

## SOLAR POWER PURCHASE AGREEMENT

THIS SOLAR POWER PURCHASE AGREEMENT (“Agreement” or “PPA”) is entered into this day of \_\_\_\_\_, 2024 (the “Effective Date”) between **Econergy Development LLC**, a Wyoming limited liability company (“Seller”) and **Joliet Township High School District 204** (“Purchaser”). Seller and Purchaser are sometimes referred to in this Agreement as a “Party” and collectively as the “Parties.” Capitalized terms used throughout this Agreement shall, except as otherwise provided herein, have the same meanings as the definitions set forth in Exhibit A hereto.

### 1. TERM AND CONDITIONS PRECEDENT.

- 1.a. Term. This Agreement shall be effective and enforceable as of the Effective Date and shall terminate on the twenty-fifth (25th) anniversary of the Commercial Operation Date (the “Term”).
- 1.b. Seller’s Conditions Precedent. The obligations of the Seller under this Agreement are expressly conditioned upon the satisfaction (or written waiver by Seller) of all of the following conditions:
- i) There is a suitable electrical interconnection point of sufficient capacity to accommodate the System as designed;
  - ii) There exist no unknown site conditions or construction requirements that would materially increase the cost of Installation Work or adversely affect the electricity production from the System as designed;
  - iii) If the System is to be located on a rooftop, then the structural integrity of the roof, as is, is sufficient to accommodate the System; alternatively, if the System is to be ground-mounted, then the soil and subsurface conditions are sufficient to accommodate the System; and
  - iv) Solar Renewable Energy Credits (“SREC”) Prices do not decrease from the current Public-School price of \$37.23 per MWh (Group A – ComEd, Public School, AC Interconnect of 2000-5000 kW) as set by the Illinois Power Agency. If prices do change, Econergy Development LLC will seek to increase the PPA price to make up for this projected decrease in revenue. If block prices are increased, Econergy Development will share in the increase with the School District by reducing the PPA price. Any decrease or increase in the PPA will only happen after Purchaser has been given 30 days written notice by Seller.

If any one of the conditions precedent above is not satisfied by the date that is twelve (12) months after the Effective Date, Seller may terminate this Agreement without liability.

- 1.c. Purchaser’s Conditions Precedent. In the event that Seller has not initiated Development Activities by the date that is twelve (12) months after the Effective Date for reasons other than a breach by Purchaser of its obligations hereunder, Purchaser may terminate this Agreement without liability.

## 2. INSTALLATION OF SYSTEM.

- 2.a. Installation. Seller shall cause the System to be designed, engineered, installed, and constructed substantially in accordance with Applicable Law and prudent industry practice by the engineering, procurement, and construction company (EPC). Purchaser shall be given the opportunity to review and satisfy itself that the System, if installed according to the plans, will not damage Purchaser's property or interfere with Purchaser's operations—such review and approval not to be unreasonably withheld or delayed. If Purchaser fails to approve or to reject such construction plans within five (5) Business Days of receipt, such plans shall be deemed to be approved by Purchaser. Any approval or deemed approval of construction plans by Purchaser shall not relieve Seller of its obligations under this Agreement. Seller shall procure all materials and equipment for the installation of the System and maintain the same at the Premises. Seller shall make reasonable commercial efforts to procure and install the particular brand of components (including solar panels and inverters) as identified in Exhibit B; however, Seller may, in its discretion, substitute any components of the System with components of a reasonably similar nature and quality. Seller's EPC shall perform the installation of the System in a manner that minimizes inconvenience to and interference with Purchaser's existing use of the premises. Seller and its EPC may use contractors and subcontractors to perform its obligations under this Agreement.
- 2.b. Permits and Approvals. Seller and its EPC shall be responsible for and bear all costs associated with applying for and obtaining all permits, licenses and approvals required for the installation, operation, and maintenance of the System. Purchaser shall cooperate with Seller and the EPC in connection with obtaining such approvals and permits.
- 2.c. Notice of COD. Seller shall notify Purchaser when the System is capable of Commercial Operation (such date, the "Commercial Operation Date"), in the form of a notice, and shall in such notice specify to Purchaser the Commercial Operation Date.

## 3. O&M; OWNERSHIP OF SYSTEM AND ENVIRONMENTAL ATTRIBUTES.

- 3.a. Ownership. The System and the associated Environmental Attributes shall be owned by Seller or its Financing Party and shall be operated by Seller at its sole cost and expense. The Parties agree that the System is personal property and shall not be deemed a part of, or fixture to, the Premises.
- 3.b. Operation & Maintenance. "System Operation(s)" means all actions, including monitoring and maintaining the System, necessary for Seller to meet its obligations herein. Any repair or maintenance (including emergency repairs) of the System shall be completed by or for Seller, at its sole cost and expense, for Seller's benefit as legal and beneficial owner or lessee of the System. The System shall at all times retain the

legal status of personal property and not as a fixture. Purchaser shall not attempt or perform any operation or maintenance of the System except as otherwise expressly set forth in this Agreement. All maintenance procedures required hereby shall be undertaken and completed in accordance with the manufacturer's recommended procedures, and by properly trained, licensed, and certified maintenance sources and maintenance personnel, so as to keep the System in as good operating condition as upon the Commercial Operation Date of such System, ordinary wear and tear excepted. Seller shall bear all risk of loss with respect to the System.

- 3.c. Metering Equipment. The EPC shall install, and the Operations & Maintenance Provider shall maintain a kilowatt-hour (kWh) meter for the measurement of electrical energy provided to the System as may be required for use at the Premises in accordance with Applicable Laws.
- 3.d. Emergencies. Except as otherwise set forth herein, the Parties each shall notify the other within twenty-four (24) hours following their discovery of any material malfunction in the operation of the System or of their discovery of an interruption in the supply of Solar Services.
- 3.e. Prohibition. Purchaser shall not make or attempt to make any repairs, adjustments, modifications or any other changes to the System or the System meter.

#### 4. PRICE AND SALE OF SOLAR SERVICES.

- 4.a. Purchase and Sale of Solar Services. Commencing on the Commercial Operation Date, Seller shall make available to Purchaser, and Purchaser agrees to purchase one hundred percent (100%) of the Solar Services of the System.
- 4.b. Price. As consideration for Solar Services produced by the System during each calendar month, Purchaser shall pay to Seller a monthly payment ("Monthly Payment") equal to the product (x) of Actual Monthly Service Production for the System for the relevant month multiplied by (y) the price per kWh for Solar Services as specified in Exhibit C (the "kWh Rate").
- 4.c. Invoices & Payment. Seller shall provide an invoice to Purchaser on or about the fifth (5th) day of each month (each an "Invoice Date"), commencing on the first Invoice Date to occur after the Commercial Operation Date. All invoices shall be sent to the address for the applicable Party as set forth in Section 13. Purchaser shall pay all amounts due within thirty (30) days after the applicable Invoice Date. In the event a Party disputes all or a portion of an invoice, or any other claim or adjustment arises, that Party shall pay the undisputed portion when due and provide the other Party notice of the dispute and the amount in dispute. In such event, the Parties shall first use good faith, reasonable, diligent efforts to resolve such dispute within a reasonable period of time not to exceed thirty (30) days from the date of such notice.

## 5. CERTAIN ADDITIONAL COVENANTS OF PURCHASER.

- 5.a. Site Access. Purchaser shall provide Seller and its EPC with access, at all times, to the Premises to allow Seller to perform the Solar Services as contemplated herein, including ingress and egress rights to the Premises.
- 5.b. Security. Purchaser agrees that its normal security measures, practices, and policies which apply to its own Premises shall also apply to the System. Purchaser shall take all commercially reasonable steps to limit access by third parties to areas of the Premises on which the System is situated. Such steps shall include, but not be limited to, fencing any ground mounted System and locking roof access for any rooftop System. Purchaser shall be liable to Seller for all damage caused to the System by the result of actions (or negligence) of third parties who access the System in contravention of the preceding sentence of this Section 5.b to the extent such access is a result of Purchaser's negligence and then only to the extent such damage is not covered by the Seller's insurance.
- 5.c. Liens.
- i) Purchaser shall not directly or indirectly cause to exist any lien on the System.
  - ii) Purchaser represents that as of the Effective Date, the mortgagee (if any) identified in Exhibit B is the only holder of a lien on the Premises, and, to Purchaser's knowledge, the only party that has the legal right to place a lien on the Premises.
  - iii) Purchaser shall use reasonable commercial efforts to notify all parties having an interest in or lien upon the real property comprising the Premises (a) of the existence of the System and (b) of the legal status or classification of the System as personal property.
- 5.d. Roof Warranty or Soil Warranty; Repairs. In the event that the System is mounted on the roof of any structure on the Premises, Purchaser represents and warrants that each such said roof is structurally sound, free of defects, and is in such a condition as adequately to be able to support the installation of the System; alternatively, in the event that the System is mounted on the ground / soil of the Premises, Purchaser represents and warrants that it has no actual or constructive knowledge of any latent defect in the ground or soil that would cause such ground or soil to be unsuitable for the purposes of supporting the System. The roof and soil warranties (as applicable) set forth in the preceding sentence do not constitute any warranty by Purchaser concerning the output of the System, the ability of the System to generate electricity, or the ability of the System to generate income at the levels estimated by Seller—Purchaser specifically does not make any such warranties to Seller. If Purchaser or Purchaser's landlord decides to repair or remediate the Premises (including, if the System is roof-mounted, the roof thereof) for any reason not directly related to damage

caused by the System, and if such repair requires the partial or complete temporary disassembly or relocation of the System, Purchaser shall pay Seller for (i) all work required by Seller to disassemble or move the System, and (ii) Seller's reasonable estimate of its reduced revenue (from Solar Services and Environmental Attribute sales) that occurred as a consequence of such roof repair or remediation. Purchaser shall not move, disassemble, or otherwise alter the System.

- 5.e. Tax on Sale of Solar Services. Purchaser shall be responsible for any taxes imposed or by any Government Authority and paid by Seller due to Seller's sale of the Solar Services to Purchaser (other than income taxes imposed directly upon Seller). Seller shall notify Purchaser in writing with a detailed statement of such amounts, which will be invoiced by Seller.
- 5.f. Notice of Damage. Purchaser shall promptly notify Seller it is aware of any damage to or loss of the use of the System that could reasonably be expected to adversely affect the System or the provision of the Solar Services.
- 5.g. Shading. Purchaser shall use all commercially reasonable means to prevent any shading of the System by any party. In the event Purchaser tolerates or causes any shading of the System, Purchaser shall be liable to Seller for Seller's lost revenue—as reasonably calculated by Seller—as a result of such shading.
- 5.h. Excavation. Purchaser shall not dig or excavate under a ground-mounted system, nor permit excavation, so near the sides of or underneath the Power Facilities or take any other actions that would undermine or otherwise adversely affect their stability and/or jeopardize the System without the consent of the Seller. Such consent will not be unreasonably withheld.

## 6. CERTAIN ADDITIONAL COVENANTS OF SELLER; SELLER WARRANTIES.

- 6.a. Removal of System at Expiration or Termination of Agreement. Within one hundred and eighty days (180) days after the expiration or earlier termination of this Agreement, Seller shall, at its expense, remove the System from the Premises, and return the ground or roof surface to its original condition, ordinary wear and tear excluded.
- 6.b. System Condition. Seller shall take all actions reasonably necessary to ensure that the System is capable of providing Solar Services at a commercially reasonable continuous rate.
- 6.c. Compliance with Law. Seller shall comply with all Applicable Law in connection with this Agreement, including those related to health and safety.
- 6.d. Structure Warranty. If Seller (or any of their respective contractors or subcontractors) alters, modifies or penetrates any structure, improvements or any portion thereof located on the Premises in performing the installation, repair, maintenance, or removal

services, Seller shall promptly repair such damage to Purchaser's reasonable satisfaction and Seller hereby warrants any repairs made to the structure(s) or improvement(s) by Seller (or its contractor(s) or subcontractor(s)) (the "Structure Warranty").

## 7. ASSIGNMENT.

- 7.a. Assignments by Seller. Seller shall at all times have the right to sell, assign, encumber, transfer or grant equal or subordinate rights and interests (including co-leases, separate leases, subleases, licenses or similar rights (however denominated)) in, the Leasehold Estate and/or any or all right or interest in this Agreement, or any or all right or interest of Purchaser in the Property or in any or all of the Power Facilities that Seller may now or hereafter install on the Property, to one or more persons (an "Assignee"), in each case without Purchaser's consent; provided, however, that any and all such transfers and transferees shall be subject to all of the terms, covenants and conditions of this Agreement. Seller shall notify Purchaser in writing of any such sale, assignment, transfer or grant. Upon Seller's assignment of its entire interest hereunder as to all or any portion of the Property, or as may otherwise be provided in the applicable sale, assignment, transfer or grant document, Purchaser shall recognize the Assignee as Seller's proper successor, the Assignee shall have all of the assigned rights, benefits and obligations of Seller under and pursuant to this Agreement, and Seller shall be relieved of all of its obligations relating to the assigned interests under this Agreement that relate to acts or omissions that occur or accrue following the effective date of such sale, assignment, transfer or grant.
- 7.b. Assignments by Landowner. The burdens of this Agreement and other rights contained herein shall run with and against the Property and shall be a charge and burden thereon for the duration of this Agreement and shall be binding upon and against Purchaser and its successors and assigns. Purchaser shall notify Seller in writing of any sale, assignment or transfer of any of Purchaser's interest in the Property, or any part thereof. Until such notice is received, Seller shall have no duty to any successor Purchaser, and Seller shall not be in default under this Agreement if it continues to make all payments to the original Purchaser before notice of sale, assignment or transfer is received. Purchaser agrees it will not assign the rights to payments due to Purchaser under this Agreement except to a successor owner of the Property, and in no case shall Purchaser sever or attempt to sever the Property's solar energy rights or interests from the Property's fee title or otherwise convey, assign or transfer or attempt to convey, assign or transfer this Agreement, except to a successor owner of the Property.
- 7.c. Cooperation with Financing.
- i) Purchaser acknowledges that Seller may be financing the acquisition and installation of the System through a System equipment lessor, lender and/or one or more financial institutions (each, a "Financing Party") and that Seller may sell or assign the System or may secure Seller's obligations by, among other

collateral, a pledge or collateral assignment of this Agreement and a senior security interest in the System. Purchaser shall cooperate with Seller and Financing Parties in connection with such financing of the System, including (a) the furnishing of such information, and (b) the giving of such certificates regarding factual matters, as Seller and Financing Parties may reasonably request.

- ii) Upon Seller's notice to Purchaser of the identity and address of the Financing Party that will provide financing to Seller in respect of the System, such Financing Party shall become a third-party beneficiary of this Agreement.

## 8. INSURANCE.

8.a. Generally. The Parties shall each maintain the following insurance coverages in full force and effect throughout the Term, either through insurance policies or acceptable self-insured retentions a broad form comprehensive coverage policy of public liability insurance insuring Seller and Purchaser (as an additional insured) against loss or liability caused by Seller's occupation and use of the Property under this Agreement, in an amount not less than One Million Dollars (\$1,000,000) of combined single limit liability coverage per occurrence, accident or incident. Such coverage may be provided as part of a blanket policy covering other properties. Seller shall carry adequate property loss insurance on the System which need not be covered by the Purchaser's property coverage. The policy amounts set forth in the first sentence of this Section 8.a are policy minimums—either Party may obtain insurance at any time during the Term in excess of the aforementioned minimum amounts. Each Party also may obtain such other, additional insurance as it deems prudent in its sole discretion.

8.b. Certificates of Insurance. If requested by the other Party, a Party shall furnish current certificates evidencing that the insurance required under Section 8.a is being maintained.

## 9. EVENTS OF DEFAULT; REMEDIES EVENTS OF DEFAULT.

9.a. Event of Default. An "Event of Default" means, with respect to a Party (the Party defaulting), the occurrence of any of the following:

- i) the failure to make, when due, any payment required under this Agreement if such failure is not remedied within thirty (30) days;
- ii) the failure to perform any material covenant or obligation set forth in this Agreement, if such failure is not remedied within thirty (30) days after receipt of notice; provided, however, that if such material covenant or obligation may be cured, but not within such thirty (30) day period, and the defaulting party has commenced curing such default and is at all times diligently pursuing the cure thereof, such further period as may be necessary for up to an additional sixty (60) days;

- iii) such Party (a) applies for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (b) admits in writing its inability, or be generally unable, to pay its debts as such debts become due; (c) makes a general assignment for the benefit of its creditors; (d) commences a voluntary case under any bankruptcy law; (e) files a petition seeking to take advantage of any other relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (f) fails within one hundred eighty (180) days of the filing against it of an involuntary case under any bankruptcy law to have such involuntary case dismissed; or
  - iv) such Party fails to provide or maintain in full force and effect any required insurance coverage, if such failure is not remedied within ten (10) Business Days after receipt of notice from the non-defaulting Party to the defaulting party.
- 9.b. Remedies. If an Event of Default has occurred, the non-defaulting Party shall have the right (without limiting any other rights or remedies available under Applicable Law), by notice to the defaulting Party, to terminate this Agreement. If the non-defaulting Party is Seller, and Seller elects to terminate this Agreement, Purchaser shall pay to Seller as liquidated damages an amount equal to the greater of (i) the applicable Early Termination Fee, or (ii) the Fair Market Value of the System on the date of such demand by Seller. Should Purchaser pay such liquidated damages, they would retain ownership of the system.
- 9.c. Remedies Are Cumulative. No remedy herein conferred upon or reserved to a Party is intended to be exclusive of any other remedies provided for in this Agreement, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy of such Party given hereunder or now or hereafter existing at law, in equity, by contract or otherwise. Every right, power and remedy given to a Party by this Agreement, at law, in equity, by contract or otherwise shall be concurrent and may be pursued separately, successively or together against the other applicable Party hereto, and every right, power and remedy given to such Party by this Agreement, at law, in equity, by contract or otherwise may be exercised from time to time as often as may be deemed expedient by such Party.
- 9.d. Duty to Mitigate. Each Party agrees to undertake reasonable commercial efforts to mitigate any loss or damage it may suffer as a result of a breach or default by any other Party. In the Event of Default by Purchaser, Seller may seek to mitigate damages by selling power to the applicable power grid.
- 9.e. Interest. Unpaid sums (including unpaid liquidated damages) will accrue interest at the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed by law.



## 10. FORCE MAJEURE.

- 10.a. Definition. “Force Majeure Event” means any act or event that prevents the affected Party from performing its obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party. Subject to the foregoing conditions, a Force Majeure Event shall include without limitation the following acts or events: (i) sabotage, riots or civil disturbances; (ii) acts of God; (iii) acts of the public enemy; (iv) terrorist acts affecting the Premises; (v) volcanic eruptions, earthquake, hurricane, flood, ice storms, explosion, fire, lightning, landslide or similarly cataclysmic occurrence; (vi) any action or inaction by any Governmental Authority or applicable local utility which prevents or prohibits the Parties from carrying out their respective obligations under this Agreement, including but not limited to curtailment or reduction of energy production required by the utility or grid operator, or a power or voltage surge caused by someone other than Seller; (vii) general strikes and labor disturbances; (viii) economic collapse of the United States of America or the state or commonwealth within the United States of America in which the Premises are located; (ix) the independence, separation from, or other termination of association (regardless of cause) from the United States of America by the state or commonwealth within which the Premises are located; and (x) bankruptcy, insolvency, or other failure of a Party’s general banking institution.
- 10.b. Excused Performance. Except as otherwise specifically provided in this Agreement, neither Party shall be considered in breach of this Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay amounts due hereunder), if (but only to the extent that) such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 10 shall promptly (i) notify the other Party in writing of the existence of the Force Majeure Event and (ii) exercise all commercially reasonable efforts necessary to minimize delay caused by such Force Majeure Event.
- 10.c. Termination in Consequence of Force Majeure. If a Force Majeure Event shall have occurred that has affected Seller's performance of its obligations hereunder and that has continued for a period of one hundred eighty (180) consecutive days or three hundred and sixty-five (365) days in the aggregate, then Purchaser shall be entitled to terminate this Agreement without further liability.

## 11. REPRESENTATIONS AND WARRANTIES.

- 11.a. Representations and Warranties. Each Party represents and warrants to the other as of the Effective Date that:
- i) This Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by

applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

- ii) It is duly organized and validly existing and in good standing in the jurisdiction of its organization;
- iii) It has taken all requisite corporate or other action to approve the execution, delivery, and performance of this Agreement; and
- iv) It has the full right and authority to enter into, execute, deliver, and perform its obligations under this Agreement.
- v) Purchaser further represents and warrants to Seller that no hazardous substances have been released at or in vicinity of the Premises that could reasonably be expected to have a material adverse impact on Seller's ability to perform its obligations hereunder or otherwise result in liability to Seller.

## 12. MUTUAL INDEMNITY.

- 12.a. Mutual Indemnity. To the extent allowable by law, each Party (the "Indemnitor") hereby indemnifies and agrees to defend and hold harmless the other Party (the "Indemnitee") from and against any and all third party claims, to the extent arising from injury to persons or property caused by negligence, or any material breach of this Agreement by the Indemnitor or any of its directors, officers, employees or agents; provided, however, that the Indemnitor shall not have any obligation to indemnify the Indemnitee from or against any losses, liabilities, damages, costs, expenses, and attorneys' fee, to the extent caused by, resulting from, relating to or arising out of the negligence or intentional misconduct of the Indemnitee or any of its directors, officers, employees or agents.

