

SEP 23 2019

Book 291 Page 531
REGISTER OF DEEDS FRANKLIN CO., KS
INSTRUMENT # 3079

SOLAR LEASE AGREEMENT
(#KS-MCS1-003)

* 463⁰⁰ This Solar Lease Agreement (this "Agreement") is made, dated and effective as of August 28, 2019 (the "Effective Date"), between **Joseph D. Ferguson** (collectively, together with their heirs, transferees, successors and assigns, "Owner"), and **Orion Power Generation, LLC, a Delaware limited liability company** (together with its transferees, successors and assigns, "Lessee"), and in connection herewith, Owner and Lessee agree, covenant and contract as set forth in this Agreement. Owner and Lessee are sometimes referred to in this Agreement as a "Party" or collectively as the "Parties".

NOW, THEREFORE, the Parties agree as follows:

1. Lease. Owner hereby leases, demises and lets unto Lessee the approximately 78.55 acres of land of Owner (which includes 18.37 acres identified as an Excluded Area [defined below, for a total of 60.18 included acres]) in Franklin County, Kansas, described in Exhibit A attached hereto and incorporated herein by reference (the "Lease"), together with (i) the right to access and utilize all radiant energy emitted from the sun upon, over and across such land ("Solar Energy"), and (ii) all rights-of-way, easements, servitudes, licenses, tenements, roadways, easements, approaches, hereditaments, and appurtenances belonging or relating thereto (the foregoing herein collectively called the "Property"). In the event of inaccuracies or insufficiencies in the legal description in Exhibit A, Lessee may modify the Exhibit to correct the inaccuracies or insufficiencies, and shall notify Owner of such modification.

2. Purpose. Lessee shall have the exclusive right to use the Property and the unobstructed flow of Solar Energy upon, over and across the Property for electric power, heat and/or steam generation purposes ("Solar Energy Purposes") and to derive all profits therefrom. For purposes of this Agreement, Solar Energy Purposes include, without limitation, the right to convert the Solar Energy into electrical energy and to collect and transmit the electrical energy so converted, together with any and all activities related thereto, including, without limitation, (a) determining the feasibility of Solar Energy conversion and power generation on the Property, including studies of the Solar Energy emitted upon, over and across the Property (through the installation of Solar Energy measurement equipment or otherwise) and other meteorological, archeological and environmental studies, land surveys and due diligence activities; (b) constructing, installing, using, replacing, relocating and removing from time to time, and maintaining, refurbishing and operating, Solar Energy collection and electrical generating equipment of all types including, without limitation, any such equipment utilizing photovoltaic and/or solar thermal technology (collectively referred to herein as "Solar Generating Equipment"), overhead and underground electrical transmission and communications lines, electric transformers, energy storage facilities, telecommunications equipment, power generation facilities to be operated in conjunction with Solar Generating Equipment, roads and gates, meteorological towers and Solar Energy measurement equipment, control buildings, maintenance yards, and related facilities and equipment (the Solar Generating Equipment together with all of the other foregoing facilities, equipment and improvements, collectively "Solar Facilities") on the Property; and (c) 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. Lessee and its consultants may enter the Property, upon

reasonable advance notice, to do work related to development of Solar Facilities. Subject to Owner's rights to use the Property in any manner consistent with Section 8.2, Lessee shall, after the commencement of construction of Solar Facilities on the Property, have the right to control and restrict access onto and over the Property and exclude others (other than any parties with preexisting easement rights) as it deems necessary or appropriate for safety and security reasons. Prior to the commencement of construction of Solar Facilities on the Property, Owner shall have the right to access and to permit others to access and use the Property in any manner consistent with Section 8.2.

3. Term.

3.1 Term. The initial term of this Agreement ("Initial Term") will commence upon the Effective Date and shall continue until the later of (a) the 30th anniversary of the first day of the month following the month in which Solar Facilities on the Property commence operation by delivering commercial quantities of electricity to the electric utility grid, or (b) 37 years after the Effective Date. Lessee may elect to extend the Initial Term for two additional 10-year terms commencing on the last day of the Initial Term or the 10th anniversary of such day, respectively, upon at least 90 days' notice to Owner. The Initial Term plus either or both of such additional 10-year terms are called the "Term." If the Start of Construction (as defined in Section 3.2) on the Property has not occurred prior to the seventh anniversary of the Effective Date, this Agreement will terminate.

3.2 Project Sites. Within thirty (30) days after the date that any of the racking that will support the Solar Facilities is installed ("Start of Construction"), Lessee shall designate the portion of the Property on which Solar Facilities are being constructed (a "Project Site"). Lessee shall designate a new Project Site each time it constructs new Solar Facilities on the Property. As used in this Agreement with respect to a Project Site, the term "Commercial Operation Date" means the first day of the month following the month in which Solar Facilities on the Project Site commence operation by delivering commercial quantities of electricity to the electric utility grid.

3.3 Delay in Use. Except as specifically provided in this Agreement, no delay of Lessee in the use or enjoyment of any leasehold, easement or other right in this Agreement will result in the loss or abandonment of any right, title interest or estate granted herein.

4. Payments. In consideration of the rights granted under this Agreement, Lessee agrees to pay Owner during the Term the amounts set forth in the Fee Schedule attached hereto (the "Fee Schedule").

5. Ownership of Solar Facilities. Owner shall have no ownership or other interest in any Solar Facilities installed on the Property, or any profits derived therefrom, and Lessee may remove any or all Solar Facilities at any time. Except for payments of Rent described in the Fee Schedule, Owner shall not be entitled to any other payments or benefits accrued by or from the Solar Facilities, including renewable energy credits, environmental credits or investment or other tax credits.

6. Taxes.

6.1 Lessee and Owner. Lessee shall pay personal property taxes attributable to Solar Facilities and other improvements to the Property installed by Lessee. Lessee shall also pay or reimburse Owner for any increase in real property taxes levied against the Property as a result of such installations or attributable to a reclassification of the Property as a result of this Agreement. Owner shall pay all taxes, assessments or other fees attributable to the underlying value of the Property itself or to facilities installed on the Property by Owner or others unrelated to Lessee or to Lessee's operations. The Solar Generating Equipment shall retain its nature as personal property and shall not become real property, even if buried in or otherwise affixed to the land. Owner and Lessee agree jointly to use commercially reasonable efforts to cause the Property not to be reclassified from its present agricultural or open space exemption (if any) as a result of this Agreement, provided that such agricultural or open space exemption can be preserved without interfering with Lessee's ability to develop, construct and operate Solar Facilities on the Property as contemplated hereunder. Lessee's obligations to Owner under this Section 6.1 shall remain in effect after termination of this Agreement until the Solar Facilities have been removed from the Property as required by Section 12.3.

6.2 Tax Bills. Lessee shall have the right, but not the obligation, to seek to have its leasehold estate separately assessed to Lessee for real estate ad valorem tax purposes as well as personal property tax purposes, and Owner and Lessee agree jointly to use commercially reasonable efforts to cause the County tax assessor to issue separate property tax bills to Owner and Lessee. It is a condition to Owner's right to payment or reimbursement hereunder that Owner submit Owner's real property tax bill to Lessee no later than 15 days prior to the due date for such taxes. If Owner fails to pay for its share of real property taxes, Lessee shall have the right to pay such amounts on Owner's behalf and to offset any amounts so paid by Lessee against all or any of the Rent payments next payable by Lessee under this Agreement.

6.3 Contest. Lessee may contest the assessed value of the Solar Facilities and the legal validity and amount of any such taxes for which it is responsible under this Agreement, and may institute such proceedings as it considers reasonable or necessary, provided that Lessee shall bear all expenses in pursuing such contest or proceeding. Owner shall submit to Lessee a copy of all notices and other correspondence Owner receives from any taxing authorities regarding the assessed value of the Property and/or the Solar Facilities within 30 days after Owner receives same, but in no event later than 30 days prior to the date an objection to such assessment or taxes must be filed. Owner agrees to provide to Lessee all reasonable assistance in contesting the validity or amount of any such taxes, including joining in the signing of any reasonable protests or pleading that Lessee may deem advisable to file, but at no out-of-pocket cost to Owner. In the event the taxing authorities provide a separate assessment and tax statement for the portion of the real property taxes levied against or allocated to the Solar Facilities, Lessee agrees to pay such real property taxes directly to the taxing authorities.

