


Livermore Area Recreation and Park District

Staff Report

TO: Chair Furst and Board of Directors

FROM: Mathew Fuzie, General Manager 

PREPARED BY: Jeffrey Schneider, Administrative Services Manager

DATE: October 10, 2019

SUBJECT: RLCC Alternative Energy Sources (aka "Solar Energy Project") Agreements

COMMITTEES: Project Approved by the Board at its September 20, 2018 meeting

RECOMMENDATION: That the Board of Directors adopt Resolution No. ____, approving the three Draft Agreements that are attached to this report in relation to the District's plans to install a solar voltaic system atop a newly constructed covered parking structure at the Robert Livermore Community Center's Loyola parking lot. In approving the attached agreements, the Board is asked to authorize the General Manager to execute them, provided there are no substantial revisions to them, as staff completes efforts to finalize these agreements with the parties related to them.

AGREEMENTS ATTACHED: Three draft agreements are attached to this report:

- A. Power Purchasing Agreement (PPA), between LARPD and SSI DevCo, LLC
 - B. Amendment to LARPD's Lease with the City of Livermore
 - C. Sub-lease agreement between LARPD and SSI DevCo
- A. **Power Purchasing Agreement**, to be executed with the provider, SSI DevCo, LLC, who will build and own a covered parking structure that will be located in the existing RLCC-Loyola parking area, deploy and maintain a solar voltaic system atop the parking structure, and set energy prices that will be fixed at \$0.165 per kilowatt hour (kWh) for a 20 year term, with an option to extend the agreement for 5 more years at the same \$0.165 rate. Also contained in this agreement are options to purchase the solar equipment, at pre-set prices, at various points in time. There will be NO capital outlay required of the District for this project, nor on-going costs to maintain the structure and solar voltaic system, unless the District opts to purchase the system in the future.
- a. Note: once the project is underway, the District will establish an "interconnect" agreement with PG&E that will allow for the sale to PG&E of any unused energy produced by the District's system at prices to be negotiated (but at a fraction of the District's cost to acquire them).

- b. Current electricity pricing, and the likelihood of on-going price increases (recent experience has been at ~5% per year prior to PG&E's recent financial challenges), mean the District's contractually fixed prices from SSI can be confidently predicted to be well below "market" energy prices during the life of the PPA.
 - i. Current utilization, following the nearly complete Energy Conservation Measures (ECM) Project, place annual usage at approximately 771,000 kWh, which will vary depending on weather conditions. Even assuming no change in utility market prices, at this usage level, the proposed solar PPA will result in annual energy savings of \$58k per year, on top of what has been realized from the nearly completed ECM project, bringing the minimum annual savings from both projects to a total of \$195k/yr., at today's energy prices, which will only grow as market prices for energy continue to rise.

Table 1, below, illustrates energy consumption and prices over time at the RLCC and provides an annual trend of prices and consumption.

TABLE 1 – Electricity Consumption and Prices at the RLCC

RLCC Total Electricity Consumption					
Fiscal Year		Total Energy Use (kWh/mo)	Total Cost (\$/yr)	Avg Energy Market Rate (\$/kWh)	Annual Increase in \$ Rate
FY16	actual	1,332,478	\$ 232,641	\$0.175	
FY17	actual	1,363,393	\$ 251,637	\$0.185	106%
FY18	actual	1,333,384	\$ 256,398	\$0.192	104%
FY19	actual	1,139,832	\$ 238,120	\$0.209	109%
FY20	forecast	771,192	\$ 186,195	\$0.241	116%

Actual Savings - ECM (based on volume reductions): 562,192 \$ 135,735
*< usage reduction of 562,192/yr * avg market energy rate of \$0.241 >*

Solar Savings - FY20 est IF in place entire year 771,192 \$ 58,949
< post-ECM usage of 771,192/yr (mkt rate \$0.241- contractual rate \$.165) >*

- ii. Qualitative benefits:
 1. Solar Carports in Loyola parking lot will provide sun/rain protection for staff and the public.
 2. Combined with the ECM effort, the deployment of solar technology gets the RLCC to a Zero Net Energy status.
- iii. An outline of the players in the deployment of LARPD's Solar deployment:
 1. Standard Solar / SSI DevCo, LLC: Standard Solar is a US-based, wholly owned subsidiary of Canadian-based Energir, an \$8-\$9Billion dollar entity. Standard Solar, through its project entity, SSI DevCo, LLC, will coordinate project financing, engineer the solar solution, and construct and maintain it through either its own operating and maintenance arm or through a contractor. Per usual practice in the Solar, Construction, and Real Estate industries, Standard Solar created

SSI DevCo, which is a separate legal entity that will manage, own, and operate the “assets” of this project, including energy credits and other tax incentives, the carport and solar equipment, etc...;

2. GoSolar: will partner with SSI DevCo to build the carport and install the solar voltaic system, including connectivity to the LARPD utility point of presence at the RLCC, and then turn over the “asset” to SSI upon project go-live. GoSolar will project manage the construction phase of this effort and may be selected by SSI to operate and maintain the carport/solar voltaic system, but SSI may also elect to utilize another provider for post-construction operations.
3. Syserco: in late 2018/early 2019, Syserco worked with LARPD staff to identify Standard Solar as the best of several alternatives in terms of pricing and project terms. As was the case with our ECM project, Syserco will play a role in project managing the solar project, focusing on quality assurance (QA) and quality control (QC) and overall compliance with the project plan, and their fees are embedded in the agreement we’ve proposed with SSI DevCo (e.g. no incremental fees will be charged by Syserco directly to LARPD).

B. Amendment to LARPD’s Lease with the City of Livermore – to be executed with the City of Livermore, this extension is meant to align the term of LARPD’s lease of the land upon which the Robert Livermore Community Center resides with the term of the proposed PPA and Sub-Lease (see below). The proposed lease extension would take us to 2046, an increase of 22 years vs the existing, initial term.

- a. **Note:** the original Lease is dated June 28, 2004 and allows for an initial term of 20 years and two five-year extensions, thus allowing for 30 years through June, 2034. This amendment would extend the initial term to 42 years, thus taking the initial term out to 2046 (safely accommodating the 25 years that are associated with the proposed PPA), and does not make any adjustment to the two five-year renewals, which would take the amended lease through 2056.

C. Sub-lease agreement between LARPD and SSI DevCo, to enable SSI/Standard Solar to access the area required to construct and maintain the covered parking structure that will be located in the existing RLCC-Loyola parking area, and the solar voltaic system that will be housed upon it.

BACKGROUND and CURRENT PROJECT STATUS:

On September 20, 2018, the Board of Directors approved the District's Energy Efficiency Measures project at the Robert Livermore Community Center (RLCC), which consists of two components:

- A. **Energy Conservation Measures (ECMs):** focuses on the reduction of energy use at the RLCC through the replacement of infrastructure that is aging and inefficient with new energy efficient equipment. Project status:
- This project will be completed on time, in October, 2019, and will be within the original project spend amount of \$2,663,000.
 - Energy savings were initially estimated at \$134,000 per year and indications are that we will realize at least this amount in savings, as utility prices continue to grow in relation to PG&E's financial challenges.
 - This project has been funded through a combination of AB1600 funds (\$1,304,000) and General Fund dollars (\$1,359,000), the latter of which will be financed with PG&E's on-bill-financing (OBF) program at 0% interest over 10 years.
 - i. We are presently awaiting the results of an audit of the actual savings realized by the project which will have a direct impact on the amount of OBF funds that will be paid to the District; Our project management firm (Syserco) has submitted its calculations for PG&E's third party auditors to consider and the resulting OBF amount is expected to significantly exceed the initial estimate.
- B. **RLCC Alternative Energy Sources:** to further reduce energy usage at the RLCC through the engineering, building, and installation of a solar voltaic system atop a newly constructed covered parking structure at the RLCC Loyola parking area. Together with the Energy Efficiency Measures, the solar energy technology will allow the District to achieve zero net energy consumption at the RLCC while reducing its greenhouse gas emissions.
- This project will commence upon the execution of the three agreements that are attached to this Staff Report, and will take 6-9 months to complete.

POWER PURCHASE AGREEMENT

By and Between

SSI DevCo, LLC
(“Seller”)

and

Livermore Area Recreation & Park District
(“Purchaser”)

Dated as of _____, 2019

ITEM NO. 5.1 – ATTACHMENT A

**POWER PURCHASE AGREEMENT
(Livermore Project)**

This Power Purchase Agreement (this “Agreement”) is made this ____ day of ____, 2019 (the “Effective Date”), by and between SSI DevCo, LLC, a Delaware limited liability company (the “Seller”), and Livermore Area Recreation & Park District, a California Public Entity (the “Purchaser”). Seller and Purchaser are sometimes referred to herein individually as a “Party” and collectively as the “Parties”.

WITNESSETH:

WHEREAS, Seller desires to construct, own and operate a solar energy system with a total aggregate nameplate capacity rated at approximately 400 kW DC with cumulative expected first year energy output of approximately 650,000 kWh, with sizing and production to be confirmed and finalized upon completion of Seller’s due diligence (as further defined in Article I of this Agreement, the “System”) upon certain real property located at 4444 East Ave., Livermore, CA 94550 (the “Site”);

WHEREAS, Purchaser currently leases the Site from the City of Livermore, California (the “City”);

WHEREAS, Seller has entered into a Sublease Agreement, dated as of _____, 2019, a true and correct copy of which is attached hereto as Exhibit A (the “Sublease Agreement”); and

WHEREAS, Seller desires to sell and deliver to Purchaser, and Purchaser desires to purchase and receive from Seller, all electricity that may be generated by the System for the term of this Agreement and otherwise on terms and subject to the conditions provided herein.

NOW THEREFORE, in consideration of the mutual obligations and undertakings herein contained, and intending to be legally bound hereby, the Parties hereto agree as follows:

**ARTICLE I
DEFINITIONS; RULES OF INTERPRETATION**

Unless otherwise required by the context in which any term appears: (i) capitalized terms used in this Agreement shall have the meanings specified in this Article I; (ii) the singular shall include the plural and vice versa; (iii) references to “articles”, “sections”, “schedules”, “annexes”, “appendices” or “exhibits”, if any, shall be to Articles, Sections, Schedules, Annexes, Appendices or Exhibits hereof; (iv) all references to a particular entity shall include a reference to such entity’s successors and permitted assigns; (v) the words “herein,” “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular Article or subparagraph hereof; (vi) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied; (vii) the words “include,” “includes” and “including” mean include,

includes and including “without limitation,” (viii) references to this Agreement shall include a reference to all appendices, annexes, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; and (ix) the masculine shall include the feminine and neuter and vice versa. The Parties have collectively prepared this Agreement, and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

Certain terms in this Agreement shall be defined as follows:

“Affiliate” shall mean, with respect to a person or entity, each person or entity that directly, or indirectly controls, is controlled by or is under common control with, such person or entity. For purposes of this definition, “control” (including, with its correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any such person or entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities or by contract or otherwise.

“Applicable Laws” shall mean, with respect to any Person, all laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, governmental approvals, licenses and permits, directives and requirements of all regulatory and other governmental authorities.

“Bankruptcy Code” shall mean the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.*, as amended.

“Business Day” shall mean each Monday through and including Friday during the Term other than nationally recognized holidays or a day when the Federal Reserve Banks in New York are closed to the public.

“Buyout Value” shall mean the values set forth or described in Exhibit D to this Agreement.

“Claim Notice” shall have the meaning set forth in Section 20.3.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Commercial Operation Date” shall mean the occurrence of Seller certifying to Purchaser that (i) the electric generating equipment and control systems of the System have been completely installed and commissioned, including, but not limited to, the process of starting up, testing and normalization of all operating systems, and (ii) the System has demonstrated that it has generated and delivered Energy Output to the Delivery Point.

“Conditions Precedent” shall have the meaning assigned to such term in Section 6.2(c).

“Curtailment Allotment” shall have the meaning assigned to such term in Section 2.5.

“Delivery Point” shall mean the meter point or points at which Energy Output from the System is delivered to the adjacent substation, as shown on Exhibit A.

“Dispute” shall have the meaning assigned to such term in Section 22.1.

“Effective Date” shall have the meaning set forth in the preamble hereto.

“Energy Output” shall mean the actual kilowatt hours (kWh) of energy generated by the System and delivered or made available for delivery to the Delivery Point in any given period of time. For the avoidance of doubt, Energy Output does not include RECs or Other Credits.

“Energy Payment” shall have the meaning assigned to such term in Section 6.1(c).

“Energy Rate” shall mean the rate for Energy Output set forth in Exhibit B hereto.

“Event of Default” shall have the meaning assigned to such term in Section 12.1.

“Expiration Date” shall have the meaning assigned to such term in Section 6.1.

“Fair Market Value” means the price, as determined by the mutual agreement of the Parties, 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 System and advances in solar technology; provided that installed equipment shall be valued on an installed basis. Costs of removal from a current location shall not be a deduction from the valuation. If unable to agree, the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry to value the System; such valuation to be binding absent fraud or manifest error. The costs of the appraisal shall be borne by the Seller. If the Parties are unable to agree on the selection of an appraiser, each Party shall select an appraiser and such appraisers shall select a third appraiser to value the System.

“Financing Part(ies)” shall mean any and all Persons or successors or assignees thereof lending money or extending credit to Seller or an Affiliate of Seller, or investing equity ((including tax equity) in Seller or an Affiliate of Seller: (i) for the construction, term or permanent financing of the System; (ii) for working capital or other ordinary business requirement of the System (including but not limited to the maintenance, repair, replacement or improvement of the System); (iii) for any development financing, bridge financing, credit enhancement, credit support or interest rate protection in connection with the System; (iv) for the

Seller's operation of the System; or (v) for the purchase of the System and related rights and obligations of Seller.

"Force Majeure" shall have the meaning assigned to such term in Article XVIII.

"Governmental Authority" means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity (including the Federal Energy Regulatory Commission or the California Public Utilities Commission), or any arbitrator with authority to bind a party at law.

"Hazardous Substance" means any chemical, waste or other substance (a) which now or hereafter becomes defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollution," "pollutants," "regulated substances," or words of similar import under any laws pertaining to the environment, health, safety or welfare, (b) which is declared to be hazardous, toxic, or polluting by any Governmental Authority, (c) exposure to which is now or hereafter prohibited, limited or regulated by any Governmental Authority, (d) the storage, use, handling, disposal or release of which is restricted or regulated by any Governmental Authority, or (e) for which remediation or cleanup is required by any Governmental Authority.

"Indemnified Party" shall have the meaning assigned to such term in Section 20.3.

"Indemnifying Party" shall have the meaning assigned to such term in Section 20.3.

"Insolation" shall have the meaning assigned to such term in Section 2.8.

"kW" shall mean a kilowatt DC of capacity.

"kWh" shall mean a kilowatt hour AC of Energy Output.

"Lien" shall mean any lien, mortgage, pledge, security interest, charge or encumbrance of any kind (including any conditional sale or other title retention agreement, any lease in the nature thereof, mechanic's liens and other liens arising under law, and any agreement to give any security interest).

"Meter" shall mean an instrument or instruments meeting applicable Utility electric industry standards used to measure and record the volume in kWh and other required delivery characteristics of the Energy Output delivered hereunder.

"Net Metering Arrangements" shall have the meaning assigned to such term in Section 2.6.

“Non-Delivery Period” shall have the meaning assigned to such term in Section 6.1(c).

“Operator” shall have the meaning assigned to such term in Section 24.6(a).

“Other Credits” shall mean all rights, credits (including Tax Credits), rebates, benefits, reductions, any other reductions or other transferable indicia (other than RECs, which are expressly excluded from this definition): (i) denoting carbon offset credits or indicating generation of a particular quantity of energy from a renewable energy source by a renewable energy facility, offsets and allowances and entitlements of any kind, known or unknown at the time of this Agreement, that are or become available to Seller from the environmental attributes of the System or the generation of the Energy Output, or otherwise from the development or installation of the System or the production, sale, purchase, consumption or use of the Energy Output, including, but not limited to carbon credits, allowances and emission reduction credits and offsets and (ii) related to the capacity of the System, whether arising under federal, state or local law, international treaty, trade association membership or the like, and the right to apply for any such credits.

“Person” shall mean an individual, partnership, corporation, company, business trust, joint stock Purchaser, trust, unincorporated association, joint venture, Governmental Authority, limited liability Purchaser or any other entity of whatever nature.

“Proprietary Information” shall have the meaning assigned to such term in Section 17.3.

“Prudent Operating Practices” shall mean the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the electric generation industry for facilities of similar size, type, and design, that in the exercise of reasonable judgment, in light of the facts known at the time would have been expected to accomplish results consistent with law, regulation, reliability, safety, environmental protection, applicable codes, and standards of economy and expedition. For the avoidance of doubt, Prudent Operating Practice is not intended to be limited to the optimum practice, method and standards to the exclusion of all others, but rather is intended to include acceptable practices, methods and standards generally accepted in the industry.

“Rebate” shall mean any and all incentives under any demand-side management or energy efficiency programs offered by a utility company, a third-party provider or the State of California or other incentive programs offered by the State of California and the right to claim income tax credits under Section 45 or 48 of the Code or any state tax law or income tax deductions under the Internal Revenue Code or any state tax law.

“RECs” shall mean those renewable energy certificates: (i) associated with the Energy Output generated by the System and retained by Seller under this Agreement; and (ii) registered

by Purchaser in the applicable REC tracking system. One REC represents the renewable attributes associated with 1,000 kWh of Energy Output generated by the System.

“Reporting Rights” means the right of Seller to report to any federal, state or local agency, authority or other party, including under Section 1605(b) of the Energy Policy Act of 1992 and provisions of the Energy Policy Act of 2005, or under any present or future domestic, international or foreign emissions trading program, that Seller owns the Rebates, RECs and Other Credits associated with the Energy Output.

“Revised Target COD” shall have the meaning assigned to such term in Section 6.2(d).

“Site” shall have the meaning set forth in the recitals hereto.