## 13. NOTICES.

- 13.a. Notice Addresses. Unless otherwise provided herein, all notices and communications concerning this Agreement will be in writing and addressed to the other Party as set forth as follows:

Notices to be sent to:

Attn: Haj Young  
Seller: Econergy Development LLC  
Address: 1720 West Division Street  
City Chicago, IL 60622  
Email: Haj@Econergy.net

Notices to be sent to:

Attn: \_\_\_\_\_  
Purchaser: Joliet Township High School District 204  
Address: \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Email: \_\_\_\_\_

- 14.b. Notice. Any notice or other communications hereunder shall be deemed to have been received (unless otherwise set forth herein) (i) on delivery if in person; (ii) on the second day following deposit with an overnight express agency, fees prepaid, or mailed by United States express, certified or registered mail, postage prepaid, return receipt requested; or (iii) on the same day if sent via email, to the other Party at the preceding addresses, or to such other address as shall be later provided in writing by one Party to the other

#### 14. CONFIDENTIALITY / PROPRIETARY INFORMATION.

- 14.a. Proprietary Information. The Parties to this Agreement shall hold in confidence, and withhold from third parties, any and all Proprietary Information (as defined below) disclosed by one Party to the other and shall use the other Party's Proprietary Information only for the purposes stated herein (the "Permitted Purposes") and for no other purpose unless the disclosing Party shall agree herein or hereafter in writing. Each Party agrees to safeguard from theft, loss, and negligent disclosure the other Party's Proprietary Information received pursuant to this Agreement by utilizing the same degree of care as the receiving Party utilizes to safeguard its own Proprietary Information of a similar character from theft, loss, and negligent disclosure, but in no event less than reasonable care. Each Party agrees to limit access to Proprietary Information to those officers, directors, and employees within the receiving Party's organization, and to the Party's subcontractors, who reasonably require such access to accomplish the Permitted Purposes. Each Party agrees not to reproduce or copy by any means the Proprietary Information of the other Party except as reasonably required to accomplish the Permitted Purposes. The Parties shall not remove any trademark or proprietary rights legend from the Proprietary Information of the other Party. All Proprietary Information disclosed pursuant to this Agreement shall be and remain the property of the disclosing Party or its third-party suppliers. Except as expressly specified in this Agreement, neither Party to this Agreement acquires any license, right, title, or interest in and to the Proprietary Information received from the other Party. Each Party shall inform such employees of the non-disclosure obligations set forth herein and shall obligate in writing any subcontractors to comply with the non-disclosure requirements stated herein. Each Party shall give prompt written notice to the other Party upon becoming aware of any unauthorized use or disclosure of the Proprietary Information. Each Party agrees to use its best efforts to remedy such unauthorized use or disclosure of the Proprietary Information at its own expense. Each Party acknowledges and agrees that in the event of an unauthorized use, reproduction, distribution, or disclosure of any Proprietary Information, the other Party will not

have an adequate remedy at law and, therefore, injunctive or other equitable relief would be appropriate to restrain such use, reproduction, distribution, or disclosure, threatened or actual. Neither Party shall be liable for use nor disclosure of what would otherwise be considered Proprietary Information if it can establish by contemporaneous, clear, and convincing written evidence that such information, in substantially the same form and content: (i) is or becomes a part of the public knowledge without breach of the Agreement by the receiving Party; (ii) is known to the receiving Party without restriction as to further disclosure when received; (iii) is independently developed by the receiving Party without the use, directly or indirectly, of information received under this or other obligation of confidentiality with the disclosing party; (iv) becomes known to the receiving Party from a third party who had a lawful right to disclose it without breaching the Agreement; (v) is approved in writing for release or use by an authorized employee of the other Party; or (vi) is disclosed in response to a valid order of a court of competent jurisdiction or other governmental body of the United States of America or any political subdivision thereof, or is otherwise required to be disclosed by law; provided, however, that the receiving Party shall first have given prompt written notice to the disclosing Party in order to allow objection by the disclosing Party to any such order or requirement, or to otherwise protect the rights of the disclosing Party and its suppliers prior to the disclosure. If a particular portion or aspect of the Proprietary Information becomes subject to any of the foregoing exceptions, all other portions or aspects of such information shall remain subject to all of the above non-disclosure provisions. Examples of Proprietary Information include, but are not limited to, System designs and pricing information.

- 14.b. Publicity. Each Party, without permission from the other Party hereto, may advertise and announce the existence of the System upon the Premises and the participation of the Parties in the project; such advertisement and announcements may be for any lawful purpose. Each Party may take, distribute, and otherwise use photographs of the System in connection therewith. Purchaser, however, shall not disclose the kWh Rate or material terms of this Agreement concerning System finances without the prior written consent of the Seller except as to Affiliates of Purchaser.

#### 15. MISCELLANEOUS TERMS; INTERPRETATION.

- 15.a. Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Purchaser.
- 15.b. Captions; Headings. The captions or headings in this Agreement are for convenience only and shall not be considered in interpreting the Agreement.
- 15.c. Integration and Exhibits. This Agreement consists of fourteen (14) pages followed by one (1) signature page and three (3) exhibits, each of which are fully incorporated hereunto: Exhibit A: Definitions; Exhibit B: Description of Premises

and System; Exhibit C: Principal Commercial Terms. This Agreement, together with the exhibits attached hereto, constitutes the entire agreement and understanding between Seller and Purchaser with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof.

- 15.d. Severability. If any term, covenant, or condition in this Agreement shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law.
- 15.e. Limited Effect of Waiver. The failure of Seller or Purchaser to enforce any of the provisions of this Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.
- 15.f. Liquidated Damages Not Penalty. Purchaser acknowledges that the Early Termination Fee constitutes liquidated damages, and not penalties, in lieu of Seller's actual damages resulting from the early termination of this Agreement. Purchaser further acknowledges that Seller's actual damages may be impractical and difficult to accurately ascertain, and in accordance with Purchaser's rights and obligations under this Agreement, the Early Termination Fee constitutes fair and reasonable damages to be borne by Purchaser in lieu of Seller's actual damages. Seller acknowledges that the Lost Savings constitutes liquidated damages, and not penalties, in lieu of Purchaser's actual damages resulting from deficient performance by Seller under this Agreement.
- 15.g. Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Illinois and without reference to any choice of law principles.
- 15.h. Consent to Jurisdiction. THE PARTIES HERETO EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE DESIGNATED, EXCLUSIVE AND PROPER VENUE OF ANY LEGAL DISPUTE, QUESTION OR INTERPRETATION, CLAIM, DECLARATORY JUDGMENT ACTION, BANKRUPTCY OR OTHER LITIGATION WITH RESPECT TO THIS AGREEMENT SHALL BE EXCLUSIVELY AND SOLELY A FEDERAL OR STATE COURT IN THE COUNTY OF COOK, STATE OF ILLINOIS. THE PARTIES HERETO HEREBY EXPRESSLY CONSENT TO THE EXERCISE OF PERSONAL JURISDICTION BY, LAYING OF VENUE IN AND EXCLUSIVE JURISDICTION OF, SUCH COURT.
- 15.i. Successors and Assigns. This Agreement and the rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of Seller and Purchaser and their respective permitted successors and assigns.

- 15.j. Relation of the Parties. The relationship between Seller and Purchaser shall not be that of partners, agents, or joint ventures for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purpose.
- 15.k. Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. Facsimile or electronic signatures shall have the same effect as original signatures and each Party consents to the admission in evidence of a facsimile, electronic copy, or photocopy of this Agreement in any court or arbitration proceedings between the Parties.
- 15.l. Records. Each Party shall use commercially reasonable efforts to keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement.

*[REST OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, the Parties hereto have duly executed and delivered this Agreement as of the Effective Date.

**SELLER: Econergy Development LLC**

Signature:

Print Name:

Title:

Date:

**PURCHASER: Joliet Township High School District 204**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT A

### DEFINITIONS

In addition to other terms specifically defined elsewhere in this Agreement, where capitalized, the following words and phrases shall be defined as follows:

“Actual Monthly Service Production” means the amount of energy recorded by Seller’s metering equipment during each calendar month of the Term, pursuant to Section 4.b.

“Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such first Person.

“Agreement” means this Solar Power Purchase Agreement, including the preamble and the Exhibits attached hereto and incorporated herein by reference.

“Applicable Law” or “Applicable Laws” means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, order, decree, judgment, decision, or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity.

“Business Day” or “Business Days” means any day other than Saturday, Sunday or any other day on which banking institutions in Chicago, Illinois, are required or authorized by Applicable Law to be closed for business.

“Commercial Operation” means that the system is ready for regular operation, is connected to the Premises’ electrical system, and is capable of producing electricity.

“Commercial Operation Date” has the meaning set forth in Section 2.c.

“Confidential Information” means any non-public confidential or proprietary information (whether conveyed orally, electronically or in hard copy) of a Party or its Affiliates relating to this Agreement, and identified as confidential by the disclosing party; provided, however “Confidential Information” shall not include information that (i) is required to be disclosed by a Governmental Authority, (ii) is independently developed by the receiving Party, or (iii) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

“Early Termination Fee” means the greater of the Fair Market Value set forth in this Exhibit A or the Total Projected Revenue minus Operating Expenses as set forth in this Exhibit A for the remainder of the Term of this Agreement discounted at 6% per annum.

“Effective Date” has the meaning set forth in the preamble hereof.

“Environmental Attributes” means, without limitation, carbon trading credits, renewable energy credits or certificates, production-based incentives, emissions reduction credits, investment tax credits, installation or production tax credits or tax grants, emissions allowances, green tags,



tradable renewable credits, Green-e® products, accelerated depreciation, and all other solar or renewable energy subsidies and incentives.

“Estimated Annual Production” means Seller’s estimated annual production of the System as described in Exhibit C.

“Event of Default” has the meaning set forth in Section 9.a.

“Fair Market Value” means, with respect to any tangible asset or service, the price that would be negotiated in an arm’s-length, free market transaction, for cash, between an informed, willing seller and an informed, willing buyer, neither of whom is under compulsion to complete the transaction.

“Financing Party” has the meaning set forth in Section 7.c.

“Force Majeure Event” has the meaning set forth in Section 10.a.

“Governmental Authority” means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Installation Work” means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Seller at the Premises.

“Indemnitee” has the meaning set forth in Section 12.a.

“Indemnitor” has the meaning set forth in Section 12.a.

“Invoice Date” has the meaning set forth in Section 4.c.

“kWh Rate” has the meaning set forth in Section 4.b, as set forth in Exhibit C.

“MACRS” stands for modified accelerated cost recovery system. It is the tax depreciation system used in the United States to calculate asset depreciation.

“Monthly Payment” has the meaning set forth in Section 4.b.

“Operating Expenses” means general operating costs for Insurance, management fees and system maintenance.

“Party” or “Parties” has the meaning set forth in the preamble hereof.

“Permitted Purposes” has the meaning set forth in Section 14.a.

“Person” means an individual, partnership, corporation, limited liability company, Governmental

Authority, or other entity.

“Premises” means the premises described in of Exhibit B, including the entirety of any structures and underlying real property located at the address described in Exhibit B.

“Proprietary Information” has the meaning set forth in Section 14.a.

“Purchaser” has the meaning set forth in the preamble hereof.

“Routine Maintenance” means commercially reasonable maintenance of the System, including but not limited to maintenance recommended by System component manufacturers.

“Seller” has the meaning set forth in the preamble hereof.

“Solar Services” means the supply of on-site electrical energy output from the System together with certain peak load coincident reductions, possible building energy conservation (if specifically described in Exhibit B hereto), and other on-site energy services or efficiencies associated with the solar energy production described herein.

“System” means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, batteries, energy storage systems, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, more specifically described in Exhibit B and interconnected with the local electric utility, owned or leased by Seller and installed at the Premises.

“System Operations” has the meaning set forth in Section 3.b.

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

“Term” has the meaning set forth in Section 1.a.

“Total Projected Revenue” means the product of the total projected kWh production of the System multiplied by the sum of the kWh Rate and the SREC price set forth in Section 1.b. The total kWh production is calculated by the average annual system production for the past three consecutive years. If the System has not produced for three consecutive years, the total kWh production will instead be calculated by the average annual electricity consumption as provided independently by the utility of record. In addition, this value includes any benefits derived from Tax Credits and MACRS depreciation equal to 85% of the system value.

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**EXHIBIT B**

DESCRIPTION OF PREMISES AND SYSTEM

Premises & Solar System Location: Rooftop System to be installed at

Joliet West High School  
401 North Larkin Avenue, Joliet, IL 60435

Owner of Premises as of Effective Date: Joliet Township High School District 204

Mortgage of Premises as of Effective Date: N/A

Anticipated Solar System Size (DC): 2,218 kw

Modules: \_\_\_\_\_, or equivalent.

Inverters: \_\_\_\_\_, or equivalent.

Purchaser's Current Utility Name: Commonwealth Edison

Purchaser's Utility Hourly Rate for Energy (as of Effective Date): \_\_\_\_\_

System Components Include:

Solar panels, support system, inverter system, wire kits, and data monitoring system.

System size may be reduced during final design if, for example, structure issues are identified with respect to the roof.

*[REST OF PAGE INTENTIONALLY LEFT BLANK]*

## EXHIBIT C

### PRINCIPAL COMMERCIAL TERMS

1. kWh Rate.

kWh Rate: **\$.0797** escalated by **2.0%** on each anniversary of the Commercial Operation Date.

2. Estimated Year 1 Yield: 3,007,138 kWh

This estimated annual production amount is a good faith estimate of Seller as of the Effective Date and does not constitute a production guaranty.

## ROOFTOP LEASE AGREEMENT

This ROOFTOP LEASE AGREEMENT (this “Agreement”) is made, dated and effective as of \_\_\_\_\_, 2024 (the “Effective Date”), between Joliet Township High School District 204 (“Landowner”), and Econergy Development LLC a Wyoming limited liability company (“Lessee”), in light of the following facts and circumstances:

### RECITALS

WHEREAS, Lessee is in the business of developing, constructing, erecting, and operating solar energy conversion systems and power generation facilities for the production of electrical energy;

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

WHEREAS, Lessee desires to lease the Property.

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

### AGREEMENT

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

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

1.2. Purpose. The foregoing leasehold estate and grant of rents, royalties, credits and profits created by this Agreement (collectively, the “Leasehold Estate”) are for (i) the production of energy, including solar energy, and for any and all related or ancillary purposes, including storage of any energy so produced, and Lessee shall have the exclusive right to use the Property and the unobstructed receipt of and access to sunlight across the Property for solar energy purposes, to convert all of the solar resources of the Property and to derive all profits therefrom, (all of the foregoing activities, collectively, (“Development Activities”), including, without limitation:

(a) determining the feasibility of solar energy conversion and power generation on the Property, including studies of available sunlight and other data and extracting soil samples;

(b) constructing, reconstructing, erecting, installing, improving, replacing, relocating and removing from time to time, and maintaining, repairing, using and operating, any new, existing, additional or repowered (i) solar power generating equipment, inverters, mounting and tracking systems, monitoring systems, solar collectors, solar energy conversion systems and other power generation facilities, of any type or technology (the “Solar Equipment”); (ii) transmission facilities, including without limitation, overhead and underground transmission, distribution or collector lines, circuit breakers, conduits, foundations, footings, towers, poles, crossarms, guy lines, anchors and wires; (iii) overhead and underground control, communications and radio relay systems; (iv) substations, power blocks, interconnection and/or switching facilities and electric transformers; (v) energy storage facilities such as backup battery cabinets to protect the district in case of a power outage; (vi) sunlight measurement, research or development equipment; (vii) control, maintenance and administration buildings; (viii) utility installations; (ix) safety protection facilities; (x) signs and fences; and (collectively, “Power Facilities”), on the Property; and Lessee acknowledges that the Property is a public school district, and access to

the Property shall be strictly for the reasons outlined in this Section 1.2, and that Lessee's activities are not intended to change the Landowner's continued use of its facilities as public schools. Lessee shall secure Landowner's written permission before engaging in any activity involving excavation, earth-moving, facility construction, or permanently affixing fixtures or other items to Landowner's facilities (other than the Solar Equipment on the facility rooftops).

(c) exercising rights of vehicular and pedestrian ingress and egress upon, over and across the Property, for purposes of conducting Development Activities and accessing the Power Facilities (whether such Development Activities are conducted, or Power Facilities are located, on the Property, adjacent to the Property or elsewhere) upon, over and across any and all now existing or hereafter constructed access routes or such new or alternative access routes as Lessee and Landowner shall determine, including the right to use roads and road-related structures on the Property; and

(d) undertaking any other activities, whether accomplished by Lessee or a third party authorized by Lessee, that Lessee reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing purposes, subject to Landowner approval, which shall not be unreasonably withheld.

1.3. Included Rights and Easements. The following rights and easements shall be included within the Leasehold Estate. Upon Lessee's request, Landowner shall execute and deliver to Lessee one (1) or more documents in recordable form, satisfactory in form and substance to Landowner and Lessee, evidencing the rights and easements granted pursuant to this Section 1.3, and Lessee may cause such documents to be recorded in the official real estate records of the county in which the Property is located.

(a) Sunlight Easement. An easement for receipt of and access to sunlight throughout the Property. Any obstruction to the receipt of and access to sunlight throughout the entire area of the Property is prohibited.

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

(c) Clearance Rights. An easement to trim, cut down and remove all trees (whether natural or cultivated), brush, vegetation and fire and electrical hazards now or hereafter existing on the Property which might obstruct receipt of or access to sunlight throughout the Property or interfere with or endanger the Power Facilities or Lessee's Development Activities, as determined by Lessee in its sole discretion.

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

(e) Utility Lines. An easement for the maintenance, repair and use of utility lines and equipment, including, without limitation, for water, natural gas and electrical transmission and interconnection. Any work by Lessee involving water or natural gas lines requires Landowner's prior written approval.

(f) Signage. An easement to place signs on or proximate to Lessee's Power Facilities.

(g) Access. A non-exclusive easement for access, ingress and egress to and from the Property, in such locations as reasonably selected by Lessee.

**2. Term.**

**2.1 Original Term and Renewal Terms.** This Agreement shall be for an initial term (the “Original Term”) commencing on the Effective Date and continuing until the twenty-fifth (25th) anniversary of the Operations Date (as defined below). As used herein, “Term” shall mean collectively, the Original Term and Renewal Term (as defined below).

**2.2 Operations Date.** For purposes of this Agreement, “Operations Date” shall mean the date the Power Facilities are installed on the Property and begin delivering electricity to the power purchaser.

**2.3 Renewal Terms.** Landowner shall have the option, per direction from Lessee to extend and renew the Original Term of this Agreement for up to two (2) periods of five (5) years each (the “Renewal Term”). Landowner may exercise such option by written notice delivered to Lessee not later than one hundred eighty (180) days prior to the expiration of the Original Term.

**3. Payments to Landowner.** Commencing with the Operations Date and continuing annually until the expiration or sooner termination of this Agreement, Lessee shall pay Owner the base annual fee set forth on Exhibit C. Such annual fees shall be payable each year within forty-five (45) days following the Operations Date or following each anniversary of the Operations Date (as applicable) and shall be prorated (or retroactively adjusted) for any partial one (1) year period preceding the expiration or sooner termination of this Agreement.

**4. Ownership of Power Facilities.** Landowner shall have no ownership or other interest in any Power Facilities installed on the Property, or any profits derived therefrom, and Lessee may mortgage, sell, lease or remove any or all Power Facilities at any time. Landowner shall have no lien or security interest and may not attempt to create a lien or security interest, in the Power Facilities, and expressly waives any statutory lien, landlord’s lien or other lien or security interest. Except for the payments described in Section 3 above, Landowner shall not be entitled to any payments, credits, benefits, emissions reductions, offsets, incentives, grants or allowances of any kind, howsoever entitled, attributable to the Power Facilities or the electric energy, capacity or other generator-based products produced therefrom, all of which shall accrue solely to the benefit of Lessee. Landowner shall have no ownership or other interest in any scientific or engineering data at any point in time or for any duration of time collected at the Power Facilities or on the Property. Such scientific or engineering data is the sole and exclusive property of Lessee. Possession of such data by Landowner shall not constitute ownership of such data.

**5. Taxes.** Lessee shall be responsible for and shall timely pay before the same become delinquent, any taxes, assessments or other governmental charges that shall or may during the Term be imposed on the Power Facilities. Landowner shall be responsible for and shall timely pay before the same become delinquent, all taxes, assessments or other governmental charges that shall or may during the Term be imposed on or arise in connection with the Property itself as a result of the installation of the Power Facilities. Lessee shall pay directly for any increase in such taxes, assessments or other governmental charges accruing during the Term to the extent resulting directly and solely from the presence of the Power Facilities on the Property. Landowner shall deliver to Lessee copies of all notices of or relating to all such charges no later than the earlier of two (2) weeks following Landowner’s receipt of each such notice or forty-five (45) days prior to the date that any such charge is due and payable. Except as specifically provided in this paragraph, Lessee shall not be responsible for any property taxes, assessments or other governmental charges or fees levied against the Property. If Landowner should fail to timely pay any taxes, assessments or other governmental charges for which Landowner is responsible hereunder and foreclosure thereof shall be threatened, then, without limiting Lessee’s other remedies under this Agreement or otherwise, Lessee may (but shall not be obligated to) pay the same, and Landowner shall reimburse Lessee, or Lessee may set off against amounts due from Lessee to Landowner under this Agreement, all such amounts paid, including any late fees or interest, together with any court costs and reasonable attorneys’ fees incurred by Lessee in connection therewith.

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

6.1. Insurance. Lessee shall, at its expense, prior to entering the Property to conduct Development Activities, have in place, and shall thereafter maintain, a broad form comprehensive coverage policy of public liability insurance insuring Lessee and Landowner (as an additional insured) against loss or liability caused by Lessee's occupation and use of the Property under this Agreement, in an amount not less than One Million Dollars (\$1,000,000) of combined single limit liability coverage per occurrence, accident or incident. Such coverage may be provided as part of a blanket policy covering other properties. Certificates of such insurance shall be provided to Landowner upon written request.