6.4 Indemnity - Real Property Taxes. OWNER AND LESSEE EACH AGREES TO INDEMNIFY AND HOLD EACH OTHER HARMLESS FROM ANY LIABILITY, COST OR EXPENSES, PAID BY IT OR FOR WHICH IT IS LIABLE, IF SUCH PARTY SHOULD FAIL TO PAY ITS PORTION OF REAL PROPERTY TAXES IN ACCORDANCE WITH THIS AGREEMENT.

7. Lessee's Representations, Warranties, and Covenants. Lessee hereby represents, warrants, and covenants to Owner that:

7.1 Siting. Lessee shall provide Owner with a survey of each Project Site, including the exact acreage thereof, within 90 days of the Commercial Operation Date for the Solar Facilities located thereon. Owner hereby grants Lessee the right to record a notice of final description ("Notice of Final Description") to reflect the boundaries of each Project Site, or at Lessee's election to record or re-record one or more Memorandums of Lease in the county's Real Property Records (as described in Section 13.9 below) and attach the legal description of each Project Site to the appropriate Memorandum of Lease. Lessee shall make all siting decisions as to Solar Facilities in its sole discretion. If Lessee builds Solar Facilities on part of the Property, then Lessee will make commercially reasonable efforts not to interfere with Owner's agricultural activities on the rest of the Property, as set forth in Section 7.6.

7.2 Insurance. Lessee shall, at its expense, maintain liability insurance insuring Lessee and Owner against loss caused by Lessee's use of the Property under this Agreement, or else Lessee shall self-insure and assume the risk of loss for general liability exposures that would have been covered by the policy, to the extent Lessee has agreed to indemnify Owner pursuant to Section 7.3(a). The amount of such insurance shall be not less than \$1 million of combined single limit liability coverage before the Start of Construction and not less than \$5 million of combined single limit liability coverage after the Start of Construction. Under such policy, Owner will be named as an additional insured with respect to operations or activities of Lessee but only to the extent Owner is held liable for damage and injuries caused by such operation or activities for which Lessee has agreed to indemnify Owner pursuant to Section 7.3(a). No coverage is provided for liability arising out of Owner's own negligence or misconduct. Certificates of such insurance, or evidence of self-insurance reasonably acceptable to Owner, shall be provided to Owner upon request.

7.3 Mutual Indemnities.

(a) Lessee's Indemnity. Lessee will indemnify, defend and hold harmless Owner and Owner's shareholders, directors, successors, assigns, personal representatives, trustees, mortgagees, employees and agents (collectively, "Owner's Indemnified Parties") against any and all losses, damages, claims, expenses and other liabilities, including without limitation, reasonable attorneys' fees, resulting from or arising out of physical damage to property or physical injury to any person, in each case to the extent caused by the operations or activities of Lessee or its employees, contractors or agents. The reference to property damage in the preceding sentence includes damage from third party nuisance claims related to Solar Facilities installed by Lessee, but does not include losses of rent, business opportunities, profits and the like that may result from Owner's loss of use of the Project Site or any other portion of the Property occupied by Solar Facilities. This indemnification shall survive the termination of this Agreement. This indemnification shall not apply to losses, damages, claims, expenses and other liabilities to the extent caused by the negligence or misconduct of Owner or any of Owner's Indemnified Parties or any party other than Lessee or its employees, contractors or agents.

(b) Owner's Indemnity. Owner will indemnify, defend and hold harmless Lessee and Lessee's members, shareholders, directors, successors, assigns, affiliates, personal representatives, trustees, mortgagees, employees and agents (collectively, "Lessee's Indemnified Parties") against any and all losses, damages, claims, expenses and other liabilities, including without limitation, reasonable attorneys' fees, resulting from or arising out of physical damage to

property or physical injury to any person, in each case to the extent caused by (i) any negligent act or failure to act by Owner, guest or invitee, or (ii) any breach of this Agreement by Owner. This indemnification shall survive the termination of this Agreement. This indemnification shall not apply to losses, damages, claims, expenses and other liabilities to the extent caused by the negligence or misconduct of Lessee or any of Lessee's Indemnified Parties or any party other than Owner or its employees, contractors or agents.

7.4 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 construction and operation of the Solar Facilities, as applicable. Lessee shall have the right, in its sole discretion, to contest by appropriate legal proceedings, the validity or applicability to the Property, Project Site or Solar Facilities of any law, ordinance, statute, order, regulation, property assessment, or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Owner shall cooperate in every reasonable way in such contest, including joining in the signing of any reasonable protests or pleading that Lessee may deem advisable to file, at no out-of-pocket expense to Owner. Any such contest or proceeding shall be controlled and directed by Lessee, but Lessee shall indemnify Owner from Lessee's failure to observe or comply with the contested law, ordinance, statute, order, regulation or property assessment.

7.5 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. Lessee may contest any such lien and the legal validity and amount of any such lien; *provided, however*, that if Lessee elects to contest any such lien, Lessee shall, within 60 days after it receives notice of the filing of such lien, either bond around such lien or establish appropriate reserves therefor, or otherwise remove such lien from the Property pursuant to applicable law.

7.6 Lessee Non-Interference with Agricultural Activities. In the construction and operation of its Solar Facilities, Lessee will make commercially reasonable efforts not to interfere with Owner's agricultural activities on the Property. To facilitate communication, Lessee and Owner will each designate a single point of contact with the other party.

(a) Construction and Siting. Lessee will consult with Owner (or, at Owner's request, with Owner's then-current tenant) prior to the Start of Construction to describe Lessee's plan and schedule for construction on the Property. As part of the consultation, Lessee will present a preliminary site map showing the Project Site and any new roads, overhead transmission lines, electric substation or switchyard, or operations and maintenance building proposed to be located on the Property outside of the Project Site pursuant to Section 8.6 or Section 10.1 (the "Related Facilities"), and solicit Owner's advice and input, before finalizing the site design. Lessee will also discuss with Owner the measures Lessee will take during construction to minimize conflicts between Lessee's construction activities and Owner's ongoing agricultural operations.

(b) Soil Restoration, Compaction, Weed Control. Outside of the Project Site, Lessee shall use commercially reasonable efforts to minimize any damage to and disturbance of growing crops and crop land caused by its construction activities and will work with Owner to minimize areas of potential soil compaction. Lessee shall not remove topsoil from the Property,

and shall replace removed topsoil to the location from which it was removed to the extent practicable, or such other location on the Property as may be reasonably requested by Owner. Upon completion of construction on the Property, Lessee will restore the soil surface on any portion of the Property disturbed by Lessee that is outside of the Project Site or the boundaries of any Related Facilities. In addition, if such disturbed area was in pasture prior to construction, Lessee will re-plant native or similar grass seed on such portion of the Property. If Lessee causes compaction of any previously cultivated part of the Property located outside of the Project Site or the boundaries of any Related Facilities, Lessee will "rip" such portion of the Property in at least three passes to a depth of at least 18 inches. After the Commercial Operation Date, Lessee will use commercially reasonable efforts to control weeds within the Project Site, the portions of the Property where Related Facilities have been installed, and in areas disturbed by Lessee's construction on the Property. Owner may spray to control weeds up to the edge of the Project Site.

(c) Underground Lines and Drainage Tiles. During construction on the Property, Lessee will promptly repair any damage to underground drainage tiles or waterways caused by the construction activities of Lessee, and such repairs will be done by a qualified professional. Lessee shall have a continuing obligation to effect repairs to drainage tiles for any damage provided that such damage is related to the construction activities of Lessee. Once Owner has provided Lessee with written acceptance of the drainage repairs, Lessee shall be relieved of any obligation to effect further repairs unless Lessee causes new damage to drainage tiles or waterways.

