section 14. The provisions of this Section 14 shall survive until three (3) years after the effective date of any termination of this Agreement.

**15. Indemnification.**

(a) Provider Indemnification. Provider shall indemnify, defend and hold Host and its directors, officers, employees, agents, volunteers, and invitees ("Host's Indemnified Parties"), harmless from and against all Losses incurred by the Host Indemnified Parties to the extent arising from or out of the following: (i) any claim for or arising out of any injury to or death of any Person or loss or damage to property to the extent arising out of Provider's (or its contractor's) negligence or willful misconduct; (ii) Provider's violation of Applicable Law; or (iii) any failure to properly handle or dispose of any Hazardous Materials brought onto the Site by Provider or by any of Provider's employees, agents, volunteers, and invitees. Such duty to indemnify with respect to any injuries to persons or damage to property arising from the generation of electricity from the Project shall not extend to incidents occurring on Host's side of the Point of Delivery except to the extent caused by incidents on Provider's side of the Point of Delivery. Such duty to indemnify shall not apply to any action or claim, whether in tort (including negligence and strict liability), contract or otherwise for any loss, injury, or costs resulting from interruptions in service. Provider shall not be obligated to indemnify Host or any Host Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of Host or any Host Indemnified Party.

(b) Host Indemnification. Host shall indemnify, defend and hold Provider, its contractors, subcontractors, shareholders, directors, officers, employees, agents, and invitees, and Financing Party ("Provider's Indemnified Parties"), harmless from and against all Losses incurred by the Provider's Indemnified Parties to the extent arising from or out of (i) any claim for or injury to or death of any Person or loss or damage to property to the extent arising out of the negligence or willful misconduct of any of Host's Indemnified Parties; (ii) Host's violation of Applicable Law; or (iii) the presence, removal or remediation of any Hazardous Materials on the Site (other than any Hazardous Materials brought on to the Site by Provider's Indemnified Parties). Host shall not be obligated to indemnify Provider or any Provider Indemnified Party for any Loss to the extent such Loss is due to the negligence or willful misconduct of Provider or any Provider Indemnified Party.

(c) Notice of Claims. Whenever any claim arises for indemnification under this Agreement, the Indemnified Person shall notify the Indemnifying Party in writing as soon as possible (but in any event prior to the time by which the interest of the Indemnifying Party will be materially prejudiced as a result of its failure to have received such notice) after the Indemnified Person has knowledge of the facts constituting the basis for such claim (the "Notice of Claim"). Such Notice of Claim shall specify all facts known to the Indemnified Person giving rise to the indemnification right and the amount or an assessment of the amount of the liability arising therefrom.

(d) Defense of Claims. The Indemnifying Party has the right, but not the obligation to assume the defense or the matter for which indemnification is sought hereunder. If the Indemnifying Party does not assume the defense, it shall timely pay all costs of counsel and case expenses incurred by Indemnified Person in connection with the defense, when and as incurred. If the Indemnifying Party assumes the defense, the Indemnified Person has the right to hire its own counsel to defend it, but the Indemnified Person shall be responsible for the reasonable costs of such counsel. The Indemnifying Party shall not consent to the entry of any judgment or enter into any settlement with respect to the matter for which indemnification is sought without the prior written consent of the Indemnified Person (which consent shall not be unreasonably withheld) unless the judgment or settlement involves the payment of money damages only and does not require the acknowledgement of the validity of any claim.

(e) Payments. At the time that the Indemnifying Party makes any indemnity payments under this Agreement, the indemnification payment shall be adjusted such that the payment will result in the Indemnified Person receiving an indemnity payment equal to the Loss after taking into account (i) all federal, state, and local income taxes that are actually payable to the Indemnified Person with respect to the receipt of such payment and (ii) all national, state, and local tax deductions allowable to the Indemnified Person for any items of loss and deduction for which the Indemnified Party is being indemnified.

(f) Survival of Indemnification. The obligations of indemnification hereunder shall survive termination of this Agreement.

## 16. Representations and Warranties.

(a) Mutual Representations. Each Party hereby represents and warrants to the other, as of date hereof, that:

(i) Organization. It is duly organized, validly existing and in good standing under the laws of its state of incorporation and of the state in which the Premises are located, respectively, and has the power and authority to enter into this Agreement and to perform its obligations hereunder.

(ii) No Conflict. The execution and delivery of this Agreement and the performance of and compliance with the provisions of this Agreement will not conflict with or constitute a breach of or a default under (1) its organizational documents; (2) any agreement or other obligation by which it is bound; (3) any law or regulation.