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

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

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

6.5. Hazardous Materials. Lessee shall not violate, and shall indemnify Landowner against any violation by Lessee or Lessee's agents or contractors of, any federal, state or local law, ordinance, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local law, ordinance, or regulation, on or under the Property.

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

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



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

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

7.2. **Title to Property.** Except as disclosed on Exhibit B attached hereto and by this reference made a part hereof, Landowner's fee simple title to the Property is free and clear of all liens, encumbrances, easements, leases, mortgages, deeds of trust, security interests, fractured interests, mineral, oil or gas rights, options to purchase or lease, claims and disputes (collectively, "Liens"), and there are no tenants on or other parties in possession of the Property. Landowner shall (i) obtain a commercially reasonable subordination, non-disturbance and attornment agreement or other appropriate agreement from each party holding a Lien (recorded or unrecorded) or in possession of the Property that might interfere with Lessee's rights under this Agreement; (ii) remove any Liens from Landowner's fee simple title to the Property; and (iii) secure the written consent of any Lien holder to this Agreement as necessary to comply with the agreement underlying any such Lien. A subordination, non-disturbance and attornment agreement is an agreement between Lessee and the holder of a Lien providing that the holder of the Lien shall not disturb Lessee's possession or rights under this Agreement or terminate this Agreement so long as Landowner is not entitled to terminate this Agreement under the provisions of this Agreement. Landowner shall not grant, create, allow or suffer any Lien or other encumbrance on title to the Property in addition to those set forth on Exhibit B.

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

7.4. **No Interference.** Landowner's activities and any grant of rights Landowner makes to any person or entity, whether located on the Property or elsewhere, shall not, currently or prospectively, interfere with (i) the construction, installation, maintenance, operation or removal of the Power Facilities; (ii) access over the Property to such Power Facilities; (iii) any Development Activities; or (iv) the undertaking of any other activities permitted hereunder. Without limiting the generality of the foregoing, Landowner shall not engage in any activity that might cause a decrease in the output or efficiency of the Power Facilities. Any grant of rights by Landowner to any person or entity as to the Property shall be subordinate to this Agreement.

7.5. **Siting and Setbacks.** Landowner consents to Lessee's siting of Power Facilities at any location upon the Rooftops of the Property. To the fullest extent applicable and permitted by law, Landowner waives enforcement of, and any and all rights it may have to pursue any remedies under, any state, zoning or local rules, ordinances or requirements related to siting of Power Facilities upon the Property, including setback requirements applicable to the Power Facilities from lot lines and improvements, and agrees not to bring any complaint, suit or action or intervene in any investigation or inquiry by any person or entity with respect thereto. Pursuant to Section 7.6 hereof, Landowner agrees to use commercially reasonable efforts to assist, cooperate and participate in any proceeding and/or petition prepared by Lessee in connection with any modification or variance to an existing siting or setback requirement, including but not limited to bringing such action, or filing such petition, in the name of Landowner.

7.6. Cooperation. Landowner shall assist and fully cooperate with Lessee, at no out-of-pocket expense to Landowner, in complying with or obtaining any land use permits and approvals, building permits, environmental impact reviews or any other approvals required for the financing, construction, installation, replacement, relocation, maintenance, operation or removal of Power Facilities, including execution of applications for such approvals. Landowner shall make available to Lessee copies of all field tiling surveys, plans, entitlement-related studies, and other geotechnical and other site assessments, surveys, environmental assessments, reports, test results, correspondence to or from any governmental agency, and other such records of Landowner relating to the Property.

7.7. Indemnity. Landowner will indemnify Lessee against liability for physical damage to the Property (including any improvements thereon) and for physical injuries to Lessee or the public (including any of Landowner's employees, contractors or agents that have gained access to the Property), to the extent caused by Landowner's activities or the activities of Landowner's employees, contractors or agents on the Property or the adjoining property, except to the extent such damage or injury is caused by the operations, activities, negligence or willful misconduct of Lessee. Landowner shall take reasonable safety measures to reduce the risk that Landowner's activities will cause harm to Lessee or the public. Landowner's obligations under this Section 7.7 shall survive the termination or expiration of this Agreement.

Lessee will indemnify Landowner against liability for physical damage to Landowner's facilities (including any improvements thereon) and for physical injuries to Landowner's employees, students, or the public to the extent caused by Lessee's activities or the activities of Lessee's employees, contractors, or agents on the Property or the adjoining property, except to the extent such damage or injury is caused by the operations, activities, negligence or willful misconduct of Landowner. Lessee shall take reasonable safety measures to reduce the risk that Lessee's activities will cause harm to Landowner or the public. Lessee's obligations under this Section 7.7 shall survive the termination or expiration of this Agreement.

7.8. No Brokers. No brokers' commission, finders' fees or other charges are due any broker, agent or other party in connection with Landowner's execution of this Agreement, or if any are now due or shall become due in the future, then Landowner shall promptly pay the same from its own funds and shall indemnify, hold harmless and defend Lessee against any and all claims and demands therefor made by any such broker, finder, agent or other party, or any of their respective successors and assigns or other parties claiming through them.

7.9. No Litigation. No litigation is pending, and, to Landowner's knowledge, no actions, claims or other legal or administrative proceedings are pending, threatened or anticipated with respect to, or that could affect, the Property, this Agreement or Lessee's rights hereunder.

7.10. Hazardous Materials. Landowner shall be responsible for any and all costs associated with investigation, remediation, or monitoring associated in any way with the cleanup or transportation of any environmental conditions on, under, emanating from, or otherwise associated with the Property.

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

7.12. Landowner's Authority. Landowner has the unrestricted right and authority to execute this Agreement and to grant to Lessee the rights granted hereunder. Each person signing this Agreement on behalf of

Landowner is authorized to do so. When signed by Landowner, this Agreement constitutes a valid and binding agreement enforceable against Landowner in accordance with its terms. Landowner is not the subject of any bankruptcy, insolvency or probate proceeding.

## **8. Assignment.**

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

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

9. **Mortgage Protection.** In the event that any mortgage, deed of trust or other security interest in this Agreement or any Power Facilities is entered into by Lessee or an Assignee, including a sale-leaseback (i.e., a transaction in which Lessee sells its interest in this Agreement and/or the Power Facilities and then leases those interests back from the purchaser) (a "Leasehold Mortgage"), then any person who is the mortgagee or beneficiary of a Leasehold Mortgage, including the purchaser in a sale-leaseback transaction (a "Leasehold Mortgage") shall, for so long as its Leasehold Mortgage is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth in this Section 9. Lessee or any Leasehold Mortgagee shall send written notice to Landowner of the name and address of any such Leasehold Mortgagee, as well as any change of the name or address of any Leasehold Mortgagee.

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

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

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

(b) The Leasehold Mortgagee shall have the same period after receipt of notice of default to remedy the default, or cause the same to be remedied, as is given to Lessee after Lessee’s receipt of notice of default, plus, in each instance, the following additional time periods: (i) sixty (60) days, for a total of one hundred twenty (120) days after receipt of the notice of default in the event of any monetary default; and (ii) sixty (60) days, for a total of one hundred twenty (120) days after receipt of the notice of default in the event of any non-monetary default, provided that such one hundred twenty (120) day period shall be extended for the time reasonably required to complete such cure, including the time required for the Leasehold Mortgagee to perfect its right to cure such non-monetary default by obtaining possession of the Property (including possession by a receiver) or by instituting foreclosure proceedings, provided the Leasehold Mortgagee acts with reasonable and continuous diligence. The Leasehold Mortgagee shall have the absolute right to substitute itself for Lessee and perform the duties of Lessee hereunder for purposes of curing such defaults. Landowner expressly consents to such substitution, agrees to accept such performance, and authorizes the Leasehold Mortgagee (or its employees, agents, representatives or contractors) to enter upon the Property to complete such performance with all the rights, privileges and obligations of the original Lessee hereunder. Landowner shall not, and shall have no right to, terminate this Agreement prior to expiration of the cure periods available to a Leasehold Mortgagee as set forth above.

(c) During any period of possession of the Property by a Leasehold Mortgagee (or a receiver requested by such Leasehold Mortgagee) and/or during the pendency of any foreclosure proceedings instituted by a Leasehold Mortgagee, the Leasehold Mortgagee shall pay or cause to be paid all other monetary charges payable by Lessee hereunder which have accrued and are unpaid at the commencement of said period and those which accrue thereafter during said period. Following acquisition of Lessee’s Leasehold Estate by the Leasehold Mortgagee or its assignee or designee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Agreement shall continue in full force and effect and the Leasehold Mortgagee or party acquiring title to Lessee’s Leasehold Estate shall, as promptly as reasonably possible, commence the cure of all defaults hereunder and thereafter diligently process such cure to completion, whereupon Landowner’s right to terminate this Agreement based upon such defaults shall be deemed waived; provided, however, the Leasehold Mortgagee or party acquiring title to Lessee’s Leasehold Estate shall not be required to cure those non-monetary defaults, if any, which are not reasonably susceptible of being cured or performed by such party (“Non-Curable Defaults”). Non-Curable Defaults shall be deemed waived by Landowner upon completion of foreclosure proceedings or acquisition of Lessee’s interest in this Agreement by such party.

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

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

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

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

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

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

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

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

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

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

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

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

## **10. Default and Termination.**

10.1. Landowner's Right to Terminate. Except as qualified by any subsequent actions and approvals of Landowner pursuant to Section 9, Landowner shall have the right to terminate this Agreement if (a) a material default in the performance of Lessee's obligations under this Agreement shall have occurred and remains uncured, (b) Landowner notifies Lessee in writing of the default, which notice sets forth in reasonable detail the facts pertaining to the default and specifies the method of cure, and (c) the default shall not have been remedied within sixty (60) days after Lessee receives such written notice, or, if cure will take longer than sixty (60) days, Lessee has not begun diligently to undertake the cure within the relevant time period and thereafter prosecute the cure to completion. In the event this Agreement is terminated by Landowner in accordance with this paragraph, Landowner and Lessee shall thereafter execute and record a notice of termination evidencing such termination. No termination of this Agreement pursuant to this paragraph shall be effective unless a notice of termination has been executed and recorded in accordance with this paragraph.

10.2. Effect of Termination or Expiration. Upon the termination or expiration of this Agreement, whether as to the entire Property or only as to part, Lessee shall, as soon as practicable thereafter, unless otherwise mutually agreed upon, (a) remove from the Property (or applicable portion thereof) all above surface grade Power Facilities and other personal property owned, located, installed or constructed by or on behalf of Lessee thereon, (b) remove (from the Property or applicable portion thereof) concrete footings, foundations and other fixtures of Lessee, (c) cover up all pit holes, trenches and other borings and excavations made by or on behalf of Lessee on the Property (or applicable portion thereof) , (d) leave the surface of the Property (or applicable portion thereof) free from debris arising from the foregoing or from the operations or activities of Lessee and (e) otherwise restore any portion of the Property (or applicable portion thereof) disturbed by Lessee to a condition reasonably similar to its original condition, consistent with the uses permitted by this Agreement. Reclamation shall include, as reasonably required, repair or replacement of damaged drainage tile, leveling, terracing, mulching and other reasonably necessary measures to prevent soil erosion. Landowner shall provide Lessee with reasonable access to the Property during the performance of such removal and other work by Lessee for a period of twelve (12) months following the termination or expiration of this Agreement. During such period, Lessee shall not be required to pay the amounts set forth in Section 3 or other rent. If Lessee fails to remove any Power Facilities within twelve (12) months following the termination or expiration of this Agreement, or such longer period as Landowner may provide by extension, Landowner may do so, in which case Lessee shall reimburse Landowner for reasonable and documented costs of removal and restoration incurred by Landowner, net of any amounts reasonably recoverable by Landowner with respect to the salvage value of any such Power Facilities.

10.3. Mitigation Duty. Notwithstanding anything contained in this Agreement to the contrary, both parties shall use commercially reasonable efforts to mitigate their damages in the event of a default hereunder.

10.4. Default by Landowner. In the event that Landowner fails to comply with or perform any or all of the obligations, covenants, warranties or agreements to be performed, honored or observed by Landowner hereunder, or interferes with Lessee's use of the Property in accordance with the terms of this Agreement, which default continues for more than thirty (30) days after Lessee's delivery of written notice to Landowner specifying

such default, or if such default is of a nature to require more than thirty (30) days for remedy and continues beyond the time reasonably necessary to cure (and Landowner has not undertaken procedures to cure such default within such thirty (30) day period and diligently pursued such efforts to complete such cure), Lessee may exercise any right or remedy available to Lessee at law or in equity, including but not limited to obtaining an injunction.

## **11. Miscellaneous.**

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

b. Condemnation; Casualty. All payments made on account of any taking or threatened taking of the Property or any part thereof in condemnation proceedings or by inverse condemnation by a government agency, governmental body or private party under the exercise of the right of eminent domain may be made to Landowner, except that Lessee shall be entitled to, and Landowner shall request that such condemning authority make payment directly to Lessee of: (i) any removal and relocation costs of the Power Facilities, (ii) any loss of or damage to any Power Facilities, (iii) the loss of use of any portion of the Property by Lessee (including impediments to or interference with the receipt of sunlight) and (iv) Lessee's lost profits, measured in each case with regard to the effect on Lessee's use of the Property and any effect on Lessee's use of other property. If such condemning authority makes all payments to Landowner, then Landowner shall forthwith make payment to Lessee of the award to which Lessee is entitled. Lessee shall have the right to participate in any condemnation settlement proceedings and Landowner shall not enter into any binding settlement agreement without the prior written consent of Lessee, which consent shall not be unreasonably withheld. Should title to or possession of all of the Property be permanently taken, or should a partial taking render the remaining portion of the Property unsuitable for Lessee's use (as determined by Lessee), then Lessee may terminate this Agreement upon such vesting of title or taking of possession. In the event of a casualty that damages or destroys more than ten percent (5%) of the Power Facilities, Lessee shall have the right to terminate this Lease upon written notice to Landowner.

c. Confidentiality. To the fullest extent allowed by law, Landowner shall maintain in the strictest confidence (i) the terms of (including the amounts payable under) this Agreement, (ii) any information regarding Lessee's Development Activities and (iii) any other information that is proprietary or that Lessee requests be held confidential, in each such case whether disclosed by Lessee or discovered by Landowner ("Confidential Information"). Excluded from the foregoing is any such information that is in the public domain by reason of prior publication through no act or omission of Landowner. Landowner shall not use Confidential Information for its own benefit or publish or otherwise disclose it to others; provided, however, that Landowner may disclose Confidential Information to (a) Landowner's personal advisors, (b) any prospective purchaser of the Property or (c) pursuant to lawful process, subpoena or court order; so long as in making such disclosure Landowner advises the person receiving the Confidential Information of the confidentiality thereof and obtains the agreement of said person not to disclose such Confidential Information. The foregoing obligation shall survive the termination of this Agreement.

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

e. Memorandum of Lease Agreement. Landowner and Lessee shall execute in recordable form, and Lessee shall then record, a memorandum of this Agreement satisfactory in form and substance to Landowner and Lessee. If a party requests to record the Agreement with the Country Recorder, the requesting party shall pay all costs of recording such memorandum. Landowner hereby consents to the recordation of the interest of an Assignee in the Property.

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

If to Landowner:

If to Lessee:

Name:  
Title:

Name: Haj Young  
Title: CEO, Econergy Development LLC

**Address:**

**Address:** 1720 West Division Street,  
Chicago, IL 60622

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

g. Further Assurances; Cooperation. Landowner shall fully support and cooperate with Lessee in the conduct of its Development Activities and the exercise of its rights hereunder (including with Lessee's efforts to obtain from any governmental authority or any other person or entity any environmental impact review, use permit, building permit, any other permit of any nature, entitlement, approval, authorization or other rights to sell, assign, transfer or finance any Power Facilities or interest in the Leasehold Estate or under this Agreement or obtain any financing), and Landowner shall perform all such acts (including executing and delivering maps, instruments and documents within ten (10) days after receipt of a written request made from time to time by Lessee) as Lessee may reasonably specify to fully effectuate each and all of the purposes and intent of this Agreement. Without limiting the generality of the foregoing, Landowner shall not oppose, in any way, whether directly or indirectly, any application by Lessee for any permit, approval or entitlement at any administrative, judicial, legislative or other level.

h. Estoppel Certificates. Landowner shall, within ten (10) days after a written request by Lessee, any Assignee or any Leasehold Mortgagee, execute, acknowledge and deliver to the requesting party such estoppel certificates (certifying as to such matters as may reasonably be requested, including, without limitation, that this Agreement is unmodified and in full force and effect (or modified and stating the modifications), the dates to which the payments and any other charges have been paid, and that, to Landowner's knowledge, there are no



defaults existing (or that defaults exist and stating the nature of such defaults)) and/or consents to assignment (whether or not such consent is actually required) and/or non-disturbance agreements as Lessee, any Assignee or any Leasehold Mortgagee may reasonably request from time to time during the term of this Agreement. At Lessee's option, such certificates, consents and agreements may be recorded and Landowner consents to such recording.

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

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

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

l. Governing Law. The terms and provisions of this Agreement shall be interpreted in accordance with the laws of the state in which the Property is located applicable to contracts made and to be performed within such state and without reference to the choice of law principles of such state or any other state.

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

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

o. Other General Provisions. Except with respect to the rights conferred hereunder upon Leasehold Mortgagees (which Leasehold Mortgagees and their respective successors and assigns are hereby expressly made

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

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

q. Recitals. The recitals set forth herein are, by this reference, incorporated into and deemed a part of this Agreement.

*[Signature page follows immediately]*

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

**Landowner:**

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

**LESSEE:**

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

**EXHIBIT A**

**To be provided by LESSOR.**

**EXHIBIT B**

**Title Matters**

Per Section 7 above please disclose any liens or encumbrances.

**EXHIBIT C**

**RENT SCHEDULE**

<b><u>Year(s)</u></b>	<b><u>Annual Lease</u></b>
1-5	\$1
6-10	\$1
11-15	\$1
16-20	\$1
21-25	\$1

## SOLAR POWER PURCHASE AGREEMENT

THIS SOLAR POWER PURCHASE AGREEMENT (“Agreement” or “PPA”) is entered into this day of \_\_\_\_\_, 2024 (the “Effective Date”) between **Econergy Development LLC**, a Wyoming limited liability company (“Seller”) and **Joliet Township High School District 204** (“Purchaser”). Seller and Purchaser are sometimes referred to in this Agreement as a “Party” and collectively as the “Parties.” Capitalized terms used throughout this Agreement shall, except as otherwise provided herein, have the same meanings as the definitions set forth in Exhibit A hereto.

### 1. TERM AND CONDITIONS PRECEDENT.

- 1.a. Term. This Agreement shall be effective and enforceable as of the Effective Date and shall terminate on the twenty-fifth (25th) anniversary of the Commercial Operation Date (the “Term”).
- 1.b. Seller’s Conditions Precedent. The obligations of the Seller under this Agreement are expressly conditioned upon the satisfaction (or written waiver by Seller) of all of the following conditions:
- i) There is a suitable electrical interconnection point of sufficient capacity to accommodate the System as designed;
  - ii) There exist no unknown site conditions or construction requirements that would materially increase the cost of Installation Work or adversely affect the electricity production from the System as designed;
  - iii) If the System is to be located on a rooftop, then the structural integrity of the roof, as is, is sufficient to accommodate the System; alternatively, if the System is to be ground-mounted, then the soil and subsurface conditions are sufficient to accommodate the System; and
  - iv) Solar Renewable Energy Credits (“SREC”) Prices do not decrease from the current Public-School price of \$59.81 per MWh (Group A – ComEd, Public School, AC Interconnect of 200-500 kW) as set by the Illinois Power Agency. If prices do change, Econergy Development LLC will seek to increase the PPA price to make up for this projected decrease in revenue. If block prices are increased, Econergy Development will share in the increase with the School District by reducing the PPA price. Any decrease or increase in the PPA will only happen after Purchaser has been given 30 days written notice by Seller.

If any one of the conditions precedent above is not satisfied by the date that is twelve (12) months after the Effective Date, Seller may terminate this Agreement without liability.

- 1.c. Purchaser’s Conditions Precedent. In the event that Seller has not initiated Development Activities by the date that is twelve (12) months after the Effective Date for reasons other than a breach by Purchaser of its obligations hereunder, Purchaser may terminate this Agreement without liability.

## 2. INSTALLATION OF SYSTEM.

- 2.a. Installation. Seller shall cause the System to be designed, engineered, installed, and constructed substantially in accordance with Applicable Law and prudent industry practice by the engineering, procurement, and construction company (EPC). Purchaser shall be given the opportunity to review and satisfy itself that the System, if installed according to the plans, will not damage Purchaser's property or interfere with Purchaser's operations—such review and approval not to be unreasonably withheld or delayed. If Purchaser fails to approve or to reject such construction plans within five (5) Business Days of receipt, such plans shall be deemed to be approved by Purchaser. Any approval or deemed approval of construction plans by Purchaser shall not relieve Seller of its obligations under this Agreement. Seller shall procure all materials and equipment for the installation of the System and maintain the same at the Premises. Seller shall make reasonable commercial efforts to procure and install the particular brand of components (including solar panels and inverters) as identified in Exhibit B; however, Seller may, in its discretion, substitute any components of the System with components of a reasonably similar nature and quality. Seller's EPC shall perform the installation of the System in a manner that minimizes inconvenience to and interference with Purchaser's existing use of the premises. Seller and its EPC may use contractors and subcontractors to perform its obligations under this Agreement.
- 2.b. Permits and Approvals. Seller and its EPC shall be responsible for and bear all costs associated with applying for and obtaining all permits, licenses and approvals required for the installation, operation, and maintenance of the System. Purchaser shall cooperate with Seller and the EPC in connection with obtaining such approvals and permits.
- 2.c. Notice of COD. Seller shall notify Purchaser when the System is capable of Commercial Operation (such date, the "Commercial Operation Date"), in the form of a notice, and shall in such notice specify to Purchaser the Commercial Operation Date.