(d) Gates and Fences. If Owner's Property is fenced, all of Lessee's newly constructed access roads located on the Property shall be gated by Lessee at Lessee's expense, and Owner shall be furnished with keys or other ability to open and close such gates. Lessee shall maintain such gates as part of the Solar Facilities. When installing a gate within Owner's existing fence, Lessee will make such fence cuts, braces, and repairs that will be permanent and remain functional for the remaining life of the fence of which they are part; alternatively, Owner may require Lessee to install a cattle guard in lieu of any internal gate. When accessing the Property, Lessee will close gates used by its personnel except when open to permit the passage of vehicular traffic, so that Owner's or Owner's tenant's livestock do not stray or escape through such gates. Additionally, Owner authorizes Lessee, at Lessee's sole expense, to take reasonable safety and security measures to reduce the risk of damage to Solar Facilities or the risk that Solar Facilities will cause damage, injury or death to people, livestock, other animals and property, including fencing around the Project Site and the perimeter of any electric substation or switchyard, operations or maintenance building, or (during periods of construction) laydown area located outside of the Project Site, as Lessee may deem necessary or appropriate to secure or enclose the same.

(e) Roads. To minimize erosion caused by Lessee's construction of roads on the Property and facilitate natural drainage, Lessee will seek Owner's advice on the design and location of such roads. Lessee will incorporate Owner's advice into the final road design to the extent such advice does not substantially increase construction costs over a design based on good engineering practice, as determined by Lessee in its reasonable judgment. During construction, Lessee will keep Owner's existing site roads used by Lessee in good repair. After the Commercial Operation Date, Lessee will maintain roads used by Lessee on the Property outside of the Project Site to the extent necessary for Lessee's continued use, as reasonably determined by Lessee, and

will use commercially reasonable efforts to minimize erosion caused by Lessee's road use. The crown of new roads located in any previously cultivated portion of the Property will be kept to a minimum. Lessee will ensure there is an adequate crossing point for agricultural vehicles over any new roads. New roads used during construction but not required for operations will be reclaimed at Owner's request. If the location of a Project Site prevents Owner from using the existing road or "two-track" that provides access to the Excluded Area, commencing on the Commercial Operation Date Lessee will provide Owner with alternate access to the Excluded Area via a "two-track" or a site road. If the installation of Solar Facilities re-routes the natural drainage, causing drainage problems on the Property, Lessee will use commercially reasonable efforts to correct such problems.

(f) Caliche and Gravel. Lessee may use caliche and gravel from the Property, so long as Lessee pays Owner the then current market price, excluding cost of transportation.

(g) Animals. Lessee's employees shall not bring animals onto the Property at any time.

(h) Keeping the Property Clean. After the Start of Construction, Lessee will use commercially reasonable efforts to keep the Property neat and clean (free from debris and waste), and shall remove all refuse, litter and debris created by Lessee and its invitees, licensees, agents and contractors from the Property.

(i) Livestock. Lessee will use commercially reasonable efforts to minimize any interference with Owner's livestock operation.

7.7 Hazardous Materials. Lessee shall not violate, and shall indemnify Owner against any liability and expense arising from violation by Lessee of, any federal, state, or local law, ordinance, or regulation promulgated thereunder ("Environmental Laws") relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any Hazardous Materials in, on or under the Property. This provision shall survive termination of this Agreement. For purposes of this Agreement, "Hazardous Materials" means any substance, material, or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state, or local laws or regulations, on or under the Property.

7.8 Noise, Glare and Shadow. Lessee shall have the right in connection with the construction, use and operation of Solar Facilities to emit or cause the emission of noise, to impact Owner's views of and from the Property, and to allow or permit the Solar Facilities to cast shadows and to create, cause and emit glare or shadow onto the Property and adjacent properties, and similar field effects. OWNER, FOR ITSELF AND ON BEHALF OF ITS SUCCESSORS AND ASSIGNS, HEREBY ACCEPTS SUCH EFFECTS, WAIVES ANY RIGHT TO OBJECT TO SUCH EFFECTS AND RELEASES LESSEE FROM ANY CLAIMS, DAMAGES, LIABILITIES OR LOSSES OWNER MAY INCUR THEREFROM.

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

8.1 Owner's Authority. Owner is the sole owner of the Property and holds fee simple title to the surface estate of the Property. Owner has the unrestricted right and authority and has taken all necessary action to authorize Owner to execute this Agreement and to grant to Lessee the rights granted hereunder. Each person signing this Agreement on behalf of Owner is authorized to do so and all persons having any ownership interest in the Property (including spouses) are signing this Agreement. When signed by Owner, this Agreement constitutes a valid and binding agreement enforceable against Owner and the Property in accordance with its terms. Without limiting the foregoing, if a title search shows that the holders of fee simple title to the Property are different from the persons who signed this Agreement as Owner, the persons who signed this Agreement as Owner shall immediately cause all of the holders of fee simple title to the Property to execute an amendment to this Agreement pursuant to which all of such holders of fee simple title to the Property agree to and ratify this Agreement, all at no cost to Lessee.

8.2 Restrictive Covenant - No Interference. Lessee shall have the quiet use and enjoyment of the Property in accordance with the terms of this Agreement. 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: the development, construction, installation, maintenance, or operation of Solar Facilities, whether located on the Property or elsewhere; access over the Property to such Solar Facilities; Lessee's rights granted hereunder to use the Property for any other Solar Energy Purposes; or the undertaking of any other activities permitted hereunder. Without limiting the generality of the foregoing, following the Start of Construction on a Project Site, the activities of Owner shall not disturb or interfere with the unobstructed flow of Solar Energy upon, over and across such Project Site, whether by placing towers or antennas of any type, planting trees or constructing buildings or other structures or facilities, or by engaging in any other activity on the Project Site or elsewhere that might delay the installation of, disrupt, or otherwise cause a decrease in the output or efficiency of the Solar Facilities. The area of land to remain unobstructed by Owner will consist horizontally of the entire Property three hundred and sixty degrees (360°) from any point where any Solar Generating Equipment are or may be located at any time or from time to time, and vertically all space located above the surface of the Property that is, one hundred eighty degrees (180°). If Lessee builds Solar Facilities on only a portion of the Property, Owner may use the rest of the Property in any manner that complies with the foregoing.

8.3 Water Rights. Owner shall retain its water rights and the ability to physically remove and contractually sell the water from existing wells on the site, provided that (a) Owner's exercise of its water rights shall not interfere with the construction, installation, maintenance, or operation of Solar Facilities, or access over the Property to such Solar Facilities, or Lessee's rights hereunder to use the Property for any other Solar Energy Purposes; and (b) Lessee shall be entitled to consume water from the Property for both onsite and offsite Solar Energy Purposes if it pays Owner then-current market rates (excluding cost of transportation) or purchases water directly from the local water authority.

8.4 Liens and Tenants. Except as disclosed by Owner in writing to Lessee on or prior to the Effective Date, Owner represents that there are no liens, encumbrances, leases, easements, mortgages, deeds of trust, security interests, mineral or gas and gas rights, options, sale contracts, claims, disputes or other exceptions to Owner's fee title ownership of the Property or to Owner's right, title or interest in the Property (collectively, "Liens"), which are not recorded in the

public records of the County in which the Property is located. Lienholders (including tenants), whether or not their Liens are recorded, shall be Owner's responsibility, and Owner shall fully cooperate and assist Lessee in obtaining a non-disturbance agreement from each party that holds a Lien that Lessee determines in its discretion might interfere with Lessee's rights under this Agreement. A non-disturbance agreement is an agreement between Lessee and a lienholder which provides that the lienholder 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 hereof. If Owner is unable to obtain any such non-disturbance agreement from a lienholder that holds a mortgage, deed of trust, tax lien or other Lien that is senior to this Agreement (if any), Lessee shall be entitled (but not obligated) to make payments in fulfillment of Owner's obligations to the lienholder and may offset the amount of such payments from amounts due Owner under this Agreement. Owner represents that Owner is not aware of any delinquent taxes affecting the Property.