(iii) Enforceability. (1) All actions required to be taken by or on the part of such Party necessary to make this Agreement effective have been duly and validly taken; (2) this Agreement has been duly and validly authorized, executed and delivered on behalf of such Party; and (3) this Agreement constitutes a legal, valid and binding obligation of such Party, enforceable in accordance with its terms, subject to laws of bankruptcy, insolvency, reorganization, moratorium or other similar laws.

(iv) No Material Litigation. There are no court orders, actions, suits or proceedings at law or in equity by or before any governmental authority, arbitral tribunal or other body, or threatened against or affecting it or brought or asserted by it in any court or before any arbitrator of any kind or before or by any governmental authority that could reasonably be expected to have a material adverse effect on it or its ability to perform its obligations under this Agreement, or the validity or enforceability of this Agreement.

(b) Host Representations. In addition to the representations and warranties in Section 16(a), Host hereby represents and warrants to Provider, as of date hereof, that:

(i) Condition of Premises. Host has provided to Provider Host's complete and correct records of the physical condition of the Premises. If it is discovered that the actual site conditions on part of, or on the entire Premises upon which all or part of the Project is to be installed, are materially different from the information presented by Host, then if practicable the rates payable by Host hereunder shall be adjusted to compensate Provider for the cost of design and construction

changes and delays incurred to adapt the Project to the unknown conditions. If such adjustment is not practicable, Provider shall have other rights under this Agreement.

(ii) Authorization. The execution and delivery of this Agreement by Host and the performance of its obligations hereunder have been duly authorized by all necessary official action. This Agreement is a legal, valid and binding obligation of Host enforceable against Host in accordance with its terms.

(iii) Financial Information. The financial statements Host has provided to Provider present fairly in all material respects the financial condition and results of operations of Host.

**17. Force Majeure.**

(a) Excuse for Force Majeure Event. Except as provided in Section 17(b) or otherwise specifically provided in this Agreement, neither Party shall be considered in breach of this Agreement or liable for any delay or failure to comply with this Agreement, if and to the extent that such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief as a result of the Force Majeure Event shall promptly (i) notify the other Party in writing of the existence and details of the Force Majeure Event; (ii) exercise all reasonable efforts to minimize delay caused by such Force Majeure Event; (iii) notify the other Party in writing of the cessation of such Force Majeure Event; and (iv) resume performance of its obligations hereunder as soon as practicable thereafter.

(b) No Excuse for Payment for Prior Services. Obligations to make payments for services already provided shall not be excused by a Force Majeure Event.

(c) Restoration. In the event of a casualty event, to the extent that such casualty event is attributable to the occurrence of a Force Majeure Event, which destroys all or a substantial portion of the Premises, Host shall elect, within ninety (90) days of such event, whether it will restore the Premises, which restoration will be at the sole expense of Host. If Host does not elect to restore the Premises, then Provider shall not restore the Project and this Agreement will terminate. If Host does elect to restore the Premises, Host shall provide notice of such election to Provider and Provider shall then elect, within ninety (90) days of receipt of such notice, whether or not to restore the Project, subject to the Parties agreeing on a schedule for the restoration of the Premises and an equitable extension to the Term of this Agreement. If the Parties are not able to so agree or if Provider does not elect to restore the Project, Provider shall promptly remove any portions of the Project remaining on the Premises, and this Agreement shall terminate. If Provider does elect to restore the Project, it shall do so at its sole expense. In the event of termination of this Agreement pursuant to this Section 17(c), (i) the Parties shall not be released from any payment or other obligations arising under this Agreement prior to the casualty event; and (ii) the confidentiality provisions of Section 14, the indemnity obligations under Section 15 hereof, and the dispute resolution provisions of Section 23 hereof shall continue to apply notwithstanding the termination of this Agreement.

(d) Termination for Force Majeure Event. Notwithstanding anything to the contrary in this Section 17, if nonperformance on account of a Force Majeure Event continues beyond a continuous period of two hundred and seventy (270) days, then either Party shall have the right to terminate this Agreement upon thirty (30) days notice to the other. Upon such termination, Provider shall be required to decommission and remove the Project from the Site in accordance with the provisions of Section 9(d) (unless there has been a casualty event, in which case the provisions of clause (c) above shall apply to the removal of the Project). In the event of such a termination of this Agreement with respect to the Project, the Parties shall not be released from any payment or other obligation arising under this Agreement which

accrued prior to the shutdown of the Project or the Premises, and the indemnity, confidentiality and dispute resolution provisions of this Agreement shall survive the termination of this Agreement.