## 3. O&M; OWNERSHIP OF SYSTEM AND ENVIRONMENTAL ATTRIBUTES.

- 3.a. Ownership. The System and the associated Environmental Attributes shall be owned by Seller or its Financing Party and shall be operated by Seller at its sole cost and expense. The Parties agree that the System is personal property and shall not be deemed a part of, or fixture to, the Premises.
- 3.b. Operation & Maintenance. "System Operation(s)" means all actions, including monitoring and maintaining the System, necessary for Seller to meet its obligations herein. Any repair or maintenance (including emergency repairs) of the System shall be completed by or for Seller, at its sole cost and expense, for Seller's benefit as legal and beneficial owner or lessee of the System. The System shall at all times retain the



legal status of personal property and not as a fixture. Purchaser shall not attempt or perform any operation or maintenance of the System except as otherwise expressly set forth in this Agreement. All maintenance procedures required hereby shall be undertaken and completed in accordance with the manufacturer's recommended procedures, and by properly trained, licensed, and certified maintenance sources and maintenance personnel, so as to keep the System in as good operating condition as upon the Commercial Operation Date of such System, ordinary wear and tear excepted. Seller shall bear all risk of loss with respect to the System.

- 3.c. Metering Equipment. The EPC shall install, and the Operations & Maintenance Provider shall maintain a kilowatt-hour (kWh) meter for the measurement of electrical energy provided to the System as may be required for use at the Premises in accordance with Applicable Laws.
- 3.d. Emergencies. Except as otherwise set forth herein, the Parties each shall notify the other within twenty-four (24) hours following their discovery of any material malfunction in the operation of the System or of their discovery of an interruption in the supply of Solar Services.
- 3.e. Prohibition. Purchaser shall not make or attempt to make any repairs, adjustments, modifications or any other changes to the System or the System meter.

#### 4. PRICE AND SALE OF SOLAR SERVICES.

- 4.a. Purchase and Sale of Solar Services. Commencing on the Commercial Operation Date, Seller shall make available to Purchaser, and Purchaser agrees to purchase one hundred percent (100%) of the Solar Services of the System.
- 4.b. Price. As consideration for Solar Services produced by the System during each calendar month, Purchaser shall pay to Seller a monthly payment ("Monthly Payment") equal to the product (x) of Actual Monthly Service Production for the System for the relevant month multiplied by (y) the price per kWh for Solar Services as specified in Exhibit C (the "kWh Rate").
- 4.c. Invoices & Payment. Seller shall provide an invoice to Purchaser on or about the fifth (5th) day of each month (each an "Invoice Date"), commencing on the first Invoice Date to occur after the Commercial Operation Date. All invoices shall be sent to the address for the applicable Party as set forth in Section 13. Purchaser shall pay all amounts due within thirty (30) days after the applicable Invoice Date. In the event a Party disputes all or a portion of an invoice, or any other claim or adjustment arises, that Party shall pay the undisputed portion when due and provide the other Party notice of the dispute and the amount in dispute. In such event, the Parties shall first use good faith, reasonable, diligent efforts to resolve such dispute within a reasonable period of time not to exceed thirty (30) days from the date of such notice.

## 5. CERTAIN ADDITIONAL COVENANTS OF PURCHASER.

- 5.a. Site Access. Purchaser shall provide Seller and its EPC with access, at all times, to the Premises to allow Seller to perform the Solar Services as contemplated herein, including ingress and egress rights to the Premises.
- 5.b. Security. Purchaser agrees that its normal security measures, practices, and policies which apply to its own Premises shall also apply to the System. Purchaser shall take all commercially reasonable steps to limit access by third parties to areas of the Premises on which the System is situated. Such steps shall include, but not be limited to, fencing any ground mounted System and locking roof access for any rooftop System. Purchaser shall be liable to Seller for all damage caused to the System by the result of actions (or negligence) of third parties who access the System in contravention of the preceding sentence of this Section 5.b to the extent such access is a result of Purchaser's negligence and then only to the extent such damage is not covered by the Seller's insurance.
- 5.c. Liens.
- i) Purchaser shall not directly or indirectly cause to exist any lien on the System.
  - ii) Purchaser represents that as of the Effective Date, the mortgagee (if any) identified in Exhibit B is the only holder of a lien on the Premises, and, to Purchaser's knowledge, the only party that has the legal right to place a lien on the Premises.
  - iii) Purchaser shall use reasonable commercial efforts to notify all parties having an interest in or lien upon the real property comprising the Premises (a) of the existence of the System and (b) of the legal status or classification of the System as personal property.
- 5.d. Roof Warranty or Soil Warranty; Repairs. In the event that the System is mounted on the roof of any structure on the Premises, Purchaser represents and warrants that each such said roof is structurally sound, free of defects, and is in such a condition as adequately to be able to support the installation of the System; alternatively, in the event that the System is mounted on the ground / soil of the Premises, Purchaser represents and warrants that it has no actual or constructive knowledge of any latent defect in the ground or soil that would cause such ground or soil to be unsuitable for the purposes of supporting the System. The roof and soil warranties (as applicable) set forth in the preceding sentence do not constitute any warranty by Purchaser concerning the output of the System, the ability of the System to generate electricity, or the ability of the System to generate income at the levels estimated by Seller—Purchaser specifically does not make any such warranties to Seller. If Purchaser or Purchaser's landlord decides to repair or remediate the Premises (including, if the System is roof-mounted, the roof thereof) for any reason not directly related to damage

caused by the System, and if such repair requires the partial or complete temporary disassembly or relocation of the System, Purchaser shall pay Seller for (i) all work required by Seller to disassemble or move the System, and (ii) Seller's reasonable estimate of its reduced revenue (from Solar Services and Environmental Attribute sales) that occurred as a consequence of such roof repair or remediation. Purchaser shall not move, disassemble, or otherwise alter the System.

- 5.e. Tax on Sale of Solar Services. Purchaser shall be responsible for any taxes imposed or by any Government Authority and paid by Seller due to Seller's sale of the Solar Services to Purchaser (other than income taxes imposed directly upon Seller). Seller shall notify Purchaser in writing with a detailed statement of such amounts, which will be invoiced by Seller.
- 5.f. Notice of Damage. Purchaser shall promptly notify Seller it is aware of any damage to or loss of the use of the System that could reasonably be expected to adversely affect the System or the provision of the Solar Services.
- 5.g. Shading. Purchaser shall use all commercially reasonable means to prevent any shading of the System by any party. In the event Purchaser tolerates or causes any shading of the System, Purchaser shall be liable to Seller for Seller's lost revenue—as reasonably calculated by Seller—as a result of such shading.
- 5.h. Excavation. Purchaser shall not dig or excavate under a ground-mounted system, nor permit excavation, so near the sides of or underneath the Power Facilities or take any other actions that would undermine or otherwise adversely affect their stability and/or jeopardize the System without the consent of the Seller. Such consent will not be unreasonably withheld.

## 6. CERTAIN ADDITIONAL COVENANTS OF SELLER; SELLER WARRANTIES.

- 6.a. Removal of System at Expiration or Termination of Agreement. Within one hundred and eighty days (180) days after the expiration or earlier termination of this Agreement, Seller shall, at its expense, remove the System from the Premises, and return the ground or roof surface to its original condition, ordinary wear and tear excluded.
- 6.b. System Condition. Seller shall take all actions reasonably necessary to ensure that the System is capable of providing Solar Services at a commercially reasonable continuous rate.
- 6.c. Compliance with Law. Seller shall comply with all Applicable Law in connection with this Agreement, including those related to health and safety.
- 6.d. Structure Warranty. If Seller (or any of their respective contractors or subcontractors) alters, modifies or penetrates any structure, improvements or any portion thereof located on the Premises in performing the installation, repair, maintenance, or removal

services, Seller shall promptly repair such damage to Purchaser's reasonable satisfaction and Seller hereby warrants any repairs made to the structure(s) or improvement(s) by Seller (or its contractor(s) or subcontractor(s)) (the "Structure Warranty").

## 7. ASSIGNMENT.

- 7.a. Assignments by Seller. Seller shall at all times have the right to sell, assign, encumber, transfer or grant equal or subordinate rights and interests (including co-leases, separate leases, subleases, licenses or similar rights (however denominated)) in, the Leasehold Estate and/or any or all right or interest in this Agreement, or any or all right or interest of Purchaser in the Property or in any or all of the Power Facilities that Seller may now or hereafter install on the Property, to one or more persons (an "Assignee"), in each case without Purchaser's consent; provided, however, that any and all such transfers and transferees shall be subject to all of the terms, covenants and conditions of this Agreement. Seller shall notify Purchaser in writing of any such sale, assignment, transfer or grant. Upon Seller's assignment of its entire interest hereunder as to all or any portion of the Property, or as may otherwise be provided in the applicable sale, assignment, transfer or grant document, Purchaser shall recognize the Assignee as Seller's proper successor, the Assignee shall have all of the assigned rights, benefits and obligations of Seller under and pursuant to this Agreement, and Seller shall be relieved of all of its obligations relating to the assigned interests under this Agreement that relate to acts or omissions that occur or accrue following the effective date of such sale, assignment, transfer or grant.
- 7.b. Assignments by Landowner. The burdens of this Agreement and other rights contained herein shall run with and against the Property and shall be a charge and burden thereon for the duration of this Agreement and shall be binding upon and against Purchaser and its successors and assigns. Purchaser shall notify Seller in writing of any sale, assignment or transfer of any of Purchaser's interest in the Property, or any part thereof. Until such notice is received, Seller shall have no duty to any successor Purchaser, and Seller shall not be in default under this Agreement if it continues to make all payments to the original Purchaser before notice of sale, assignment or transfer is received. Purchaser agrees it will not assign the rights to payments due to Purchaser under this Agreement except to a successor owner of the Property, and in no case shall Purchaser sever or attempt to sever the Property's solar energy rights or interests from the Property's fee title or otherwise convey, assign or transfer or attempt to convey, assign or transfer this Agreement, except to a successor owner of the Property.
- 7.c. Cooperation with Financing.
- i) Purchaser acknowledges that Seller may be financing the acquisition and installation of the System through a System equipment lessor, lender and/or one or more financial institutions (each, a "Financing Party") and that Seller may sell or assign the System or may secure Seller's obligations by, among other

collateral, a pledge or collateral assignment of this Agreement and a senior security interest in the System. Purchaser shall cooperate with Seller and Financing Parties in connection with such financing of the System, including (a) the furnishing of such information, and (b) the giving of such certificates regarding factual matters, as Seller and Financing Parties may reasonably request.

- ii) Upon Seller's notice to Purchaser of the identity and address of the Financing Party that will provide financing to Seller in respect of the System, such Financing Party shall become a third-party beneficiary of this Agreement.

## 8. INSURANCE.

8.a. Generally. The Parties shall each maintain the following insurance coverages in full force and effect throughout the Term, either through insurance policies or acceptable self-insured retentions a broad form comprehensive coverage policy of public liability insurance insuring Seller and Purchaser (as an additional insured) against loss or liability caused by Seller's occupation and use of the Property under this Agreement, in an amount not less than One Million Dollars (\$1,000,000) of combined single limit liability coverage per occurrence, accident or incident. Such coverage may be provided as part of a blanket policy covering other properties. Seller shall carry adequate property loss insurance on the System which need not be covered by the Purchaser's property coverage. The policy amounts set forth in the first sentence of this Section 8.a are policy minimums—either Party may obtain insurance at any time during the Term in excess of the aforementioned minimum amounts. Each Party also may obtain such other, additional insurance as it deems prudent in its sole discretion.

8.b. Certificates of Insurance. If requested by the other Party, a Party shall furnish current certificates evidencing that the insurance required under Section 8.a is being maintained.

## 9. EVENTS OF DEFAULT; REMEDIES EVENTS OF DEFAULT.

9.a. Event of Default. An "Event of Default" means, with respect to a Party (the Party defaulting), the occurrence of any of the following:

- i) the failure to make, when due, any payment required under this Agreement if such failure is not remedied within thirty (30) days;
- ii) the failure to perform any material covenant or obligation set forth in this Agreement, if such failure is not remedied within thirty (30) days after receipt of notice; provided, however, that if such material covenant or obligation may be cured, but not within such thirty (30) day period, and the defaulting party has commenced curing such default and is at all times diligently pursuing the cure thereof, such further period as may be necessary for up to an additional sixty (60) days;

- iii) such Party (a) applies for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (b) admits in writing its inability, or be generally unable, to pay its debts as such debts become due; (c) makes a general assignment for the benefit of its creditors; (d) commences a voluntary case under any bankruptcy law; (e) files a petition seeking to take advantage of any other relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (f) fails within one hundred eighty (180) days of the filing against it of an involuntary case under any bankruptcy law to have such involuntary case dismissed; or
  - iv) such Party fails to provide or maintain in full force and effect any required insurance coverage, if such failure is not remedied within ten (10) Business Days after receipt of notice from the non-defaulting Party to the defaulting party.
- 9.b. Remedies. If an Event of Default has occurred, the non-defaulting Party shall have the right (without limiting any other rights or remedies available under Applicable Law), by notice to the defaulting Party, to terminate this Agreement. If the non-defaulting Party is Seller, and Seller elects to terminate this Agreement, Purchaser shall pay to Seller as liquidated damages an amount equal to the greater of (i) the applicable Early Termination Fee, or (ii) the Fair Market Value of the System on the date of such demand by Seller. Should Purchaser pay such liquidated damages, they would retain ownership of the system.
- 9.c. Remedies Are Cumulative. No remedy herein conferred upon or reserved to a Party is intended to be exclusive of any other remedies provided for in this Agreement, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy of such Party given hereunder or now or hereafter existing at law, in equity, by contract or otherwise. Every right, power and remedy given to a Party by this Agreement, at law, in equity, by contract or otherwise shall be concurrent and may be pursued separately, successively or together against the other applicable Party hereto, and every right, power and remedy given to such Party by this Agreement, at law, in equity, by contract or otherwise may be exercised from time to time as often as may be deemed expedient by such Party.
- 9.d. Duty to Mitigate. Each Party agrees to undertake reasonable commercial efforts to mitigate any loss or damage it may suffer as a result of a breach or default by any other Party. In the Event of Default by Purchaser, Seller may seek to mitigate damages by selling power to the applicable power grid.
- 9.e. Interest. Unpaid sums (including unpaid liquidated damages) will accrue interest at the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed by law.

## 10. FORCE MAJEURE.

- 10.a. Definition. “Force Majeure Event” means any act or event that prevents the affected Party from performing its obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party. Subject to the foregoing conditions, a Force Majeure Event shall include without limitation the following acts or events: (i) sabotage, riots or civil disturbances; (ii) acts of God; (iii) acts of the public enemy; (iv) terrorist acts affecting the Premises; (v) volcanic eruptions, earthquake, hurricane, flood, ice storms, explosion, fire, lightning, landslide or similarly cataclysmic occurrence; (vi) any action or inaction by any Governmental Authority or applicable local utility which prevents or prohibits the Parties from carrying out their respective obligations under this Agreement, including but not limited to curtailment or reduction of energy production required by the utility or grid operator, or a power or voltage surge caused by someone other than Seller; (vii) general strikes and labor disturbances; (viii) economic collapse of the United States of America or the state or commonwealth within the United States of America in which the Premises are located; (ix) the independence, separation from, or other termination of association (regardless of cause) from the United States of America by the state or commonwealth within which the Premises are located; and (x) bankruptcy, insolvency, or other failure of a Party’s general banking institution.
- 10.b. Excused Performance. Except as otherwise specifically provided in this Agreement, neither Party shall be considered in breach of this Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay amounts due hereunder), if (but only to the extent that) such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 10 shall promptly (i) notify the other Party in writing of the existence of the Force Majeure Event and (ii) exercise all commercially reasonable efforts necessary to minimize delay caused by such Force Majeure Event.
- 10.c. Termination in Consequence of Force Majeure. If a Force Majeure Event shall have occurred that has affected Seller's performance of its obligations hereunder and that has continued for a period of one hundred eighty (180) consecutive days or three hundred and sixty-five (365) days in the aggregate, then Purchaser shall be entitled to terminate this Agreement without further liability.

## 11. REPRESENTATIONS AND WARRANTIES.

- 11.a. Representations and Warranties. Each Party represents and warrants to the other as of the Effective Date that:
- i) This Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by

applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

- ii) It is duly organized and validly existing and in good standing in the jurisdiction of its organization;
- iii) It has taken all requisite corporate or other action to approve the execution, delivery, and performance of this Agreement; and
- iv) It has the full right and authority to enter into, execute, deliver, and perform its obligations under this Agreement.
- v) Purchaser further represents and warrants to Seller that no hazardous substances have been released at or in vicinity of the Premises that could reasonably be expected to have a material adverse impact on Seller's ability to perform its obligations hereunder or otherwise result in liability to Seller.

## 12. MUTUAL INDEMNITY.

- 12.a. Mutual Indemnity. To the extent allowable by law, each Party (the "Indemnitor") hereby indemnifies and agrees to defend and hold harmless the other Party (the "Indemnitee") from and against any and all third party claims, to the extent arising from injury to persons or property caused by negligence, or any material breach of this Agreement by the Indemnitor or any of its directors, officers, employees or agents; provided, however, that the Indemnitor shall not have any obligation to indemnify the Indemnitee from or against any losses, liabilities, damages, costs, expenses, and attorneys' fee, to the extent caused by, resulting from, relating to or arising out of the negligence or intentional misconduct of the Indemnitee or any of its directors, officers, employees or agents.

## 13. NOTICES.

- 13.a. Notice Addresses. Unless otherwise provided herein, all notices and communications concerning this Agreement will be in writing and addressed to the other Party as set forth as follows:

Notices to be sent to:

Attn: Haj Young  
Seller: Econergy Development LLC  
Address: 1720 West Division Street  
City Chicago, IL 60622  
Email: Haj@Econergy.net

Notices to be sent to:



Attn: \_\_\_\_\_  
Purchaser: Joliet Township High School District 204  
Address: \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Email: \_\_\_\_\_

- 14.b. Notice. Any notice or other communications hereunder shall be deemed to have been received (unless otherwise set forth herein) (i) on delivery if in person; (ii) on the second day following deposit with an overnight express agency, fees prepaid, or mailed by United States express, certified or registered mail, postage prepaid, return receipt requested; or (iii) on the same day if sent via email, to the other Party at the preceding addresses, or to such other address as shall be later provided in writing by one Party to the other

#### 14. CONFIDENTIALITY / PROPRIETARY INFORMATION.

- 14.a. Proprietary Information. The Parties to this Agreement shall hold in confidence, and withhold from third parties, any and all Proprietary Information (as defined below) disclosed by one Party to the other and shall use the other Party's Proprietary Information only for the purposes stated herein (the "Permitted Purposes") and for no other purpose unless the disclosing Party shall agree herein or hereafter in writing. Each Party agrees to safeguard from theft, loss, and negligent disclosure the other Party's Proprietary Information received pursuant to this Agreement by utilizing the same degree of care as the receiving Party utilizes to safeguard its own Proprietary Information of a similar character from theft, loss, and negligent disclosure, but in no event less than reasonable care. Each Party agrees to limit access to Proprietary Information to those officers, directors, and employees within the receiving Party's organization, and to the Party's subcontractors, who reasonably require such access to accomplish the Permitted Purposes. Each Party agrees not to reproduce or copy by any means the Proprietary Information of the other Party except as reasonably required to accomplish the Permitted Purposes. The Parties shall not remove any trademark or proprietary rights legend from the Proprietary Information of the other Party. All Proprietary Information disclosed pursuant to this Agreement shall be and remain the property of the disclosing Party or its third-party suppliers. Except as expressly specified in this Agreement, neither Party to this Agreement acquires any license, right, title, or interest in and to the Proprietary Information received from the other Party. Each Party shall inform such employees of the non-disclosure obligations set forth herein and shall obligate in writing any subcontractors to comply with the non-disclosure requirements stated herein. Each Party shall give prompt written notice to the other Party upon becoming aware of any unauthorized use or disclosure of the Proprietary Information. Each Party agrees to use its best efforts to remedy such unauthorized use or disclosure of the Proprietary Information at its own expense. Each Party acknowledges and agrees that in the event of an unauthorized use, reproduction, distribution, or disclosure of any Proprietary Information, the other Party will not

have an adequate remedy at law and, therefore, injunctive or other equitable relief would be appropriate to restrain such use, reproduction, distribution, or disclosure, threatened or actual. Neither Party shall be liable for use nor disclosure of what would otherwise be considered Proprietary Information if it can establish by contemporaneous, clear, and convincing written evidence that such information, in substantially the same form and content: (i) is or becomes a part of the public knowledge without breach of the Agreement by the receiving Party; (ii) is known to the receiving Party without restriction as to further disclosure when received; (iii) is independently developed by the receiving Party without the use, directly or indirectly, of information received under this or other obligation of confidentiality with the disclosing party; (iv) becomes known to the receiving Party from a third party who had a lawful right to disclose it without breaching the Agreement; (v) is approved in writing for release or use by an authorized employee of the other Party; or (vi) is disclosed in response to a valid order of a court of competent jurisdiction or other governmental body of the United States of America or any political subdivision thereof, or is otherwise required to be disclosed by law; provided, however, that the receiving Party shall first have given prompt written notice to the disclosing Party in order to allow objection by the disclosing Party to any such order or requirement, or to otherwise protect the rights of the disclosing Party and its suppliers prior to the disclosure. If a particular portion or aspect of the Proprietary Information becomes subject to any of the foregoing exceptions, all other portions or aspects of such information shall remain subject to all of the above non-disclosure provisions. Examples of Proprietary Information include, but are not limited to, System designs and pricing information.