8.5 Requirements of Governmental Agencies. Owner shall assist and fully cooperate with Lessee, at no out-of-pocket expense to Owner, in complying with or obtaining any land use permits and approvals, property tax abatements, building permits, environmental impact reviews, or any other approvals required for the financing, construction, installation, monitoring, replacement, relocation, maintenance, operation or removal of Solar Facilities (whether located on the Property or elsewhere), including execution of applications for such approvals if required. In connection with any applications for such approvals, Owner agrees at Lessee's request to support such application (at no out-of-pocket expense to Owner) at any administrative, judicial or legislative level, including participating in any appeals or regulatory proceedings. If Owner is contacted directly by any governmental agency about this Agreement, any Solar Facilities or the Property, Owner shall notify Lessee. To the extent permitted by law, Owner hereby waives any setbacks or other restrictions on the location of any Solar Facilities to be installed on the Property or on adjacent properties, including but not limited to waiver of all property line setbacks, pursuant to state or county rules, regulations or ordinances (that is, Owner approves a reduction of each such setback to zero), and Owner shall cooperate with Lessee in providing documentation of such setback waivers and shall execute any documents reasonably requested by Lessee to evidence Owner's waiver of such setbacks.

8.6 Access. Owner hereby grants to Lessee the right of ingress to and egress from Solar Facilities (whether located on the Property, on adjacent property or elsewhere) over and across the Property by means of roads and lanes thereon if existing, or otherwise by such route or routes as Lessee may construct from time to time ("Access Easement"). The Access Easement shall include the right to improve existing roads and lanes, shall run with the Property, and shall inure to the benefit of and be binding upon Owner and Lessee and their respective transferees, successors and assigns, and all persons claiming under them. The Access Easement shall expire upon termination or expiration of this Agreement.

8.7 Construction Easement. Owner grants Lessee an easement in, over and across the Property ("Construction Easement") which may be utilized on a temporary basis for access, construction laydown or other purposes to facilitate the construction, maintenance or repair of Solar Facilities (whether located on the Property or nearby properties) during any time that Lessee is conducting such work. Lessee shall have the right, at its sole expense, to (a) remove any existing trees, shrubs, vegetation, structures or improvements located on a Project Site that might

interfere with construction or operation of Solar Facilities; and (b) change the grade of any part of the Property used as a Project Site, to the extent necessary to construct Solar Facilities as determined by Lessee. Lessee will use commercially reasonable efforts to minimize surface disturbance on the portion of the Property lying outside of the Project Site during construction. Lessee will comply with Section 7.6 with respect to damage caused by Lessee's use of the Construction Easement. The Construction Easement shall run with the Property, and shall inure to the benefit of and be binding upon Owner and Lessee and their respective transferees, successors and assigns, and all persons claiming under them. The Construction Easement shall expire upon the termination or expiration of this Agreement.

8.8 Mineral Development. This Agreement is subject to any and all existing mineral reservations and mineral leases granted by Owner or its predecessors-in-interest, which cover some or all of the Property as of the Effective Date. In order to permit the simultaneous use of the Property for Solar Energy Purposes and mineral resource development, Owner and Lessee agree to work cooperatively together to ensure that Owner can benefit from the exploitation of the mineral resources on or under the Property and Lessee can undertake development of Solar Energy projects with reasonable certainty that the exploitation of the mineral resources will not interfere with or adversely affect the Solar Energy projects or unobstructed access to sunlight on the Property. Thus, prior to the issuance of any new mineral lease or to a sale or exchange of minerals under the Property during the Term, Owner will advise and consult with Lessee regarding each such proposed transaction and include in any new lease or sale or exchange documentation, as applicable, a requirement that the buyer, lessee or other party to the minerals transaction waive and release during the Term, any and all rights to enter upon, utilize or disturb the surface area of the Property, with the exception of the Excluded Area, for any reason whatsoever, including, without limitation, the exploration, drilling or mining of such oil, gas or other minerals; provided, however, that foregoing waiver and release shall not preclude the exploration, mining, development, extraction and production of oil, gas, sulphur or other minerals from or under the Property (or rights-of-way, lakebeds, waterways or other strips adjacent or contiguous to the Property) by means of directional or horizontal drilling or utilized or pooled operations with the well and all surface equipment located either on the Excluded Area or off of the Property, without, in either case, any well bore or mine shaft penetrating any depth beneath the Property above the subsurface depth of five hundred feet (500') feet nor shall such well bore or mine shaft impair the subjacent support of the Property or of any improvements now or hereafter situated on the Property. Notwithstanding the foregoing, vertical drilling within the Excluded Area is not prohibited under this Agreement, so long as all other requirements of this Section 8.8 are met. In addition, upon written request from Lessee, Owner shall (i) cooperate with Lessee in requesting a separate nondisturbance agreement from any existing mineral interest lessee or owner on terms reasonably acceptable to Lessee, and (ii) enforce any rights Owner may have against any such mineral interest lessee or owner in order to provide reasonable accommodation for Lessee to exercise its rights under this Agreement.

8.9 Hazardous Materials.

(a) Owner shall not violate, and shall indemnify Lessee against any such violation of, any Environmental Laws in, on or under the Property. Owner shall promptly notify

Lessee of any such violation. This provision shall survive expiration or termination of this Agreement.

(b) To the best of Owner's knowledge, the Property, including, but not limited to, all improvements, facilities, structures and equipment thereon, and the soil and groundwater thereunder, is not in material violation of any Environmental Laws. No release or threatened release of any Hazardous Material has occurred, or is occurring, at, on, under, from or to the Property, and no Hazardous Material is present in, on, under or about, or migrating to or from the Property that could give rise to a claim under Environmental Laws. Neither Owner nor, to the best of Owner's knowledge, any third party has used, generated, manufactured, produced, stored or disposed of on, under or about the Property, or transported to or from the Property any Hazardous Materials in violation of Environmental Laws or in such a manner as to require investigation or remediation of such Hazardous Materials. To Owner's knowledge, there are no storage or other tanks or containers, or wells or other improvements, below the surface of the Property, nor have any storage or other tanks or containers, or wells or other improvements ever previously been located below the surface of the Property. Owner shall be responsible for and/or shall indemnify Lessee for any liability arising out of a violation of any Environmental Laws in, on or under the Property that may exist (whether known or unknown) as of the Effective Date.

8.10 Non-exclusive Grant of Rights. Owner hereby grants Lessee a non-exclusive right, privilege, license and easement covering all of the following:

(a) Any and all easements, rights-of-way, rights of entry, hereditaments, privileges and appurtenances benefiting, belonging to or inuring to the benefit of Owner and pertaining to the Property.

(b) Any and all right, title and interest of Owner in and to any land in the bed of any street, road, avenue or alley (open, proposed or closed) in front of or adjoining the Property and any and all right, title and interest of Owner, in and to any rights-of-way, rights of ingress or egress, or other interests in, on, or to any land, highway, street, road, avenue or alley (open, proposed or closed) in, on, or across, in front of, abutting, or adjoining the Property.

(c) Any and all right, title and interest of Owner, in and to any strips or gores of land adjacent or contiguous to the Property, whether those lands are owned or claimed by deed, limitations, or otherwise.

8.11 Hunting. For safety reasons, hunting is prohibited on the Property after the Start of Construction.

9. Assignment.

9.1 Assignments by Lessee. Lessee and any Assignee (as hereinafter defined) shall have the right, without obtaining the consent of Owner, to do any of the following with respect to all or any portion of its right, title and/or interest in and to this Agreement, the Lease, the Property, any Project Site and/or any Solar Facilities: (a) grant subleases, separate easements, co-easements, subeasements, licenses or similar rights (however denominated) to one or more Assignees, (b) collaterally assign, mortgage, encumber, pledge or transfer all or any portion of its right, title or interest therein to one or more parties providing financing to Lessee, and/or (c) sell,

lease, assign, transfer or otherwise convey all or any portion of its right, title or interest therein to one or more Assignees. Lessee or an Assignee that has assigned an interest hereunder will give notice of such assignment (including the address of the assignee thereof for notice purposes) to Owner, *provided* that failure to give such notice shall not constitute a default under this Agreement but rather shall only have the effect of not binding Owner with respect to such assignment until such notice shall have been given. For purposes of this paragraph, an "Assignee" is any of the following: (i) any one or more parties involved in the development, financing or refinancing of any Solar Facilities, including, without limitation, any lender to or investor in, or purchaser or lessee of, Solar Facilities; (ii) any one or more parties involved in financing or refinancing the development of any Solar Facilities, or any purchaser or owner of Solar Facilities; (iii) a corporation, partnership or limited liability company now existing or hereafter organized (including Lessee) in which Lessee or any of its owners, or any affiliate or partner of either, owns (directly or indirectly) a controlling interest at the time of assignment; (iv) a partnership now existing or hereafter organized, a general partner of which is such a corporation, partnership or limited liability company; or (v) a corporation, partnership, limited liability company, or other entity that acquires all or substantially all of Lessee's business, assets or capital stock, directly or indirectly, by purchase, merger, consolidation or other means.