**18. Change in Law.**

In the event there is a Change in Law that is applicable to the operation of the Project, the sale of electric energy produced by the Project, or any other obligation of the Provider hereunder, and compliance with the Change in Law results in an increase in Provider's costs to operate and/or maintain the Project, Provider will promptly submit to Host a written notice setting forth (i) the applicable Change in Law; (ii) the manner in which such Change in Law increases Provider's costs; and (iii) Provider's proposed adjustment to the then applicable and future rates for electric energy in this Agreement to reflect such increases in costs. Host agrees to an adjustment in the then applicable and future rates such that the new rates compensate Provider for the total cost increase arising from the Change in Law and said adjustment will remain in effect for as long as the costs arising from the Change in Law continue to be incurred by the Provider. Host agrees to resist changes in law that increase Provider's costs.

**19. Provider Default and Host Remedies.**

(a) Provider Events of Default. Provider shall be in default of this Agreement if any of the following ("Provider Events of Default") shall occur:

(i) Misrepresentation. Any representation or warranty by Provider under Section 16 hereof, is incorrect or incomplete in any material way, or omits to include any information necessary to make such representation or warranty not materially misleading, and such defect is not cured within fifteen (15) days after receipt of notice from Host identifying the defect.

(ii) Abandonment During Installation. After commencement of installation of the Project, Provider abandons installation of the Project for thirty (30) days and fails to resume installation within thirty (30) days after receipt of notice from Host stating that, in Host's reasonable determination, Provider has abandoned installation of the Project.

(iii) Failure to Operate. After the Commercial Operation Date, Provider fails to operate the Project for a period of ninety (90) days which failure is not due to equipment failure, or damage to the Project, act of governmental authority, or exercise of Provider's rights under this Agreement, or otherwise excused by the provisions of Section 17(b) (relating to Force Majeure Events); and Provider fails to resume operation within thirty (30) days after receipt of notice from Host stating that, in Host's reasonable determination, Provider has ceased operation of the Project; provided, however, that the cure period shall be extended by the number of calendar days during which Provider is prevented from taking curative action if Provider had begun curative action and was proceeding diligently, using commercially reasonable efforts, to complete such curative action.

(iv) Obligation Failure. Provider fails to perform any obligation hereunder, such failure is material, such failure is not excused by the provisions of Section 17(b) (relating to Force Majeure Events), and such failure is not cured within: (A) ten (10) days if the failure involves a failure to make payment when due or maintain required insurance; or (B) sixty (60) days if the failure involves an obligation other than payment or the maintenance of insurance, after receipt of notice from Host identifying the failure.

(v) Insolvency. Provider (A) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property; (B) admits in writing its inability, or is generally unable, to pay its debts as such debts become due; (C) makes a general assignment for the benefit of its creditors; (D) commences a voluntary case under any bankruptcy law; (E) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; (F) acquiesces in, or fails to contest in a timely manner, any petition filed against Provider in an involuntary case under bankruptcy law or seeking to dissolve Provider under other Applicable Law; or (G) takes any action authorizing its dissolution. Prior to any event of Provider insolvency, Provider shall offer to sell the Project at Fair Market Value to Host, unless prohibited by law.

(b) Financing Party Opportunity to Cure; Host Remedies. Upon an Event of Default by Provider, provided that Host complies with its obligations under Section 21 and Financing Party does not cure such Event of Default by Provider, Host may terminate this Agreement, seek to recover damages for costs of replacement electricity and pursue other remedies available at law or equity.

## 20. Host Default and Provider Remedies.

(a) Host Events of Default. Host shall be in default of this Agreement if any of the following (“Host Events of Default”) shall occur:

(i) Misrepresentation. Any representation or warranty by Host under Section 16 hereof, is incorrect or incomplete in any material way, or omits to include any information necessary to make such representation or warranty not materially misleading, and such defect is not cured within fifteen (15) days after receipt of notice from Provider identifying the defect.

(ii) Obstruction. Host intentionally obstructs commencement of installation of the Project or fails to take any actions necessary for the interconnection of the Project, or fails to take electric energy produced by the Project (except in the case of a Host Requested Shutdown under Section 10(a), and fails to correct such action within its own power to do so within fifteen (15) days.