“Sublease Agreement” shall have the meaning assigned to such term in the recitals hereto.

“System” means all equipment, facilities and materials, including canopy structures, photovoltaic arrays, DC/AC inverters, wiring, Meters, tools, and any other property now or hereafter installed, owned, operated, or controlled by Seller for the purpose of, or incidental or useful to, maintaining the use of the solar generation system and providing Energy Output to Purchaser at the Delivery Point.

“Target COD” shall have the meaning assigned to such term in Section 6.2(d).

“Tax Credits” means any and all (i) investment tax credits, (ii) production tax credits and (iii) similar tax credits or grants under federal, state or local law relating to the construction, ownership or production of energy from the System.

“Term” shall have the meaning set forth in Article VI.

“Termination Date” shall have the meaning assigned to such term in Section 6.1.

“Termination Value” shall mean the values set forth or described in Exhibit C to this Agreement.

“Transferee” shall have the meaning assigned to such term in Section 17.2.

“Transferor” shall have the meaning assigned to such term in Section 17.2.

“Utility” shall mean the electric distribution company responsible for electric energy transmission and distribution service at the Site. The Parties acknowledge and agree that, as of the Effective Date, the Utility is Pacific Gas & Electric.

ARTICLE II

SALE AND PURCHASE OF ENERGY; RISK OF LOSS; EXCLUSIVE CONTROL

Section 2.1 Summary Description. Seller will cause the System to be constructed at the Site and will own, operate, and maintain the System. Seller shall be permitted to use contractors and subcontractors to perform its obligations under this Agreement; provided, that Seller shall continue to be responsible for the quality of the work performed by its contractors and subcontractors.

Section 2.2 Delivery; Energy Purchase Price. In accordance with the terms and conditions hereof, commencing on the Commercial Operation Date and continuing throughout the remainder of the Term, Seller shall sell and deliver to Purchaser at the Delivery Point as and when available, and Purchaser shall purchase and accept from Seller at the Delivery Point, all of the Energy Output generated by the System. Purchaser shall pay Seller a purchase price equal to the Energy Output for the applicable period of time multiplied by the applicable Energy Rate as set forth in Exhibit B. Such amount shall be paid in accordance with Article III hereof. Purchaser acknowledges and understands that solar power is an intermittent resource and that the output of the System, which is dependent on the sun and other factors, will constantly vary and that no particular amount of Energy Output is guaranteed or represented in amount or time of delivery.

Section 2.3 Purchaser's Failure to Accept Delivery. On and after the Commercial Operation Date if, when there exists no breach or default by Seller under this Agreement, Purchaser fails to accept all or any amount of the Energy Output for any reason other than an event of Force Majeure, such event shall constitute a Purchaser curtailment and be treated in accordance with Section 2.5 below.

Section 2.4 Seller's Failure to Deliver. The Parties acknowledge that the Energy Output delivered hereunder is delivered "as available" to Purchaser and Seller's failure to deliver Energy Output for any reason other than those identified in Article VI shall not give rise to any default, claim or damages by Purchaser hereunder.

Section 2.5 Curtailment. (a) Purchaser shall have the right to request curtailment of Energy Output upon sufficient prior written notice to Seller, and Seller shall curtail Energy Output pursuant to such request. The Parties agree Purchaser will be allotted six (6) four (4) hour curtailments per annum for any reason (the "Curtailment Allotment"). Each year will begin at the anniversary of the Commercial Operation Date. The Parties agree that if the number or duration exceed this allotment during periods when Purchaser invokes such curtailment option (i) Purchaser shall pay to Seller liquidated damages for the Energy Output not sold that would have been due to Seller had such curtailment of Energy Output not occurred, which liquidated damages shall be calculated in the manner set forth below; and (ii) Seller shall have no obligation to remarket the Energy Output that is curtailed as a result of Purchaser invoking the Curtailment Allotment. The remedy provided in this Section shall be the sole and exclusive remedy of Seller for any such voluntary curtailment requested by Purchaser. Seller will have no obligation to

reimburse Purchaser if the Curtailment Allotment is not used and the Parties agree there will be no carry forward from one year to the next.

(b) Liquidated damages pursuant to this Section 2.5 shall be calculated for each hour during which delivery does not occur according to the following formula:

Price x EEO + Rebate

where the above items have the following meanings:

Price =	The applicable Energy Rate plus the then current rate of RECs and the Other Credits (if applicable) for the hour or hours when delivery is not occurring as set forth in this <u>Section 2.5</u> .
EEO =	The estimated energy output that would have been achieved during the hour or hours to which the above formula is being applied, calculated by applying the sunlight data for each such hour available from the supervisory control and data acquisition system at the System to the rated output for the photovoltaic modules; provided, however, that the rated output for the photovoltaic modules shall be the manufacturer's stated nominal output.
Rebate =	The amounts or current rate, if any, of Rebates for which the Seller was not eligible as a result of delivery not occurring as set forth in this <u>Section 2.5</u> .

The liquidated damages set forth in this Section 2.5 are a reasonable estimate of the damages the Seller will suffer in the event of nonperformance as set forth herein and are not intended as a penalty.

Section 2.6 Net Metering. The Parties recognize and acknowledge that, from time to time, (a) the Energy Output may exceed Purchaser's demand for electricity or (b) Purchaser will otherwise be unable to consume Energy Output delivered to the applicable Delivery Point. Purchaser shall nonetheless accept and take title to the Energy Output at the applicable Delivery Point in accordance with Section 4.1, and Purchaser shall make and maintain arrangements to deliver and sell to the Utility at the interconnection point between the applicable Site Electrical System and the Utility any Energy Output that exceeds Purchaser's demand for or ability to consume electricity during the Term (such arrangements referred to as "Net Metering Arrangements"); provided, that, if Purchaser fails to enter into, maintain or otherwise comply with such Net Metering Arrangements, and as a result of such failure, Seller cannot deliver Energy Output to Purchaser, then (x) such Energy Output shall be deemed delivered for all purposes hereunder and (y) Purchaser shall be deemed to have purchased the electricity that such

System produced, or was capable of producing, and that would otherwise have been delivered to Purchaser as Energy Output in accordance with the provisions set forth in Section 2.3.

Section 2.7 Non-Exclusive Benefit. Subject to the terms of this Agreement (including Sections 2.3 and 2.5), all Energy Output generated by the System shall be delivered to Purchaser.

Section 2.8 Insolation. Purchaser understands that unobstructed access to sunlight (“Insolation”) is essential to Seller’s performance of its obligations and a material term of this Agreement. Purchaser shall not in any way cause and, where possible, shall not in any way permit any interference with the System’s Insolation. If Purchaser becomes aware of any activity or condition that could diminish the Insolation of the System, Purchaser shall notify Seller immediately and shall cooperate with Seller in preserving the System’s existing Insolation levels. The Parties agree that reducing Insolation would irreparably injure Seller, that such injury may not be adequately compensated by an award of money damages, and that Seller is entitled to seek specific enforcement of this Section 2.8 against Purchaser.

Section 2.9 Ownership of the System. Throughout the Term, Seller shall be the legal and beneficial owner of the System at all times, including all RECs and Other Credits, and the System shall remain the personal property of Seller and shall not attach to or be deemed a part of, or fixture to, the Site. Each of the Seller and Purchaser agree that the Seller is the tax owner of the System and all tax filings and reports will be filed in a manner consistent with this Agreement. The System shall at all times retain the legal status of personal property as defined under Article 9 of the Uniform Commercial Code. Purchaser covenants that it will use commercially reasonable efforts to place all parties having an interest in or a mortgage, pledge, lien, charge, security interest, encumbrance or other claim of any nature on the Site on notice of the ownership of the System and the legal status or classification of the System as personal property. If there is any mortgage or fixture filing against the Site which could reasonably be construed as prospectively attaching to the System as a fixture of the Site, Purchaser shall provide a disclaimer or release from such lienholder. If Purchaser is the fee owner of the Site, Purchaser consents to the filing of a disclaimer of the System as a fixture of the Site in the office where real estate records are customarily filed in the jurisdiction where the Site is located. If Purchaser is not the fee owner, Purchaser will obtain such consent from such owner. For the avoidance of doubt, in either circumstance Seller shall file such disclaimer. Upon request, Purchaser agrees to deliver to Seller a non-disturbance agreement in a form reasonably acceptable to Seller from the owner of the Site (if the Site is leased by Purchaser), any mortgagee with a lien on the Site, and other Persons holding a similar interest in the Site. To the extent that Purchaser does not own the Site, Purchaser shall provide to Seller immediate written notice of receipt of notice of eviction from the Site or termination of Purchaser’s lease of the Site.

Section 2.10 Maintenance of Site; Alterations to Site. Purchaser shall, at its sole cost and expense, maintain the Site in good condition and repair. Purchaser will ensure that the Site remains interconnected to the local utility grid at all times and will not permit cessation of electric service to the Site from the local utility. Purchaser is fully responsible for the

maintenance and repair of the Site electrical system and of all of Purchaser's equipment that utilizes the System's outputs. Purchaser shall properly maintain in full working order all of Purchaser's electric supply or generation equipment that Purchaser may shut down while utilizing the System. Purchaser shall promptly notify Seller of any matters of which it is aware pertaining to any damage to or loss of use of the System or that could reasonably be expected to adversely affect the System. Purchaser shall not make any alterations or repairs to the Site which may adversely affect the operation and maintenance of the System without Seller's prior written consent. If Purchaser wishes to make such alterations or repairs, Purchaser shall give prior written notice to Seller, setting forth the work to be undertaken (except for emergency repairs, for which notice may be given by telephone), and give Seller the opportunity to advise Purchaser in making such alterations or repairs in a manner that avoids damage to the System, but, notwithstanding any such advice, Purchaser shall be responsible for all damage to the System caused by Purchaser or its contractors. To the extent that temporary disconnection or removal of the System is necessary to perform such alterations or repairs, such work and any replacement of the System after completion of Purchaser's alterations and repairs shall be done by Seller or its contractors at Purchaser's cost. All of Purchaser's alterations and repairs will be done in a good and workmanlike manner and in compliance with all applicable laws, codes and permits in all material respects.

ARTICLE III BILLING AND PAYMENT

Billing and payment for amounts due and payable hereunder shall be as follows:

Section 3.1 Invoices. Seller shall submit a monthly invoice for the preceding month no later than ten (10) days after the end of the month to Purchaser based on actual Energy Output. Each invoice shall include the kWh, and applicable rates for the applicable pricing periods.

Section 3.2 Payment. Purchaser shall make payment to Seller or to any person designated by Seller in writing by the fifteenth (15th) calendar day following the date of Seller's invoice. All invoices shall be submitted for payment with supporting documentation in duplicate to Purchaser at the address specified herein; provided, that invoices may be submitted via electronic mail to the Purchaser email address set forth in Section 24.3. Purchaser shall pay to Seller or to any person designated by Seller in writing, by check or wire transfer of immediately available funds to an account specified in writing by Seller or by any other means agreed to by the Parties in writing from time to time, the amount due in such invoice. If Purchaser in good faith disputes an invoice, Purchaser shall provide Seller with a written explanation specifying in detail the basis for the Dispute within fifteen (15) calendar days of receipt of such monthly invoice, and Purchaser shall pay the undisputed portion of the invoice in accordance with these payments terms. Disputed portions of Seller's invoice shall be due and payable no later than ten (10) calendar days after resolution of the Dispute. Payments of disputed amounts shall in no way waive Purchaser's right to contest charges. Any amount not paid when due under this Agreement shall accrue interest at the lesser of twelve percent (12%) per

annum or the highest rate permitted under Applicable Law. In the event the Parties are unable to resolve any Dispute, Section 22.1 (b) shall be applied as the methodology to resolve any Dispute and shall be binding upon the parties notwithstanding anything to the contrary in this Agreement; and, the prevailing party shall be entitled to any reasonable costs that result therefrom. In the event that Seller is the prevailing party, the provisions herein for late fees or interest costs on unpaid invoices shall prevail.

Section 3.3 Errors. Within thirty (30) Business Days after receipt of any invoice, either Party may provide written notice to the other Party of any alleged error in such invoice.

Section 3.4 Billing Disputes. Any Dispute with respect to the amount set forth as due in any invoice shall be resolved pursuant to Article XXII.

ARTICLE IV TITLE AND RISK OF LOSS

Section 4.1 Risk of Loss and Exclusive Control. Title to and risk of loss of the Energy Output shall pass from Seller to Purchaser upon delivery of the Energy Output at the Delivery Point. All deliveries of Energy Output hereunder shall be in the form of three-phase, sixty-cycle alternating current. Purchaser shall purchase and accept delivery of metered Energy Output at the Delivery Point. As between the Parties, Seller will be deemed to be in exclusive control and responsible for any property damage or injuries to persons caused thereby of the Energy Output up to but excluding the point where the System is interconnected to the Delivery Point and Purchaser will be deemed to be in exclusive control and responsible for any property damage or injuries to persons caused thereby of Energy Output at and from the Delivery Point. Risk of loss related to Energy Output will transfer from Seller to Purchaser at the Delivery Point. Purchaser shall be responsible for arranging delivery of Energy Output from the Delivery Point to Purchaser and for the installation and operation of all necessary equipment on Purchaser's side of the Delivery Point necessary for acceptance and use of the Energy Output.

Section 4.2 Changes in Interconnection Conditions. The Parties acknowledge that adjustments in the terms and conditions of this Agreement may be appropriate to account for rule changes in the respective Utility or Utility control areas, by the respective independent system operators, or their successors, that could not be anticipated at the date of execution of this Agreement or that are beyond the control of the Parties, and the Parties agree to make such commercially reasonable amendments as are reasonably required to comply therewith.

ARTICLE V CURTAILMENT AND MODIFICATION BY SELLER

Section 5.1 Curtailment. Seller may curtail deliveries (inclusive of discontinuing or reducing Energy Output) if Seller reasonably believes that curtailment is necessary to construct, install, repair, replace, remove, maintain or inspect any of its equipment or facilities; or in connection with an emergency or an event of Force Majeure. To the extent practical, all

maintenance and repairs shall be performed during off peak hours and in a manner that would not require a complete interruption in Energy Output of the System. Seller shall notify Purchaser of any curtailments of which Seller has advance knowledge, and will endeavor to mitigate the time periods and causes of such curtailments to the extent that such cause is within Seller's reasonable control. Subject to available sunlight, Seller shall resume deliveries of Energy Output as soon as is reasonably possible and safe in accordance with Prudent Operating Practices.

Section 5.2 Modification of the System. Seller may modify, alter, expand or otherwise change the System without the prior written consent of Purchaser as required by Prudent Operating Practices or Applicable Law, so long as such modifications, alterations, expansions or other changes would not reasonably be expected to result in a material change in the capacity of the System or a material adverse impact on the operations of the System or the System's capability to operate. Each Party shall promptly notify the other Party if it becomes aware of any Hazardous Substance on or about the Site generally or any deposit, spill or release of any Hazardous Substance.

ARTICLE VI

TERM, TERMINATION, COMMERCIAL OPERATION AND INTERCONNECTION

Section 6.1 Term and Termination

(a) Term. The Term shall commence on the Effective Date and continue until the sooner of (i) the date that is twenty (20) years from the first day of the month following the month in which the Commercial Operation Date occurs (the "Expiration Date") or (ii) the date of occurrence of an Event of Default pursuant to Article XII or the occurrence of any event described in Section 6.1(b) or Section 6.1(c) below (the "Termination Date"). At least one hundred eighty (180) days prior to Expiration Date, the Parties may agree to extend the Term for an additional period, not to exceed five (5) years, provided, however that the Energy Rate during such extension period shall continue to escalate at the same percentage as during the initial term hereof.

(b) Early Termination by Seller. Seller shall have the right, but not the obligation, to terminate this Agreement prior to the Expiration Date only upon the occurrence of:

(i) the determination by Seller in its sole and absolute discretion within one hundred eighty (180) days from the Effective Date that it is unable or that it would be commercially unreasonable to install the System on the Site;

(ii) an unstayed order of a court or administrative agency having the effect of subjecting the sales of Energy Output to federal or state regulation of prices and/or service;

(iii) elimination or alteration of one or more Rebates, RECs or Other Credits or other change in law that results in a material adverse economic impact on, or

impairment of, Seller's ability to meet its ongoing financial obligations with regards to the System; or

(iv) the termination of the Sublease Agreement by its terms and conditions for any reason prior to the Expiration Date.

In the event that Seller terminates this Agreement pursuant to this Section 6.1(b), this Agreement shall terminate without triggering the default provisions of this Agreement or the Termination Value set forth in Exhibit C, and with no liability of either Party to the other Party except such amounts then due and owing under this Agreement as of the date of such termination.

(c) Termination for Seller's Failure to Deliver Energy Output. In the event that the System fails to deliver any Energy Output for ninety-one (91) consecutive days (the "Non-Delivery Period"), and provided Purchaser's acts, actions or inaction or those of its employees, contractors or agents or a Force Majeure event have not prevented the System from operating during such time, this Agreement may be terminated by Purchaser; provided, that Seller's failure to deliver any Energy Output following the Non-Delivery Period shall not give rise to a Purchaser termination right so long as Seller, at its option, pays to Purchaser on a monthly basis in arrears the positive difference, if any, between the Energy Rate Purchaser would have paid for Energy Output following the Non-Delivery Period and the rate of the quantities of Energy Output that Purchaser obtains to replace the estimated energy output that would have been achieved ("Energy Payment") for a period of up to an additional ninety-one (91) days after which, should the System continue to fail to deliver any Energy Output despite being paid the Energy Payment, Purchaser may terminate this Agreement. In the event that Purchaser terminates this Agreement pursuant to this Section 6.1(c), this Agreement shall terminate without triggering the default provisions of this Agreement, and with no liability of either Party to the other Party except such amounts then due and owing under this Agreement as of the date of such termination.