9.2 Assignee Obligations. No Assignee shall have any obligation or liability under this Agreement prior to the time that such Assignee takes actual physical possession of the Property. An Assignee shall be liable to perform obligations under this Agreement only for and during the period such Assignee is in possession of the Property. Any assignment permitted hereunder shall release the assignor from assigned liabilities of Lessee under this Agreement when the Assignee agrees in writing to perform the assigned obligations, if such Assignee either (a) is at least as creditworthy as the assignor at the time of the assignment, or (b) owns or holds, or will own or hold, a majority or controlling interest, directly or indirectly, in any Solar Facilities including Solar Generating Equipment located on the Property.

9.3 Right to Cure Defaults. To prevent termination of this Agreement or any partial interest therein, Lessee (or any Assignee) shall have the right, but not the obligation, at any time prior to the termination, to pay any or all amounts due hereunder, and to do any other act or thing required of any Assignee or Lessee hereunder or necessary to prevent the termination of this Agreement or any partial interest therein. A default of the holder of a partial interest in this Agreement will not be considered a default by the holder of any other partial interest in this Agreement, and the non-defaulting holder's partial interest shall not be disturbed. If Lessee or an Assignee holds an interest in less than all of this Agreement, the Property or the Solar Facilities, any default under this Agreement shall be deemed remedied, as to Lessee's or such Assignee's partial interest, and Owner shall not disturb such partial interest, if Lessee or the Assignee, as the case may be, shall have cured its *pro rata* portion of the default by paying the fees attributable to the Solar Facilities or the Project Site in which Lessee or the Assignee, as the case may be, holds an interest.

9.4 Separability. Lessee may use the Property in connection with one or more Project Sites of associated Solar Facilities constructed, installed and/or operated on the Property and/or on other lands in the general vicinity of the Property by or on behalf of Lessee or an affiliate or Assignee(s) thereof as an integrated energy generating and delivery system. If Lessee elects to use the Property for two or more Project Sites, then Owner shall, within 20 days after request from

Lessee, and without demanding any additional consideration, bifurcate this Agreement and the Lease by entering into and delivering to Lessee two or more independent new lease agreements (which shall supersede and replace this Agreement) that provide Lessee with separate leasehold estates in different portions of the Property, as designated by Lessee. Each such new lease agreement shall: (a) specify the portion(s) of the Property to be covered thereby, (b) contain the same terms and conditions as this Agreement (except for any requirements that have been fulfilled by Lessee or any other person or entity prior to the execution of such new agreements, and except for any modifications that may be required to ensure that each Party's combined obligations under such new agreements do not exceed such Party's obligations under this Agreement) and be in a form reasonably acceptable to Lessee; (c) be for a term equal to the remaining Term of this Agreement; (d) contain a grant of access, transmission, communications and other easements for the benefit of each of the bifurcated estates, covering such portion or portions of the Property outside of the benefited estate in each case as Lessee may designate; (e) require payment to Owner of only an acreage-proportionate part of each payment due under the Fee Schedule (which under all such new agreements shall in the aggregate equal the amounts that are due under the Fee Schedule); (f) provide for payments thereafter due under the Fee Schedule and elsewhere to be paid with respect to the Solar Facilities actually installed under such new lease for the portion of the Property subject to such lease; and (g) enjoy the same priority as this Agreement over any lien, encumbrance or other interest against the Property. Further, notwithstanding any other provision of this Agreement, (i) in the event of any uncured default under any such new lease agreement, such event of default shall not affect, or cause a termination of, any other such new lease agreement or any rights or interests granted under any other such new lease agreement and (ii) in the event of a termination of any such new lease agreement, the remaining new lease agreements and all rights granted therein, including all easements affecting any portions of the Property (regardless of whether such portions of the Property are part of or outside the benefited estate), shall remain in full force and effect without any further compensation due Owner.

9.5 Transfers by Owner. Owner shall have full right and authority to sell, convey, mortgage, or transfer to one or more transferees, all of Owner's right, title and interest in and to the Property, but any such sale or other transfer shall be subject to the Construction Easement, the Transmission Easement, the Access Easement and this Agreement.

10. Transmission.

10.1 Grant of Transmission Easement. For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Owner, Owner hereby grants to Lessee an exclusive easement ("Transmission Easement") in, on, along and under the Property for the right to erect, construct, reconstruct, replace, relocate, remove, maintain and use the following from time to time in connection with Solar Energy Purposes, whether carried out on the Property or elsewhere: (a) a line or lines of poles or towers, together with such wires and cables as from time to time are suspended therefrom, and/or underground wires and cables, for the transmission of electrical energy and/or for communication purposes, and all necessary and proper foundations, footings, electric inverters, crossarms and other appliances and fixtures for use in connection with said poles, towers, wires and cables on, along and in the Property, including beneath the bed of any road located on the Property; and (b) one or more substations or interconnection or switching facilities from which Lessee or others that generate energy may interconnect to a utility transmission system or the transmission system of another purchaser of electrical energy, together

with the appropriate rights-of-way, on, along and in the Property. Said poles, towers, wires, cables, substations, facilities and rights-of-way are herein collectively called the "Transmission Facilities."

10.2 Access. The Transmission Easement also includes the right of ingress to and egress from the Transmission Facilities (whether located on the Property or elsewhere), over and along the Property by means of roads and lanes thereon if existing or otherwise by such route or routes as Lessee may construct from time to time.

10.3 Assignment in Connection with Transmission Lines. In connection with the exercise of the rights of Lessee hereunder to utilize the Property for Solar Energy Purposes, Lessee, in its sole discretion and without further act or consent of Owner, shall have the right to grant to any utility or other duly authorized entity the right to construct, operate and maintain electric transmission, distribution, interconnection or switching facilities on the Property pursuant to any standard form of easement or other agreement used or proposed by the utility or other entity, including, without limitation, a perpetual easement. Alternatively, at Lessee's election, Owner agrees either to (a) grant such rights directly to such utility or other entity, or (b) convey title to such portion of the Property to the utility or other entity by deed or other conveyance. In the event Lessee exercises the foregoing rights or election, and in lieu of payment to Owner by the utility or other entity, Lessee will make a one-time payment to Owner of the amount set forth in the Fee Schedule.

10.4 Term; Assignment. The term of the Transmission Easement shall expire upon expiration or termination of this Agreement, except that if Lessee grants a utility or other duly authorized entity any rights pursuant to Section 10.3, then the term of the Transmission Easement shall be perpetual. Lessee (and any Assignee) shall have the right, without need for Owner's consent, to assign or convey all or any portion of the Transmission Easement to an Assignee on an exclusive or nonexclusive basis. The Transmission Easement shall run with the Property and inure to the benefit of and be binding upon Owner and Lessee and their respective transferees, successors and assigns, and all persons claiming under them.

11. Mortgagee Protection. In the event that any mortgage, deed of trust or other security interest in all or any portion of Lessee's interest in this Agreement, the Lease, the Property, a Project Site or in any Solar Facilities is entered into by Lessee (a "Leasehold Mortgage"), then any person who is the mortgagee of a Leasehold Mortgage (a "Leasehold Mortgagee") 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 11. 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.

11.1 Leasehold Mortgagee's Right to Possession, Right to Acquire and Right to Assign. A Leasehold Mortgagee shall have the absolute right to: (a) assign its security interest; (b) enforce its lien and acquire title to the leasehold and/or easement estate by any lawful means; (c) take possession of and operate the Solar Facilities 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) acquire the leasehold and/or easement estate by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer the leasehold and/or easement estate to a third party.

Owner's consent shall not be required for the acquisition of the encumbered leasehold and/or easement estate by a third party who acquires the same by foreclosure or assignment in lieu of foreclosure.