(iii) Payment Failure. Host fails to make any payment due under the terms of this Agreement, and fails to make such payment within ten (10) days after receipt of notice thereof from Provider.

(iv) Obligation Failure. Host fails to perform any obligation hereunder, such failure is material, such failure is not excused by the provisions of Section 17(b) (relating to Force Majeure Events), and such failure is not cured within: (A) ten (10) days if the failure involves a failure to maintain required insurance; or (B) sixty (60) days if the failure involves an obligation other than payment or the maintenance of insurance, after receipt of notice from Provider identifying the failure.

(v) Insolvency. Host (A) applies for or consents to the appointment, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or a substantial portion of its property; (B) admits in writing its inability, or be generally unable, to pay its debts as such debts become due; (C) makes a general assignment for the benefit of its creditors; (D) commences a voluntary case under any bankruptcy law; (E) files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment

of debts; (F) acquiesces in, or fails to contest in a timely manner, any petition filed against Host in an involuntary case under bankruptcy law or seeking to dissolve Host under other Applicable Law; or (G) takes any action authorizing its dissolution.

(vi) Site Lease Default. Host, as Lessor under the Site Lease, has failed to cure its material breach under the Site Lease within thirty (30) days after receiving written notice from Provider, as Lessee under the Site Lease, of such breach.

(b) Default Damages. Upon an Event of Default by Host, Provider may require Host to pay to Provider the Early Termination Amount, sell electricity produced by the Project to persons other than Host, and recover from Host any loss in revenues resulting from such sales; and/or pursue other remedies available at law or in equity. After Provider's receipt of such Early Termination Amount pursuant to this Section 20(b), Provider shall collect no additional damages resulting from lost revenues from sales of electricity from the Project.

## 21. Collateral Assignment, Financing Provisions.

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

(i) Consent to Collateral Assignment. Host hereby consents to both of the sale of the Project to a Financing Party and the collateral assignment to the Financing of the Provider's right, title and interest in and to this Agreement.

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

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

(B) Opportunity to Cure Default. The Financing Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Provider thereunder or cause to be cured any default of Provider thereunder in the time and manner provided by the terms of this Agreement. Nothing herein requires the Financing Party to cure any default of Provider under this Agreement or (unless the Financing Party has succeeded to Provider's interests under this Agreement) to perform any act, duty or obligation of Provider under this Agreement, but Host hereby gives it the option to do so;



(C) Exercise of Remedies. Upon the exercise of remedies, including any sale of the Project by the Financing Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Provider to the Financing Party (or any assignee of the Financing Party as defined below) in lieu thereof, the Financing Party shall give notice to Host of the transferee or assignee of this Agreement. Any such exercise of remedies shall not constitute a default under this Agreement;

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

(iii) Right to Cure.

(A) Cure Period. Host will not exercise any right to terminate or suspend this Agreement unless it shall have given the Financing Party prior written notice of its intent to terminate or suspend this Agreement, as required by this Agreement, specifying the condition giving rise to such right, and the Financing Party shall not have caused to be cured the condition giving rise to the right of termination or suspension within thirty (30) days after such notice or (if longer) the periods provided for in this Agreement; provided that if such Provider default reasonably cannot be cured by the Financing Party within such period and the Financing Party commences and continuously pursues cure of such default within such period, such period for cure will be extended for a reasonable period of time under the circumstances, such period not to exceed an additional ninety (90) days. The Parties' respective obligations will otherwise remain in effect during any cure period.

(B) Continuation of Agreement. If the Financing Party or its assignee (including any purchaser or transferee), pursuant to an exercise of remedies by the Financing Party, shall acquire title to or control of Provider's assets and shall, within the time periods described in Section 21(a)(iii)(A) above, cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person or entity, then such Person shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect.

(b) Financing Party a Third Party Beneficiary. Host agrees and acknowledges that Financing Party is a third party beneficiary of the provisions of this Section 21.

(c) Entry to Consent to Assignment. Host agrees to (i) execute any consents to assignment or acknowledgements and (ii) provide such opinions of counsel as may be reasonably requested by Provider and/or Financing Party in connection with such financing or sale of the Project.

## 22. Limitations on Damages.

EXCEPT AS EXPLICITLY PROVIDED IN THIS AGREEMENT (including, without limitation, in Sections 10 and 20(b)), NEITHER PARTY NOR ANY OF ITS INDEMNIFIED PERSONS SHALL BE LIABLE TO THE OTHER PARTY OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT.