- 14.b. Publicity. Each Party, without permission from the other Party hereto, may advertise and announce the existence of the System upon the Premises and the participation of the Parties in the project; such advertisement and announcements may be for any lawful purpose. Each Party may take, distribute, and otherwise use photographs of the System in connection therewith. Purchaser, however, shall not disclose the kWh Rate or material terms of this Agreement concerning System finances without the prior written consent of the Seller except as to Affiliates of Purchaser.

#### 15. MISCELLANEOUS TERMS; INTERPRETATION.

- 15.a. Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Purchaser.
- 15.b. Captions; Headings. The captions or headings in this Agreement are for convenience only and shall not be considered in interpreting the Agreement.
- 15.c. Integration and Exhibits. This Agreement consists of fourteen (14) pages followed by one (1) signature page and three (3) exhibits, each of which are fully incorporated hereunto: Exhibit A: Definitions; Exhibit B: Description of Premises

and System; Exhibit C: Principal Commercial Terms. This Agreement, together with the exhibits attached hereto, constitutes the entire agreement and understanding between Seller and Purchaser with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof.

- 15.d. Severability. If any term, covenant, or condition in this Agreement shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law.
- 15.e. Limited Effect of Waiver. The failure of Seller or Purchaser to enforce any of the provisions of this Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.
- 15.f. Liquidated Damages Not Penalty. Purchaser acknowledges that the Early Termination Fee constitutes liquidated damages, and not penalties, in lieu of Seller's actual damages resulting from the early termination of this Agreement. Purchaser further acknowledges that Seller's actual damages may be impractical and difficult to accurately ascertain, and in accordance with Purchaser's rights and obligations under this Agreement, the Early Termination Fee constitutes fair and reasonable damages to be borne by Purchaser in lieu of Seller's actual damages. Seller acknowledges that the Lost Savings constitutes liquidated damages, and not penalties, in lieu of Purchaser's actual damages resulting from deficient performance by Seller under this Agreement.
- 15.g. Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Illinois and without reference to any choice of law principles.
- 15.h. Consent to Jurisdiction. THE PARTIES HERETO EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE DESIGNATED, EXCLUSIVE AND PROPER VENUE OF ANY LEGAL DISPUTE, QUESTION OR INTERPRETATION, CLAIM, DECLARATORY JUDGMENT ACTION, BANKRUPTCY OR OTHER LITIGATION WITH RESPECT TO THIS AGREEMENT SHALL BE EXCLUSIVELY AND SOLELY A FEDERAL OR STATE COURT IN THE COUNTY OF COOK, STATE OF ILLINOIS. THE PARTIES HERETO HEREBY EXPRESSLY CONSENT TO THE EXERCISE OF PERSONAL JURISDICTION BY, LAYING OF VENUE IN AND EXCLUSIVE JURISDICTION OF, SUCH COURT.
- 15.i. Successors and Assigns. This Agreement and the rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of Seller and Purchaser and their respective permitted successors and assigns.

- 15.j. Relation of the Parties. The relationship between Seller and Purchaser shall not be that of partners, agents, or joint ventures for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purpose.
- 15.k. Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. Facsimile or electronic signatures shall have the same effect as original signatures and each Party consents to the admission in evidence of a facsimile, electronic copy, or photocopy of this Agreement in any court or arbitration proceedings between the Parties.
- 15.l. Records. Each Party shall use commercially reasonable efforts to keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement.

*[REST OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, the Parties hereto have duly executed and delivered this Agreement as of the Effective Date.

**SELLER: Econergy Development LLC**

Signature:

Print Name:

Title:

Date:

**PURCHASER: Joliet Township High School District 204**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT A

### DEFINITIONS

In addition to other terms specifically defined elsewhere in this Agreement, where capitalized, the following words and phrases shall be defined as follows:

“Actual Monthly Service Production” means the amount of energy recorded by Seller’s metering equipment during each calendar month of the Term, pursuant to Section 4.b.

“Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such first Person.

“Agreement” means this Solar Power Purchase Agreement, including the preamble and the Exhibits attached hereto and incorporated herein by reference.

“Applicable Law” or “Applicable Laws” means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, order, decree, judgment, decision, or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity.

“Business Day” or “Business Days” means any day other than Saturday, Sunday or any other day on which banking institutions in Chicago, Illinois, are required or authorized by Applicable Law to be closed for business.

“Commercial Operation” means that the system is ready for regular operation, is connected to the Premises’ electrical system, and is capable of producing electricity.

“Commercial Operation Date” has the meaning set forth in Section 2.c.

“Confidential Information” means any non-public confidential or proprietary information (whether conveyed orally, electronically or in hard copy) of a Party or its Affiliates relating to this Agreement, and identified as confidential by the disclosing party; provided, however “Confidential Information” shall not include information that (i) is required to be disclosed by a Governmental Authority, (ii) is independently developed by the receiving Party, or (iii) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

“Early Termination Fee” means the greater of the Fair Market Value set forth in this Exhibit A or the Total Projected Revenue minus Operating Expenses as set forth in this Exhibit A for the remainder of the Term of this Agreement discounted at 6% per annum.

“Effective Date” has the meaning set forth in the preamble hereof.

“Environmental Attributes” means, without limitation, carbon trading credits, renewable energy credits or certificates, production-based incentives, emissions reduction credits, investment tax credits, installation or production tax credits or tax grants, emissions allowances, green tags,

tradable renewable credits, Green-e® products, accelerated depreciation, and all other solar or renewable energy subsidies and incentives.

“Estimated Annual Production” means Seller’s estimated annual production of the System as described in Exhibit C.

“Event of Default” has the meaning set forth in Section 9.a.

“Fair Market Value” means, with respect to any tangible asset or service, the price that would be negotiated in an arm’s-length, free market transaction, for cash, between an informed, willing seller and an informed, willing buyer, neither of whom is under compulsion to complete the transaction.

“Financing Party” has the meaning set forth in Section 7.c.

“Force Majeure Event” has the meaning set forth in Section 10.a.

“Governmental Authority” means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Installation Work” means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Seller at the Premises.

“Indemnitee” has the meaning set forth in Section 12.a.

“Indemnitor” has the meaning set forth in Section 12.a.

“Invoice Date” has the meaning set forth in Section 4.c.

“kWh Rate” has the meaning set forth in Section 4.b, as set forth in Exhibit C.

“MACRS” stands for modified accelerated cost recovery system. It is the tax depreciation system used in the United States to calculate asset depreciation.

“Monthly Payment” has the meaning set forth in Section 4.b.

“Operating Expenses” means general operating costs for Insurance, management fees and system maintenance.

“Party” or “Parties” has the meaning set forth in the preamble hereof.

“Permitted Purposes” has the meaning set forth in Section 14.a.

“Person” means an individual, partnership, corporation, limited liability company, Governmental

Authority, or other entity.

“Premises” means the premises described in of Exhibit B, including the entirety of any structures and underlying real property located at the address described in Exhibit B.

“Proprietary Information” has the meaning set forth in Section 14.a.

“Purchaser” has the meaning set forth in the preamble hereof.

“Routine Maintenance” means commercially reasonable maintenance of the System, including but not limited to maintenance recommended by System component manufacturers.

“Seller” has the meaning set forth in the preamble hereof.

“Solar Services” means the supply of on-site electrical energy output from the System together with certain peak load coincident reductions, possible building energy conservation (if specifically described in Exhibit B hereto), and other on-site energy services or efficiencies associated with the solar energy production described herein.

“System” means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, batteries, energy storage systems, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, more specifically described in Exhibit B and interconnected with the local electric utility, owned or leased by Seller and installed at the Premises.

“System Operations” has the meaning set forth in Section 3.b.

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

“Term” has the meaning set forth in Section 1.a.

“Total Projected Revenue” means the product of the total projected kWh production of the System multiplied by the sum of the kWh Rate and the SREC price set forth in Section 1.b. The total kWh production is calculated by the average annual system production for the past three consecutive years. If the System has not produced for three consecutive years, the total kWh production will instead be calculated by the average annual electricity consumption as provided independently by the utility of record. In addition, this value includes any benefits derived from Tax Credits and MACRS depreciation equal to 85% of the system value.

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**EXHIBIT B**

DESCRIPTION OF PREMISES AND SYSTEM

Premises & Solar System Location: Rooftop System to be installed at

Joliet Transportation Center  
3901 Olympic Blvd, Joliet, IL 60431

Owner of Premises as of Effective Date: Joliet Township High School District 204

Mortgage of Premises as of Effective Date: N/A

Anticipated Solar System Size (DC): 354 kw

Modules: \_\_\_\_\_, or equivalent.

Inverters: \_\_\_\_\_, or equivalent.

Purchaser's Current Utility Name: Commonwealth Edison

Purchaser's Utility Hourly Rate for Energy (as of Effective Date): \_\_\_\_\_

System Components Include:

Solar panels, support system, inverter system, wire kits, and data monitoring system.

System size may be reduced during final design if, for example, structure issues are identified with respect to the roof.

*[REST OF PAGE INTENTIONALLY LEFT BLANK]*

## EXHIBIT C

### PRINCIPAL COMMERCIAL TERMS

1. kWh Rate.

kWh Rate: **\$.0786** escalated by **2.0%** on each anniversary of the Commercial Operation Date.

2. Estimated Year 1 Yield: 494,566 kWh

This estimated annual production amount is a good faith estimate of Seller as of the Effective Date and does not constitute a production guaranty.

## **ROOFTOP LEASE AGREEMENT**

This ROOFTOP LEASE AGREEMENT (this “Agreement”) is made, dated and effective as of \_\_\_\_\_, 2024 (the “Effective Date”), between Joliet Township High School District 204 (“Landowner”), and Econergy Development LLC a Wyoming limited liability company (“Lessee”), in light of the following facts and circumstances:

### **RECITALS**

WHEREAS, Lessee is in the business of developing, constructing, erecting, and operating solar energy conversion systems and power generation facilities for the production of electrical energy;

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

WHEREAS, Lessee desires to lease the Property.

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

### **AGREEMENT**

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

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

1.2. Purpose. The foregoing leasehold estate and grant of rents, royalties, credits and profits created by this Agreement (collectively, the “Leasehold Estate”) are for (i) the production of energy, including solar energy, and for any and all related or ancillary purposes, including storage of any energy so produced, and Lessee shall have the exclusive right to use the Property and the unobstructed receipt of and access to sunlight across the Property for solar energy purposes, to convert all of the solar resources of the Property and to derive all profits therefrom, (all of the foregoing activities, collectively, (“Development Activities”), including, without limitation:

(a) determining the feasibility of solar energy conversion and power generation on the Property, including studies of available sunlight and other data and extracting soil samples;

(b) constructing, reconstructing, erecting, installing, improving, replacing, relocating and removing from time to time, and maintaining, repairing, using and operating, any new, existing, additional or repowered (i) solar power generating equipment, inverters, mounting and tracking systems, monitoring systems, solar collectors, solar energy conversion systems and other power generation facilities, of any type or technology (the “Solar Equipment”); (ii) transmission facilities, including without limitation, overhead and underground transmission, distribution or collector lines, circuit breakers, conduits, foundations, footings, towers, poles, crossarms, guy lines, anchors and wires; (iii) overhead and underground control, communications and radio relay systems; (iv) substations, power blocks, interconnection and/or switching facilities and electric transformers; (v) energy storage facilities such as backup battery cabinets to protect the district in case of a power outage; (vi) sunlight measurement, research or development equipment; (vii) control, maintenance and administration buildings; (viii) utility installations; (ix) safety protection facilities; (x) signs and fences (collectively, “Power Facilities”), on the Property; and Lessee acknowledges that the Property is a public school district, and access to

the Property shall be strictly for the reasons outlined in this Section 1.2, and that Lessee's activities are not intended to change the Landowner's continued use of its facilities as public schools. Lessee shall secure Landowner's written permission before engaging in any activity involving excavation, earth-moving, facility construction, or permanently affixing fixtures or other items to Landowner's facilities (other than the Solar Equipment on the facility rooftops).

(c) exercising rights of vehicular and pedestrian ingress and egress upon, over and across the Property, for purposes of conducting Development Activities and accessing the Power Facilities (whether such Development Activities are conducted, or Power Facilities are located, on the Property, adjacent to the Property or elsewhere) upon, over and across any and all now existing or hereafter constructed access routes or such new or alternative access routes as Lessee and Landowner shall determine, including the right to use roads, and road-related structures on the Property; and

(d) undertaking any other activities, whether accomplished by Lessee or a third party authorized by Lessee, that Lessee reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing purposes, subject to Landowner approval, which shall not be unreasonably withheld.

1.3. Included Rights and Easements. The following rights and easements shall be included within the Leasehold Estate. Upon Lessee's request, Landowner shall execute and deliver to Lessee one (1) or more documents in recordable form, satisfactory in form and substance to Landowner and Lessee, evidencing the rights and easements granted pursuant to this Section 1.3, and Lessee may cause such documents to be recorded in the official real estate records of the county in which the Property is located.

(a) Sunlight Easement. An easement for receipt of and access to sunlight throughout the Property. Any obstruction to the receipt of and access to sunlight throughout the entire area of the Property is prohibited.

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

(c) Clearance Rights. An easement to trim, cut down and remove all trees (whether natural or cultivated), brush, vegetation and fire and electrical hazards now or hereafter existing on the Property which might obstruct receipt of or access to sunlight throughout the Property or interfere with or endanger the Power Facilities or Lessee's Development Activities, as determined by Lessee in its sole discretion.

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

(e) Utility Lines. An easement for the maintenance, repair and use of utility lines and equipment, including, without limitation, for water, natural gas and electrical transmission and interconnection. Any work by Lessee involving water or natural gas lines requires Landowner's prior written approval.

(f) Signage. An easement to place signs on or proximate to Lessee's Power Facilities.

(g) Access. A non-exclusive easement for access, ingress and egress to and from the Property, in such locations as reasonably selected by Lessee.

**2. Term.**

**2.1 Original Term and Renewal Terms.** This Agreement shall be for an initial term (the “Original Term”) commencing on the Effective Date and continuing until the twenty-fifth (25th) anniversary of the Operations Date (as defined below). As used herein, “Term” shall mean collectively, the Original Term and Renewal Term (as defined below).

**2.2 Operations Date.** For purposes of this Agreement, “Operations Date” shall mean the date the Power Facilities are installed on the Property and begin delivering electricity to the power purchaser.

**2.3 Renewal Terms.** Landowner shall have the option, per direction from Lessee to extend and renew the Original Term of this Agreement for up to two (2) periods of five (5) years each (the “Renewal Term”). Landowner may exercise such option by written notice delivered to Lessee not later than one hundred eighty (180) days prior to the expiration of the Original Term.

**3. Payments to Landowner.** Commencing with the Operations Date and continuing annually until the expiration or sooner termination of this Agreement, Lessee shall pay Owner the base annual fee set forth on Exhibit C. Such annual fees shall be payable each year within forty-five (45) days following the Operations Date or following each anniversary of the Operations Date (as applicable) and shall be prorated (or retroactively adjusted) for any partial one (1) year period preceding the expiration or sooner termination of this Agreement.

**4. Ownership of Power Facilities.** Landowner shall have no ownership or other interest in any Power Facilities installed on the Property, or any profits derived therefrom, and Lessee may mortgage, sell, lease or remove any or all Power Facilities at any time. Landowner shall have no lien or security interest and may not attempt to create a lien or security interest, in the Power Facilities, and expressly waives any statutory lien, landlord’s lien or other lien or security interest. Except for the payments described in Section 3 above, Landowner shall not be entitled to any payments, credits, benefits, emissions reductions, offsets, incentives, grants or allowances of any kind, howsoever entitled, attributable to the Power Facilities or the electric energy, capacity or other generator-based products produced therefrom, all of which shall accrue solely to the benefit of Lessee. Landowner shall have no ownership or other interest in any scientific or engineering data at any point in time or for any duration of time collected at the Power Facilities or on the Property. Such scientific or engineering data is the sole and exclusive property of Lessee. Possession of such data by Landowner shall not constitute ownership of such data.

**5. Taxes.** Lessee shall be responsible for and shall timely pay before the same become delinquent, any taxes, assessments or other governmental charges that shall or may during the Term be imposed on the Power Facilities. Landowner shall be responsible for and shall timely pay before the same become delinquent, all taxes, assessments or other governmental charges that shall or may during the Term be imposed on or arise in connection with the Property itself as a result of the installation of the Power Facilities. Lessee shall pay directly for any increase in such taxes, assessments or other governmental charges accruing during the Term to the extent resulting directly and solely from the presence of the Power Facilities on the Property. Landowner shall deliver to Lessee copies of all notices of or relating to all such charges no later than the earlier of two (2) weeks following Landowner’s receipt of each such notice or forty-five (45) days prior to the date that any such charge is due and payable. Except as specifically provided in this paragraph, Lessee shall not be responsible for any property taxes, assessments or other governmental charges or fees levied against the Property. If Landowner should fail to timely pay any taxes, assessments or other governmental charges for which Landowner is responsible hereunder and foreclosure thereof shall be threatened, then, without limiting Lessee’s other remedies under this Agreement or otherwise, Lessee may (but shall not be obligated to) pay the same, and Landowner shall reimburse Lessee, or Lessee may set off against amounts due from Lessee to Landowner under this Agreement, all such amounts paid, including any late fees or interest, together with any court costs and reasonable attorneys’ fees incurred by Lessee in connection therewith.

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

6.1. Insurance. Lessee shall, at its expense, prior to entering the Property to conduct Development Activities, have in place, and shall thereafter maintain, a broad form comprehensive coverage policy of public liability insurance insuring Lessee and Landowner (as an additional insured) against loss or liability caused by Lessee's occupation and use of the Property under this Agreement, in an amount not less than One Million Dollars (\$1,000,000) of combined single limit liability coverage per occurrence, accident or incident. Such coverage may be provided as part of a blanket policy covering other properties. Certificates of such insurance shall be provided to Landowner upon written request.

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

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

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

6.5. Hazardous Materials. Lessee shall not violate, and shall indemnify Landowner against any violation by Lessee or Lessee's agents or contractors of, any federal, state or local law, ordinance, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local law, ordinance, or regulation, on or under the Property.

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

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

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

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

7.2. **Title to Property.** Except as disclosed on Exhibit B attached hereto and by this reference made a part hereof, Landowner's fee simple title to the Property is free and clear of all liens, encumbrances, easements, leases, mortgages, deeds of trust, security interests, fractured interests, mineral, oil or gas rights, options to purchase or lease, claims and disputes (collectively, "Liens"), and there are no tenants on or other parties in possession of the Property. Landowner shall (i) obtain a commercially reasonable subordination, non-disturbance and attornment agreement or other appropriate agreement from each party holding a Lien (recorded or unrecorded) or in possession of the Property that might interfere with Lessee's rights under this Agreement; (ii) remove any Liens from Landowner's fee simple title to the Property; and (iii) secure the written consent of any Lien holder to this Agreement as necessary to comply with the agreement underlying any such Lien. A subordination, non-disturbance and attornment agreement is an agreement between Lessee and the holder of a Lien providing that the holder of the Lien shall not disturb Lessee's possession or rights under this Agreement or terminate this Agreement so long as Landowner is not entitled to terminate this Agreement under the provisions of this Agreement. Landowner shall not grant, create, allow or suffer any Lien or other encumbrance on title to the Property in addition to those set forth on Exhibit B.

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

7.4. **No Interference.** Landowner's activities and any grant of rights Landowner makes to any person or entity, whether located on the Property or elsewhere, shall not, currently or prospectively, interfere with (i) the construction, installation, maintenance, operation or removal of the Power Facilities; (ii) access over the Property to such Power Facilities; (iii) any Development Activities; or (iv) the undertaking of any other activities permitted hereunder. Without limiting the generality of the foregoing, Landowner shall not engage in any activity that might cause a decrease in the output or efficiency of the Power Facilities. Any grant of rights by Landowner to any person or entity as to the Property shall be subordinate to this Agreement.

7.5. **Siting and Setbacks.** Landowner consents to Lessee's siting of Power Facilities at any location upon the Rooftops of the Property. To the fullest extent applicable and permitted by law, Landowner waives enforcement of, and any and all rights it may have to pursue any remedies under, any state, zoning or local rules, ordinances or requirements related to siting of Power Facilities upon the Property, including setback requirements applicable to the Power Facilities from lot lines and improvements, and agrees not to bring any complaint, suit or action or intervene in any investigation or inquiry by any person or entity with respect thereto. Pursuant to Section 7.6 hereof, Landowner agrees to use commercially reasonable efforts to assist, cooperate and participate in any proceeding and/or petition prepared by Lessee in connection with any modification or variance to an existing siting or setback requirement, including but not limited to bringing such action, or filing such petition, in the name of Landowner.

7.6. Cooperation. Landowner shall assist and fully cooperate with Lessee, at no out-of-pocket expense to Landowner, in complying with or obtaining any land use permits and approvals, building permits, environmental impact reviews or any other approvals required for the financing, construction, installation, replacement, relocation, maintenance, operation or removal of Power Facilities, including execution of applications for such approvals. Landowner shall make available to Lessee copies of all field tiling surveys, plans, entitlement-related studies, and other geotechnical and other site assessments, surveys, environmental assessments, reports, test results, correspondence to or from any governmental agency, and other such records of Landowner relating to the Property.