(d) Termination Value for Purchaser's Default. In the event that the Termination Date has occurred for reasons attributable to an Event of Default by Purchaser, Purchaser shall be required to pay to Seller any amount owed by Purchaser to Seller for Energy Output delivered prior to the Termination Date, and, as liquidated damages, the Termination Value; provided, however, Purchaser shall be required to reimburse Seller (in addition to such amounts) the reasonable costs to Seller for the removal of the System pursuant to the terms of the Sublease Agreement. The Parties agree and acknowledge that given the complexity of the technology used by the System and the volatility of energy markets, actual damages to Seller would be difficult if not impossible to ascertain, and the amount calculated pursuant to the preceding sentence is a reasonable approximation of the damages suffered by Seller as a result of early termination of this Agreement.

(e) Removal of the System. Upon the expiration or termination of this Agreement and provided that Purchaser does not exercise any applicable rights to purchase the

System provided hereunder, Seller shall remove all the System at Seller's expense within one hundred twenty (120) days of the expiration or termination. In such event, Seller shall remove the System and restore the Site in accordance with good industry practices.

Section 6.2 Construction and Commercial Operation of the System.

(a) Seller shall install or cause to be installed the System, which, upon the Commercial Operation Date, is targeted to have an aggregate approximate nameplate generating capacity rating as shown in Exhibit A.

(b) Promptly following the Effective Date, Seller shall commence pre-installation activities relating to the System, which shall include the following:

(i) obtain financing for the System on terms acceptable to the Seller in its sole discretion;

(ii) designate and obtain or cause to be obtained the right to use the Site through the Sublease Agreement on a long-term basis, for the installation, maintenance, operation and, if applicable, removal of the System;

(iii) subject to the execution and delivery of the Sublease Agreement, obtain or cause to be obtained all government approvals, permits, contracts, and agreements required for installation, operation and maintenance of the System and Site and delivery of Energy Output to Purchaser;

(iv) determine, in its commercially reasonable judgment, that the System is able to be constructed on the Site;

(v) confirm that Seller will obtain all RECs, Other Credits and Tax Credits;

(vi) subject to the execution and delivery of the Sublease Agreement, obtain all necessary authority from any applicable regulatory entities for the operation of the System and sale and delivery of Energy Output to Purchase.

(c) Successful completion of Sections 6.2(b)(i) through (vi), together with Purchaser's receipt of (i) an extension of the term of the lease of the Site from the City to be at least as long as the term (including all renewal options) of the Sublease Agreement, and (ii) such easements and encroachment agreements from the City as are reasonably necessary, in Seller's discretion, for Seller and its contractors to perform the obligations under this Agreement (collectively, the "Conditions Precedent") shall be conditions precedent to Seller's obligations to install and operate the System and otherwise perform its obligations under this Agreement. Seller shall provide written notice to Purchaser upon the completion of each item under Sections 6.2(b)(i) through (vi). Failure to provide such notice shall be deemed a failure by Seller to have completed the item. If the activities contemplated in Sections 6.2(b)(i) through (vi) are not

completed, or waived by Seller in its sole discretion, by the six-month anniversary of the Effective Date, then Seller or Purchaser shall have the option to terminate the Agreement without triggering the default provisions of this Agreement or any liability under this Agreement.

(d) Seller shall use commercially reasonable efforts to cause, but does not guaranty, the installation of the System to be completed and the System to achieve the Commercial Operation Date on or before the date that is six months following the satisfaction of all of the Conditions Precedent (the “Target COD”). In the event that the System has not achieved the Commercial Operation Date on or before the Target COD, the Parties agree to negotiate in good faith to amend this Agreement to revise the Target COD (the “Revised Target COD”), provided, however that the Revised Target COD shall not be later than three (3) months following the Target COD. The Target COD and Revised Target COD shall be subject to extension in accordance with the provisions of Section 18.2 or in the event that Purchaser’s failure to comply with its obligations hereunder delays Seller’s ability to achieve the Commercial Operation Date on or before the Target COD or the Revised Target COD, as applicable.

(e) Seller’s failure to achieve the Commercial Operation Date on or before the Revised Target COD (as extended in accordance with Section 6.2(d)), is agreed and acknowledged to result in damage to Purchaser, and in such event, Seller shall pay liquidated damages to Purchaser in an amount equal to \$100 per day for each day between the Revised Target COD and the date that such System achieves the Commercial Operation Date. The Parties agree that payment of such liquidated damages shall be Purchaser’s sole remedy for Seller’s unexcused delay in achieving the Commercial Operation Date, and that such liquidated damages are a reasonable estimation of Purchaser’s damage and shall not be deemed a penalty. Notwithstanding the above, if the Commercial Operation Date has not occurred within six (6) months following the Revised Target COD, such failure shall be deemed an Event of Default as to Seller, unless such failure is due to Force Majeure or Purchaser’s failure to comply with its obligations hereunder or under the Sublease Agreement.

(f) Seller and Purchaser hereby agree and acknowledge that Purchaser shall have no ownership interest in the System and no responsibility for its operation or maintenance. Neither Purchaser nor any party related thereto shall have the right or be deemed to operate the System for purposes of Section 7701(e)(4)(A)(i) of the Code.

Section 6.3 Interconnection. Purchaser shall apply in a timely manner for Net Metering Arrangements and file in a timely manner any applicable applications and certifications for all other approvals that may be required from the Purchaser to perform its obligations under this Agreement; provided, however, Seller shall be responsible for payment of such application fees. Seller agrees to assist Purchaser in the timely effectuation of Net Metering Arrangements with the Utility and applications and certifications for all other approvals that may be required from Purchaser.

ARTICLE VII GOVERNMENTAL AND OTHER APPROVALS

Section 7.1 Approvals. Purchaser shall assist Seller and cooperate with Seller, as reasonably necessary and appropriate, to secure and maintain at no cost to Purchaser those governmental approvals, permits (including environmental permits), licenses, easements, rights-of-way, releases and other approvals necessary for the construction, maintenance and operation of the System.

Section 7.2 Assistance. Upon request by either Party, Purchaser and Seller shall use their commercially reasonable efforts to assist one another in obtaining and retaining credits, permits, licenses, releases and other approvals necessary for the design, construction, engineering, operation and maintenance of the System. Each Party shall reimburse the other for out-of-pocket costs reasonably incurred by a Party in assisting the other under this Article VII and as mutually agreed upon by the Parties. Seller is responsible for the costs of construction of the System. Further, the Parties agree that they will support and cooperate with one another in the defense of any action of any regulatory body or Governmental Authority having jurisdiction over the System that could adversely affect this Agreement.

ARTICLE VIII TAXES

Section 8.1 To the extent that Purchaser is not exempt, Purchaser shall pay all taxes imposed by any taxing authority arising out of and with respect to the purchase or consumption of the Energy Output purchased from Seller, including but not limited to sales taxes due with respect to the sale and purchase of the Energy Output and taxes based on Seller's use of the Purchaser's real property for commercial purposes. For clarity, as between Seller and Purchaser, Seller shall only be liable for taxes imposed on Seller based on (i) its income or (ii) its ownership of personal property comprising the System. Purchaser shall provide Seller with any tax exemption certificates, including a non-taxable transaction certificate, which may be applicable to the transactions contemplated hereunder.

ARTICLE IX OFFSETS, ALLOWANCES, CREDITS

Section 9.1 RECs. Seller shall own and retain (in exchange for consideration paid pursuant to Section 2.2) all present and future rights, titles and interest in any RECs attributable to the Energy Output of the System purchased by Purchaser under this Agreement.

Section 9.2 Other Credits. Without limiting Seller's rights under Section 9.1, Seller shall own and retain all present and future rights, titles and interest in any Other Credits or exemptions attributable to the installation of the System or the production of Energy Output therefrom, including but not limited to sales tax exemptions, rebates or incentives relating to equipment installed as part of the System, capacity payments or property tax exemptions or

credits. Purchaser shall cooperate with Seller in obtaining, securing and transferring all RECs and Other Credits, including by using the electric energy generated by the System in a manner necessary to qualify for such available RECs and Other Credits. Purchaser shall not be obligated to incur any out-of-pocket costs or expenses in connection with such actions unless reimbursed by Seller. If any RECs or Other Credits are paid directly to Purchaser, Purchaser shall immediately pay such amounts over to Seller.

Section 9.3 Rebates. So long as Seller owns the System, all Rebates available in connection with the System installed on the Site are owned by Seller. Purchaser shall take all reasonable measures to assist Seller in obtaining all Rebates currently available or subsequently made available in connection with the System. If Purchaser fails to act in good faith in completing documentation or taking actions reasonably requested by Seller, and such failure results in a loss of a Rebate, Purchaser shall reimburse Seller for the full amount of such lost Rebate within thirty (30) days of receipt of an invoice therefor.

Section 9.4 Reporting Rights. Without limiting Purchaser's rights under Section 9.1, Seller shall retain the Reporting Rights and the exclusive rights to claim that: (a) the Energy Output was generated by the System; (b) Seller is responsible for the delivery of the Energy Output to the Delivery Point; (c) Seller is responsible for the reductions in emissions of pollution and greenhouse gases resulting from the generation of the Energy Output and the delivery thereof to the Delivery Point; and (d) Seller is entitled to all credits, certificates, registrations, etc., evidencing or representing any of the foregoing.

Section 9.5 Impairment of RECs, Other Credits and Rebates. Purchaser shall not take any action or suffer any omission that would have the effect of impairing the value to the Seller of the RECs, Other Credits and Rebates. Purchaser shall use commercially reasonable efforts to notify Seller of any action or omission that could impair such value and for consulting with Seller as requested to prevent impairment of the value of the RECs, Other Credits and Rebates.

ARTICLE X REPRESENTATIONS AND WARRANTIES OF PURCHASER

Section 10.1 Purchaser represents and warrants that:

(a) It is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation; that it has the power and authority to enter into and perform this Agreement; and that the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action. Purchaser covenants that during the Term it shall remain a duly organized and validly existing legal entity with authority to conduct business in its jurisdiction of formation, and shall have the power and authority to perform this Agreement; and

(b) No suit, action, arbitration, legal, administrative or other proceeding is pending or, to the best of Purchaser's knowledge, has been threatened against Purchaser that

would affect the validity or enforceability of this Agreement or the ability of Purchaser to fulfill its commitments hereunder, or that would, if adversely determined, have a material adverse effect on Purchaser's performance of this Agreement; and

(c) The execution, delivery and performance of this Agreement by Purchaser will not result in a breach of, default under or violation of any Applicable Law, or the provisions of any authorization or in a breach of, default under or violation of any provision of its articles of incorporation or bylaws or any promissory note, indenture or any evidence of indebtedness or security therefor, material lease, material contract or other material agreement by which it or its property is bound, including its obligations to purchase electricity and related energy products from the Utility; and

(d) To the best knowledge of the Purchaser, as of the date hereof, no governmental approval or consent is required in connection with the due authorization, execution and delivery of this Agreement or the performance of the Purchaser of its obligations hereunder which the Purchaser has reason to believe that it will be unable to obtain in due course on or before the date required for Purchaser to perform such obligations; and

(e) This Agreement constitutes a legal, valid and binding obligation enforceable against Purchaser in accordance with its terms, except as the enforceability of such terms may be limited by applicable bankruptcy, reorganization, insolvency or similar laws affecting the enforcement of creditors' rights generally; and

(f) Purchaser has not entered, and will not after the Effective Date enter, into any contracts or agreements with any other person regarding the provision of services at the Site contemplated to be provided by Seller under this Agreement or which would otherwise impair or limit Seller's ability to perform in accordance with the terms hereof;

(g) Purchaser is in compliance in all material respects with all laws that relate to this Agreement in all material respects; and

(h) Purchaser will obtain the power and authority to enter into the Sublease Agreement. Entering into the Sublease Agreement does not violate any law, ordinance, rule or other governmental restriction applicable to Purchaser or the Site and is not inconsistent with and will not result in a breach or default under any agreement by which Purchaser is bound or that affects the Site; and

(i) All information provided by Purchaser to Seller, as it pertains to the Site's physical configuration, Purchaser's planned use of the Site, and Purchaser's estimated electricity requirements, is accurate in all material respects; and

(j) No electricity generated by the System will be used to heat a swimming pool.

ARTICLE XI
REPRESENTATIONS AND WARRANTIES OF SELLER

Section 11.1 Seller represents and warrants that:

(a) It is a limited liability company, duly organized, validly existing, and in good standing under the laws of the State of Delaware; that it has the power and authority to enter into and perform this Agreement; and that the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate action on its part. Further, Seller covenants that during the Term it shall remain a duly organized and validly existing legal entity with authority to conduct business in the State of California and shall have the power and authority to perform this Agreement; and

(b) To the best of Seller's knowledge, it is in compliance in all material respects with all requirements of federal, state and local safety standards, codes and regulations applicable to the System, including those laws applicable to the protection of the Parties' employees and members of the public and to the best knowledge of the Seller, as of the date hereof, no governmental approval or consent is required in connection with the due authorization, execution and delivery of this Agreement or the performance of the Seller of its obligations hereunder which the Seller has reason to believe that it will be unable to obtain in due course on or before the date required for Seller to perform such obligations. Said laws include, but are not limited to, the Occupational Safety and Health Act of 1970 as amended, and those prohibiting discrimination against any employee or applicant for employment because of race, creed, color, sex, national origin, age or disability; and

(c) No suit, action, arbitration, legal, administrative or other proceeding is pending or, to the best of Seller's knowledge, has been threatened against Seller that would affect the validity or enforceability of this Agreement or the ability of Seller to fulfill its commitments hereunder, or that would, if adversely determined, have a material adverse effect on Seller's performance of this Agreement; and

(d) The execution, delivery and performance of this Agreement by Seller will not result in a breach of, default under or violation of any Applicable Law, or the provisions of any authorization or a breach of, default under or violation of any provision of its certificate of formation or other organizational documents or any promissory note, indenture or any evidence of indebtedness or security therefor, material lease, material contract or other material agreement by which it or its property is bound; and

(e) This Agreement constitutes a legal, valid and binding obligation enforceable against Seller in accordance with its terms, except as the enforcement of such terms may be limited by applicable bankruptcy, reorganization, insolvency or similar laws affecting the enforceability of creditors' rights generally.

ARTICLE XII EVENTS OF DEFAULT AND REMEDIES

Section 12.1 The following shall constitute an “Event of Default” hereunder:

(a) A failure by a Party to pay any amount due hereunder where such failure is not cured within ten (10) Business Days after receipt of written notice by the non-defaulting Party of such failure to pay such amounts due hereunder; provided, however, any amount due shall continue to accrue interest during any such cure period as set forth in Section 3.2; or

(b) Except as otherwise provided in Article XVIII, or Section 6.1(c), any other material default in the event such default is not cured within thirty (30) calendar days after receipt of written notice of the default from the non-defaulting Party setting forth in reasonable detail the nature of such default; provided, that in the case of any such default that cannot be reasonably cured within the thirty (30) calendar days, then the defaulting Party shall have additional time, but in any event not longer than ninety (90) days, to cure the default if it commences in good faith to cure the default within such thirty (30) calendar day cure period and it diligently and continuously pursues such cure; or;

(c) A Party’s dissolution or liquidation; a Party’s making a general assignment of its assets for the benefit of creditors (except as otherwise permitted by this Agreement); a Party’s filing of a voluntary petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or after the filing of a case in bankruptcy or any proceeding under any other insolvency law against a Party, a Party’s failure to obtain a dismissal of such filing within sixty (60) calendar days after the date of such filing; or

(d) Any representation or warranty furnished by a Party in connection with this Agreement was false or misleading in any material respect when made, unless the fact, circumstance or condition that is the subject of such representation or warranty is made true within thirty (30) calendar days after the other Party has given the defaulting Party written notice thereof; provided, however, that if the fact, circumstance or condition that is the subject of such representation or warranty cannot be corrected within thirty (30) calendar days; or if such fact, circumstance or condition being otherwise than as first represented does not materially adversely affect the non-defaulting Party, then the defaulting Party shall have additional time, but in any event not longer than ninety (90) days, to cure the default if it commences in good faith within such thirty (30) calendar day cure period to correct the fact, circumstance or condition that is the subject of such representation or warranty and it diligently and continuously proceeds with all due diligence to correct the fact, circumstance or condition that is the subject of such representation or warranty; or

(e) A failure to maintain insurance pursuant to Article XXI, which is not corrected within thirty (30) days; or

(f) Purchaser loses its rights to occupy and enjoy the Site; or

(g) Purchaser prevents Seller from installing the System or otherwise failing to perform in a way that prevents the delivery of electric energy from the System.

Section 12.2 Upon the occurrence of an Event of Default, or if otherwise permitted under this Agreement, the non-defaulting Party may exercise any one or more of the following remedies:

(a) Exercise any and all remedies available under this Agreement (including Section 6.1(d)) or under Applicable Laws after the applicable cure period; or

(b) Terminate this Agreement by delivery of a written notice to defaulting Party declaring termination. No termination of this Agreement following an Event of Default shall relieve the defaulting Party of its liability and obligations hereunder, and the non-defaulting Party may take whatever action may appear necessary or desirable to enforce performance and observance of any obligations under this Agreement pursuant to this Article XII, and the rights given hereunder and under Applicable Laws.

Section 12.3 Except as specifically provided herein, each and every right, power and remedy of a Party, whether specifically stated in this Agreement or otherwise existing, may be exercised concurrently or separately from time to time, and so often and in such order as may be deemed expedient by the exercising Party. No delay or omission of a Party in the exercise of any right, power or remedy shall impair or operate as a waiver thereof or of any other right, power or remedy.

Section 12.4 Except as otherwise specifically and expressly permitted in this Agreement (including with reference to Sections 2.3, 2.5 and 6.1(d)), neither Party nor its directors, officers, shareholders, partners, members, agents and employees subcontractors or suppliers shall be liable for any indirect, special, punitive, exemplary, incidental or consequential damages arising out of performance or non-performance under this Agreement, including loss of use, loss or revenues, loss of profit, interest charges, cost of capital or claims of customers to which services is made, whether arising under statute or in tort or contract, and whether or not the Party was advised of the possibility thereof.