**23. Dispute Resolution.**

(a) Negotiation Period. The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to this Agreement (a "Dispute") within thirty (30) days after the date that a Party gives written notice of such Dispute to the other Party.

(b) Mediation. If, after such negotiation in accordance with Section 23(a), the Dispute remains unresolved, either Party may require that a non-binding mediation take place. In such mediation, representatives of the Parties with authority to resolve the dispute shall meet for at least three (3) hours with a mediator whom they choose together. If the Parties are unable to agree on a mediator, then either Party is hereby empowered to request the American Arbitration Association to appoint a mediator. The mediator's fee and expenses shall be paid one-half by each Party.

(c) Arbitration of Disputes.

(i) Rules of Arbitration. Any Dispute that is not settled to the mutual satisfaction of the Parties pursuant to Sections 23(a) or 23(b) shall (except as provided in Section 23(d)) be settled by binding arbitration between the Parties conducted in Portland, Oregon, or such other location mutually agreeable to the Parties, and in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "AAA") in effect on the date that a Party gives notice of its demand for arbitration.

(ii) Dispute Submission. The Party initiating the Arbitration (the "Submitting Party") shall submit such Dispute to arbitration by providing a written demand for arbitration to the other Party (the "Responding Party"), which demand must include statements of the facts and circumstances surrounding the dispute, the legal obligation breached by the other Party, the amount in controversy and the requested relief, accompanied by all relevant documents supporting the Demand.

(iii) Arbitrator Selection. The arbitrator(s) selected shall have contract resolution experience and experience in the electric power business and shall not have any current or past substantial business or financial relationships with the Parties or their Affiliates. Arbitrators must agree to be bound by the confidentiality provisions of this Agreement. If the amount in controversy is less than \$250,000, the Dispute will be determined by a single neutral arbitrator, who will be chosen by the Parties within forty-five (45) days of submission of the demand on the Responding Party. If the Parties cannot agree on a single neutral arbitrator within such period, the arbitrator shall be chosen by the AAA. If the amount in controversy is \$250,000 or greater, the Dispute will be determined by a Panel of three (3) arbitrators. Each Party shall select one arbitrator, but if a Party fails to select an arbitrator within forty-five (45) days of the submission of the demand on the Responding Party, the arbitrator will be chosen by the AAA. The two arbitrators so selected will select the third arbitrator, who shall act as the chairman of the panel. If the two arbitrators cannot select the third arbitrator within thirty (30) days (or such additional time as the Parties may agree) of the selection of both of the first two arbitrators, the third arbitrator shall be chosen by the AAA.

As used herein, "Panel" means either a single arbitrator or a group of three arbitrators selected as provided herein.

(iv) Discovery. Within fifteen days (15) of the selection of the third arbitrator, the Parties shall submit statements to the Panel summarizing the issues in the case and including recommendations for discovery. Within twenty (20) days of receipt of the statements from the Parties, the Panel will meet with the Parties and issue orders on the scheduling of the case and any discovery to be permitted.

(v) Decision. Upon ten (10) days of completion of the hearing conducted by the Panel, each Party shall submit to the Panel its proposal for resolution of the dispute. The Panel in its award shall select one of the two proposals submitted by the Parties or a compromise solution thereof. The award shall be in writing (stating the amount and reasons therefore) and shall be final and binding upon the Parties, and shall be the sole and exclusive remedy between the Parties regarding any claims and counterclaims presented to the Panel. The Panel shall be permitted, in its discretion, to add pre-award and post-award interest at commercial rates. Judgment upon any award may be entered in any court having jurisdiction.

(vi) Expenses. Unless otherwise ordered by the Panel, each Party shall bear its own expenses and one-half of the cost of the Panel. Payments of the Panel's costs shall be made on a monthly basis prior to the Award.

(d) Exceptions to Arbitration. The obligation to arbitrate shall not be binding upon any Party with respect to (i) requests for preliminary injunctions, temporary restraining orders, specific performance, or other procedures in a court of competent jurisdiction to obtain interim relief deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual Dispute; (ii) actions to enforce an award of a Panel or otherwise to collect payments not subject to bonafide dispute; or (iii) claims involving third parties who have not agreed to participate in the arbitration of the Dispute.

(e) Survival of Arbitration Provisions. The provisions of this Section 23 shall survive any termination of this Agreement and shall apply (except as provided herein) to any disputes arising out of this Agreement.