7.7. Indemnity. Landowner will indemnify Lessee against liability for physical damage to the Property (including any improvements thereon) and for physical injuries to Lessee or the public (including any of Landowner's employees, contractors or agents that have gained access to the Property), to the extent caused by Landowner's activities or the activities of Landowner's employees, contractors or agents on the Property or the adjoining property, except to the extent such damage or injury is caused by the operations, activities, negligence or willful misconduct of Lessee. Landowner shall take reasonable safety measures to reduce the risk that Landowner's activities will cause harm to Lessee or the public. Landowner's obligations under this Section 7.7 shall survive the termination or expiration of this Agreement.

Lessee will indemnify Landowner against liability for physical damage to Landowner's facilities (including any improvements thereon) and for physical injuries to Landowner's employees, students, or the public to the extent caused by Lessee's activities or the activities of Lessee's employees, contractors, or agents on the Property or the adjoining property, except to the extent such damage or injury is caused by the operations, activities, negligence or willful misconduct of Landowner. Lessee shall take reasonable safety measures to reduce the risk that Lessee's activities will cause harm to Landowner or the public. Lessee's obligations under this Section 7.7 shall survive the termination or expiration of this Agreement.

7.8. No Brokers. No brokers' commission, finders' fees or other charges are due any broker, agent or other party in connection with Landowner's execution of this Agreement, or if any are now due or shall become due in the future, then Landowner shall promptly pay the same from its own funds and shall indemnify, hold harmless and defend Lessee against any and all claims and demands therefor made by any such broker, finder, agent or other party, or any of their respective successors and assigns or other parties claiming through them.

7.9. No Litigation. No litigation is pending, and, to Landowner's knowledge, no actions, claims or other legal or administrative proceedings are pending, threatened or anticipated with respect to, or that could affect, the Property, this Agreement or Lessee's rights hereunder.

7.10. Hazardous Materials. Landowner shall be responsible for any and all costs associated with investigation, remediation, or monitoring associated in any way with the cleanup or transportation of any environmental conditions on, under, emanating from, or otherwise associated with the Property.

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

7.12. Landowner's Authority. Landowner has the unrestricted right and authority to execute this Agreement and to grant to Lessee the rights granted hereunder. Each person signing this Agreement on behalf of



Landowner is authorized to do so. When signed by Landowner, this Agreement constitutes a valid and binding agreement enforceable against Landowner in accordance with its terms. Landowner is not the subject of any bankruptcy, insolvency or probate proceeding.

## **8. Assignment.**

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

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

9. **Mortgage Protection.** In the event that any mortgage, deed of trust or other security interest in this Agreement or any Power Facilities is entered into by Lessee or an Assignee, including a sale-leaseback (i.e., a transaction in which Lessee sells its interest in this Agreement and/or the Power Facilities and then leases those interests back from the purchaser) (a "Leasehold Mortgage"), then any person who is the mortgagee or beneficiary of a Leasehold Mortgage, including the purchaser in a sale-leaseback transaction (a "Leasehold Mortgage") shall, for so long as its Leasehold Mortgage is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth in this Section 9. Lessee or any Leasehold Mortgagee shall send written notice to Landowner of the name and address of any such Leasehold Mortgagee, as well as any change of the name or address of any Leasehold Mortgagee.

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

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

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

(b) The Leasehold Mortgagee shall have the same period after receipt of notice of default to remedy the default, or cause the same to be remedied, as is given to Lessee after Lessee’s receipt of notice of default, plus, in each instance, the following additional time periods: (i) sixty (60) days, for a total of one hundred twenty (120) days after receipt of the notice of default in the event of any monetary default; and (ii) sixty (60) days, for a total of one hundred twenty (120) days after receipt of the notice of default in the event of any non-monetary default, provided that such one hundred twenty (120) day period shall be extended for the time reasonably required to complete such cure, including the time required for the Leasehold Mortgagee to perfect its right to cure such non-monetary default by obtaining possession of the Property (including possession by a receiver) or by instituting foreclosure proceedings, provided the Leasehold Mortgagee acts with reasonable and continuous diligence. The Leasehold Mortgagee shall have the absolute right to substitute itself for Lessee and perform the duties of Lessee hereunder for purposes of curing such defaults. Landowner expressly consents to such substitution, agrees to accept such performance, and authorizes the Leasehold Mortgagee (or its employees, agents, representatives or contractors) to enter upon the Property to complete such performance with all the rights, privileges and obligations of the original Lessee hereunder. Landowner shall not, and shall have no right to, terminate this Agreement prior to expiration of the cure periods available to a Leasehold Mortgagee as set forth above.

(c) During any period of possession of the Property by a Leasehold Mortgagee (or a receiver requested by such Leasehold Mortgagee) and/or during the pendency of any foreclosure proceedings instituted by a Leasehold Mortgagee, the Leasehold Mortgagee shall pay or cause to be paid all other monetary charges payable by Lessee hereunder which have accrued and are unpaid at the commencement of said period and those which accrue thereafter during said period. Following acquisition of Lessee’s Leasehold Estate by the Leasehold Mortgagee or its assignee or designee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Agreement shall continue in full force and effect and the Leasehold Mortgagee or party acquiring title to Lessee’s Leasehold Estate shall, as promptly as reasonably possible, commence the cure of all defaults hereunder and thereafter diligently process such cure to completion, whereupon Landowner’s right to terminate this Agreement based upon such defaults shall be deemed waived; provided, however, the Leasehold Mortgagee or party acquiring title to Lessee’s Leasehold Estate shall not be required to cure those non-monetary defaults, if any, which are not reasonably susceptible of being cured or performed by such party (“Non-Curable Defaults”). Non-Curable Defaults shall be deemed waived by Landowner upon completion of foreclosure proceedings or acquisition of Lessee’s interest in this Agreement by such party.

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

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

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

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

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

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

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

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

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

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

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

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

## **10. Default and Termination.**

10.1. Landowner's Right to Terminate. Except as qualified by any subsequent actions and approvals of Landowner pursuant to Section 9, Landowner shall have the right to terminate this Agreement if (a) a material default in the performance of Lessee's obligations under this Agreement shall have occurred and remains uncured, (b) Landowner notifies Lessee in writing of the default, which notice sets forth in reasonable detail the facts pertaining to the default and specifies the method of cure, and (c) the default shall not have been remedied within sixty (60) days after Lessee receives such written notice, or, if cure will take longer than sixty (60) days, Lessee has not begun diligently to undertake the cure within the relevant time period and thereafter prosecute the cure to completion. In the event this Agreement is terminated by Landowner in accordance with this paragraph, Landowner and Lessee shall thereafter execute and record a notice of termination evidencing such termination. No termination of this Agreement pursuant to this paragraph shall be effective unless a notice of termination has been executed and recorded in accordance with this paragraph.

10.2. Effect of Termination or Expiration. Upon the termination or expiration of this Agreement, whether as to the entire Property or only as to part, Lessee shall, as soon as practicable thereafter, unless otherwise mutually agreed upon, (a) remove from the Property (or applicable portion thereof) all above surface grade Power Facilities and other personal property owned, located, installed or constructed by or on behalf of Lessee thereon, (b) remove (from the Property or applicable portion thereof) concrete footings, foundations and other fixtures of Lessee, (c) cover up all pit holes, trenches and other borings and excavations made by or on behalf of Lessee on the Property (or applicable portion thereof), (d) leave the surface of the Property (or applicable portion thereof) free from debris arising from the foregoing or from the operations or activities of Lessee and (e) otherwise restore any portion of the Property (or applicable portion thereof) disturbed by Lessee to a condition reasonably similar to its original condition, consistent with the uses permitted by this Agreement. Reclamation shall include, as reasonably required, repair or replacement of damaged drainage tile, leveling, terracing, mulching and other reasonably necessary measures to prevent soil erosion. Landowner shall provide Lessee with reasonable access to the Property during the performance of such removal and other work by Lessee for a period of twelve (12) months following the termination or expiration of this Agreement. During such period, Lessee shall not be required to pay the amounts set forth in Section 3 or other rent. If Lessee fails to remove any Power Facilities within twelve (12) months following the termination or expiration of this Agreement, or such longer period as Landowner may provide by extension, Landowner may do so, in which case Lessee shall reimburse Landowner for reasonable and documented costs of removal and restoration incurred by Landowner, net of any amounts reasonably recoverable by Landowner with respect to the salvage value of any such Power Facilities.

10.3. Mitigation Duty. Notwithstanding anything contained in this Agreement to the contrary, both parties shall use commercially reasonable efforts to mitigate their damages in the event of a default hereunder.

10.4. Default by Landowner. In the event that Landowner fails to comply with or perform any or all of the obligations, covenants, warranties or agreements to be performed, honored or observed by Landowner hereunder, or interferes with Lessee's use of the Property in accordance with the terms of this Agreement, which default continues for more than thirty (30) days after Lessee's delivery of written notice to Landowner specifying

such default, or if such default is of a nature to require more than thirty (30) days for remedy and continues beyond the time reasonably necessary to cure (and Landowner has not undertaken procedures to cure such default within such thirty (30) day period and diligently pursued such efforts to complete such cure), Lessee may exercise any right or remedy available to Lessee at law or in equity, including but not limited to obtaining an injunction.

## **11. Miscellaneous.**

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

b. Condemnation; Casualty. All payments made on account of any taking or threatened taking of the Property or any part thereof in condemnation proceedings or by inverse condemnation by a government agency, governmental body or private party under the exercise of the right of eminent domain may be made to Landowner, except that Lessee shall be entitled to, and Landowner shall request that such condemning authority make payment directly to Lessee of: (i) any removal and relocation costs of the Power Facilities, (ii) any loss of or damage to any Power Facilities, (iii) the loss of use of any portion of the Property by Lessee (including impediments to or interference with the receipt of sunlight) and (iv) Lessee's lost profits, measured in each case with regard to the effect on Lessee's use of the Property and any effect on Lessee's use of other property. If such condemning authority makes all payments to Landowner, then Landowner shall forthwith make payment to Lessee of the award to which Lessee is entitled. Lessee shall have the right to participate in any condemnation settlement proceedings and Landowner shall not enter into any binding settlement agreement without the prior written consent of Lessee, which consent shall not be unreasonably withheld. Should title to or possession of all of the Property be permanently taken, or should a partial taking render the remaining portion of the Property unsuitable for Lessee's use (as determined by Lessee), then Lessee may terminate this Agreement upon such vesting of title or taking of possession. In the event of a casualty that damages or destroys more than ten percent (5%) of the Power Facilities, Lessee shall have the right to terminate this Lease upon written notice to Landowner.

c. Confidentiality. To the fullest extent allowed by law, Landowner shall maintain in the strictest confidence (i) the terms of (including the amounts payable under) this Agreement, (ii) any information regarding Lessee's Development Activities and (iii) any other information that is proprietary or that Lessee requests be held confidential, in each such case whether disclosed by Lessee or discovered by Landowner ("Confidential Information"). Excluded from the foregoing is any such information that is in the public domain by reason of prior publication through no act or omission of Landowner. Landowner shall not use Confidential Information for its own benefit or publish or otherwise disclose it to others; provided, however, that Landowner may disclose Confidential Information to (a) Landowner's personal advisors, (b) any prospective purchaser of the Property or (c) pursuant to lawful process, subpoena or court order; so long as in making such disclosure Landowner advises the person receiving the Confidential Information of the confidentiality thereof and obtains the agreement of said person not to disclose such Confidential Information. The foregoing obligation shall survive the termination of this Agreement.

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

e. Memorandum of Lease Agreement. Landowner and Lessee shall execute in recordable form, and Lessee shall then record, a memorandum of this Agreement satisfactory in form and substance to Landowner and Lessee. If a party requests to record the Agreement with the Country Recorder, the requesting party shall pay all costs of recording such memorandum. Landowner hereby consents to the recordation of the interest of an Assignee in the Property.

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

If to Landowner:

If to Lessee:

Name:  
Title:

Name: Haj Young  
Title: CEO, Econergy Development LLC

**Address:**

**Address:** 1720 West Division Street,  
Chicago, IL 60622

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

g. Further Assurances; Cooperation. Landowner shall fully support and cooperate with Lessee in the conduct of its Development Activities and the exercise of its rights hereunder (including with Lessee's efforts to obtain from any governmental authority or any other person or entity any environmental impact review, use permit, building permit, any other permit of any nature, entitlement, approval, authorization or other rights to sell, assign, transfer or finance any Power Facilities or interest in the Leasehold Estate or under this Agreement or obtain any financing), and Landowner shall perform all such acts (including executing and delivering maps, instruments and documents within ten (10) days after receipt of a written request made from time to time by Lessee) as Lessee may reasonably specify to fully effectuate each and all of the purposes and intent of this Agreement. Without limiting the generality of the foregoing, Landowner shall not oppose, in any way, whether directly or indirectly, any application by Lessee for any permit, approval or entitlement at any administrative, judicial, legislative or other level.

h. Estoppel Certificates. Landowner shall, within ten (10) days after a written request by Lessee, any Assignee or any Leasehold Mortgagee, execute, acknowledge and deliver to the requesting party such estoppel certificates (certifying as to such matters as may reasonably be requested, including, without limitation, that this Agreement is unmodified and in full force and effect (or modified and stating the modifications), the dates to which the payments and any other charges have been paid, and that, to Landowner's knowledge, there are no

defaults existing (or that defaults exist and stating the nature of such defaults)) and/or consents to assignment (whether or not such consent is actually required) and/or non-disturbance agreements as Lessee, any Assignee or any Leasehold Mortgagee may reasonably request from time to time during the term of this Agreement. At Lessee's option, such certificates, consents and agreements may be recorded and Landowner consents to such recording.

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

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

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

l. Governing Law. The terms and provisions of this Agreement shall be interpreted in accordance with the laws of the state in which the Property is located applicable to contracts made and to be performed within such state and without reference to the choice of law principles of such state or any other state.

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

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

o. Other General Provisions. Except with respect to the rights conferred hereunder upon Leasehold Mortgagees (which Leasehold Mortgagees and their respective successors and assigns are hereby expressly made

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

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

q. Recitals. The recitals set forth herein are, by this reference, incorporated into and deemed a part of this Agreement.

*[Signature page follows immediately]*



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

**Landowner:**

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

**LESSEE:**

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

**EXHIBIT A**

**To be provided by LESSOR.**

**EXHIBIT B**

**Title Matters**

Per Section 7 above please disclose any liens or encumbrances.

**EXHIBIT C**

**RENT SCHEDULE**

<b><u>Year(s)</u></b>	<b><u>Annual Lease</u></b>
1-5	\$1
6-10	\$1
11-15	\$1
16-20	\$1
21-25	\$1

## SOLAR POWER PURCHASE AGREEMENT

THIS SOLAR POWER PURCHASE AGREEMENT (“Agreement” or “PPA”) is entered into this day of \_\_\_\_\_, 2024 (the “Effective Date”) between **Econergy Development LLC**, a Wyoming limited liability company (“Seller”) and **Joliet Township High School District 204** (“Purchaser”). Seller and Purchaser are sometimes referred to in this Agreement as a “Party” and collectively as the “Parties.” Capitalized terms used throughout this Agreement shall, except as otherwise provided herein, have the same meanings as the definitions set forth in Exhibit A hereto.

### 1. TERM AND CONDITIONS PRECEDENT.

- 1.a. Term. This Agreement shall be effective and enforceable as of the Effective Date and shall terminate on the twenty-fifth (25th) anniversary of the Commercial Operation Date (the “Term”).
- 1.b. Seller’s Conditions Precedent. The obligations of the Seller under this Agreement are expressly conditioned upon the satisfaction (or written waiver by Seller) of all of the following conditions:
  - i) There is a suitable electrical interconnection point of sufficient capacity to accommodate the System as designed;
  - ii) There exist no unknown site conditions or construction requirements that would materially increase the cost of Installation Work or adversely affect the electricity production from the System as designed;
  - iii) If the System is to be located on a rooftop, then the structural integrity of the roof, as is, is sufficient to accommodate the System; alternatively, if the System is to be ground-mounted, then the soil and subsurface conditions are sufficient to accommodate the System; and
  - iv) Solar Renewable Energy Credits (“SREC”) Prices do not decrease from the current Public-School price of \$59.81 per MWh (Group A – ComEd, Public School, AC Interconnect of 200-500 kW) as set by the Illinois Power Agency. If prices do change, Econergy Development LLC will seek to increase the PPA price to make up for this projected decrease in revenue. If block prices are increased, Econergy Development will share in the increase with the School District by reducing the PPA price. Any decrease or increase in the PPA will only happen after Purchaser has been given 30 days written notice by Seller.

If any one of the conditions precedent above is not satisfied by the date that is twelve (12) months after the Effective Date, Seller may terminate this Agreement without liability.

- 1.c. Purchaser’s Conditions Precedent. In the event that Seller has not initiated Development Activities by the date that is twelve (12) months after the Effective Date for reasons other than a breach by Purchaser of its obligations hereunder, Purchaser may terminate this Agreement without liability.

## 2. INSTALLATION OF SYSTEM.

- 2.a. Installation. Seller shall cause the System to be designed, engineered, installed, and constructed substantially in accordance with Applicable Law and prudent industry practice by the engineering, procurement, and construction company (EPC). Purchaser shall be given the opportunity to review and satisfy itself that the System, if installed according to the plans, will not damage Purchaser's property or interfere with Purchaser's operations—such review and approval not to be unreasonably withheld or delayed. If Purchaser fails to approve or to reject such construction plans within five (5) Business Days of receipt, such plans shall be deemed to be approved by Purchaser. Any approval or deemed approval of construction plans by Purchaser shall not relieve Seller of its obligations under this Agreement. Seller shall procure all materials and equipment for the installation of the System and maintain the same at the Premises. Seller shall make reasonable commercial efforts to procure and install the particular brand of components (including solar panels and inverters) as identified in Exhibit B; however, Seller may, in its discretion, substitute any components of the System with components of a reasonably similar nature and quality. Seller's EPC shall perform the installation of the System in a manner that minimizes inconvenience to and interference with Purchaser's existing use of the premises. Seller and its EPC may use contractors and subcontractors to perform its obligations under this Agreement.
- 2.b. Permits and Approvals. Seller and its EPC shall be responsible for and bear all costs associated with applying for and obtaining all permits, licenses and approvals required for the installation, operation, and maintenance of the System. Purchaser shall cooperate with Seller and the EPC in connection with obtaining such approvals and permits.
- 2.c. Notice of COD. Seller shall notify Purchaser when the System is capable of Commercial Operation (such date, the "Commercial Operation Date"), in the form of a notice, and shall in such notice specify to Purchaser the Commercial Operation Date.

## 3. O&M; OWNERSHIP OF SYSTEM AND ENVIRONMENTAL ATTRIBUTES.

- 3.a. Ownership. The System and the associated Environmental Attributes shall be owned by Seller or its Financing Party and shall be operated by Seller at its sole cost and expense. The Parties agree that the System is personal property and shall not be deemed a part of, or fixture to, the Premises.
- 3.b. Operation & Maintenance. "System Operation(s)" means all actions, including monitoring and maintaining the System, necessary for Seller to meet its obligations herein. Any repair or maintenance (including emergency repairs) of the System shall be completed by or for Seller, at its sole cost and expense, for Seller's benefit as legal and beneficial owner or lessee of the System. The System shall at all times retain the

legal status of personal property and not as a fixture. Purchaser shall not attempt or perform any operation or maintenance of the System except as otherwise expressly set forth in this Agreement. All maintenance procedures required hereby shall be undertaken and completed in accordance with the manufacturer's recommended procedures, and by properly trained, licensed, and certified maintenance sources and maintenance personnel, so as to keep the System in as good operating condition as upon the Commercial Operation Date of such System, ordinary wear and tear excepted. Seller shall bear all risk of loss with respect to the System.

- 3.c. Metering Equipment. The EPC shall install, and the Operations & Maintenance Provider shall maintain a kilowatt-hour (kWh) meter for the measurement of electrical energy provided to the System as may be required for use at the Premises in accordance with Applicable Laws.
- 3.d. Emergencies. Except as otherwise set forth herein, the Parties each shall notify the other within twenty-four (24) hours following their discovery of any material malfunction in the operation of the System or of their discovery of an interruption in the supply of Solar Services.
- 3.e. Prohibition. Purchaser shall not make or attempt to make any repairs, adjustments, modifications or any other changes to the System or the System meter.

#### 4. PRICE AND SALE OF SOLAR SERVICES.

- 4.a. Purchase and Sale of Solar Services. Commencing on the Commercial Operation Date, Seller shall make available to Purchaser, and Purchaser agrees to purchase one hundred percent (100%) of the Solar Services of the System.
- 4.b. Price. As consideration for Solar Services produced by the System during each calendar month, Purchaser shall pay to Seller a monthly payment ("Monthly Payment") equal to the product (x) of Actual Monthly Service Production for the System for the relevant month multiplied by (y) the price per kWh for Solar Services as specified in Exhibit C (the "kWh Rate").
- 4.c. Invoices & Payment. Seller shall provide an invoice to Purchaser on or about the fifth (5th) day of each month (each an "Invoice Date"), commencing on the first Invoice Date to occur after the Commercial Operation Date. All invoices shall be sent to the address for the applicable Party as set forth in Section 13. Purchaser shall pay all amounts due within thirty (30) days after the applicable Invoice Date. In the event a Party disputes all or a portion of an invoice, or any other claim or adjustment arises, that Party shall pay the undisputed portion when due and provide the other Party notice of the dispute and the amount in dispute. In such event, the Parties shall first use good faith, reasonable, diligent efforts to resolve such dispute within a reasonable period of time not to exceed thirty (30) days from the date of such notice.