ARTICLE XIII

PURCHASER'S OPTION TO PURCHASE THE SYSTEM

Section 13.1 Option to Purchase During Term. Provided that no Purchaser Event of Default will have occurred and be continuing, beginning with the seventh (7th) anniversary of the Commercial Operation Date and on each anniversary of such date thereafter during the Term, Purchaser shall have the option to purchase the System from Seller at the applicable Buyout Value of the System. Purchaser shall notify Seller in writing of its intent to

exercise its purchase option under this Section 13.1 no later than ninety (90) days prior to applicable anniversary of the Commercial Operation Date of the System.

Section 13.2 Option to Purchase at End of Term. Provided that Purchaser has fulfilled all obligations to Seller under this Agreement, at the expiration of the Term of this Agreement, Purchaser shall have the option to purchase the System from Seller at a price equal to the Buyout Value of the System. Purchaser shall notify Seller in writing of its intent to exercise its purchase option under this Section 13.2 no later than ninety (90) days prior to the end of the Term.

Section 13.3 Procedure. If Purchaser desires to exercise the option set forth in Section 13.1 or Section 13.2, the Parties will promptly agree to a date for the closing of the purchase, not less than sixty (60) days after such confirmation and not more than one hundred and twenty (120) days after such confirmation at which closing, Seller and Purchaser, as the case may be, shall execute and/or deliver the following documents: (a) all documents necessary to cause title to the System to pass to Purchaser, free and clear of any liens immediately subsequent to the purchase; (b) assignment and assumption agreements, with all necessary consents thereto, causing the assignment of Seller's rights to Purchaser and assumption by Purchaser of the obligations of Seller under all material contracts with respect to the System; (c) assignment of all warranties for the System to Purchaser, to the extent that such warranties are assignable; and (d) evidence of the satisfaction of any loans or other obligations of Seller to any lender that provided financing in connection with the System. The System shall be sold to Purchaser "as-is, where-is," without further warranty by Seller, provided, however, that Seller shall disclose prior to purchase and assign, transfer and deliver to Purchaser all manufacturer or other warranties on the System that apply to Purchaser as the new owner of the System.

ARTICLE XIV NO PARTNERSHIP/INDEPENDENT SELLER

Section 14.1 No Partnership. Notwithstanding any provision of this Agreement, the Parties do not intend to create hereby any lease, joint venture, partnership or association taxable as a corporation or other entity for the conduct of any business for profit. Neither Party shall have any right, power or authority to enter any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of the other Party.

Section 14.2 Changes to Agreement. If it should appear that one or more changes to this Agreement would be required in order to prevent the creation of a partnership for United States federal tax purposes between Seller and Purchaser, the Parties agree to negotiate promptly in good faith with respect to such changes.

Section 14.3 Independent Contractors. The Parties agree that they are independent contractors and shall be at all times solely responsible for themselves, as well as their respective officers, directors, members, partners, employees, agents, and contractors as to workmanship, accidents, injuries, wages, supervision and control. This Agreement may not be altered in any

manner so as to change the relationship or responsibilities of the Parties as independent contractors.

ARTICLE XV METER MAINTENANCE AND RECORDS

Section 15.1 Energy Output delivered by Seller to Purchaser hereunder shall be measured by electric watt-hour meters located at the Delivery Point as follows:

(a) Seller shall own, operate, maintain and read the Meter for the measurement of Energy Output provided to Purchaser. Upon Purchaser's written request, Seller shall furnish a copy of all technical specifications and accuracy calibrations for the Meter.

(b) Purchaser shall have the right to install check meters and associated metering equipment and shall, upon prior written notice to Seller, have reasonable access to Seller's metering equipment for purposes of testing. Purchaser or its energy supplier may test the Meter annually, with the costs of such annual testing to be borne by Purchaser, including any costs incurred by Seller associated with such annual testing.

(c) Each Party shall have the right to be present when the other Party is performing maintenance on the metering equipment; provided, that the Party performing maintenance gives the other Party reasonable prior notice of the scheduled maintenance time.

(d) All records, reports and data concerning the Meter shall be and remain the property of Seller, although Purchaser shall have the right to use the same only to the extent necessary to perform and administer this Agreement.

(e) Seller must pay to test the Meter every five (5) years regardless of any error. Should Purchaser request testing more frequently than every five (5) years and such testing indicates that such Meter is in error by less than two percent (2%), then Purchaser shall reimburse Seller for costs associated with testing the Meter. On the other hand, if such testing indicates that such Meter is in error by two percent (2%) or more, then Seller shall promptly repair or replace such Meter at its sole expense. Seller shall make a corresponding adjustment to the records of the amount of Energy Output based on such test results for (a) the actual period of time when such error caused inaccurate meter recordings, if such period can be determined to the mutual satisfaction of the Parties, or (b) if such period cannot be so determined, then a period equal to one-half (1/2) of the period from the later of (i) the date of the last previous test confirming accurate metering and (ii) the date the Meter was placed into service; provided, however, that such period shall in no case exceed two (2) years whereupon the Parties shall make such payments as are appropriate to reflect such correction in Energy Output amounts.

(f) Any Dispute arising out of the reading of the Meter or any metering equipment shall be resolved pursuant to Article XXII.

ARTICLE XVI
RIGHTS AND OBLIGATIONS OF PURCHASER

Section 16.1 Construction. Purchaser shall provide Seller and its contractors adequate space on the Site during the Construction Period for Seller's construction and installation of the System, including reasonable staging and laydown areas. Seller shall consult with Purchaser in advance of the beginning of construction about the required laydown areas.

Section 16.2 Access.

(a) Pursuant to the terms and conditions of that certain Sublease being entered into, the Parties acknowledge and agree that Seller is leasing the portion of Purchaser's Site during the Term and as otherwise agreed to by the Parties for the purposes of installing, operating and maintaining the System and uses ancillary thereto. Subject to the terms of the Sublease, Seller will be entitled to the use of certain portions of the Site as may be necessary or required by Seller for the temporary storage, laydown and staging of tools, materials and equipment, the parking of construction crew vehicles and temporary construction trailers and facilities, and rigging reasonably necessary during the furnishing, installation, testing, commissioning and, if necessary during any period of repair or deconstruction, disassembly, decommissioning and removal of the System. Subject to the terms and conditions of the Sublease, Seller will be entitled to use agreed-upon portions of the Site to otherwise exercise its rights and meet its obligations hereunder, including interconnection with the Site electrical system. Seller shall use reasonable efforts to minimize disruption to Purchaser's operations.

(b) The terms of the Sublease will also provide Seller, together with its employees, representatives, agents and contractors adequate access to the Site, across or through the Site and any surrounding or adjacent lands or buildings owned, leased or under the control of Purchaser at such locations to be chosen by Seller as may be reasonably required for (a) the installation, maintenance, repair and removal of the System; (b) utility lines, pipes and conduits for the transmission of electricity or otherwise serving the System; and (c) as may be otherwise reasonably required by Seller in connection with this Agreement and the System, passage through which is necessary or convenient, to gain access to the System or the Site.

(c) As used in this Section 16.2, access rights applicable to Seller shall include access for Seller's agents, contractors (including second-tier contractors) and assigns.

Section 16.3 Compliance with Applicable Laws. Purchaser shall comply in all material respects with all Applicable Laws, including but not limited to environmental laws, workers' compensation laws, unemployment insurance laws, and health and safety laws.

ARTICLE XVII PUBLICITY AND PROPRIETARY INFORMATION

Section 17.1 Publicity.

(a) The Parties share a common desire to generate favorable publicity regarding the System and their association with it. The Parties agree that they will, from time to time, issue press releases regarding the System and that they shall cooperate with each other in connection with the issuance of such releases including completing the review of press releases proposed to be issued by the other Party by no later than ten (10) calendar days after submission by such other Party. Each Party agrees that it shall not issue any press release containing the identity of the other Party or the specific terms of this Agreement (except for filings as may be required by applicable law) without the prior consent of the other, and each Party agrees not to unduly withhold or delay any such consent.

(b) Purchaser or Seller may, with the prior written approval of the other Party (which shall not be unreasonably withheld), reference the System and display photographs of the System in its promotional materials.

Section 17.2 Proprietary Information. Except as otherwise provided herein and to the fullest extent permitted by law, any Proprietary Information of a Party (the “Transferor”) which is disclosed to or otherwise received or obtained by the other Party (the “Transferee”) incident to this Agreement shall be held, in confidence, and the Transferee shall not publish or otherwise disclose any such Proprietary Information to any Person for any reason or purpose whatsoever, or use any such Proprietary Information for its own purposes or for the benefit of any Person, without the prior written approval of the Transferor, which approval may be granted or withheld by the Transferor in its sole discretion. Without limiting the generality of the foregoing, each Party shall observe the same safeguards and precautions with regard to Proprietary Information which such Party observes with respect to its own information of the same or similar kind.

Section 17.3 Definition of Proprietary Information:

(a) The term “Proprietary Information” means (i) the terms set forth in this Agreement, and (ii) all information, written or oral, which has been or is disclosed by the Transferor, or which otherwise becomes known to the Transferee or any Person in a confidential relationship with, the Transferee, and which (A) relates to matters such as patents, trade secrets, research and development activities, draft or final contracts or other business arrangements, books and records, budgets, cost estimates, pro forma calculations, engineering work product, environmental compliance, vendor lists, suppliers, manufacturing processes, energy consumption, pricing information, private processes, and other similar information, as they may exist from time to time, or (B) the Transferor expressly designates in writing to be confidential, which the Parties agree shall include the terms of this Agreement.

(b) Proprietary Information shall exclude information falling into any of the following categories:

(i) Information that, at the time of disclosure hereunder, is in the public domain, other than information that entered the public domain by breach of this Agreement or any other agreement, or in violation of any Applicable Law;

(ii) Information that, after disclosure hereunder, enters the public domain, other than information that entered the public domain by breach of this Agreement or any other agreement, or in violation of any Applicable Law;

(iii) Information, other than that obtained from third parties, that prior to disclosure hereunder, was already in the recipient's possession, either without limitation on disclosure to others or subsequently becoming free of such limitation;

(iv) Information obtained by the recipient from a third party having an independent right to disclose the information; or

(v) Information that is obtained through independent research without use of or access to the Proprietary Information.

Section 17.4 Notwithstanding the foregoing, and to the fullest extent permitted by law:

(a) A Transferee may provide any Proprietary Information to any Governmental Authority having jurisdiction over or asserting a right to obtain such information; provided, that (i) the disclosure of such Proprietary Information is required by Applicable Laws, or such Governmental Authority issues a valid order that such Proprietary Information be provided, and (ii) the Transferee promptly advises the Transferor of any request for such information by such Governmental Authority and cooperates in giving the Transferor an opportunity to present objections, requests for limitation, and/or requests for confidentiality or other restrictions on disclosure or access, to such Governmental Authority.

(b) Seller may disclose Proprietary Information to any Governmental Authority in connection with the application for any license or other authorization or Other Credit or Rebate; provided, however, that Seller shall make use of any applicable policy or regulation of the Governmental Authority that allows for the filing of Proprietary Information under seal or other confidentiality procedures.

(c) Seller may disclose Proprietary Information to any prospective Financing Party for purposes of such party's evaluation in connection with the provision of debt or equity financing (including equity contributions or commitments), refinancing of any such financing, or any guarantee, insurance or credit support for or in connection with such financing or refinancing, in connection with the construction, ownership, operation or maintenance of the System, or any part thereof; provided, that the recipient of any such Proprietary Information

agrees in writing to maintain such information in confidence under terms substantially identical to those contained in this Agreement. Seller shall vigorously enforce the terms of any such confidentiality agreement.

(d) Either Party may disclose Proprietary Information to the extent that such disclosure is required pursuant to the rules of any securities exchange to the extent such Party is subject to regulation.

(e) The Parties recognize that Purchaser is a public entity and is subject to the Ralph M. Brown Act (Government Code §§ 54950 et seq.), the California Public Records Act (Government Code §§ 6250 et seq.), and other provisions of Applicable Law, which limit Purchaser's ability to keep the Proprietary Information confidential. It shall not be a violation of this Agreement or the condition of confidentiality for either Party to disclose the Proprietary Information when obligated by law to do so.

Section 17.5 In the event of a breach or threatened breach of the provisions of Article XVII by any Transferee, the Transferor shall be entitled to an injunction restraining such Party from such breach. Nothing contained herein shall be construed as prohibiting the Transferor from pursuing any other remedies available at law or equity for such breach or threatened breach of this Agreement.

Section 17.6 Disclosure to Affiliates. Each Party agrees that it will make available Proprietary Information received from the other Party to its Affiliates and its and their employees, agents, contractors and advisors only on a need-to-know basis, and that all Persons to whom such Proprietary Information is made available will be made aware of the confidential nature of such Proprietary Information, and will be required to agree to hold such Proprietary Information in confidence under terms substantially identical to the terms hereof.

Section 17.7 Tax Structure or Treatment. Notwithstanding anything to the contrary set forth herein or in any other agreement to which the Parties are parties or by which they are bound, the obligations of confidentiality contained herein and therein, as they relate to the transaction, shall not apply to the U.S. federal tax structure or U.S. federal tax treatment of the transaction, and each Party (and any employee, representative, or agent of any Party hereto) may disclose to any and all persons, without limitation of any kind, the U.S. federal tax structure and U.S. federal tax treatment of the transaction. The preceding sentence is intended to cause the transaction not to be treated as having been offered under conditions of confidentiality for purposes of Section 1.6011-4(b)(3) (or any successor provision) of the Treasury Regulations promulgated under Section 6011 of the Code and shall be construed in a manner consistent with such purpose. In addition, each Party acknowledges that it has no proprietary or exclusive rights to the tax structure of the transaction or any tax matter or tax idea related to the transaction.

Section 17.8 The obligations of the Parties under this Article XVII shall remain in full force and effect during the Term and for two (2) years following the expiration or termination of this Agreement.

ARTICLE XVIII FORCE MAJEURE

Section 18.1 The term “Force Majeure,” as used in this Agreement, means causes or events beyond the reasonable control of, and without the fault or negligence of the Party claiming Force Majeure or its contractors or subcontractors. Subject to the foregoing definition, examples of causes or events that may constitute Force Majeure include acts of God, sudden actions of the elements such as floods, earthquakes, volcanoes, meteorites, hurricanes, solar flare or eruption, wind speeds in excess of safe installation or working limits of the photovoltaic modules or tornadoes; sabotage; vandalism beyond that which could reasonably be prevented by the Party claiming the Force Majeure; terrorism; acts of a public enemy; war; riots or other civil disturbance; fire; explosion; blockage, insurrection, or inability (despite due diligence), to obtain or maintain required licenses, permits, or approvals for the construction and operation of the System under the terms of this Agreement; any failure or inability to obtain necessary machinery, equipment, materials or spare parts, but only to the extent such failure or inability is caused by an event of Force Majeure, including any order to Seller to take any action, that prevents Seller from delivering Energy Output under this Agreement. Notwithstanding the foregoing, during the development or construction of the System, but not from or after the Commercial Operation Date, Force Majeure shall include strikes, slow downs, or labor disruptions (even if such difficulties could be resolved by conceding to the demands of a labor group); the adoption or change in (or change in the interpretation of) any rule or regulation or judicial decision lawfully imposed by federal, state, or local government bodies.

Section 18.2 Neither Party shall be considered to be in default in the performance of any obligations in this Agreement (other than obligations to pay money, including for sales and purchases of Energy Output pursuant to Article II) when a failure of performance shall be due to an event of Force Majeure, and any time periods for such performance shall be extended during an event of Force Majeure; provided, that (i) the non-performing Party gives the other Party prompt written notice describing the particulars of the event of the Force Majeure; (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure event; (iii) the non-performing Party proceeds with reasonable diligence to remedy its inability to perform, mitigates the effects of the Force Majeure event and provides regular progress reports to the other Party describing actions taken to end the Force Majeure event; and (iv) when the non-performing Party is able to resume performance of its obligations under this Agreement, the non-performing Party shall provide written notice of its ability to resume performance of its obligations under this Agreement and shall promptly resume such performance.

Section 18.3 If an event of Force Majeure is reasonably expected to continue for more than three hundred sixty-five (365) days or longer, then the Party not experiencing the event of Force Majeure may terminate this Agreement after one hundred eighty (180) days by providing written notice of termination to the other Party. Termination shall be effective upon the giving of the notice. Purchaser shall pay Seller the Energy Rate for the Energy Output delivered to the Delivery Point prior to the date of termination.

ARTICLE XIX WARRANTIES AND PERFORMANCE STANDARD

Section 19.1 Warranty. Seller warrants that (i) the Energy Output provided by Seller under this Agreement at the Delivery Point shall be produced by a photovoltaic system consisting of photovoltaic modules and suitable for use in a commercial operation for utility interconnection, and (ii) title to the Energy Output delivered at the Delivery Point shall pass from Seller to Purchaser free of any Liens created by Seller.

Section 19.2 Performance Standard. Seller shall undertake commercially reasonable efforts to operate and maintain the System in accordance with Prudent Operating Practices.

Section 19.3 Limitation of Warranty. EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THE AGREEMENT, SELLER MAKES NO WARRANTY EXPRESS OR IMPLIED UNDER THIS AGREEMENT. ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER WARRANTIES, WHETHER BASED ON STATUTE, CONTRACT, TORT OR OTHERWISE (OTHER THAN AS SPECIFICALLY SET FORTH IN THE AGREEMENT) ARE HEREBY COMPLETELY AND IRREVOCABLY WAIVED BY PURCHASER.

ARTICLE XX INDEMNIFICATION

Section 20.1 Indemnification by Seller. To the fullest extent permitted by law, Seller shall indemnify, save harmless and defend Purchaser or any of its trustees, officers, directors, employees, contractors and agents from and against any and all costs, claims, and expenses incurred by such parties in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any person, but only to the extent caused by (a) the negligence, gross negligence or willful misconduct of Seller or its agents or employees or others under Seller's control or (b) Seller's default under this Agreement.