## 24. Notices.

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

If to Host:

City of Prineville  
387 NE Third Street  
Prineville, Oregon 97754  
Attention: Eric Klann  
Email: eklann@cityofprineville.com

If to Provider:

Westlake Solar Panels LLC  
1000 2<sup>nd</sup> Ave. #1800  
Seattle, Washington 98104  
Attention: Peter Parker  
Email: [\_\_\_\_\_]

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

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

**25. Miscellaneous.**

(a) Governing Law. This Agreement shall be governed by the laws of the State of Oregon, including principles of good faith and fair dealing that will apply to all dealings under this Agreement.

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

(c) Severability. If any non-material part of this Agreement is held to be unenforceable, the rest of the Agreement will continue in effect. If a material provision is determined to be unenforceable and the Party which would have been benefited by the provision does not waive its unenforceability, then the Parties shall negotiate in good faith to amend the Agreement to restore to the Party that was the beneficiary of such unenforceable provision the benefits of such provision. If the Parties are unable to agree upon an amendment that restores the Party’s benefits, the matter shall be resolved under Section 23(c) in order to restore to the Party that was the beneficiary of the unenforceable provision the economic benefits of such provision.

(d) Amendment and Waiver. This Agreement may only be amended by a writing signed by both Parties. Any waiver of any of the terms hereof shall be enforceable only to the extent it is waived in a writing signed by the Party against whom the waiver is sought to be enforced. Any waiver shall be

effective only for the particular event for which it is issued and shall not constitute a waiver of a subsequent occurrence of the waived event nor constitute a waiver of any other provision hereof, at the same time or subsequently.

(e) Assignment. Neither Party may assign, sell, transfer or in any other way convey its rights, duties or obligations under this Agreement, either in whole or in part, without the prior written consent of the other Party which consent shall not be unreasonably withheld or delayed, except that without consent of Host, Provider (i) may assign its rights and obligations hereunder to an Affiliate of Provider and (ii) may sell or collaterally assign this Agreement in accordance with Section 21. If Provider seeks to sell the Project, other than a sale to a Financing Party in accordance with Section 21, Host shall have thirty (30) days to exercise a right of first refusal to purchase the Project. For purposes of this Section 25(e), transfer does not include any sale of all or substantially all of the assets of Provider or Host or any merger of Provider or Host with another person, whether or not Provider or Host is the surviving entity from such merger, or any other change in control of Provider or Host, provided any such surviving entity assumes all obligations of Provider or Host, as appropriate, under this Agreement; provided however, with respect to Host, such surviving entity is acceptable to Financing Party in its sole discretion.

(f) Service Contract. The Parties acknowledge and agree that, for accounting or tax purposes, this Agreement is not and shall not be construed as a lease and, pursuant to Section 7701(e)(3) of the Internal Revenue Code, this Agreement is and shall be deemed to be a service contract with respect to the sale to Host of electric energy produced at an alternative energy facility.

(g) Forward Contract. Without prejudice to Section 25(f), the Parties acknowledge and agree that this Agreement and the transactions consummated under this Agreement constitute a “forward contract” within the meaning of the United States Bankruptcy Code and that Seller is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

(h) No Joint Venture. This Agreement does not create a joint venture, partnership or other form of business association between the Parties.

(i) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of signature by fax, or scan delivered by email, receipt acknowledged, or electronic signature are effective to bind a Party hereto.

(j) Right of First Refusal. Host hereby grants to Provider the right of first refusal to develop any solar electric facility to be situated on or adjacent to the Premises or the Site.

*[signature page follows]*

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

**CITY OF PRINEVILLE**

By: \_\_\_\_\_

Name: Stephen P. Uffelman

Title: Mayor

**WESTLAKE SOLAR PANELS LLC**

By:  \_\_\_\_\_

Name (printed): Peter Parker

Title: CFO/COO

## GLOSSARY OF TERMS

“Access Rights” means the rights provided in this Agreement for Provider and its designees, including Installer, to enter upon and cross the Site to install, operate, maintain, repair and remove the Project, and to interconnect the Project with the Local Electric Utility and to provide water, electric and other services to the Project. The Provider and its designees shall have such Access Rights twenty-four (24) hours a day, seven (7) days a week.

“Affiliate” means, as to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” of a Person means the power, directly or indirectly, to direct or cause the direction of the management and policies of such Person whether by contract or otherwise.

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

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

“Business Day” means a day other than Saturday, Sunday, or other day on which commercial banks in New York City are authorized or required by law to be closed.