## 5. CERTAIN ADDITIONAL COVENANTS OF PURCHASER.

- 5.a. Site Access. Purchaser shall provide Seller and its EPC with access, at all times, to the Premises to allow Seller to perform the Solar Services as contemplated herein, including ingress and egress rights to the Premises.
- 5.b. Security. Purchaser agrees that its normal security measures, practices, and policies which apply to its own Premises shall also apply to the System. Purchaser shall take all commercially reasonable steps to limit access by third parties to areas of the Premises on which the System is situated. Such steps shall include, but not be limited to, fencing any ground mounted System and locking roof access for any rooftop System. Purchaser shall be liable to Seller for all damage caused to the System by the result of actions (or negligence) of third parties who access the System in contravention of the preceding sentence of this Section 5.b to the extent such access is a result of Purchaser's negligence and then only to the extent such damage is not covered by the Seller's insurance.
- 5.c. Liens.
- i) Purchaser shall not directly or indirectly cause to exist any lien on the System.
  - ii) Purchaser represents that as of the Effective Date, the mortgagee (if any) identified in Exhibit B is the only holder of a lien on the Premises, and, to Purchaser's knowledge, the only party that has the legal right to place a lien on the Premises.
  - iii) Purchaser shall use reasonable commercial efforts to notify all parties having an interest in or lien upon the real property comprising the Premises (a) of the existence of the System and (b) of the legal status or classification of the System as personal property.
- 5.d. Roof Warranty or Soil Warranty; Repairs. In the event that the System is mounted on the roof of any structure on the Premises, Purchaser represents and warrants that each such said roof is structurally sound, free of defects, and is in such a condition as adequately to be able to support the installation of the System; alternatively, in the event that the System is mounted on the ground / soil of the Premises, Purchaser represents and warrants that it has no actual or constructive knowledge of any latent defect in the ground or soil that would cause such ground or soil to be unsuitable for the purposes of supporting the System. The roof and soil warranties (as applicable) set forth in the preceding sentence do not constitute any warranty by Purchaser concerning the output of the System, the ability of the System to generate electricity, or the ability of the System to generate income at the levels estimated by Seller—Purchaser specifically does not make any such warranties to Seller. If Purchaser or Purchaser's landlord decides to repair or remediate the Premises (including, if the System is roof-mounted, the roof thereof) for any reason not directly related to damage



caused by the System, and if such repair requires the partial or complete temporary disassembly or relocation of the System, Purchaser shall pay Seller for (i) all work required by Seller to disassemble or move the System, and (ii) Seller's reasonable estimate of its reduced revenue (from Solar Services and Environmental Attribute sales) that occurred as a consequence of such roof repair or remediation. Purchaser shall not move, disassemble, or otherwise alter the System.

- 5.e. Tax on Sale of Solar Services. Purchaser shall be responsible for any taxes imposed or by any Government Authority and paid by Seller due to Seller's sale of the Solar Services to Purchaser (other than income taxes imposed directly upon Seller). Seller shall notify Purchaser in writing with a detailed statement of such amounts, which will be invoiced by Seller.
- 5.f. Notice of Damage. Purchaser shall promptly notify Seller it is aware of any damage to or loss of the use of the System that could reasonably be expected to adversely affect the System or the provision of the Solar Services.
- 5.g. Shading. Purchaser shall use all commercially reasonable means to prevent any shading of the System by any party. In the event Purchaser tolerates or causes any shading of the System, Purchaser shall be liable to Seller for Seller's lost revenue—as reasonably calculated by Seller—as a result of such shading.
- 5.h. Excavation. Purchaser shall not dig or excavate under a ground-mounted system, nor permit excavation, so near the sides of or underneath the Power Facilities or take any other actions that would undermine or otherwise adversely affect their stability and/or jeopardize the System without the consent of the Seller. Such consent will not be unreasonably withheld.

## 6. CERTAIN ADDITIONAL COVENANTS OF SELLER; SELLER WARRANTIES.

- 6.a. Removal of System at Expiration or Termination of Agreement. Within one hundred and eighty days (180) days after the expiration or earlier termination of this Agreement, Seller shall, at its expense, remove the System from the Premises, and return the ground or roof surface to its original condition, ordinary wear and tear excluded.
- 6.b. System Condition. Seller shall take all actions reasonably necessary to ensure that the System is capable of providing Solar Services at a commercially reasonable continuous rate.
- 6.c. Compliance with Law. Seller shall comply with all Applicable Law in connection with this Agreement, including those related to health and safety.
- 6.d. Structure Warranty. If Seller (or any of their respective contractors or subcontractors) alters, modifies or penetrates any structure, improvements or any portion thereof located on the Premises in performing the installation, repair, maintenance, or removal

services, Seller shall promptly repair such damage to Purchaser's reasonable satisfaction and Seller hereby warrants any repairs made to the structure(s) or improvement(s) by Seller (or its contractor(s) or subcontractor(s)) (the "Structure Warranty").

## 7. ASSIGNMENT.

- 7.a. Assignments by Seller. Seller shall at all times have the right to sell, assign, encumber, transfer or grant equal or subordinate rights and interests (including co-leases, separate leases, subleases, licenses or similar rights (however denominated)) in, the Leasehold Estate and/or any or all right or interest in this Agreement, or any or all right or interest of Purchaser in the Property or in any or all of the Power Facilities that Seller may now or hereafter install on the Property, to one or more persons (an "Assignee"), in each case without Purchaser's consent; provided, however, that any and all such transfers and transferees shall be subject to all of the terms, covenants and conditions of this Agreement. Seller shall notify Purchaser in writing of any such sale, assignment, transfer or grant. Upon Seller's assignment of its entire interest hereunder as to all or any portion of the Property, or as may otherwise be provided in the applicable sale, assignment, transfer or grant document, Purchaser shall recognize the Assignee as Seller's proper successor, the Assignee shall have all of the assigned rights, benefits and obligations of Seller under and pursuant to this Agreement, and Seller shall be relieved of all of its obligations relating to the assigned interests under this Agreement that relate to acts or omissions that occur or accrue following the effective date of such sale, assignment, transfer or grant.
- 7.b. Assignments by Landowner. The burdens of this Agreement and other rights contained herein shall run with and against the Property and shall be a charge and burden thereon for the duration of this Agreement and shall be binding upon and against Purchaser and its successors and assigns. Purchaser shall notify Seller in writing of any sale, assignment or transfer of any of Purchaser's interest in the Property, or any part thereof. Until such notice is received, Seller shall have no duty to any successor Purchaser, and Seller shall not be in default under this Agreement if it continues to make all payments to the original Purchaser before notice of sale, assignment or transfer is received. Purchaser agrees it will not assign the rights to payments due to Purchaser under this Agreement except to a successor owner of the Property, and in no case shall Purchaser sever or attempt to sever the Property's solar energy rights or interests from the Property's fee title or otherwise convey, assign or transfer or attempt to convey, assign or transfer this Agreement, except to a successor owner of the Property.
- 7.c. Cooperation with Financing.
- i) Purchaser acknowledges that Seller may be financing the acquisition and installation of the System through a System equipment lessor, lender and/or one or more financial institutions (each, a "Financing Party") and that Seller may sell or assign the System or may secure Seller's obligations by, among other

collateral, a pledge or collateral assignment of this Agreement and a senior security interest in the System. Purchaser shall cooperate with Seller and Financing Parties in connection with such financing of the System, including (a) the furnishing of such information, and (b) the giving of such certificates regarding factual matters, as Seller and Financing Parties may reasonably request.

- ii) Upon Seller's notice to Purchaser of the identity and address of the Financing Party that will provide financing to Seller in respect of the System, such Financing Party shall become a third-party beneficiary of this Agreement.

## 8. INSURANCE.

8.a. Generally. The Parties shall each maintain the following insurance coverages in full force and effect throughout the Term, either through insurance policies or acceptable self-insured retentions a broad form comprehensive coverage policy of public liability insurance insuring Seller and Purchaser (as an additional insured) against loss or liability caused by Seller's occupation and use of the Property under this Agreement, in an amount not less than One Million Dollars (\$1,000,000) of combined single limit liability coverage per occurrence, accident or incident. Such coverage may be provided as part of a blanket policy covering other properties. Seller shall carry adequate property loss insurance on the System which need not be covered by the Purchaser's property coverage. The policy amounts set forth in the first sentence of this Section 8.a are policy minimums—either Party may obtain insurance at any time during the Term in excess of the aforementioned minimum amounts. Each Party also may obtain such other, additional insurance as it deems prudent in its sole discretion.

8.b. Certificates of Insurance. If requested by the other Party, a Party shall furnish current certificates evidencing that the insurance required under Section 8.a is being maintained.

## 9. EVENTS OF DEFAULT; REMEDIES EVENTS OF DEFAULT.

9.a. Event of Default. An "Event of Default" means, with respect to a Party (the Party defaulting), the occurrence of any of the following:

- i) the failure to make, when due, any payment required under this Agreement if such failure is not remedied within thirty (30) days;
- ii) the failure to perform any material covenant or obligation set forth in this Agreement, if such failure is not remedied within thirty (30) days after receipt of notice; provided, however, that if such material covenant or obligation may be cured, but not within such thirty (30) day period, and the defaulting party has commenced curing such default and is at all times diligently pursuing the cure thereof, such further period as may be necessary for up to an additional sixty (60) days;

- iii) such Party (a) applies for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (b) admits in writing its inability, or be generally unable, to pay its debts as such debts become due; (c) makes a general assignment for the benefit of its creditors; (d) commences a voluntary case under any bankruptcy law; (e) files a petition seeking to take advantage of any other relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (f) fails within one hundred eighty (180) days of the filing against it of an involuntary case under any bankruptcy law to have such involuntary case dismissed; or
  - iv) such Party fails to provide or maintain in full force and effect any required insurance coverage, if such failure is not remedied within ten (10) Business Days after receipt of notice from the non-defaulting Party to the defaulting party.
- 9.b. Remedies. If an Event of Default has occurred, the non-defaulting Party shall have the right (without limiting any other rights or remedies available under Applicable Law), by notice to the defaulting Party, to terminate this Agreement. If the non-defaulting Party is Seller, and Seller elects to terminate this Agreement, Purchaser shall pay to Seller as liquidated damages an amount equal to the greater of (i) the applicable Early Termination Fee, or (ii) the Fair Market Value of the System on the date of such demand by Seller. Should Purchaser pay such liquidated damages, they would retain ownership of the system.
- 9.c. Remedies Are Cumulative. No remedy herein conferred upon or reserved to a Party is intended to be exclusive of any other remedies provided for in this Agreement, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy of such Party given hereunder or now or hereafter existing at law, in equity, by contract or otherwise. Every right, power and remedy given to a Party by this Agreement, at law, in equity, by contract or otherwise shall be concurrent and may be pursued separately, successively or together against the other applicable Party hereto, and every right, power and remedy given to such Party by this Agreement, at law, in equity, by contract or otherwise may be exercised from time to time as often as may be deemed expedient by such Party.
- 9.d. Duty to Mitigate. Each Party agrees to undertake reasonable commercial efforts to mitigate any loss or damage it may suffer as a result of a breach or default by any other Party. In the Event of Default by Purchaser, Seller may seek to mitigate damages by selling power to the applicable power grid.
- 9.e. Interest. Unpaid sums (including unpaid liquidated damages) will accrue interest at the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed by law.

## 10. FORCE MAJEURE.

- 10.a. Definition. “Force Majeure Event” means any act or event that prevents the affected Party from performing its obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party. Subject to the foregoing conditions, a Force Majeure Event shall include without limitation the following acts or events: (i) sabotage, riots or civil disturbances; (ii) acts of God; (iii) acts of the public enemy; (iv) terrorist acts affecting the Premises; (v) volcanic eruptions, earthquake, hurricane, flood, ice storms, explosion, fire, lightning, landslide or similarly cataclysmic occurrence; (vi) any action or inaction by any Governmental Authority or applicable local utility which prevents or prohibits the Parties from carrying out their respective obligations under this Agreement, including but not limited to curtailment or reduction of energy production required by the utility or grid operator, or a power or voltage surge caused by someone other than Seller; (vii) general strikes and labor disturbances; (viii) economic collapse of the United States of America or the state or commonwealth within the United States of America in which the Premises are located; (ix) the independence, separation from, or other termination of association (regardless of cause) from the United States of America by the state or commonwealth within which the Premises are located; and (x) bankruptcy, insolvency, or other failure of a Party’s general banking institution.
- 10.b. Excused Performance. Except as otherwise specifically provided in this Agreement, neither Party shall be considered in breach of this Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay amounts due hereunder), if (but only to the extent that) such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 10 shall promptly (i) notify the other Party in writing of the existence of the Force Majeure Event and (ii) exercise all commercially reasonable efforts necessary to minimize delay caused by such Force Majeure Event.
- 10.c. Termination in Consequence of Force Majeure. If a Force Majeure Event shall have occurred that has affected Seller's performance of its obligations hereunder and that has continued for a period of one hundred eighty (180) consecutive days or three hundred and sixty-five (365) days in the aggregate, then Purchaser shall be entitled to terminate this Agreement without further liability.

## 11. REPRESENTATIONS AND WARRANTIES.

- 11.a. Representations and Warranties. Each Party represents and warrants to the other as of the Effective Date that:
- i) This Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by

applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

- ii) It is duly organized and validly existing and in good standing in the jurisdiction of its organization;
- iii) It has taken all requisite corporate or other action to approve the execution, delivery, and performance of this Agreement; and
- iv) It has the full right and authority to enter into, execute, deliver, and perform its obligations under this Agreement.
- v) Purchaser further represents and warrants to Seller that no hazardous substances have been released at or in vicinity of the Premises that could reasonably be expected to have a material adverse impact on Seller's ability to perform its obligations hereunder or otherwise result in liability to Seller.

## 12. MUTUAL INDEMNITY.

- 12.a. Mutual Indemnity. To the extent allowable by law, each Party (the "Indemnitor") hereby indemnifies and agrees to defend and hold harmless the other Party (the "Indemnitee") from and against any and all third party claims, to the extent arising from injury to persons or property caused by negligence, or any material breach of this Agreement by the Indemnitor or any of its directors, officers, employees or agents; provided, however, that the Indemnitor shall not have any obligation to indemnify the Indemnitee from or against any losses, liabilities, damages, costs, expenses, and attorneys' fee, to the extent caused by, resulting from, relating to or arising out of the negligence or intentional misconduct of the Indemnitee or any of its directors, officers, employees or agents.

## 13. NOTICES.

- 13.a. Notice Addresses. Unless otherwise provided herein, all notices and communications concerning this Agreement will be in writing and addressed to the other Party as set forth as follows:

Notices to be sent to:

Attn: Haj Young  
Seller: Econergy Development LLC  
Address: 1720 West Division Street  
City Chicago, IL 60622  
Email: Haj@Econergy.net

Notices to be sent to:

Attn: \_\_\_\_\_  
Purchaser: Joliet Township High School District 204  
Address: \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Email: \_\_\_\_\_

- 14.b. Notice. Any notice or other communications hereunder shall be deemed to have been received (unless otherwise set forth herein) (i) on delivery if in person; (ii) on the second day following deposit with an overnight express agency, fees prepaid, or mailed by United States express, certified or registered mail, postage prepaid, return receipt requested; or (iii) on the same day if sent via email, to the other Party at the preceding addresses, or to such other address as shall be later provided in writing by one Party to the other

14. CONFIDENTIALITY / PROPRIETARY INFORMATION.

- 14.a. Proprietary Information. The Parties to this Agreement shall hold in confidence, and withhold from third parties, any and all Proprietary Information (as defined below) disclosed by one Party to the other and shall use the other Party's Proprietary Information only for the purposes stated herein (the "Permitted Purposes") and for no other purpose unless the disclosing Party shall agree herein or hereafter in writing. Each Party agrees to safeguard from theft, loss, and negligent disclosure the other Party's Proprietary Information received pursuant to this Agreement by utilizing the same degree of care as the receiving Party utilizes to safeguard its own Proprietary Information of a similar character from theft, loss, and negligent disclosure, but in no event less than reasonable care. Each Party agrees to limit access to Proprietary Information to those officers, directors, and employees within the receiving Party's organization, and to the Party's subcontractors, who reasonably require such access to accomplish the Permitted Purposes. Each Party agrees not to reproduce or copy by any means the Proprietary Information of the other Party except as reasonably required to accomplish the Permitted Purposes. The Parties shall not remove any trademark or proprietary rights legend from the Proprietary Information of the other Party. All Proprietary Information disclosed pursuant to this Agreement shall be and remain the property of the disclosing Party or its third-party suppliers. Except as expressly specified in this Agreement, neither Party to this Agreement acquires any license, right, title, or interest in and to the Proprietary Information received from the other Party. Each Party shall inform such employees of the non-disclosure obligations set forth herein and shall obligate in writing any subcontractors to comply with the non-disclosure requirements stated herein. Each Party shall give prompt written notice to the other Party upon becoming aware of any unauthorized use or disclosure of the Proprietary Information. Each Party agrees to use its best efforts to remedy such unauthorized use or disclosure of the Proprietary Information at its own expense. Each Party acknowledges and agrees that in the event of an unauthorized use, reproduction, distribution, or disclosure of any Proprietary Information, the other Party will not

have an adequate remedy at law and, therefore, injunctive or other equitable relief would be appropriate to restrain such use, reproduction, distribution, or disclosure, threatened or actual. Neither Party shall be liable for use nor disclosure of what would otherwise be considered Proprietary Information if it can establish by contemporaneous, clear, and convincing written evidence that such information, in substantially the same form and content: (i) is or becomes a part of the public knowledge without breach of the Agreement by the receiving Party; (ii) is known to the receiving Party without restriction as to further disclosure when received; (iii) is independently developed by the receiving Party without the use, directly or indirectly, of information received under this or other obligation of confidentiality with the disclosing party; (iv) becomes known to the receiving Party from a third party who had a lawful right to disclose it without breaching the Agreement; (v) is approved in writing for release or use by an authorized employee of the other Party; or (vi) is disclosed in response to a valid order of a court of competent jurisdiction or other governmental body of the United States of America or any political subdivision thereof, or is otherwise required to be disclosed by law; provided, however, that the receiving Party shall first have given prompt written notice to the disclosing Party in order to allow objection by the disclosing Party to any such order or requirement, or to otherwise protect the rights of the disclosing Party and its suppliers prior to the disclosure. If a particular portion or aspect of the Proprietary Information becomes subject to any of the foregoing exceptions, all other portions or aspects of such information shall remain subject to all of the above non-disclosure provisions. Examples of Proprietary Information include, but are not limited to, System designs and pricing information.

- 14.b. Publicity. Each Party, without permission from the other Party hereto, may advertise and announce the existence of the System upon the Premises and the participation of the Parties in the project; such advertisement and announcements may be for any lawful purpose. Each Party may take, distribute, and otherwise use photographs of the System in connection therewith. Purchaser, however, shall not disclose the kWh Rate or material terms of this Agreement concerning System finances without the prior written consent of the Seller except as to Affiliates of Purchaser.

#### 15. MISCELLANEOUS TERMS; INTERPRETATION.

- 15.a. Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Purchaser.
- 15.b. Captions; Headings. The captions or headings in this Agreement are for convenience only and shall not be considered in interpreting the Agreement.
- 15.c. Integration and Exhibits. This Agreement consists of fourteen (14) pages followed by one (1) signature page and three (3) exhibits, each of which are fully incorporated hereunto: Exhibit A: Definitions; Exhibit B: Description of Premises



and System; Exhibit C: Principal Commercial Terms. This Agreement, together with the exhibits attached hereto, constitutes the entire agreement and understanding between Seller and Purchaser with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof.

- 15.d. Severability. If any term, covenant, or condition in this Agreement shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law.
- 15.e. Limited Effect of Waiver. The failure of Seller or Purchaser to enforce any of the provisions of this Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.
- 15.f. Liquidated Damages Not Penalty. Purchaser acknowledges that the Early Termination Fee constitutes liquidated damages, and not penalties, in lieu of Seller's actual damages resulting from the early termination of this Agreement. Purchaser further acknowledges that Seller's actual damages may be impractical and difficult to accurately ascertain, and in accordance with Purchaser's rights and obligations under this Agreement, the Early Termination Fee constitutes fair and reasonable damages to be borne by Purchaser in lieu of Seller's actual damages. Seller acknowledges that the Lost Savings constitutes liquidated damages, and not penalties, in lieu of Purchaser's actual damages resulting from deficient performance by Seller under this Agreement.
- 15.g. Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Illinois and without reference to any choice of law principles.
- 15.h. Consent to Jurisdiction. THE PARTIES HERETO EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE DESIGNATED, EXCLUSIVE AND PROPER VENUE OF ANY LEGAL DISPUTE, QUESTION OR INTERPRETATION, CLAIM, DECLARATORY JUDGMENT ACTION, BANKRUPTCY OR OTHER LITIGATION WITH RESPECT TO THIS AGREEMENT SHALL BE EXCLUSIVELY AND SOLELY A FEDERAL OR STATE COURT IN THE COUNTY OF COOK, STATE OF ILLINOIS. THE PARTIES HERETO HEREBY EXPRESSLY CONSENT TO THE EXERCISE OF PERSONAL JURISDICTION BY, LAYING OF VENUE IN AND EXCLUSIVE JURISDICTION OF, SUCH COURT.
- 15.i. Successors and Assigns. This Agreement and the rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of Seller and Purchaser and their respective permitted successors and assigns.