Section 20.2 Indemnification by Purchaser. To the fullest extent permitted by law, Purchaser shall indemnify, save harmless and defend Seller or any of its officers, directors, employees, contractors and agents from and against any and all costs, claims, and expenses incurred by such parties in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any person, but only to the extent caused by (a) the negligence, gross negligence or willful misconduct of Purchaser or its agents or employees or others under Purchaser's control or (b) Purchaser's default under this Agreement. Purchaser shall indemnify, defend and hold harmless all of Seller's Indemnified Parties from and against all Liabilities arising out of or relating to the existence at, on, above, below or near the Site of any Hazardous Substance, except to the extent

deposited, spilled or otherwise caused by the negligence or willful misconduct of Seller or any of its contractors, agents or employees.

Section 20.3 Notice of Claims. Any Party seeking indemnification hereunder (the “Indemnified Party”) shall deliver to the other Party (the “Indemnifying Party”) a written notice describing the facts underlying its indemnification claim and the amount of such claim (each such notice a “Claim Notice”). Such Claim Notice shall be delivered promptly to the Indemnifying Party that an action at law or a suit in equity has commenced; provided, however, that failure to deliver the Claim Notice shall not relieve the Indemnifying Party of its obligations under this Article XX, except to the extent that such Indemnifying Party has been prejudiced by such failure.

Section 20.4 Defense of Action. If requested by the Indemnified Party, the Indemnifying Party shall assume on behalf of the Indemnified Party, and conduct with due diligence and in good faith, the defense of such Indemnified Party with counsel reasonably satisfactory to the Indemnified Party; provided, however, that if the Indemnifying Party is a defendant in any such action and the Indemnified Party reasonably believes that there may be legal defenses available to it that are inconsistent with those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to participate in its defense of such action at the Indemnifying Party’s expense. If any claim, action, proceeding or investigation arises as to which the indemnity provided for in this Article XX applies, and the Indemnifying Party fails to assume the defense of such claim, action, proceeding or investigation after having been requested to do so by the Indemnified Party, then the Indemnified Party may, at the Indemnifying Party’s expense, contest or, with the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld, settle such claim, action, proceeding or investigation. All costs and expenses incurred by the Indemnified Party in connection with any such contest or settlement shall be paid upon demand by the Indemnifying Party.

Section 20.5 Percentage Share of Negligence. It is the intent of the Parties hereto that where fault, acts or omissions are determined to be contributory, principles of comparative negligence will be followed and each Party shall bear the proportionate cost of any loss, damage, expense and liability attributable to that Party’s negligence, acts or omissions.

ARTICLE XXI INSURANCE

Section 21.1 Insurance. Each Party shall provide and maintain, without interruption, during the Term hereof commercial general liability insurance in the amount set forth in subparagraph (a) below, and property damage insurance in the amount set forth in subparagraph (b) below.

(a) Commercial General Liability (CGL) Insurance, including but not limited to Products and Completed Operations and Contractual Liability, as applicable to Seller's obligations under this Agreement with limits not less than:

(i) Personal Injury - \$2,000,000 per occurrence and in the annual aggregate; and

(ii) Property Damage - \$2,000,000 per occurrence and in the annual aggregate.

(b) Each Party shall maintain All Risk Property Damage Insurance (including vandalism, theft, earthquake and flood insurance providing coverage to the Party's property or equipment) at levels sufficient to cover damage and losses to its property and equipment necessary to discharge its obligations hereunder.

(c) Each Party shall maintain Excess Liability Insurance with limits of not less than \$5,000,000 per occurrence and in the general annual aggregate in excess of the limited provided in the CGL policies set forth above. The coverage terms of the Excess insurance must be at least as broad as the underlying insurance policies.

(d) Each Party shall maintain employer's liability insurance with coverage of at least \$1,000,000.

(e) Each Party shall maintain workers' compensation insurance as required by law.

Section 21.2 Certificates of Insurance. Each Party shall provide the other Party with certificates of insurance evidencing property insurance and general liability coverage promptly following receipt of written request from the requesting Party.

Section 21.3 Occurrence Policy. All insurance required hereunder shall provide insurance for occurrences from the date hereof throughout the later of the expiration or termination hereof.

ARTICLE XXII DISPUTES

Section 22.1 Any dispute, controversy or claim arising out of or in connection with this Agreement (a "Dispute") shall be resolved in accordance with this Article XXII. Upon the occurrence of a Dispute:

(a) Either Party may deliver a notice to the other Party requesting the Dispute be referred to that Party's management. Any such notice shall include the names of the managers to resolve the Dispute. Any such notice shall be delivered within a reasonable period of time after the Dispute arises. Within seven (7) Business Days after receipt of a notice, the

other Party shall provide written notice to the requesting Party indicating a schedule for Dispute resolution, which resolution shall commence within fourteen (14) Business Days of the notice of Dispute.

(b) If, after such resolution in accordance with paragraph (a) above a 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 in good faith 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) With respect to any Dispute not resolved to the mutual satisfaction of the Parties pursuant to paragraphs (a) and (b) above, each Party shall retain the right, but not the obligation, to pursue any legal or equitable remedy available to it in a court of competent jurisdiction.

(d) Either Party may seek a restraining order, temporary injunction, or other provisional judicial relief if the Party, in its sole judgment, believes that such action is necessary to avoid irreparable injury or to preserve the status quo. The Parties shall continue to undertake the procedures hereunder, in good faith, despite any requests for provisional relief.

(e) During the conduct of any Dispute resolution procedures pursuant hereto the Parties shall continue to perform their respective obligations irrespective of the matters in Dispute.

ARTICLE XXIII LIMITATIONS OF LIABILITY

Section 23.1 Waiver of Consequential Damages. Except to the extent of its indemnity obligations for third party claims set forth herein for such liquidated damages that are expressly set forth herein, neither Party shall be liable hereunder for any special, incidental, indirect, punitive or consequential damages arising out of, or in connection with, this Agreement or such Party's performance of its obligations hereunder, including, but not limited to, loss of profits or revenue, lost business opportunities, cost of capital or cost of replacement services. Notwithstanding anything herein, any liquidated damages (including the Termination Value) or other amount due and owing under this Agreement upon the termination of this Agreement shall not be deemed consequential damages.

ARTICLE XXIV MISCELLANEOUS

Section 24.1 Audit Review. Copies of any records in the possession of either Party related solely to the volume or price of the Energy Output, including invoices, receipts, charts,

computer printouts, magnetic tapes or other media, shall be made available not more than one (1) time per calendar year during the Term of this Agreement by either Party to the other Party within thirty (30) days of receipt by the Party supplying such records of: (a) a written request specifying in reasonable detail the records to be provided, and (b) the payment of reasonable research and copying costs incurred in providing such records.

Section 24.2 Purchaser Financial Information. Purchaser shall provide (or causes its auditors to provide) Seller with copies of its audited financial information within one hundred twenty (120) days following the end of each fiscal year during the Term hereof, and shall provide Seller with copies of its unaudited financial information within thirty (30) days following the end of each fiscal quarter during the Term.

Section 24.3 Notice. Any notice, demand, request, consent, approval confirmation, communication or statements which is required or permitted under this Agreement shall be in writing and shall be given or delivered by electronic mail, personal service, Federal Express or comparable overnight delivery service, or by deposit in the United States Post Office, postage prepaid, by registered or certified mail, return receipt requested and addressed to the Party receiving notice as specified below. Changes in such address and/or contact persons named shall be made by notice similarly given. Notices given by electronic mail or personal service shall be deemed given and received the day so given or sent. Notices mailed or sent by a delivery service or by registered or certified mail as provided herein shall be deemed given on the third Business Day following the date so mailed or on the date of actual receipt, whichever is earlier. Each party shall deem a document emailed or electronically sent in PDF form to it as an original document.

PURCHASER: Livermore Area Recreation and Park District
4444 East Avenue
Livermore, California 94550
Attention: Jeff Schneider, Administrative Services Manager
Telephone: (925) 373-5700
Email: jschneider@larpd.org

SELLER: SSI DevCo, LLC
c/o Standard Solar, Inc.
1355 Piccard Dr, Suite 300
Rockville, MD 20850
Attention: President & CEO
Telephone: 301-944-1200

With a required copy that shall not constitute notice to:

GreeneHurlocker PLC
1807 Libbie Ave., Suite 102
Richmond, VA 23226

Attention: Eric W. Hurlocker
Email: ehurlocker@greenehurlocker.com

Section 24.4 Complete Agreement; Modification. The terms and provisions contained in this Agreement and referenced documents constitute the entire Agreement between Purchaser and Seller and shall supersede all previous communications, representations, or agreements, either oral or written, between Purchaser and Seller with respect to the sale of Energy Output from the System. No amendment or modification of this Agreement shall be binding on either Party unless such amendment is reduced to writing and signed by authorized representatives of both Parties.

Section 24.5 Third Party Beneficiaries. Except as otherwise expressly provided herein (e.g., with respect to Financing Party's rights hereunder), this Agreement is for the sole benefit of the Parties hereto and their permitted successors and assigns, and nothing in this Agreement or any action taken hereunder shall be construed to create any duty, liability or standard of care to any Person not a Party to this Agreement. Except as specifically otherwise provided herein, no Person shall have any rights or interest, direct or indirect, in this Agreement.

Section 24.6 Assignment; Financing.

(a) Assignment. Except as set forth in the next sentence, neither Party shall have the right to sell, transfer or assign this Agreement or its rights, duties or obligations hereunder, without the prior written consent of the other Party, which consent may not be unreasonably withheld, conditioned or delayed. Seller may, without the prior written consent of Purchaser, assign, mortgage, pledge or otherwise directly or indirectly assign its interests in this Agreement to any Financing Party, any entity through which Seller is obtaining financing from a Financing Party, any Affiliate of Seller or any person succeeding to all or substantially all of the assets of Seller (provided that Seller shall be released from liability hereunder as a result of any of the foregoing permitted assignments only upon assumption of Seller's obligations hereunder by the assignee); provided, that with respect to any assignment described above, the assignee either (A) is an entity that has the appropriate experience and ability to operate and maintain photovoltaic solar systems (an "Operator"); or (B) enters into a contract with an Operator, pursuant to which (1) such Operator shall be responsible for all System operation and maintenance under this Agreement and (2) Seller shall have granted to Operator all other rights granted to Seller herein necessary for operation and maintenance of the System (including access rights to the Site) as required by this Agreement. This Agreement shall be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.

(b) Financing. Purchaser acknowledges that Seller may be financing a part or all of its capital requirements for the installation of the System and its operation and maintenance with a Financing Party. Seller may choose the manner of financing the System and the financing parties in Seller's sole discretion. The transaction costs and repayment of any such Seller financing shall be borne entirely by Seller.

(i) Seller may assign and transfer as security to any Financing Party all of the interest, rights and remedies of Seller in, to and with respect to this Agreement or with respect to the System.

(ii) In the event of a default by Seller in the performance of any of its obligations under this Agreement, or upon the occurrence or non-occurrence of any event or condition under this Agreement which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable Purchaser to terminate or suspend its obligations or exercise any other right or remedy under this Agreement or under applicable law. If Seller has provided written notice to Purchaser of the Financing Party's name and address, Purchaser will provide the Financing Party with notice of such occurrence at the same time it provides such notice to Seller. Purchaser will afford the Financing Party or its designee the same cure period as provided to Seller pursuant to this Agreement, it being understood that the cure period in respect of one event will cover the same days for Seller and the Financing Party or its designee as long as each receives such written notice of default.

(iii) Upon any default by Seller and the exercise of remedies by a Financing Party under any Seller financing agreement, including any foreclosure on or taking of possession of the System by the Financing Party, whether by judicial proceeding or under any power of sale contained in any security agreement, or any conveyance from Seller to the Financing Party (or any assignee of the Financing Party) in lieu thereof, and upon compliance by such Financing Party or designated operator with Seller obligations in connection with its rights of cure as contained in such financing agreement, Purchaser shall accept such Financing Party or designated operator in place of Seller for all purposes under or in connection with this Agreement for the remainder of the Term hereof.

(c) Purchaser's Cooperation in respect of Seller Financing. To facilitate Seller's financing, including Seller's pledge or collateral assignment of its rights under this Agreement and/or grant of a security interest in the System, Purchaser agrees as follows:

(i) Purchaser acknowledges that it has been advised that as part of the financing of the System, Seller may grant one or more security interests in the System to financing parties, which may be perfected by a public record filing in the applicable state and/or local jurisdiction records. Purchaser consents to such filings.

(ii) Purchaser shall provide all reasonable assistance to Seller to help Seller consummate financing of the System by any Financing Party. Purchaser shall use its best efforts to obtain any lien waivers, execution of commercial law forms and other documents as reasonably needed by Seller or any Financing Party to secure such Financing Party's collateral position in the System or in Seller's rights under this Agreement, all at Seller's expense, including any attorneys' fees incurred for any requested assistance.

Section 24.7 Savings Clause. Each term and condition of this Agreement is deemed to have independent effect and the invalidity of any partial or whole paragraph or article shall not invalidate the remaining paragraphs or articles. The obligation to perform all of the terms and conditions of this Agreement shall remain in effect regardless of the performance of any invalid term by the other Party.

Section 24.8 Counterparts. This Agreement may be executed in counterparts, each of which shall, for all purposes, be deemed an original and all such counterparts, taken together, shall constitute one and the same instrument.

Section 24.9 Forward Contract. The Parties acknowledge and agree that this Agreement and the transactions consummated under this Agreement constitute a “forward contract” within the meaning of the Bankruptcy Code and that each Party is a “forward contract merchant” within the meaning of the Bankruptcy Code.

Section 24.10 Governing Law. The interpretation and performance of this Agreement and each of its provisions shall be governed and construed in accordance with the laws of the State where the System is located, without regard to its principles on conflict of laws.

Section 24.11 Removal of Liens.

(a) Purchaser will ensure that no Liens of whatever type will be filed, lodged or attached to the System (other than those created by Seller or its creditors). If any such Liens are filed, lodged or attached to the System, Purchaser will do all acts and things at the Purchaser’s expense to remove such Liens and agrees to fully indemnify Seller for any loss and damage that Seller suffers as a result of a Lien on or over the System. Seller shall be entitled to, and is hereby authorized to, file one or more precautionary Uniform Commercial Code financing statements or fixture filings, as applicable, in such jurisdictions as it deems appropriate with respect to the System in order to protect its rights in the System; provided, however, Purchaser shall obtain any necessary consents from the City prior to any fixture filings on the Site.

(b) Seller shall not cause liens to be filed against the Site. If any liens are filed, lodged or attached to the Site, Seller will do all acts and things at Seller’s expense to remove such liens and agrees to fully indemnify Purchaser for any loss and damage that Purchase suffers as a result of a Lien on the Site.

Section 24.12 Estoppel. Either Party hereto, without charge, at any time and from time to time, within five (5) Business Days after receipt of a written request by the other Party hereto, shall deliver a written instrument, duly executed, certifying to such requesting Party, or any other person, firm or corporation specified by such requesting Party: (i) that this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or not to the knowledge of any such Party there are then existing any offsets or defenses in favor of such Party against enforcement of any of the terms, covenants and conditions of this Agreement

and, if so, specifying the same and also whether or not to the knowledge of such Party the other Party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by a Party hereto. Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

Section 24.13 Cooperation with Financing. Purchaser acknowledges that Seller may be financing the System and Purchaser agrees that it shall reasonably cooperate with Seller and its financing parties in connection with such financing, including but not limited to (a) the furnishing of financial statements and other relevant information to the Seller, (b) the giving of certificates, (c) the consent to the collateral assignment or license of this Agreement, the Sublease Agreement and/or the System, for the benefit of any Financing Party, and (d) the consent to any Liens upon any of Seller's interest in the Site or any easement or leasehold interest in the Site owned by the Seller, all as reasonably required by any Financing Party in order to effect the successful financing of the System.

Section 24.14 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 Code, this Agreement is and shall be deemed to be a service contract with respect to the sale to the Purchaser of electric energy produced at an alternative energy facility.

Section 24.15 Attorneys' Fees. In the event that any court or arbitration proceeding is brought under or in connection with this Agreement, the prevailing party in such proceeding (whether at trial or on appeal) shall be entitled to recover from the other party all costs, expenses, and reasonable attorneys' fees incident to any such proceeding. The term "prevailing party" as used herein shall mean the party in whose favor the final judgment or award is entered in any such judicial or arbitration proceeding.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have duly executed and delivered this Agreement as of the date first written above.

SELLER:

SSI DevCo, LLC

By: _____
Name: _____
Its: _____

PURCHASER:

Livermore Area Recreation & Park District

By: _____
Name: _____
Its: _____

SYSTEM SPECIFICATIONS

Site Location: Robert Livermore Community Center, 4444 East Ave. Livermore, CA 94550

System Size (Nameplate Capacity): 400 kW DC

Installation Type: Roof Mount

Site Layout and System Drawings: [Attached hereto.]

ENERGY RATES

Pursuant to Section 2.2 the rates paid during the Term of this Agreement are as follows:

Energy Rate shall mean:

A starting rate of \$0.165/kWh adjusted (with an annual escalation rate of 0%) on the first anniversary of the Commercial Operation Date, and each anniversary of such date thereafter over the Term, as set forth in the table below.