“Change in Law” means that after the date of this Agreement, an Applicable Law is amended, modified, nullified, suspended, repealed, found unconstitutional or unlawful, or changed or affected in any material respect by any Applicable Law. Change in Law does not include changes in federal or state income tax laws. Change in Law does include material changes in the interpretation of an Applicable Law.

“Commercial Operation Date” means the date, which shall be specified by Provider to Host pursuant to Section 4(d), when the Project is physically complete, has successfully completed all performance tests, satisfies the interconnection requirements of the Local Electric Utility, and has satisfied all necessary requirements in connection with the net metering application process.

“Confidential Information” means information of a confidential or proprietary nature, whether or not specifically marked as confidential. Such information shall include, but not be limited to, any documentation, records, listing, notes, data, computer disks, files or records, memoranda, designs, financial models, accounts, reference materials, trade-secrets, prices, strategic partners, marketing plans, strategic or other plans, financial analyses, customer names or lists, project opportunities and the like, provided however that Confidential Information does not include information which (i) was in the possession of the receiving Party before receipt from the disclosing Party; (ii) is or becomes publicly available other than as a result of unauthorized disclosure by the receiving Party; (iii) is received by the receiving Party from a third party not known by the receiving Party with the exercise of reasonable diligence to be under an obligation of confidentiality respecting the information; or (iv) is independently developed by the receiving Party without reference to information provided by the disclosing Party.

“Dispute” means a controversy or claim arising out of or relating to this Agreement.

“Early Termination Amount” means all projected lost revenues associated with the sale or utilization of electrical energy resulting from the early termination, plus any tax penalty or losses incurred by Provider as a result of such termination.

“Environmental Attributes” means Renewable Energy Certificates, carbon trading credits, emissions reductions credits, emissions allowances, green tags, Green-e certifications, or other entitlements, certificates, products, or valuations attributed to the Project and its displacement of conventional energy generation, or any other entitlement pursuant to any federal, state, or local program applicable to renewable energy sources, whether legislative or regulatory in origin, as amended from time to time, and excluding, for the avoidance of doubt, any Tax Attributes.

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

“Financing Party” means a Project Lessor or Lender.

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

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

“Hazardous Materials” means all hazardous or toxic substances, wastes or other pollutants, including petroleum, petroleum hydrocarbons or petroleum products, petroleum by-products, radioactive materials, asbestos or asbestos-containing materials, gasoline, diesel fuel, pesticides, radon, urea formaldehyde, lead or lead-containing materials, polychlorinated biphenyls; and any other chemicals, materials, substances or wastes in any amount or concentration which are now included in the definition of “hazardous substances,” “hazardous materials,” “hazardous wastes,” “extremely hazardous wastes,” “restricted hazardous wastes,” “toxic substances,” “toxic pollutants,” “pollutants,” “regulated substances,” “solid wastes,” or “contaminants” or words of similar import, under any Applicable Law.

“Host” means City of Prineville, Oregon and all successors and assigns.

“Indemnified Person” means the person who asserts a right to indemnification under Section 15.



Indemnifying Party” means the Party who has the indemnification obligation under Section 15 to the Indemnified Person.

Installer” means the person designated by Provider to install the Project on the Premises.

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

Lender” means persons providing construction or permanent financing to Provider in connection with installation of the Project.

Liens” has the meaning provided in Section 8(c).

Local Electric Utility” means Pacific Power and all Affiliates, successors, and assigns.

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

Operations Year” means a twelve month period beginning at 12:00 am on an anniversary of the Commercial Operation Date and ending at 11:59 pm on the day immediately preceding the next anniversary of the Commercial Operation Date, provided that the first Operations Year shall begin on the Commercial Operation Date.

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

Point of Delivery” has the meaning set forth in Section 5(a) and Exhibit E.

Premises” means the portions of the Site described on Exhibit D.

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

Project Lessor” means, if applicable, any Person to whom Provider transferred the ownership interest in the Project, subject to a leaseback of the Project from such Person.

Provider” means Westlake Solar Panels LLC, a limited liability company formed under the laws of the State of Washington, and all Affiliates, successors and assigns.

Relocation Event” means the relocation of the Project, starting at the shutdown of the Project pursuant to such relocation, and ending at the commercial operation of the Project when such relocated Project is reinstalled at a new location, as determined by the Provider in its reasonable discretion.