11.2 *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 of which Owner has notice 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 written notice of default, the following provisions shall apply:

(a) A "monetary default" means failure to pay (i) when due any rent or other monetary obligation of Lessee under this Agreement other than real property taxes, or (ii) prior to delinquency any real property taxes (unless Owner did not deliver the applicable tax bill to Lessee at least 10 business days prior to the applicable tax delinquency date). Any other event of default is a "non-monetary default."

(b) The Leasehold Mortgagee shall have the same period after delivery of notice of default to remedy the default, or cause the same to be remedied, as is given to Lessee after delivery of notice of default, plus, in each instance, the following additional time periods: (i) 60 days, for a total of 120 days after delivery of the notice of default in the event of any monetary default; and (ii) 60 days, for a total of 120 days after delivery of the notice of default in the event of any non-monetary default; *provided* that such 120-day period shall be extended for a non-monetary default by the time reasonably required to complete such cure, including the time required for the Leasehold Mortgagee to perfect its right to cure such non-monetary default by obtaining possession of Lessee's interest in the Property (including possession by a receiver) or by instituting foreclosure proceedings, provided the Leasehold Mortgagee acts with reasonable and continuous diligence. The Leasehold Mortgagee shall have the absolute right to substitute itself for the 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 terminate this Agreement prior to expiration of the cure periods available to a Leasehold Mortgagee as set forth above. If a Leasehold Mortgagee's delay in curing a non-monetary default causes damages to Owner, Owner shall have the right to reimbursement for all actual costs thereof.

(c) 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 the Rent and all other monetary charges payable by Lessee hereunder which have accrued and are unpaid at the commencement of said period and those which accrue thereafter during said period. Following acquisition of Lessee's leasehold or easement 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 or easement 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.

(d) Any Leasehold Mortgagee or other party who acquires Lessee's leasehold or easement interest pursuant to foreclosure or assignment in lieu of foreclosure shall be liable to perform the obligations imposed on such party by this Agreement so long as such Leasehold Mortgagee or other party has ownership of the leasehold and/or easement estate or possession of the Property.

(e) Neither the bankruptcy nor the insolvency of Lessee shall be grounds for terminating this Agreement or any interest therein as long as all material obligations of Lessee under the terms of this Agreement are performed by Lessee or a Leasehold Mortgagee in accordance with the terms of this Agreement.

(f) 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.

11.3 New Lease or Easement to Mortgagee. If this Agreement or a partial interest herein terminates because of Lessee's default or if any leasehold and/or easement estate is foreclosed, or if this Agreement or a partial interest herein is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, Owner shall, upon written request from any Leasehold Mortgagee within 90 days after such event, enter into a new agreement ("New Lease") for the Property or portion thereof, on the following terms and conditions:

(a) The terms of the New Lease shall commence on the date of termination, foreclosure, rejection or disaffirmance and shall continue for the remainder of the term of this Agreement, subject to the same terms and conditions set forth in this Agreement as are applicable to such interest, as if this Agreement had not been terminated.

(b) The New Lease shall be executed within 30 days after receipt by Owner of written notice of the Leasehold Mortgagee's election to enter into a New Lease, provided such Leasehold Mortgagee: (i) pays to Owner all rent and other monetary charges payable by Lessee under the terms of this Agreement up to the date of execution of the New Lease, as if this Agreement or applicable interest therein had not been terminated, foreclosed, rejected or disaffirmed; (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 within 120 days of the termination, foreclosure, rejection, or disaffirmance; and (iii) agrees in writing to perform, or cause to be performed within a reasonable period of time, all non-monetary obligations which have not been performed by Lessee and which should have been performed under this Agreement or the partial interest therein up to the date of commencement of the New Lease, except those obligations which constitute non-monetary defaults not susceptible to cure. Any New Lease granted to the Leasehold Mortgagee shall enjoy the same priority as this Agreement over any lien, encumbrances or other interest created by Owner.

(c) At the option of the Leasehold Mortgagee, the New Lease may be executed by a third party designated by such Leasehold Mortgagee, without the Leasehold Mortgagee assuming the burdens and obligations of Lessee thereunder.

(d) The provisions of this Section 11.3 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 11.3 were a separate and independent contract made by Owner, Lessee and such Leasehold Mortgagee, and, from the date of such termination, rejection or disaffirmance of this Agreement to the date of execution and delivery of such New Lease, 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 as set forth herein are complied with.

11.4 Leasehold Mortgagee's Consent to Amendment, Termination or Surrender. Notwithstanding any provision of this Agreement to the contrary, the Parties agree that so long as there exists a Leasehold Mortgage, this Agreement shall not be modified or amended with respect to the interest in this Agreement encumbered by such Leasehold Mortgage and Owner shall not accept a surrender of the Property or any part thereof or a cancellation, termination or release of this Agreement from Lessee prior to expiration of the term without the prior written consent of any Leasehold Mortgagee. This provision is for the express benefit of and shall be enforceable by such Leasehold Mortgagee.

11.5 Estoppel Certificates, Etc. Owner shall execute such (a) estoppel certificates (certifying as to such matters as Lessee may reasonably request, including, without limitation, that no default then exists under this Agreement, if such be the case); (b) consents to assignment, (c) non-disturbance agreements (respecting other property as to which Owner or its affiliates may have lease, use or other rights), and (d) documents reasonably required by a title insurance company, in each case as Lessee or any Assignee may reasonably request from time to time. Owner shall cooperate in amending this Agreement from time to time to include any provision that may be reasonably requested by Lessee or any Assignee for the purpose of implementing the terms and conditions contained in this Agreement or of preserving a Leasehold Mortgagee's security interest, at no out-of-pocket cost to Owner. Notwithstanding any provision of this Agreement, the Parties agree that this Agreement shall not be modified or amended prior to expiration of the Term in a manner which would materially and adversely affect any Assignee without such Assignee's prior written consent. The previous sentence is for the express benefit of, and shall be enforceable by, each Assignee.

12. Default and Termination.

12.1 Lessee's Right to Terminate. Lessee shall have the right to terminate this Agreement as to all or any part of the Property at any time and without cause, effective upon written notice to Owner from Lessee. If Lessee terminates this Agreement as to the entire Property prior to the Start of Construction, Lessee will provide Owner with a summary of any solar measurements on the Property.

12.2 Owner's Right to Terminate. Except as qualified by Section 9 or 11, Owner shall have the right to terminate this Agreement if (a) a material default in the performance of

Lessee's obligations under this Agreement shall have occurred and remains uncured, (b) Owner notifies Lessee in writing of the default, which notice sets forth in reasonable detail the facts pertaining to the default and specifies the method of cure, (c) the default shall not have been remedied within 60 days after Lessee receive the written notice, or, if cure of any non-monetary default will take longer than 60 days, Lessee has not begun diligently to undertake the cure within 60 days and thereafter prosecutes the cure to completion unless unable to do so due to Force Majeure (as defined in Section 13.1).

12.3 Effect of Termination. Upon termination or expiration of this Agreement, Lessee shall, as soon as practicable thereafter, remove all Solar Facilities from the surface of the Property down to a depth of three feet. All Property disturbed by Lessee shall be restored to a condition reasonably similar to its condition prior to Start of Construction, except that Lessee shall not be required to remove any Transmission Facilities owned by a public utility, or any roads, or restore the original grade of any land or any cleared timber, or plant any trees, crops or other plants. Reclamation shall include, as reasonably required, leveling, terracing, mulching and other reasonably necessary steps to prevent soil erosion. Reclamation shall also include environmental remediation in the event that Lessee contaminates the Property in violation of Section 7.7 hereof. If Lessee fails to remove such Solar Facilities and restore the Property within 18 months of termination or expiration, 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.