Year	PPA Energy Rate (\$/kWh)
1	\$0.165
2	\$0.165
3	\$0.165
4	\$0.165
5	\$0.165
6	\$0.165
7	\$0.165
8	\$0.165
9	\$0.165
10	\$0.165
11	\$0.165
12	\$0.165
13	\$0.165
14	\$0.165
15	\$0.165
16	\$0.165
17	\$0.165
18	\$0.165
19	\$0.165
20	\$0.165
21	\$0.165
22	\$0.165
23	\$0.165
24	\$0.165
25	\$0.165

TERMINATION VALUE SCHEDULE

The Termination Value due in any year, at any point within such year, is value set forth in the table below (the “Termination Value”):

Project: City of Livermore - \$0.1650/kwh 0% escalation

Year	Termination Value (in \$)
1	1,411,528
2	1,321,635
3	1,230,932
4	1,139,384
5	1,046,932
6	953,525
7	936,389
8	918,058
9	898,356
10	877,308
11	854,647
12	830,223
13	803,914
14	777,855
15	749,882
16	719,703
17	687,105
18	651,854
19	613,695
20	572,348
21	527,508
22	478,838
23	425,971
24	368,506
25	306,002

BUYOUT VALUE SCHEDULE

The Buyout Value for a specified year, at any point within such year, is amount set forth in the table below (the “Buyout Value”).

Year	Buyout Value (in \$)
7	\$909,361
8	\$890,490
9	\$870,236
10	\$848,625
11	\$825,391
12	\$800,382
13	\$773,476
14	\$746,808
15	\$718,215
16	\$687,402
17	\$654,158
18	\$618,248
19	\$579,417
20	\$537,385
21	\$491,845
22	\$442,462
23	\$388,868
24	\$330,661
25	\$267,400

Recording Requested by and
When Recorded Return to:

City Clerk
City of Livermore
1052 South Livermore Avenue
Livermore, CA 94550

**AMENDMENT TO LEASE
Between City and LARPD
4444 East Avenue, Livermore, California**

This First Amendment (“Amendment”) to the Lease dated June 28, 2004 (“Lease”) between the Livermore Area Recreation and Park District (“District” or “Lessee”) and the City of Livermore, a municipal corporation (“City” or “Lessor”), is made and entered into as of _____, 2019.

RECITALS

A. The parties wish to extend the term of the Lease until the year 2046.

NOW, THEREFORE, the Lease is extended as follows:

1. Section 2.2 of the Lease is hereby amended to read as follows:

“2.2. Initial Term of Lease. The term of the Lease begins on the date this Lease is signed and continues for Forty-two (42) years from the date of commencement.”

2. Except as modified by this Amendment, the Lease shall remain unchanged and is in full force and effect.
3. The terms and provisions of this Amendment are incorporated by this reference into the Lease as though set forth in full therein.
4. In the event of any conflict between this Amendment and the Lease, this Amendment shall govern and control the intent and agreement of the parties.
5. This Amendment may be executed in any number of counterparts with the same effect as if the parties had all signed the same document, and which together shall constitute one and the same instrument.

6. Facsimile, electronically scanned and photocopied signatures shall be as valid as original signatures only for purposes of demonstrating execution of the Amendment until such time as originally executed documents can be circulated. Said originally executed documents shall be binding and shall constitute evidence of the execution of this Amendment for all purposes.
7. District and City have executed this Amendment, which shall be effective as of the day and year written above.

Signatures (shall be notarized):

Lessee:

Livermore Area Recreation and Park District

Mathew Fuzie
General Manager

Dated: _____

Lessor:

ATTEST:

City of Livermore
A municipal corporation

John Marchand
Mayor

Sarah Bunting
City Clerk

Dated: _____

APPROVED AS TO FORM:

Jason R. Alcala
City Attorney

ACKNOWLEDGMENT

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 _____)

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

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

WITNESS my hand and official seal.

ACKNOWLEDGMENT

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 _____)

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

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

WITNESS my hand and official seal.

SUBLEASE
Livermore Area Recreation and Park District
Sublease of a Portion of Subtenant Space

THIS SUBLEASE ("Sublease"), dated as of _____, 2019 is made by and between SSI DevCo, LLC, a Delaware limited liability company ("Subtenant"), and Livermore Area Recreation and Park District ("LARPD"), a California special district ("Tenant").

RECITALS

A. On June 28, 2004, the Tenant entered into a lease ("Lease") with the City of Livermore ("Master Landlord") for the Property located at 4444 East Avenue in Livermore, California, consisting of approximately 29.853 ± acres of improved real property, more particularly described in Exhibit "A", attached hereto and incorporated by reference ("Property"). A copy of the Lease is attached hereto as Exhibit "B."

B. Subtenant acknowledges that it has reviewed the Lease and is familiar with the provisions thereof.

C. Subtenant wishes to sublease a portion of the Property from the Tenant, and the Tenant agrees to sublease a portion of the Property to Subtenant, on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Subtenant and Tenant agree as follows:

1. **Definitions.** All capitalized terms used in this Sublease and not otherwise defined herein shall have the respective meanings ascribed to them in the Lease.
2. **Subtenant's Space.** The Tenant hereby subleases to Subtenant and Subtenant hereby subleases from Tenant a portion of the Property consisting of approximately 89,145 square feet or 2.0465 acres, more or less as shown on Exhibit "C" attached hereto ("Subtenant's Space"), for the Term (as defined below), at the rental set forth herein, and subject to all of the terms, conditions and reservations set forth herein.
3. **Use.** The Subtenant's Space shall be used and occupied only for the following purposes: For Subtenant's construction, operation and maintenance of a solar energy system, including a solar array, to generate electricity to be used by Tenant in connection with Tenant's use of the Property. Subtenant will be entitled to the use of certain portions of the Subtenants Space as may be necessary or required by Subtenant for the temporary storage, laydown and

staging of tools, materials and equipment, the parking of construction crew vehicles and temporary construction trailers and facilities, and rigging reasonably necessary during the furnishing, installation, testing, commissioning and, if necessary during any period of repair or deconstruction, disassembly, decommissioning and removal of the system. Subtenant shall use reasonable efforts to minimize disruption to Tenant's operations and use of the Property.

Subtenant shall not use or suffer or permit the Subtenant Space to be used for any other purpose except with Master Landlord's and Tenant's discretionary consent.

4. **Term.**

a. This Sublease shall commence on _____, 2019 ("Sublease Commencement Date") and shall terminate on 20 years, ("Initial Term") unless sooner terminated pursuant to the terms of this Sublease or the Lease.

b. Subtenant shall have one (1) option to extend the term of the Sublease on the terms and conditions set forth herein, for a period of five (5) years from 20 to 20, ("Renewal Term") provided Subtenant gives the Tenant between sixty (60) and one hundred eighty (180) days prior written notice of its intent to extend the term of the Sublease. Monthly Rent during the extended term will be \$1.00 annually for each year of any extended term.

c. Notwithstanding anything to the contrary herein, if, during the term of this Sublease, the Lease is terminated by the Master Landlord, and provided that Subtenant is not in default under this Lease, Subtenant may terminate this Sublease upon not less than thirty (30) days prior written notice to the Tenant and the Master Landlord. Subtenant shall pay Rent to the effective date of termination.

5. **Condition of Subtenant's Space.** Subtenant acknowledges that it is subleasing the Subtenant's Space in an improved condition, on an AS-IS, WHERE-IS and WITH ALL FAULTS basis. By acceptance of possession of the Subtenant Space, Subtenant conclusively acknowledges the Subtenant Space is in good order and repair and in a tenantable condition for Subtenant's allowed Use. Subtenant shall provide its own fixtures and equipment, subject to any restrictions stated in the Lease and consistent with the terms of the Power Purchase Agreement, dated _____, 2019, by and between Tenant and Subtenant.

6. **Rent.** Prior to Occupancy, and by the 15th day of the month following execution of this Sublease or any renewal of this Sublease, the Subtenant will make a payment to the Subtenant of Twenty Dollars (\$20.00) ("Initial Rent") covering the Initial Term of the Sublease and an appropriate amount for any renewal thereof. After the Initial Rent payment Subtenant will pay rent in advance on January 1 of each year. Subtenant shall pay to the Tenant One Dollar (\$1.00) in annual rent ("Rent"). The Rent shall be payable to the Tenant without setoff or

deduction. The Rent for any fractional year shall not be prorated. Should there be a dispute over amounts owed, the parties shall meet and confer in good faith to resolve the dispute prior to initiating any action. Payment of Rent under this provision does not constitute a waiver of any remedy either party may have under law or equity.

7. **Other Costs.** If, due to the negligence or wrongful acts of Subtenant, or its breach of the Lease, additional costs or charges are imposed on the Tenant by the Master Landlord pursuant to the Lease, Subtenant shall pay all such costs or charges to the Tenant within thirty (30) days after written demand by the Tenant.

8. **Alterations.** Subtenant shall be allowed to make alterations, additions or changes to the structure of the Subtenant's Space consistent with Subtenant's allowed Use. Any other alterations, additions or changes to any Tenant or Subtenant improvements or permanent fixtures at the Subtenant's Space shall require the prior written approval of the Tenant and Master Landlord. The parties understand that the Lease limits the right of the Tenant to make improvements. All limitations relating to alterations in the Lease are binding upon Tenant and Subtenant. Further, Subtenant acknowledges that alterations may be subject to laws applicable to public works projects, including but not limited to the prevailing wage requirements set forth in Labor Code Section 1771.5.

9. **Condition at Termination.** At the expiration of this Sublease, Subtenant shall have removed its trade fixtures and personal property from the Subtenant's Space, and shall surrender the Subtenant's Space to the Tenant in a substantially similar condition and in as good order, repair and condition as when the Subtenant's Space were delivered to Subtenant, ordinary wear and tear excepted.

10. **Lease.** This Sublease is and shall at all times be subject and subordinate to the Lease, and every provision thereof. Subtenant acknowledges that Subtenant's use and enjoyment of the Subtenant's Space are subject to the Tenant's rights and obligations pursuant to the Lease. For purposes of this Sublease, the terms of the Lease are incorporated in this Sublease by reference with the same force and effect as if set forth herein, except that, if the context requires otherwise:

- a. References in such provisions to City, Landlord or Lessor shall be deemed to refer to the City of Livermore;
- b. References in such provisions to District, Tenant or Lessee shall be deemed to refer to LARPD;
- c. References in such provisions to the Property shall be deemed to refer to the Subtenant's Space;

- d. References in such provisions to subleases, sublettings or tenants in the Lease shall be deemed to refer to subsubleases, subsublettings, or subtenants or subassignments. Notwithstanding anything to the contrary in the Lease, Subtenant shall not further transfer any interest in this Sublease or enter into any assignment as set forth in Section 7.1 of the Lease without the prior approval of the Tenant and Master Landlord.
- e. Subtenant shall not commit nor permit its employees, agents, visitors, invitees, directors or vendors to commit any act or omission which would violate any material term or condition of the Lease. Likewise, Tenant shall not commit nor permit its employees, agents, visitors, invitees or vendors, including, without limitation, any person on the Premises as a result of use by LARPD and others described at Section 3, above, to commit any act or omission which would violate any material term or condition of the Lease or this Sublease.
- f. Subtenant shall not have any authority to make any separate agreement with Master Landlord regarding the Subtenant's Space. If the Lease terminates or expires, this Sublease shall terminate and the parties shall be relieved of any further liability or obligation under this Sublease, except for liabilities arising prior to the termination of the Lease; provided, however, that if the Lease terminates as a result of a default or breach by LARPD or Subtenant under this Sublease and/or the Lease, then the defaulting party shall be liable to the nondefaulting party for the damage suffered as a result of such termination. Notwithstanding the foregoing, if the Lease gives LARPD any right to terminate the Lease in the event of the partial or total damage, destruction, or condemnation of the Property or the building or project of which the Subtenant's Space are a part, or by exercising any cancellation option, the exercise of such right by the LARPD shall not constitute a default or breach hereunder.
- g. Notwithstanding anything to the contrary contained herein, in no event shall LARPD be deemed to be in default under this Sublease or liable to Subtenant for any failure of the Master Landlord to perform its obligations under the Lease. With respect to all work, services, utilities, repairs, restoration, maintenance, compliance with law, insurance, indemnification or other obligations or services to be performed or provided by Master Landlord under the Lease, the LARPD's sole obligation shall be to exercise commercially reasonable efforts to require Master Landlord to comply with the obligations of Master Landlord under the Lease, provided that in no event shall the LARPD be required to file suit against Master Landlord unless any such legal action is required to protect Subtenant and the LARPD's use, possession and enjoyment of the Subtenant's Space.

- h. Wherever the Lease requires the consent of the Landlord be obtained, Master Landlord's consent and the LARPD's consent shall be required. It shall not be unreasonable for the LARPD to withhold consent under any circumstances where Master Landlord withholds its consent, whether or not Master Landlord acts reasonably in so doing.

11. Insurance and Indemnification

- a. Whenever, pursuant to the Lease as incorporated herein, LARPD is required to furnish insurance to or for the Landlord, Subtenant also shall be required to furnish such insurance to or for the LARPD and the Master Landlord, and shall name Master Landlord and the parties identified in the Lease, and the LARPD, its Board members, officers, employees, volunteers and agents as additional insureds.
- b. Whenever, pursuant to the Lease as incorporated herein, LARPD is required to indemnify or defend the Landlord, Subtenant shall be required also to indemnify or defend the LARPD and the Landlord and such other persons as shall be entitled thereto under the Lease.
- c. In addition to Subtenant's obligations under this section, Subtenant shall indemnify, defend and hold harmless the LARPD from and against any loss, cost, damage or expense, or any claim therefor, arising out of (i) any failure by Subtenant to observe or perform any of the terms, covenants or conditions of the Lease required to be observed or performed by Subtenant, including any loss, cost, damage or expense which may result from any default under or termination of the Lease arising by reason of any such failure, or (ii) any holding over by Subtenant in the Subtenant's Space beyond the expiration or sooner termination of this Sublease, including any such liability with respect to the Subtenant's Space arising out of such holding over by Subtenant.
- d. Subtenant waives claims against LARPD for damage to property owned by Subtenant, unless such damage is not covered under any policy of property insurance maintained (or required by this Sublease to be maintained) by Subtenant, and to the extent that such damage is not caused by any negligent or intentional misconduct of LARPD. Notwithstanding the foregoing, Subtenant hereby waives claims against Master Landlord and LARPD for death, injury, loss or damage of every kind and nature, if and to the extent that LARPD waives or releases such claims against Master Landlord under the Lease. Subtenant agrees to obtain, for the benefit of Master Landlord and LARPD, such waivers of subrogation rights from its insurer as are required of LARPD under the Master Lease.
- e. LARPD shall defend, indemnify and hold the Subtenant, its officers, employees, and agents harmless from and against any and all liability, loss, expense or claims for injury

or damages arising out of the performance of this Sublease but only (i) in proportion to and to the extent such liability, loss, expense, or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the LARPD, its officers, agents or employees, and (ii) if not otherwise waived or released under Section 12.d above.

12. **Remedies Upon Default.** Should Subtenant be in default of the Sublease, including a default as defined in Section 6 of the Lease, or any other breach or default which would permit Master Landlord to terminate the Lease for default, the LARPD may elect any remedies set forth in Section 6 of the Lease or otherwise provided by applicable law.

13. **Notices.** All notices, consents, demands and other communications from one party to the other given pursuant to the terms of this Sublease or under the laws of the State of California, including but not limited to, notice under the provisions of Section 1161 of the California Code of Civil Procedure and Section 1946 of the California Civil Code, shall be in writing and shall be deemed to have been fully given when deposited in the United States mail, certified or registered, postage prepaid, and addressed to Subtenant or LARPD at the addresses respectively specified below or to such other place as Subtenant or LARPD may from time to time designate by a written notice to the other; or, in the case of Subtenant, delivered to Subtenant at the Subtenant's Space or at any place where Subtenant or any agent or employee of Subtenant may be found if sent subsequent to Subtenant's vacating, deserting, abandoning or surrendering of the Subtenant's Space. Subtenant hereby appoints as its agent to receive the service of all dispossessory or distraint proceedings and notices thereunder the person in charge of or occupying the Subtenant's Space at the time, and, if no person shall be in charge of or occupying the same, then such service may be made by attaching the same on the main entrance of the Subtenant's Space. Subtenant hereby agrees that service of notice in accordance with the terms of this Sublease shall be in lieu of the methods of service specified in Section 1162 of the California Code of Civil Procedure. The provisions of subdivision (a) of Section 1013 of the California Code of Civil Procedure, extending the time within which a right may be exercised or an act may be done, shall not apply to a notice given pursuant to this Sublease.

The address for Subtenant is:

SSI DevCo., LLC
c/o Standard Solar, Inc.
1355 Piccard Dr., Suite 300
Rockville, MD 20850
Attention: President & CEO
Telephone: 301-944-1200

The address for Tenant is:

Livermore Area Recreation and Park District
Attn: Jeff Schneider, Administrative Services Manager
4444 East Avenue
Livermore, California 94550

14. **Limitation of Liability.** No board member, director, officer, employee, advisor or agent of the Subtenant or Tenant acting within the course and scope of his or her employment duties or fiduciary duties, as the case may be, shall be personally liable in any manner or to any extent under or in connection with this Sublease. In no event shall the Subtenant, Tenant or any of their respective directors, officers, employees, advisors or agents be responsible for any consequential damages suffered or incurred by the Subtenant or Tenant.

15. **Holding Over.** The parties contemplate that this Sublease shall terminate or expire in accordance with the terms and conditions of the Lease, without any right of holdover by Subtenant.

16. **Miscellaneous.**

- a. Exhibits. Exhibits A, B and C are attached to this Sublease and are incorporated herein by this reference.
- b. Authority. The individual or individuals signing this Sublease on behalf of each party hereto represent and warrant that: (i) Each has full power and authority to enter into this Sublease and to perform this Sublease; (ii) the execution, delivery and performance of this Sublease by the party in question have been duly and validly authorized by all necessary action on the part of such party and all required consents and approvals have been duly obtained; and (iii) this Sublease is a legal, valid and binding obligation of the party in question, enforceable against such party in accordance with its terms, subject to the effect of applicable bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws affecting the rights of creditors generally.
- c. Independent Covenants. This Sublease shall be construed as though the covenants between Subtenant and Tenant are independent.
- d. Attorneys' Fees. Notwithstanding any provision to the contrary in the Lease, in the event of an action or suit solely between the Subtenant and Tenant by reason of a breach of any of the covenants or agreements in the Lease, then, in that event, the prevailing party in such action or dispute, whether by final judgment or out of court settlement, shall pay its own attorneys' fees and costs.