Renewable Energy Certificate” or REC” means a certificate, credit, allowance, green tag, or other transferable indicia, howsoever entitled, created by an applicable program or certification authority indicating generation of a particular quantity of energy, or product associated with the generation of a megawatt-hour (MWh) from a renewable energy source by a renewable energy project.

“Site” means the “Property” as such term is defined in the Site Lease.

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

“Term” shall have the meaning provided in Section 2 hereof.

EXHIBIT A

ENERGY PURCHASE RATES

<b>Operations Year</b>	<b>Price per MWh</b>
1	\$30
2	\$30
3	\$30
4	\$30.60
5	\$31.21
6	\$31.84
7	\$32.47
8	\$33.12
9	\$33.78
10	\$34.46
11	\$35.15
12	\$35.85
13	\$36.57
14	\$37.30
15	\$38.05
16	\$38.81
17	\$39.58
18	\$40.38
19	\$41.18
20	\$42.01

EXHIBIT B

EARLY TERMINATION AMOUNTS

All projected lost revenues associated with the sale or utilization of electrical energy resulting from the early termination, plus any tax penalty or losses incurred by Provider as a result of such termination.

EXHIBIT C

DESCRIPTION OF SITE

The Site is the property described in Exhibit A of the Site Lease.

EXHIBIT D

DESCRIPTION OF PREMISES

*[Note to draft: parties to confirm/discuss]*

Location of buildings or portion of Site where the Project will be located

Location of access routes to Premises

Location of interconnection routes for Project across the Site

Location of storage facility

EXHIBIT E

DESCRIPTION OF PROJECT

1.5 MW DC Solar PV Array utilizing approximately 4,824 modules, a ground mounted fixed racking, inverters, other Balance of Systems, Data Monitoring equipment, and occupying approximately 8 acres of land.

*[Note to draft: to insert Point of Delivery description here]*

## EXHIBIT F

### INSURANCE REQUIREMENTS

1. General Liability

(a) Both Host and Provider will have a minimum level of commercial general liability insurance for the term of the Power Purchase Agreement of two million dollars (\$2,000,000) for each occurrence, and two million dollars (\$2,000,000) in the aggregate. Insurance coverage shall be at least as broad as the Insurance Services Office (ISO) Commercial General Liability Coverage "occurrence" form, with no coverage deletions.

(b) Both the Host and Provider general liability insurance coverage shall:

(i) Be endorsed to specify that the Provider's and Host's insurance is primary and that any insurance or self-insurance maintained by the Local Electric Utility shall not contribute with it.

2. Workers' Compensation

Both Host and Provider will have Workers' Compensation insurance indicating compliance with any applicable labor codes, acts, laws or statutes, state or federal, at the Site where the work is performed. Employers' Liability insurance shall not be less than one million dollars (\$1,000,000) for injury or death each accident.

3. Business Auto

Both Host and Provider will have not less than one million dollars (\$1,000,000) each accident for bodily injury and property damage, and two million dollars (\$2,000,000) in the aggregate.

4. Additional Insurance Provisions

Host shall furnish Provider with certificates of insurance and endorsements of all required insurance, as may be reasonably requested. The documentation must be signed by a person authorized by the insurer to bind coverage on its behalf.

5. Additional Installation Contractor Requirements

Installation contractors will have valid commercial general liability, workers compensation, and business auto insurance as follows:

- Commercial general liability insurance will be in the following amounts: \$4,000,000 for each occurrence and \$4,000,000 in the aggregate.



- Workers compensation insurance or self-insurance indicating compliance with any applicable labor codes, laws or statutes, state or federal, where Installer performs work.
- Auto coverage not less than one million dollars (\$1,000,000) each accident for bodily injury and property damage, and 2 million dollars (\$2,000,000) in the aggregate.
- Excess liability insurance on an occurrence basis covering claims (on at least a following form basis) in excess of the underlying insurance for Commercial General Liability, Auto Liability and Employers' Liability with a minimum limit per occurrence of one million dollars (\$1,000,000) and 2 million dollars (\$2,000,000) in the aggregate. The amounts of insurance required for Commercial General Liability, Auto Liability, Employers' Liability and Excess Liability may be satisfied by Installer purchasing coverage in the amounts specified or by any combination of primary and excess insurance, so long as the total amount of insurance meets the requirements specified above.

EXHIBIT G

ESTIMATED ELECTRICITY PRODUCTION

The estimated electricity production for the first Operations Year is 2,250,114 kWh. Following the first Operations Year, this level of estimated annual electricity production will remain constant except for a one-half percent annual degradation.