12.4 Security for Removal. On such date as may be required by county or state regulations, but not later than 15 years after the Commercial Operation Date, Lessee shall provide security ("Removal Bond") to cover the estimated removal costs associated with the Solar Facilities then on the Property pursuant to Section 12.3. The Removal Bond shall be, at Lessee's option, either a removal bond from an individual or entity engaged in the construction business and reasonably acceptable to the Parties, a surety bond from an insurance company with a Best's Rating of not less than A, a corporate guarantee (from a financially responsible entity that is reasonably acceptable to the Parties and whose credit rating is investment grade), a letter of credit issued by a financial institution reasonably acceptable to the Parties, a cash deposit, or other security reasonably acceptable to both Parties. The amount of the Removal Bond shall be based on a written estimate from a reputable construction company selected by Lessee and reasonably acceptable to Owner, which sets forth such company's estimate of the cost of removal minus estimated salvage value. In the event the county or other governmental authority requires Lessee to provide security for removal or decommissioning of Solar Facilities on the Property, Lessee may provide a single Removal Bond that benefits Owner and the governmental authority, all in a manner consistent with the requirements of the governmental authority, and the governmental authority shall have access to the Property pursuant to reasonable notice to effect or complete the required removal or decommissioning. In order to maximize the economies of scale associated with the removal of a Solar Energy project, if any, located on the property of multiple landowners, Lessee may elect to have the net removal costs of the Solar Facilities on the Property calculated on the basis of the entire Solar Energy project and not on such costs solely for the Property, and the Removal Bond may be provided on that basis. In addition, to the extent the removal and restoration requirements set forth in Section 12.3 and this Section 12.4 conflict with the requirements of any State or local permitting entity for construction and operation of the solar energy project being developed by Lessee (the "Permitting Requirements"), such Permitting

Requirements shall prevail and control over the removal and restoration requirements in this Agreement and Lessee shall be obligated to perform such Permitting Requirements instead of any conflicting requirements hereunder.

13. Miscellaneous.

13.1 Force Majeure. If performance of this Agreement or of any obligation hereunder is prevented, or materially hindered by reason of an event of Force Majeure (defined below), the affected Party, upon giving notice to the other Party, shall be excused from such performance to the extent of and for the duration of such prevention or material hindrance. The affected Party shall use reasonable efforts to avoid or remove such causes of nonperformance and shall continue performance hereunder whenever such causes are removed. "Force Majeure" means fire, earthquake, flood, drought, storm, fire, tornado, lightning, windstorm, unusually inclement weather or other natural catastrophe; acts of God, casualty or accident; strikes or labor disputes; war, civil strife, sabotage, vandalism, or other violence; any law, order, proclamation, regulation, ordinance, action, demand, approval, delay, permit or requirement of any government agency or utility; or any other act or condition beyond the reasonable control of the Party claiming Force Majeure.

13.2 Confidentiality. Owner shall maintain in the strictest confidence, for the sole benefit of Lessee, all information pertaining to the financial terms of or payments under this Agreement, Lessee's site or product design, methods of operation, methods of construction, power production or availability of the Solar Facilities, and the like, whether disclosed by Lessee or discovered by Owner, unless such information either (a) is in the public domain by reason of prior publication through no act or omission of Owner or its employees or agents, or (b) was already known to Owner at the time of disclosure and which Owner is free to use or disclose without breach of any obligation to any person or entity, or (c) is required to be disclosed by a court or governmental agency; *provided however*, that Owner may disclose the financial terms of this Agreement to Owner's family members; consultants, accountants, lawyers, or other professionals who receive such information under an obligation of confidentiality; prospective buyers of the Property; or lenders that may have a mortgage on the Property. Lessee shall maintain in confidence, and shall not publish or otherwise disclose, information pertaining to the financial terms of this Agreement except as necessary in connection with Lessee's development, construction, operations or financing activities or in connection with any assignment. The provisions of this Section 13.2 shall survive the termination or expiration of this Agreement.

13.3 Successors and Assigns. This Agreement and any right, title or interest hereunder 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 9, any Assignee, and their respective heirs, transferees, successors and assigns, and all persons claiming under them. References to Lessee in this Agreement shall be deemed to include Assignees that hold a direct ownership interest in this Agreement as to all or a portion of the Property and actually are exercising rights under this Agreement to the extent consistent with such interest. The Parties agree and intend that the provisions of this Agreement shall be covenants running with the land and that they touch and concern the land because they determine how the Parties will use the Property and its resources, including payment for those resources and use of the Property. The Parties further agree and intend that any conveyance, assignment, sale or other transfer of all or a portion of either Party's rights

or interests covered by and permitted under this Agreement shall include and be subject thereto because the provisions of this Agreement are covenants that run with the land. As covenants running with the land, the Parties intend that should either no longer share privity of estate with the other, its rights and obligations in this Agreement pass to the person or entity that shares privity of estate and assumes the role of Owner or Lessee. As a result, except as otherwise provided in Section 9.2 above, any Party who ceases to have privity of estate under this Agreement shall bear no liability or any obligation for the terms hereunder after the date on which privity ends. The privity of contract between the current Parties shall not change this result because the Parties do not intend the use of identifiers like Owner or Lessee to bind those specific Parties upon any transfer, conveyance, assignment, sale or other transfer covered by and permitted under this Agreement.

13.4 Notices. All notices, requests and other communications required or permitted by this Agreement shall be given in writing by personal delivery (confirmed by courier delivery service), or facsimile, receipt confirmed, or first class U.S. mail, postage prepaid, certified, and addressed as follows:

If to Owner:

Joseph D. Ferguson
3335 Rock Creek Rd.
Ottawa, KS 66067

-----Telephone: (785) 418-1783

Email:

Joe.Ferguson@earthlink.net

If to any Assignee:

If to Lessee:

Orion Power Generation, LLC
c/o Orion Renewable Energy Group LLC
155 Grand Avenue, Suite 706
Oakland, CA 94612
Attn: General Counsel
Phone: (510) 267-8921
Fax: (510) 267-8911

At the address indicated in the notice to Owner provided under Section 9.1.

Payments to Owner shall be mailed to Owner's address above and made out to Owner, unless Owner directs Lessee otherwise in writing. For the purpose of notices to be given by Owner, Owner designates the person to whom notices are given hereunder as its primary contact, and Lessee shall be entitled to rely on any notices given by such individual in writing as if given in writing by all of the persons or entities constituting Owner. Any Party may change its address for purposes of this paragraph by giving written notice of such change to the other parties in the manner provided in this paragraph. Any notice provided for herein shall become effective only upon actual receipt by the Party to whom it is given, unless such notice is only mailed by certified mail, in which case it shall be deemed to be received five business days after the date it is mailed.

13.5 Entire Agreement; Amendments. This Agreement constitutes the entire agreement between Owner and Lessee respecting its subject matter. Any agreement, understanding or representation respecting the Property, this Agreement, or any other matter referenced herein not expressly set forth in this Agreement or a subsequent writing signed by both Parties is null and void. This Agreement shall not be modified or amended except in a writing signed by both Parties. No purported modifications or amendments, including without limitation any oral agreement (even

if supported by new consideration), course of conduct or absence of a response to a unilateral communication, shall be binding on either Party.

13.6 Legal Matters. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Kansas. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, they agree that such dispute shall be resolved in the state or federal courts located in Topeka, Kansas. The Parties agree that any rule of construction to the effect that ambiguities are to be resolved in favor of either Party shall not be employed in the interpretation of this Agreement and is hereby waived. **Each Party waives all right to trial by jury and specifically agrees that trial of suits or causes of action arising out of this Agreement shall be to the Court. In no event shall either Party be liable under this Agreement for consequential, punitive, special, incidental or indirect damages.**

13.7 Partial Invalidity. Should any provision of this Agreement be held, in a final and unappealable decision by a court of competent jurisdiction, to be either invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect, unimpaired by the holding. Notwithstanding any other provision of this Agreement, the Parties agree that in no event shall the Term of this Agreement, the Construction Easement, the Transmission Easement or the Access Easement be longer than, respectively, the longest period permitted by applicable law.

13.8 No Partnership. Neither the provisions of this Agreement, nor the provisions of any other agreements referenced herein, nor any acts of the Parties, nor any other circumstances shall be deemed to create a partnership or joint venture between the Parties with respect to the Property or the Solar Facilities for any purposes whatsoever. Each Party shall, in connection with this Agreement, the Property, or the Solar Facilities, take reasonable steps in dealing with third parties to negate any inference that such partnership or joint venture exists.