IN WITNESS WHEREOF, the parties have executed this Sublease as of the date first set forth above.

“Subtenant”

SSI DevCo, LLC, a Delaware limited liability company

By: _____

“Tenant”

Livermore Area Recreation and Park District

By: Jeff Schneider,
Administrative Services Manager

APPROVED AS TO FORM:

By: _____

APPROVED AS TO FORM:

Rod A. Attebery, General Counsel

EXHIBIT "A"
LEGAL DESCRIPTION OF THE PROPERTY

DRAFT

EXHIBIT "A"
Description of Lease Parcel

LEGAL DESCRIPTION
L.A.R.P.D. LEASE PARCEL
Robert Livermore Park Community Center Complex

APN 99A-1400-1-2,2-6 & 2-7 (Portions)

The following described "non-exclusive" Lease Parcel is reserved for the use of Livermore Area Recreation and Parks District (L.A.R.P.D.) for recreational activities, facilities and the appurtenances thereto.

Real Property situate in the City of Livermore, County of Alameda, State of California, as follows:

A portion of Subdivision 2 of Plot "J", as said Plot is shown upon the "Map of the Rancho Las Positas", recorded July 1873 in Book 95 of Deeds at page 205, in the Office of the County Recorder of Alameda County, California, described as follows:

Being a portion of those certain parcels of land described in the deeds to the City of Livermore, recorded April 1, 1969 on Reel:2374 at Image 16, Series No. 69-035148, and the deed recorded January 24, 1975, on Reel: 3861 at Image 309, Series No. 75-009144, Official Records of Alameda County, together with a portion of Parcel 3 of Parcel Map 4387, filed April 24, 1985 in Book 154 of Parcel Maps at Page 5, Alameda County Records, more particularly described as follows:

Beginning at a point of the northern line of East Avenue, said line being a line drawn parallel with and ten (10) feet northerly of the northern line of County Road No. 1515 (66 foot in width), at the southeast corner of Lot 6, Block A, Tract 1984, filed February 19, 1959 in Book 39 of Maps at Page 51, Alameda County Records, the monument line of East Avenue taken as North 89°01'20" West, per Parcel Map 4387 (154 PM 5) as the Basis of Bearings for this description. Thence from said Point of Beginning running along the northern line of East Avenue the following three courses, easterly along the arc of a curve concave to the north, with a radius of 1000.00 feet, from a radial bearing of North 0°58'40" East, through a central angle of 5°35'12", an arc length of 97.51 feet to a point of reverse curvature; thence along the arc of said reverse curve with a radius of 1000.00 feet, through a central angle of 5°35'12", an arc length of 97.51 feet; thence along a line parallel with and 19.50 feet northerly of the above described northern line of Alameda County Road No. 1515, South 89°01'20" East, 491.02 feet to the western line the Fire Station Parcel (as fenced) ; thence along said western line North 0°58'40" East, 258.00 feet; thence along the northern line of said Fire Station Parcel (as fenced) South 89°01'20" East, 225.00 feet to a point

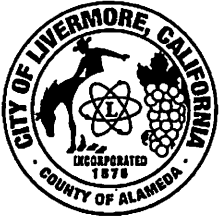
on the western line of Loyola Way as shown on the maps of Tract 5956, filed April 23, 1990 in Book 190 of Maps at Page 32, Alameda County Records; thence along said western line of Loyola Way, North 0°58'40" East, 1230.62 feet to the southeast corner of Lot 87 of the aforesaid Tract 5956, thence along the southern line of Lots 87, 88 and 89 of said Tract 5956, North 89°01'05" West, 242.88 feet to the southwest corner of said Lot 89; thence along the southern line of that parcel of land conveyed to the Livermore School District of Alameda County, a public corporation (L.V.J.U.S.D.), by the deed dated June 29, 1960, and recorded December 30, 1960, on Reel:235 at Image 822, Series No. AR-153714, Official Records of Alameda County, and the northern line of the herein above described Parcel 3 of Parcel Map 4387, North 89°01'20" West, 670.21 feet to the northwest corner of said Parcel 3; thence along the western line of said Parcel 3, being the west line of the hereinabove described Subdivision 2 of Plot "J" of the Rancho Las Positas, South 0°53'15" West, 1498.14 feet to the Point of Beginning.

Containing 29.853 Acres, more or less.



EXHIBIT "B"
LEASE AGREEMENT BETWEEN TENANT AND MASTER LANDLORD

DRAFT



City of Livermore City Clerk's Office

1052 South Livermore Avenue
Livermore, CA 94550-4899
Phone: 925.960.4200 Fax: 925.960.4205

DOCUMENT TRANSMITTAL FORM

Date: August 23, 2004

To: Gail Sloane
LARPD
71 Trevarno Road
Livermore, CA 94551

cc: City Attorney's Office

PLEASE READ THE FOLLOWING:

☒ Original document and resolution copy enclosed for your records

☐ Duplicate original of recorded document and resolution are enclosed for your records

Date of Document:	June 28, 2004
Type of Document:	Lease
Parties:	City of Livermore and LARPD

By: Alice Calvert, City Clerk
Roberta Mathews
925.960.4200

IN THE CITY COUNCIL OF THE CITY OF LIVERMORE
STATE OF CALIFORNIA

A RESOLUTION AUTHORIZING SIGNING OF LEASE AGREEMENT

(ROBERT LIVERMORE COMMUNITY CENTER PARK –
LIVERMORE AREA PARK AND RECREATION DISTRICT [LARPD])

BE IT RESOLVED by the Livermore City Council that the Mayor is authorized to sign, on behalf of the City of Livermore, a lease agreement between the City of Livermore and the Livermore Area Park and Recreation District (LARPD), related to the Robert Livermore Community Center Park Lease. A copy of the lease agreement is on file in the office of the City Clerk.

APPROVED AS TO FORM:



INTERIM CITY ATTORNEY

On motion of Councilmember Dietrich, seconded by Councilmember Beeman, the foregoing Resolution was passed and adopted this 28th day of June, 2004, by the following vote:

AYES: COUNCILMEMBERS Beeman, Dietrich, Reitter

NOES: COUNCILMEMBERS _____

ABSENT: COUNCILMEMBERS Leider, Mayor Kamena



MAYOR, CITY OF LIVERMORE, CALIFORNIA

ATTEST:



CITY CLERK

BB S:\AGENDA\06-28\LARPD park lease.doc AM/TW

RESOLUTION NO. 2004-159

Recording Requested by and
When Recorded Return to:

City Clerk
City of Livermore
1052 South Livermore Avenue
Livermore, CA 94550

Recorded July 28, 2004
Series# 2004346016
Alameda County

LEASE
Between City and LARPD
4444 East Avenue, Livermore, California
(Robert Livermore Community Park)

This Lease is entered into on June 28, 2004 between the Livermore Area Recreation and Park District ("District" or "Lessee") and the City of Livermore, a municipal corporation ("City" or "Lessor").

RECITALS

This Lease is based on the following facts:

- A. The City and LARPD entered into an Agreement entitled *Joint Acquisition and Development of Parks*, dated November 2, 1970 (the "Agreement"). (City Council Resolution No. 314.) The Agreement has been amended four (4) times by mutual agreement of the Parties. The Agreement is a joint exercise of powers agreement under Government Code section 6500 *et. seq.*;
- B. The Agreement provides for the acquisition of park sites by the City and the development, operation and maintenance of the sites by the District for park and recreation purposes and activities;
- C. One of the park sites covered by the Agreement is the Robert Livermore Community Park generally described as 4444 East Avenue, Livermore, California, described more specifically in Exhibit A, attached hereto and incorporated herein by reference (the "Property");
- D. The park site is owned by the City and has been developed, maintained, managed and operated as a park and recreation facility by the District for more than twenty (20) years prior to the effective date of this Lease. For financing reasons, under the State Park Bonds Act, the District must be able to establish that it has rights to the land for at least 20 years following completion of the improvements;
- E. The purpose of this Lease is to set forth the terms of the Lease of the Property.

NOW, THEREFORE, the parties agree that:

Section 1: Definitions.

1.1 Property. The Property which is the subject of this Lease is approximately 29.853± acres located at 4444 East Avenue in Livermore, California, more particularly described in Exhibit "A", attached hereto and incorporated herein by reference.

Section 2: Term of Lease; Use; Operation.

2.1 Lease. The City agrees to lease the Property to Lessee. Lessee agrees to lease the Property all subject to the terms of the Lease. This Lease begins on the date it is signed by both parties.

2.2 Initial Term of Lease. The term of the Lease begins on the date this Lease is signed and continues for Twenty (20) years from the date of commencement.

2.3 Renewal. Upon a written request by the Lessee prior to the expiration of the Agreement, the City Manager may grant a maximum of two five (5) year extensions of the agreement (a total term 30 years).

2.4 Use of Property.

a. Use of Property. Lessee may use the Property for the construction, operation and maintenance of a park and recreation facility, community recreation center, community garden and related park and recreation uses. The use of the property by Lessee shall be on a non-exclusive basis and may be utilized by the public.

b. Nuisances Prohibited. Lessee shall not commit or permit to be committed any waste on or of the Property, and Lessee shall not do or permit to be done any act in or about the Property which shall constitute a nuisance or which may endanger any part of the Property or adjoining property.

c. Compliance With Laws. No use of the Property shall be made or permitted which is in any manner contrary to the statutes, ordinances, regulations, and other requirements of law in effect during the term that regulate the use of the Property.

Section 3: Rent; Late Payments.

3.1 Rent; General. Lessee shall pay to the City rent for the Property in the amounts set forth below:

\$1.00 annually for the initial twenty (20) years.

\$1.00 annually for each year of any renewal of this agreement.

3.2 When Payable. By the 15th day of the month following execution of this Agreement or any renewal of this Agreement, the Lessee shall make a payment to the City of Twenty Dollars (\$20.00) covering the Initial Term of the Agreement and/or an appropriate amount for any renewal thereof as set forth in Paragraph 3.1, above.

Section 4: Taxes.

4.1 Taxes.

The rent paid shall be inclusive of real property taxes.

Should Lessee's interest create additional real property taxes over those now due, Lessee shall be responsible for paying the difference, if any.

Section 5: Insurance.

5.1 Insurance Requirements. Lessee shall maintain insurance in the amounts and under the terms set forth in Exhibit "B" attached, naming the City as an Additional Insured.

Section 6: Default; Remedies.

6.1 Defaults. The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Lessee.

a. The failure by Lessee to make any payment of rent or any other payment required to be made by Lessee, when due, where such failure shall continue for a period of ten (10) days after written notice from the City of the overdue amount.

b. The failure by Lessee to observe or perform any of the covenants, conditions or provisions of this Lease to be observed or performed by Lessee, other than described in Subparagraph 2.4.b. above, where such failure continues for a period of thirty (30) days after written notice from the City; provided, however, that, if the nature of the default is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commences such cure within the thirty (30) day period and thereafter diligently prosecutes such cure to completion.

- c. i) The making by Lessee of any general assignment for the benefit of creditors;
- ii) The institution of any bankruptcy proceedings by or against Lessee;

iii) The appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Property or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days; or

iv) The attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Property or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days.

6.2 Remedies in Default. In the event of any such default or breach by Lessee, the City may, at any time thereafter, with or without notice or demand, and without limiting the City in the exercise of any right or remedy which the City may have by reason of such default or breach.

a. Terminate Lessee's right to possession of the Property by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the Property to the City. In such event, the City shall be entitled to recover from Lessee all damages incurred by the City by reason of Lessee's default, including, but not limited to:

i) The reasonable cost of recovering possession of the Property;

b. Maintain Lessee's right to possession, in which case this Lease shall continue in effect whether or not Lessee has abandoned the Property. In such event, the City is entitled to enforce all of its rights and remedies under this Lease, including the right to recover the rent as it becomes due.

c. Pursue any other remedy now or hereafter available to the City under the laws or judicial decisions of California.

Section 7: Miscellaneous Provisions.

7.1 Assignment and Subletting. Lessee shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber any of Lessee's interest in this Lease or in the Property without the City's prior written consent, which the City shall not unreasonably withhold; provided, Lessee shall not be required to obtain City's prior, written consent with respect to any rental, sublease and/or reservation for use of the Property including the Robert Livermore Community Center or portions of said facility for private or public use so long as such rental, sublease and/or reservation is made subject to and in accordance with Lessee's Facilities Rental Regulations then in effect and as amended from time to time.

7.2 Subordination. Lessee's interest in the Property and this leasehold shall, at all times, be subordinated to the lien of any mortgage, deed of trust, or other encumbrances placed upon the real property by the City from time to time or by its successors except as provided below.

a. All such mortgages, deeds of trust and/or encumbrances shall provide that as long as Lessee is not in default hereunder, neither Lessee's interest nor Lessee's quiet possession and enjoyment of the Property shall be disturbed or interfered with by any such mortgage, trustee, beneficiary or encumbrance holder.

b. This provision for subordination is self-operative and no further instrument of subordination is necessary. Nevertheless, in confirmation of such subordination, Lessee shall execute promptly any instruments that the City may reasonably request.

7.3 Surrender. At the end of the term or upon sooner termination of this Lease, Lessee shall surrender the leased Property to the City.

7.4 Entry and Inspection. The City reserves the right to enter the Property to inspect for Lease compliance, to supply necessary services, and for other legitimate purposes, at any reasonable time. This right of entry shall, except in an emergency, be exercised only after seventy-two (72) hour advance notice.

7.5 Memorandum of Lease. The City agrees upon request to execute a memorandum or "short form" of this Lease for the purpose of recording.

7.6 Waiver. A term or condition of this Lease may be waived at any time by the party entitled to the benefit thereof, but no such waiver shall affect the right of the waiving party to require observance, performance or satisfaction either of that term or condition as it applies on a subsequent occasion or of any other term or condition.

7.7 Amendment. The provisions of this Lease may be modified at any time by written agreement of the parties.

7.8 Succession. Subject to the provisions in this Lease, this Lease shall inure to the benefit of, and be binding upon, the heirs executors, administrators, successors and assigns of the respective parties.

7.9 Exhibits. All exhibits referred to in and attached to this Lease are incorporated in the Lease by reference.

7.10 Attorney's Fees and Costs. If either party commences an action against the other party to enforce this Lease, the prevailing party is entitled to reasonable attorney's fees, costs of suit, investigation costs and discovery costs, including costs of appeal.

If either party becomes a party to any litigation concerning this Lease, or the leased Property, by reason of any act or omission of the other party or its authorized representatives, and not by any act or omission of the party that becomes a party to that litigation or any act or omission of the party that becomes a party to that litigation or any act or omission of its authorized representatives, the party that causes the other party to become involved in the litigation shall be liable to that party for reasonable attorney's fees, court costs, investigation expenses, discovery costs and costs of appeal incurred by it in the litigation.

7.11 Counterparts. This Lease may be executed in any number of counterparts with the same effect as if the parties had all signed the same document.

7.12 Notices. Any notice under this Lease shall be in writing. A written notice or other document shall be deemed to have been duly given on the date of personal service or on the fifth (5th) business day after mailing, if the document is mailed by registered or certified mail addressed to the parties at the addresses set forth below, or at the most recent address specified by the addressee:

City: City Manager
City of Livermore
1052 South Livermore Avenue
Livermore, CA 94550

Lessee: Livermore Area Recreation and Park District
71 Trevarno Road
Livermore, CA 94550
Attn: General Manager

7.13 Entire Agreement. This document constitutes the entire agreement between the parties.

7.14 Holding Over. If Lessee holds over at the Property after the expiration of the term with the consent of the City, either express or implied, such holding over shall be construed to be only a tenancy from month-to-month subject to all the other terms in this Lease. Lessee hereby agrees to continue payment of all monetary sums (such as base monthly rent, taxes, insurance, etc.), which are Lessee's obligation under this Lease.

7.15 Force Majeure. No party shall be deemed to be in breach of this Lease if it is prevented from performing any of its obligations (excepting only the payment of monies then due) for any reason beyond its reasonable control (an "occurrence of force majeure"), including, without limitation, acts of God, riots, strikes, fires, storms, or any regulation of any federal, state, local or foreign government or any agency therein. However, such excuse shall continue only during the pendency of the particular occurrence of force majeure.

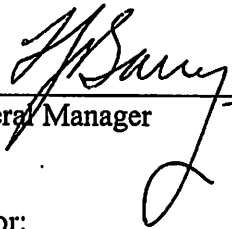
7.16 Termination. This lease may only be terminated by mutual consent, or for cause.

Signatures (shall be notarized):

Lessee:

Livermore Area Recreation and
Park District

Dated: 6-29-04
7-15-04


General Manager T.J. Barry

Lessor:



ATTEST:

City of Livermore
A municipal corporation


Vice-Mayor Tom Reitter


City Clerk

APPROVED AS TO FORM:

 
Senior Assistant City Attorney

STATE OF CALIFORNIA
COUNTY OF ALAMEDA

}
} SS.
}

On June 28, 2004 before me, ALICE CALVERT, CITY CLERK

personally appeared Tom Reitter Vice Mayor,
CITY OF LIVERMORE, personally known to me (or 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.

WITNESS my hand and official seal.

Signature

Alice Calvert



(This area for official City seal)

ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Alameda

} SS.

On 7-15-04

(DATE)

before me, Brian R. Dattilo

(NOTARY)

personally appeared T. J. Barry

SIGNER(S)

☐ personally known to me

- OR -

☒ 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 signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Brian R. Dattilo
NOTARY'S SIGNATURE

OPTIONAL INFORMATION

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgment to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)

- ☐ PARTNER(S)
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

Lease between City of LARAD

TITLE OR TYPE OF DOCUMENT

7
NUMBER OF PAGES

DATE OF DOCUMENT

OTHER

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

RIGHT THUMBPRINT
OF
SIGNER

Top of thumbprint here

EXHIBIT "A"
Description of Lease Parcel

LEGAL DESCRIPTION
L.A.R.P.D. LEASE PARCEL
Robert Livermore Park Community Center Complex

APN 99A-1400-1-2,2-6 & 2-7 (Portions)

The following described "non-exclusive" Lease Parcel is reserved for the use of Livermore Area Recreation and Parks District (L.A.R.P.D.) for recreational activities, facilities and the appurtenances thereto.

Real Property situate in the City of Livermore, County of Alameda, State of California, as follows:

A portion of Subdivision 2 of Plot "J", as said Plot is shown upon the "Map of the Rancho Las Positas", recorded July 1873 in Book 95 of Deeds at page 205, in the Office of the County Recorder of Alameda County, California, described as follows:

Being a portion of those certain parcels of land described in the deeds to the City of Livermore, recorded April 1, 1969 on Reel:2374 at Image 16, Series No. 69-035148, and the deed recorded January 24, 1975, on Reel: 3861 at Image 309, Series No. 75-009144, Official Records of Alameda County, together with a portion of Parcel 3 of Parcel Map 4387, filed April 24, 1985 in Book 154 of Parcel Maps at Page 5, Alameda County Records, more particularly described as follows:

Beginning at a point of the northern line of East Avenue, said line being a line drawn parallel with and ten (10) feet northerly of the northern line of County Road No. 1515 (66 foot in width), at the southeast corner of Lot 6, Block A, Tract 1984, filed February 19, 1959 in Book 39 of Maps at Page 51, Alameda County Records, the monument line of East Avenue taken as North 89°01'20" West, per Parcel Map 4387 (154 PM 5) as the Basis of Bearings for this description. Thence from said Point of Beginning running along the northern line of East Avenue the following three courses, easterly along the arc of a curve concave to the north, with a radius of 1000.00 feet, from a radial bearing of North 0°58'40" East, through a central angle of 5°35'12", an arc length of 97.51 feet to a point of reverse curvature; thence along the arc of said reverse curve with a radius of 1000.00 feet, through a central angle of 5°35'12", an arc length of 97.51 feet; thence along a line parallel with and 19.50 feet northerly of the above described northern line of Alameda County Road No. 1515, South 89°01'20" East, 491.02 feet to the western line the Fire Station Parcel (as fenced) ; thence along said western line North 0°58'40" East, 258.00 feet; thence along the northern line of said Fire Station Parcel (as fenced) South 89°01'20" East, 225.00 feet to a point

on the western line of Loyola Way as shown on the maps of Tract 5956, filed April 23, 1990 in Book 190 of Maps at Page 32, Alameda County Records; thence along said western line of Loyola Way, North 0°58'40" East, 1230.62 feet to the southeast corner of Lot 87 of the aforesaid Tract 5956, thence along the southern line of Lots 87, 88 and 89 of said Tract 5956, North 89°01'05" West, 242.88 feet to the southwest corner of said Lot 89; thence along the southern line of that parcel of land conveyed to the Livermore School District of Alameda County, a public corporation (L.V.J.U.S.D.), by the deed dated June 29, 1960, and recorded December 30, 1960, on Reel:235 at Image 822, Series No. AR-153714, Official Records of Alameda County, and the northern line of the herein above described Parcel 3 of Parcel Map 4387, North 89°01'20" West, 670.21 feet to the northwest corner of said Parcel 3; thence along the western line of said Parcel 3, being the west line of the hereinabove described Subdivision 2 of Plot "J" of the Rancho Las Positas, South 0°53'15" West, 1498.14 feet to the Point of Beginning.

Containing 29.853 Acres, more or less.



EXHIBIT "B"

INSURANCE REQUIREMENTS FOR LESSEES (NO AUTO RISKS)

Lessee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property that may arise from or in connection with the Lessee's operation and use of the leased premises. The cost of such insurance shall be borne by the Lessee.

The Lessor and Lessee acknowledge that the Lessee is a member of the California Association of Park and Recreation Insurance ("CAPRI"), a state-wide, self-insured risk pool of member Park and Recreation Districts. During the entire period that this Lease remains in effect, District shall maintain in force at Lessee's sole cost and expense either (i) a Certificate of Coverage issued by CAPRI representing the Lessee's continued membership in the self-insurance pool with coverage of the type and with limits specified below; or (ii) general commercial liability coverage of the type and with limits specified below. In the case of coverage through CAPRI, the Lessee shall obtain an Attachment to Coverage naming Lessor as an "Additional Covered Entity". In the case of coverage through purchase of general commercial liability insurance policies, all such insurance certificates shall name Lessor as additional insured and shall be issued by insurance companies licensed to do business in the State of California meeting the requirements specified below. In either case, the Attachment to Coverage or Additional Named Insured endorsement shall provide that such coverage may not be canceled or amended without thirty (30) days prior written notice to Lessor. Lessee may carry said insurance under a blanket policy, provided however, said insurance by Lessee shall include an endorsement confirming application to and coverage of Lessor. A copy of each policy of insurance and/or Certificate of Coverage and Additional Named Insured endorsement and/or Attachment to Coverage, as the case may be, shall be delivered to Lessor by Lessee within ten (10) days after the effective date of this Lease.

Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).
2. Workers' Compensation insurance as required by the State of California and Employer's Liability insurance (for Lessees with employees).

3. Property insurance against all risks of loss to any tenant improvements or betterment.

Minimum Limits of Insurance

Lessee shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Employer's Liability: \$1,000,000 per accident for bodily injury or disease.
3. Property Insurance: Full replacement cost with no coinsurance penalty provision.

Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City of Livermore. At the option of the City of Livermore, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City of Livermore, its officers, officials, employees and volunteers; or the Lessee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Other Insurance Provisions

The general liability policy is to contain, or be endorsed to contain, the following provisions:

1. The City of Livermore, its officers, officials, employees and volunteers are to be covered as additional insureds as respects: liability arising out of premises owned, occupied or used by the Lessee. The coverage shall contain no special limitations on the scope of protection afforded to the City of Livermore, its officers, officials, employees or volunteers.
2. The Lessee's insurance coverage shall be primary insurance as respects the City of Livermore, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City of Livermore, its officers, officials, employees or volunteers shall be excess of the Lessee's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the

City of Livermore, its officers, officials, employees or volunteers to the Lessee.

4. Coverage shall state that the Lessee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Livermore.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII.

Verification of Coverage

Lessee shall furnish the City of Livermore with original Certificates of Insurance and endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the City of Livermore before work commences. At the option of the City, the Lessee may be required to provide certified copies of all insurance policies required by this clause.

**IN THE BOARD OF DIRECTORS
OF THE
LIVERMORE AREA RECREATION AND PARK DISTRICT**

RESOLUTION NO. 1902

**A RESOLUTION APPROVING A LEASE AGREEMENT
WITH THE CITY OF LIVERMORE
FOR OPERATION OF ROBERT LIVERMORE COMMUNITY PARK
AND COMMUNITY CENTER**

WHEREAS, the Board of Directors of the Livermore Area Recreation and Park District wishes to enter into an agreement with the City of Livermore for the purpose of establishing the terms and conditions under which the Livermore Area Recreation and Park District will lease the Robert Livermore Community Park from the City of Livermore; and

WHEREAS, the Board of Directors has reviewed the form of the agreement and has found the provisions acceptable to the Livermore Area Recreation and Park District.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of the Livermore Area Recreation and Park District, that the General Manager is hereby authorized and directed to execute on behalf of the District, an agreement by and between the District and the City of Livermore, as attached hereto and made a part hereof.

ON MOTION of Director Turner, seconded by Director Kamena, the foregoing resolution was passed and adopted this 30th day of June, 2004, by the following roll call vote.

AYES: *Directors Quinn, Kamena, Turner and Vice Chairman Furst (4)*

NOES: *None (0)*

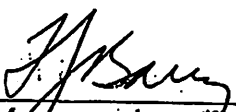
ABSENT: *Chairman Faltings (1)*

APPROVED THIS 30TH DAY OF JUNE, 2004



Vice Chairman, Board of Directors

ATTEST:



General Manager and ex-officio
Clerk to the Board of Directors

EXHIBIT "C"
LEGAL DESCRIPTION OF SUBTENANT'S SPACE

DRAFT

**EXHIBIT A
LEGAL DESCRIPTION
SOLAR ARRAY EASEMENT**

BEING REAL PROPERTY SITUATED IN THE CITY OF LIVERMORE, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF THAT CERTAIN GRANT DEED RECORDED ON APRIL 1, 1969 IN REEL 2374 AT IMAGE 16 AND GRANT DEED RECORDED ON JANUARY 24, 1975 IN REEL 3861 AT IMAGE 309, OFFICIAL RECORDS OF ALAMEDA COUNTY.

COMMENCING AT THE SOUTHEAST CORNER OF LOT 87 AS SAID LOT IS SHOWN ON THAT CERTAIN TRACT MAP NO. 5956 RECORDED ON APRIL 23, 1990 IN BOOK 190, OF MAPS AT PAGES 32-40, OFFICIAL RECORDS OF ALAMEDA COUNTY, SAID POINT ALSO BEING ON THE WESTERLY RIGHT OF WAY LINE OF LOYOLA WAY;

THENCE ALONG SAID RIGHT OF WAY LINE SOUTH 00° 58' 40" WEST, 638.47 FEET TO THE **POINT OF BEGINNING**;

THENCE CONTINUING ALONG LAST SAID LINE SOUTH 00° 58' 40" WEST, 29.50 FEET;

THENCE LEAVING SAID LINE AND ALONG THE FOLLOWING NINE (9) COURSES:

- 1) NORTH 89° 01' 20" WEST, 35.00 FEET,
- 2) SOUTH 00° 58' 40" WEST, 121.20 FEET,
- 3) NORTH 89° 01' 20" WEST, 352.35 FEET,
- 4) NORTH 11° 36' 23" WEST, 31.72 FEET,
- 5) NORTH 03° 20' 38" WEST, 20.64 FEET,
- 6) NORTH 03° 45' 03" EAST, 12.88 FEET,
- 7) NORTH 89° 01' 20" WEST, 78.24 FEET,
- 8) NORTH 64° 42' 17" WEST, 149.10 FEET, AND
- 9) NORTH 89° 01' 20" WEST, 267.16 FEET TO A POINT THAT IS PARALLEL WITH AND 15 FEET EAST OF THE WESTERLY LINE OF SAID GRANT DEED (2374 OR 16).

THENCE ALONG SAID PARALLEL LINE SOUTH 00° 53' 34" WEST, 353.71 FEET;

THENCE LEAVING SAID LINE AND ALONG THE FOLLOWING THREE (3) COURSES:

- 1) NORTH 72° 00' 01" EAST, 113.30 FEET,
- 2) SOUTH 17° 59' 59" EAST, 15.00 FEET, AND
- 3) SOUTH 72° 00' 01" WEST, 134.29 FEET TO A POINT ON THE WESTERLY LINE OF SAID GRANT DEED (2374 OR 16).

THENCE ALONG SAID WESTERLY LINE NORTH 00° 53' 34" EAST, 389.72 FEET;

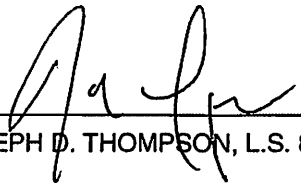
THENCE LEAVING SAID LINE AND ALONG THE FOLLOWING TEN (10) COURSES:

- 1) SOUTH 89° 01' 20" EAST, 285.41 FEET,
- 2) SOUTH 64° 42' 17" EAST, 149.10 FEET,
- 3) SOUTH 89° 01' 20" EAST, 75.73 FEET,
- 4) NORTH 03° 45' 03" EAST, 12.88 FEET,
- 5) NORTH 11° 55' 20" EAST, 29.95 FEET,
- 6) NORTH 20° 05' 10" EAST, 40.71 FEET,
- 7) NORTH 27° 01' 01" EAST, 55.24 FEET,
- 8) SOUTH 89° 01' 20" EAST, 315.58 FEET,

- 9) SOUTH $00^{\circ} 58' 40''$ WEST, 59.08 FEET, AND
10) SOUTH $89^{\circ} 01' 20''$ EAST, 35.00 FEET TO A POINT ON THE WESTERLY RIGHT
OF WAY LINE OF SAID LOYOLA WAY AND THE POINT OF BEGINNING.

CONTAINING 89,145 SQUARE FEET OR 2.0465 ACRES, MORE OR LESS.

KIER & WRIGHT CIVIL ENGINEERS & SURVEYORS, INC.



JOSEPH D. THOMPSON, L.S. 8121

7/30/19
DATE





0 30' 60' 120'
Scale 1" = 60'



JD
7/30/19

LOT 87
(190 M 32)

POC
SE CORNER
LOT 87

CITY OF LIVERMORE
2374 OR 16

S89°01'20"E 315.58'

N27°01'01"E 55.24'

S0°58'40"W 59.08'

N20°05'10"E 40.71'

CITY OF LIVERMORE
3861 OR 300

S89°01'20"E 35.00'
N89°01'20"W 35.00'

N11°55'20"E 29.95'

N3°45'03"E 12.88'

SOLAR ARRAY EASEMENT
AREA= 89,145 ± S.F. OR
2.0465 ± ACRES

N3°45'03"E 12.88'

S89°01'20"E 75.73'
N89°01'20"W 78.24'

N3°20'38"W 20.64'

N11°36'23"W 31.72'

N89°01'20"W 352.35'

S0°58'40"W 638.47'
S0°58'40"W 29.50'

LOYOLA WAY
(60' PUBLIC ROW)

SEE SHEET 2



KIER+WRIGHT

2850 Collier Canyon Road
Livermore, California 94551

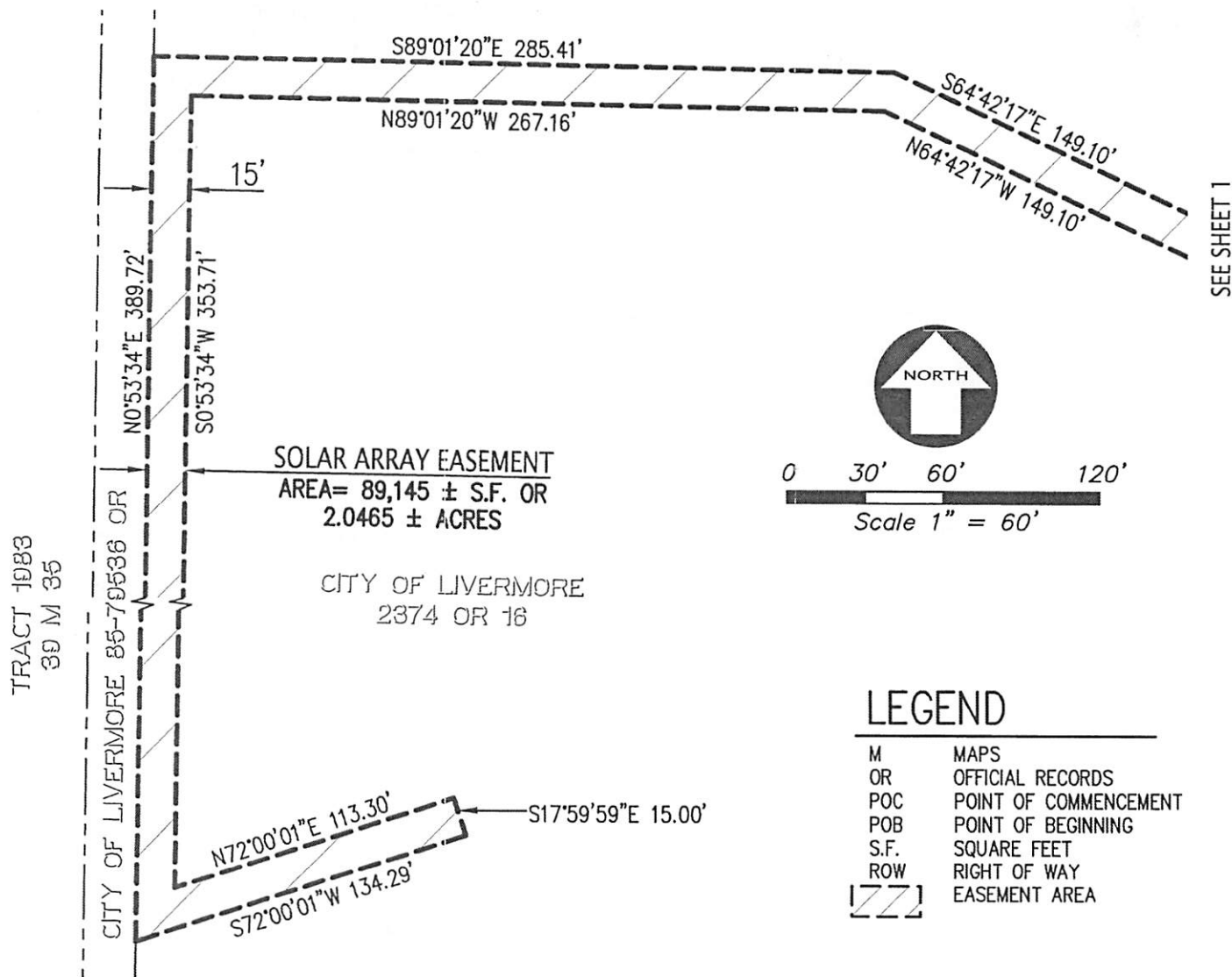
Phone (925) 245-8788
www.kierwright.com

EXHIBIT B
SOLAR ARRAY EASEMENT

LIVERMORE,

CALIFORNIA

DATE	JULY 2019
SCALE	1" = 60'
BY	KJK
JOB NO.	A19592
SHEET	1 OF 2



KIER+WRIGHT

2850 Collier Canyon Road
Livermore, California 94551

Phone (925) 245-8788
www.kierwright.com

EXHIBIT B SOLAR ARRAY EASEMENT

LIVERMORE,

CALIFORNIA

DATE	JULY 2019
SCALE	1" = 60'
BY	KJK
JOB NO.	A19592
SHEET	2 OF 2