13.9 Redacted Version of Lease. As permitted by K.S.A §58-2272, Owner and Lessee agree that this Agreement (without the Fee Schedule) shall be recorded in the real property records of the County where the Property is located ("Real Property Records"). Owner consents to the recordation of the interest of any Leasehold Mortgagee or Assignee of Lessee's interest in this Agreement. In the event of any inaccuracy in Exhibit A, Lessee may correct such inaccuracy in order to accomplish the intent of Lessee and Owner.

13.10 Tax and Renewable Energy Credits. If under applicable law, the holder of a lease becomes ineligible for any tax credit, renewable energy credit, environmental credit or any other benefit or incentive for renewable or low carbon energy established by any local, state or federal government, then, at Lessee's option, Owner and Lessee shall exercise good faith and negotiate an amendment to this Agreement or replace it with a different instrument so as to convert Lessee's interest in the Property to a substantially similar interest that makes Lessee eligible for such credit, benefit or incentive.

13.11 Further Assurances. From time to time at and after the execution of this Agreement, each Party, at its expense and without further consideration, shall execute, acknowledge and deliver to the other Party such instruments and documents, and take such other actions, in addition to the instruments, documents and actions specifically provided for herein, as

such other Party may reasonably request in order to effectuate the provisions of this Agreement, consummate the transactions contemplated herein, or confirm or perfect any right, restriction or interest to be created or transferred hereunder or pursuant to these transactions.

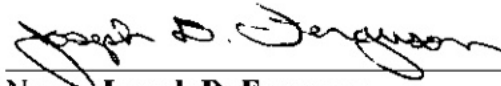
13.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which when so executed shall be deemed an original, and all of which taken together shall constitute one and the same instrument.

[Signatures to follow on next page.]

.....

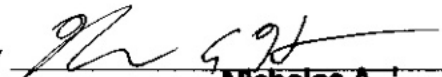
IN WITNESS WHEREOF, Owner and Lessee, individually or through duly authorized representatives, hereby execute this Agreement and certify that they have read, understand and agree to the terms and conditions of this Agreement.

"Owner"



Name: **Joseph D. Ferguson**

**Orion Power Generation, LLC,
a Delaware limited liability company**

By 

Name: **Nicholas A.**

Title: **Vice Pres.**

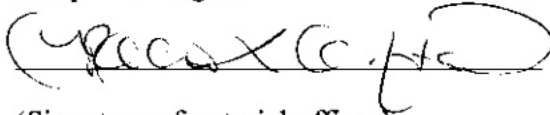
**Nicholas A. Hiza
Vice President**

State of Kansas

(County) of Franklin

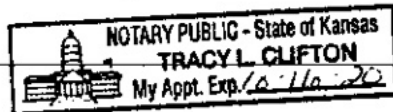
This instrument was acknowledged before me on August 20, 2019 by

Joseph D. Ferguson.



(Signature of notarial officer)

(Seal, if any)



Title (and Rank)

[My appointment expires: 10-16-20]

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

STATE OF CALIFORNIA

§

COUNTY OF ALAMEDA

§

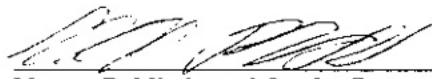
§

On August 28, 2019, before me, Max Rosen, a Notary Public, personally appeared Nicholas A. Hiza, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

[Notary Stamp/Seal]



Notary Public in and for the State of California

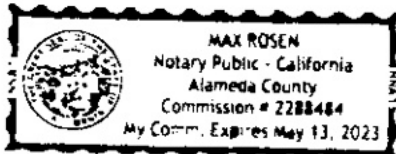


EXHIBIT A

Legal Description of the Property

ALL THAT CERTAIN real estate lying and being situated in Franklin County, Kansas, being more particularly bounded and described as follows:

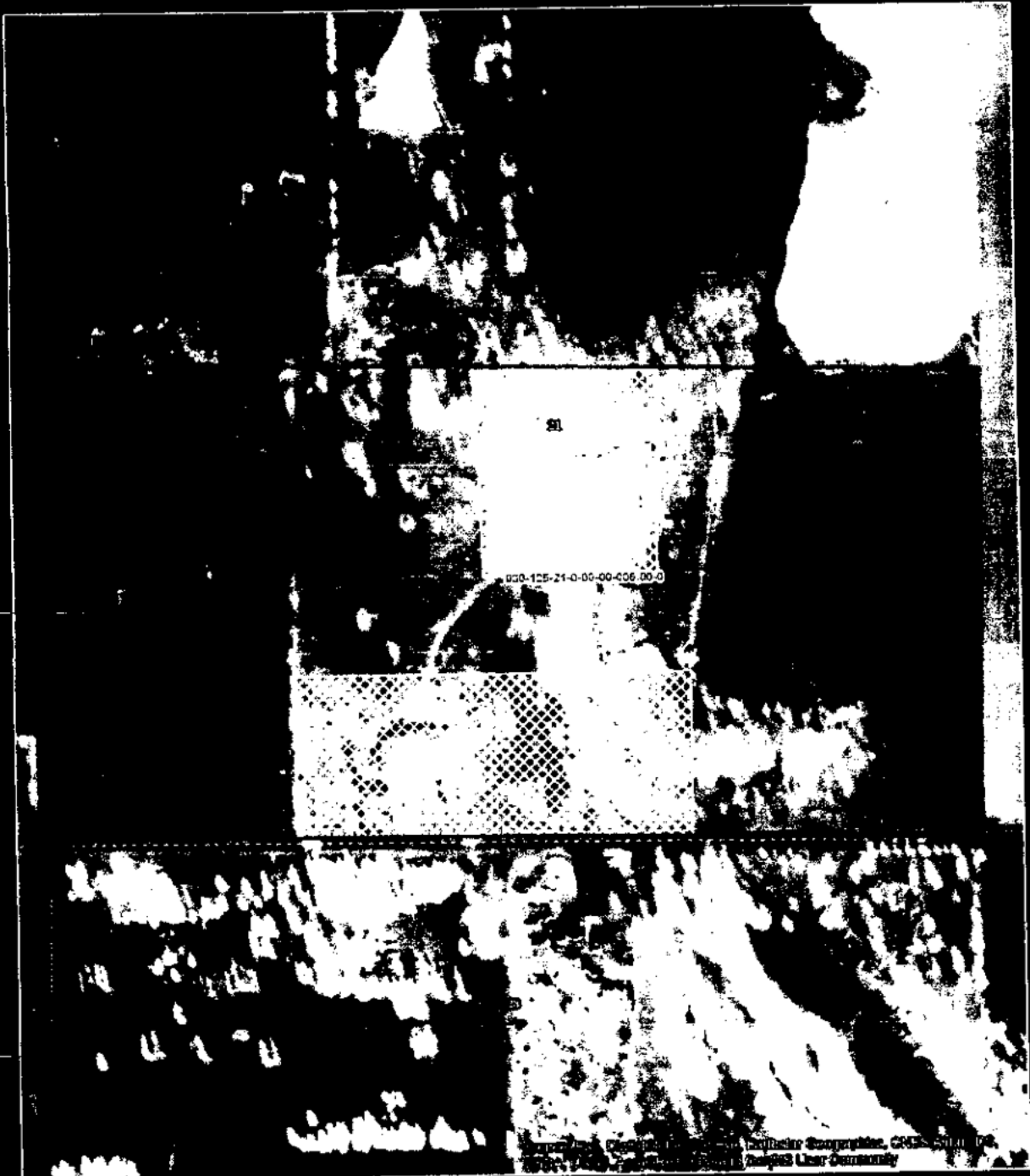
Real Property Tax Parcel No. 030-125-21-0-00-00-005.00-0 (78.55 acres)

The South Half of the Southwest Quarter of Section 21, Township 17, Range 20 East of the 6th P.M., in Franklin County, Kansas.

(In the event of any inaccuracies or insufficiencies in the above legal description, Lessee may modify this Exhibit A to correct such inaccuracies or insufficiencies)

EXHIBIT A-1

Map of Property and Excluded Area



NORTH

1 inch = 350 feet

Exhibit A-1 Ferguson; KS-MCSI-003

Property (Approx 78.55 Ac.)

Excluded Area (Approx 18.37 Ac.)

Section

Franklin Co., KS
Confidential

8/5/2019

ORION