- 15.j. Relation of the Parties. The relationship between Seller and Purchaser shall not be that of partners, agents, or joint ventures for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purpose.
- 15.k. Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. Facsimile or electronic signatures shall have the same effect as original signatures and each Party consents to the admission in evidence of a facsimile, electronic copy, or photocopy of this Agreement in any court or arbitration proceedings between the Parties.
- 15.l. Records. Each Party shall use commercially reasonable efforts to keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement.

*[REST OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, the Parties hereto have duly executed and delivered this Agreement as of the Effective Date.

**SELLER: Econergy Development LLC**

Signature:

Print Name:

Title:

Date:

**PURCHASER: Joliet Township High School District 204**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT A

### DEFINITIONS

In addition to other terms specifically defined elsewhere in this Agreement, where capitalized, the following words and phrases shall be defined as follows:

“Actual Monthly Service Production” means the amount of energy recorded by Seller’s metering equipment during each calendar month of the Term, pursuant to Section 4.b.

“Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such first Person.

“Agreement” means this Solar Power Purchase Agreement, including the preamble and the Exhibits attached hereto and incorporated herein by reference.

“Applicable Law” or “Applicable Laws” means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, order, decree, judgment, decision, or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity.

“Business Day” or “Business Days” means any day other than Saturday, Sunday or any other day on which banking institutions in Chicago, Illinois, are required or authorized by Applicable Law to be closed for business.

“Commercial Operation” means that the system is ready for regular operation, is connected to the Premises’ electrical system, and is capable of producing electricity.

“Commercial Operation Date” has the meaning set forth in Section 2.c.

“Confidential Information” means any non-public confidential or proprietary information (whether conveyed orally, electronically or in hard copy) of a Party or its Affiliates relating to this Agreement, and identified as confidential by the disclosing party; provided, however “Confidential Information” shall not include information that (i) is required to be disclosed by a Governmental Authority, (ii) is independently developed by the receiving Party, or (iii) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

“Early Termination Fee” means the greater of the Fair Market Value set forth in this Exhibit A or the Total Projected Revenue minus Operating Expenses as set forth in this Exhibit A for the remainder of the Term of this Agreement discounted at 6% per annum.

“Effective Date” has the meaning set forth in the preamble hereof.

“Environmental Attributes” means, without limitation, carbon trading credits, renewable energy credits or certificates, production-based incentives, emissions reduction credits, investment tax credits, installation or production tax credits or tax grants, emissions allowances, green tags,

tradable renewable credits, Green-e® products, accelerated depreciation, and all other solar or renewable energy subsidies and incentives.

“Estimated Annual Production” means Seller’s estimated annual production of the System as described in Exhibit C.

“Event of Default” has the meaning set forth in Section 9.a.

“Fair Market Value” means, with respect to any tangible asset or service, the price that would be negotiated in an arm’s-length, free market transaction, for cash, between an informed, willing seller and an informed, willing buyer, neither of whom is under compulsion to complete the transaction.

“Financing Party” has the meaning set forth in Section 7.c.

“Force Majeure Event” has the meaning set forth in Section 10.a.

“Governmental Authority” means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Installation Work” means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Seller at the Premises.

“Indemnitee” has the meaning set forth in Section 12.a.

“Indemnitor” has the meaning set forth in Section 12.a.

“Invoice Date” has the meaning set forth in Section 4.c.

“kWh Rate” has the meaning set forth in Section 4.b, as set forth in Exhibit C.

“MACRS” stands for modified accelerated cost recovery system. It is the tax depreciation system used in the United States to calculate asset depreciation.

“Monthly Payment” has the meaning set forth in Section 4.b.

“Operating Expenses” means general operating costs for Insurance, management fees and system maintenance.

“Party” or “Parties” has the meaning set forth in the preamble hereof.

“Permitted Purposes” has the meaning set forth in Section 14.a.

“Person” means an individual, partnership, corporation, limited liability company, Governmental

Authority, or other entity.

“Premises” means the premises described in of Exhibit B, including the entirety of any structures and underlying real property located at the address described in Exhibit B.

“Proprietary Information” has the meaning set forth in Section 14.a.

“Purchaser” has the meaning set forth in the preamble hereof.

“Routine Maintenance” means commercially reasonable maintenance of the System, including but not limited to maintenance recommended by System component manufacturers.

“Seller” has the meaning set forth in the preamble hereof.

“Solar Services” means the supply of on-site electrical energy output from the System together with certain peak load coincident reductions, possible building energy conservation (if specifically described in Exhibit B hereto), and other on-site energy services or efficiencies associated with the solar energy production described herein.

“System” means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, batteries, energy storage systems, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, more specifically described in Exhibit B and interconnected with the local electric utility, owned or leased by Seller and installed at the Premises.

“System Operations” has the meaning set forth in Section 3.b.

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

“Term” has the meaning set forth in Section 1.a.

“Total Projected Revenue” means the product of the total projected kWh production of the System multiplied by the sum of the kWh Rate and the SREC price set forth in Section 1.b. The total kWh production is calculated by the average annual system production for the past three consecutive years. If the System has not produced for three consecutive years, the total kWh production will instead be calculated by the average annual electricity consumption as provided independently by the utility of record. In addition, this value includes any benefits derived from Tax Credits and MACRS depreciation equal to 85% of the system value.

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**EXHIBIT B**

DESCRIPTION OF PREMISES AND SYSTEM

Premises & Solar System Location: Rooftop System to be installed at

Joliet Central High School, North Building  
201 East Jefferson Street, Joliet, IL 60432

Owner of Premises as of Effective Date: Joliet Township High School District 204

Mortgage of Premises as of Effective Date: N/A

Anticipated Solar System Size (DC): 409 kw

Modules: \_\_\_\_\_, or equivalent.

Inverters: \_\_\_\_\_, or equivalent.

Purchaser's Current Utility Name: Commonwealth Edison

Purchaser's Utility Hourly Rate for Energy (as of Effective Date): \_\_\_\_\_

System Components Include:

Solar panels, support system, inverter system, wire kits, and data monitoring system.

System size may be reduced during final design if, for example, structure issues are identified with respect to the roof.

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## EXHIBIT C

### PRINCIPAL COMMERCIAL TERMS

1. kWh Rate.

kWh Rate: **\$.0789** escalated by **2.0%** on each anniversary of the Commercial Operation Date.

2. Estimated Year 1 Yield: 546,385 kWh

This estimated annual production amount is a good faith estimate of Seller as of the Effective Date and does not constitute a production guaranty.



## **ROOFTOP LEASE AGREEMENT**

This ROOFTOP LEASE AGREEMENT (this “Agreement”) is made, dated and effective as of \_\_\_\_\_, 2024 (the “Effective Date”), between Joliet Township High School District 204 (“Landowner”), and Econergy Development LLC a Wyoming limited liability company (“Lessee”), in light of the following facts and circumstances:

### **RECITALS**

WHEREAS, Lessee is in the business of developing, constructing, erecting, and operating solar energy conversion systems and power generation facilities for the production of electrical energy;

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

WHEREAS, Lessee desires to lease the Property.

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

### **AGREEMENT**

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

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

1.2. Purpose. The foregoing leasehold estate and grant of rents, royalties, credits and profits created by this Agreement (collectively, the “Leasehold Estate”) are for (i) the production of energy, including solar energy, and for any and all related or ancillary purposes, including storage of any energy so produced, and Lessee shall have the exclusive right to use the Property and the unobstructed receipt of and access to sunlight across the Property for solar energy purposes, to convert all of the solar resources of the Property and to derive all profits therefrom, (all of the foregoing activities, collectively, (“Development Activities”), including, without limitation:

(a) determining the feasibility of solar energy conversion and power generation on the Property, including studies of available sunlight and other data and extracting soil samples;

(b) constructing, reconstructing, erecting, installing, improving, replacing, relocating and removing from time to time, and maintaining, repairing, using and operating, any new, existing, additional or repowered (i) solar power generating equipment, inverters, mounting and tracking systems, monitoring systems, solar collectors, solar energy conversion systems and other power generation facilities, of any type or technology (the “Solar Equipment”); (ii) transmission facilities, including without limitation, overhead and underground transmission, distribution or collector lines, circuit breakers, conduits, foundations, footings, towers, poles, crossarms, guy lines, anchors and wires; (iii) overhead and underground control, communications and radio relay systems; (iv) substations, power blocks, interconnection and/or switching facilities and electric transformers; (v) energy storage facilities such as backup battery cabinets to protect the district in case of a power outage; (vi) sunlight measurement, research or development equipment; (vii) control, maintenance and administration buildings; (viii) utility installations; (ix) safety protection facilities; (x) signs and fences (collectively, “Power Facilities”), on the Property; and Lessee acknowledges that the Property is a public school district, and access to

the Property shall be strictly for the reasons outlined in this Section 1.2, and that Lessee's activities are not intended to change the Landowner's continued use of its facilities as public schools. Lessee shall secure Landowner's written permission before engaging in any activity involving excavation, earth-moving, facility construction, or permanently affixing fixtures or other items to Landowner's facilities (other than the Solar Equipment on the facility rooftops).

(c) exercising rights of vehicular and pedestrian ingress and egress upon, over and across the Property, for purposes of conducting Development Activities and accessing the Power Facilities (whether such Development Activities are conducted, or Power Facilities are located, on the Property, adjacent to the Property or elsewhere) upon, over and across any and all now existing or hereafter constructed access routes or such new or alternative access routes as Lessee and Landowner shall determine, including the right to use roads and road-related structures on the Property; and

(d) undertaking any other activities, whether accomplished by Lessee or a third party authorized by Lessee, that Lessee reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing purposes, subject to Landowner approval, which shall not be unreasonably withheld.

1.3. Included Rights and Easements. The following rights and easements shall be included within the Leasehold Estate. Upon Lessee's request, Landowner shall execute and deliver to Lessee one (1) or more documents in recordable form, satisfactory in form and substance to Landowner and Lessee, evidencing the rights and easements granted pursuant to this Section 1.3, and Lessee may cause such documents to be recorded in the official real estate records of the county in which the Property is located.

(a) Sunlight Easement. An easement for receipt of and access to sunlight throughout the Property. Any obstruction to the receipt of and access to sunlight throughout the entire area of the Property is prohibited.

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

(c) Clearance Rights. An easement to trim, cut down and remove all trees (whether natural or cultivated), brush, vegetation and fire and electrical hazards now or hereafter existing on the Property which might obstruct receipt of or access to sunlight throughout the Property or interfere with or endanger the Power Facilities or Lessee's Development Activities, as determined by Lessee in its sole discretion.

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

(e) Utility Lines. An easement for the installation, maintenance, repair and use of utility lines and equipment, including, without limitation, for water, natural gas and electrical transmission and interconnection. Any work by Lessee involving water or natural gas lines requires Landowner's prior written approval.

(f) Signage. An easement to place signs on or proximate to Lessee's Power Facilities.

(g) Access. A non-exclusive easement for access, ingress and egress to and from the Property, in such locations as reasonably selected by Lessee.

**2. Term.**

2.1 Original Term and Renewal Terms. This Agreement shall be for an initial term (the “Original Term”) commencing on the Effective Date and continuing until the twenty-fifth (25th) anniversary of the Operations Date (as defined below). As used herein, “Term” shall mean collectively, the Original Term and Renewal Term (as defined below).

2.2 Operations Date. For purposes of this Agreement, “Operations Date” shall mean the date the Power Facilities are installed on the Property and begin delivering electricity to the power purchaser.

2.3 Renewal Terms. Landowner shall have the option, per direction from Lessee to extend and renew the Original Term of this Agreement for up to two (2) periods of five (5) years each (the “Renewal Term”). Landowner may exercise such option by written notice delivered to Lessee not later than one hundred eighty (180) days prior to the expiration of the Original Term.

**3. Payments to Landowner**. Commencing with the Operations Date and continuing annually until the expiration or sooner termination of this Agreement, Lessee shall pay Owner the base annual fee set forth on Exhibit C. Such annual fees shall be payable each year within forty-five (45) days following the Operations Date or following each anniversary of the Operations Date (as applicable) and shall be prorated (or retroactively adjusted) for any partial one (1) year period preceding the expiration or sooner termination of this Agreement.

**4. Ownership of Power Facilities**. Landowner shall have no ownership or other interest in any Power Facilities installed on the Property, or any profits derived therefrom, and Lessee may mortgage, sell, lease or remove any or all Power Facilities at any time. Landowner shall have no lien or security interest and may not attempt to create a lien or security interest, in the Power Facilities, and expressly waives any statutory lien, landlord’s lien or other lien or security interest. Except for the payments described in Section 3 above, Landowner shall not be entitled to any payments, credits, benefits, emissions reductions, offsets, incentives, grants or allowances of any kind, howsoever entitled, attributable to the Power Facilities or the electric energy, capacity or other generator-based products produced therefrom, all of which shall accrue solely to the benefit of Lessee. Landowner shall have no ownership or other interest in any scientific or engineering data at any point in time or for any duration of time collected at the Power Facilities or on the Property. Such scientific or engineering data is the sole and exclusive property of Lessee. Possession of such data by Landowner shall not constitute ownership of such data.

**5. Taxes**. Lessee shall be responsible for and shall timely pay before the same become delinquent, any taxes, assessments or other governmental charges that shall or may during the Term be imposed on the Power Facilities. Landowner shall be responsible for and shall timely pay before the same become delinquent, all taxes, assessments or other governmental charges that shall or may during the Term be imposed on or arise in connection with the Property itself as a result of the installation of the Power Facilities. Lessee shall pay directly for any increase in such taxes, assessments or other governmental charges accruing during the Term to the extent resulting directly and solely from the presence of the Power Facilities on the Property. Landowner shall deliver to Lessee copies of all notices of or relating to all such charges no later than the earlier of two (2) weeks following Landowner’s receipt of each such notice or forty-five (45) days prior to the date that any such charge is due and payable. Except as specifically provided in this paragraph, Lessee shall not be responsible for any property taxes, assessments or other governmental charges or fees levied against the Property. If Landowner should fail to timely pay any taxes, assessments or other governmental charges for which Landowner is responsible hereunder and foreclosure thereof shall be threatened, then, without limiting Lessee’s other remedies under this Agreement or otherwise, Lessee may (but shall not be obligated to) pay the same, and Landowner shall reimburse Lessee, or Lessee may set off against amounts due from Lessee to Landowner under this Agreement, all such amounts paid, including any late

fees or interest, together with any court costs and reasonable attorneys' fees incurred by Lessee in connection therewith.

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

6.1. Insurance. Lessee shall, at its expense, prior to entering the Property to conduct Development Activities, have in place, and shall thereafter maintain, a broad form comprehensive coverage policy of public liability insurance insuring Lessee and Landowner (as an additional insured) against loss or liability caused by Lessee's occupation and use of the Property under this Agreement, in an amount not less than One Million Dollars (\$1,000,000) of combined single limit liability coverage per occurrence, accident or incident. Such coverage may be provided as part of a blanket policy covering other properties. Certificates of such insurance shall be provided to Landowner upon written request.

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

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

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

6.5. Hazardous Materials. Lessee shall not violate, and shall indemnify Landowner against any violation by Lessee or Lessee's agents or contractors of, any federal, state or local law, ordinance, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local law, ordinance, or regulation, on or under the Property.

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

6.7. No Development Undertaking. Nothing expressly stated or implied in this Agreement or represented to Landowner shall be construed as requiring Lessee to undertake construction, installation or

operation of any Power Facilities on the Property or elsewhere or prohibit Lessee from removing Power Facilities from the Property, and Lessee makes no representation or warranty as to the likelihood that Power Facilities will be installed upon the Property.

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

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

7.2. **Title to Property.** Except as disclosed on Exhibit B attached hereto and by this reference made a part hereof, Landowner's fee simple title to the Property is free and clear of all liens, encumbrances, easements, leases, mortgages, deeds of trust, security interests, fractured interests, mineral, oil or gas rights, options to purchase or lease, claims and disputes (collectively, "Liens"), and there are no tenants on or other parties in possession of the Property. Landowner shall (i) obtain a commercially reasonable subordination, non-disturbance and attornment agreement or other appropriate agreement from each party holding a Lien (recorded or unrecorded) or in possession of the Property that might interfere with Lessee's rights under this Agreement; (ii) remove any Liens from Landowner's fee simple title to the Property; and (iii) secure the written consent of any Lien holder to this Agreement as necessary to comply with the agreement underlying any such Lien. A subordination, non-disturbance and attornment agreement is an agreement between Lessee and the holder of a Lien providing that the holder of the Lien shall not disturb Lessee's possession or rights under this Agreement or terminate this Agreement so long as Landowner is not entitled to terminate this Agreement under the provisions of this Agreement. Landowner shall not grant, create, allow or suffer any Lien or other encumbrance on title to the Property in addition to those set forth on Exhibit B.

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

7.4. **No Interference.** Landowner's activities and any grant of rights Landowner makes to any person or entity, whether located on the Property or elsewhere, shall not, currently or prospectively, interfere with (i) the construction, installation, maintenance, operation or removal of the Power Facilities; (ii) access over the Property to such Power Facilities; (iii) any Development Activities; or (iv) the undertaking of any other activities permitted hereunder. Without limiting the generality of the foregoing, Landowner shall not engage in any activity that might cause a decrease in the output or efficiency of the Power Facilities. Any grant of rights by Landowner to any person or entity as to the Property shall be subordinate to this Agreement.

7.5. **Siting and Setbacks.** Landowner consents to Lessee's siting of Power Facilities at any location upon the Rooftops of the Property. To the fullest extent applicable and permitted by law, Landowner waives enforcement of, and any and all rights it may have to pursue any remedies under, any state, zoning or local rules, ordinances or requirements related to siting of Power Facilities upon the Property, including setback requirements applicable to the Power Facilities from lot lines and improvements, and agrees not to bring any complaint, suit or action or intervene in any investigation or inquiry by any person or entity with respect thereto. Pursuant to Section 7.6 hereof, Landowner agrees to use commercially reasonable efforts to assist, cooperate and participate in any proceeding and/or petition prepared by Lessee in connection with any modification or variance to an existing

siting or setback requirement, including but not limited to bringing such action, or filing such petition, in the name of Landowner.

7.6. Cooperation. Landowner shall assist and fully cooperate with Lessee, at no out-of-pocket expense to Landowner, in complying with or obtaining any land use permits and approvals, building permits, environmental impact reviews or any other approvals required for the financing, construction, installation, replacement, relocation, maintenance, operation or removal of Power Facilities, including execution of applications for such approvals. Landowner shall make available to Lessee copies of all field tiling surveys, plans, entitlement-related studies, and other geotechnical and other site assessments, surveys, environmental assessments, reports, test results, correspondence to or from any governmental agency, and other such records of Landowner relating to the Property.

7.7. Indemnity. Landowner will indemnify Lessee against liability for physical damage to the Property (including any improvements thereon) and for physical injuries to Lessee or the public (including any of Landowner's employees, contractors or agents that have gained access to the Property), to the extent caused by Landowner's activities or the activities of Landowner's employees, contractors or agents on the Property or the adjoining property, except to the extent such damage or injury is caused by the operations, activities, negligence or willful misconduct of Lessee. Landowner shall take reasonable safety measures to reduce the risk that Landowner's activities will cause harm to Lessee or the public. Landowner's obligations under this Section 7.7 shall survive the termination or expiration of this Agreement.

Lessee will indemnify Landowner against liability for physical damage to Landowner's facilities (including any improvements thereon) and for physical injuries to Landowner's employees, students, or the public to the extent caused by Lessee's activities or the activities of Lessee's employees, contractors, or agents on the Property or the adjoining property, except to the extent such damage or injury is caused by the operations, activities, negligence or willful misconduct of Landowner. Lessee shall take reasonable safety measures to reduce the risk that Lessee's activities will cause harm to Landowner or the public. Lessee's obligations under this Section 7.7 shall survive the termination or expiration of this Agreement.

7.8. No Brokers. No brokers' commission, finders' fees or other charges are due any broker, agent or other party in connection with Landowner's execution of this Agreement, or if any are now due or shall become due in the future, then Landowner shall promptly pay the same from its own funds and shall indemnify, hold harmless and defend Lessee against any and all claims and demands therefor made by any such broker, finder, agent or other party, or any of their respective successors and assigns or other parties claiming through them.

7.9. No Litigation. No litigation is pending, and, to Landowner's knowledge, no actions, claims or other legal or administrative proceedings are pending, threatened or anticipated with respect to, or that could affect, the Property, this Agreement or Lessee's rights hereunder.

7.10. Hazardous Materials. Landowner shall be responsible for any and all costs associated with investigation, remediation, or monitoring associated in any way with the cleanup or transportation of any environmental conditions on, under, emanating from, or otherwise associated with the Property.

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

7.12. Landowner's Authority. Landowner has the unrestricted right and authority to execute this Agreement and to grant to Lessee the rights granted hereunder. Each person signing this Agreement on behalf of Landowner is authorized to do so. When signed by Landowner, this Agreement constitutes a valid and binding agreement enforceable against Landowner in accordance with its terms. Landowner is not the subject of any bankruptcy, insolvency or probate proceeding.

## **8. Assignment.**

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

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

9. **Mortgagee Protection.** In the event that any mortgage, deed of trust or other security interest in this Agreement or any Power Facilities is entered into by Lessee or an Assignee, including a sale-leaseback (i.e., a transaction in which Lessee sells its interest in this Agreement and/or the Power Facilities and then leases those interests back from the purchaser) (a "Leasehold Mortgage"), then any person who is the mortgagee or beneficiary of a Leasehold Mortgage, including the purchaser in a sale-leaseback transaction (a "Leasehold Mortgage") shall, for so long as its Leasehold Mortgage is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth in this Section 9. Lessee or any Leasehold Mortgagee shall send written notice to Landowner of the name and address of any such Leasehold Mortgagee, as well as any change of the name or address of any Leasehold Mortgagee.

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

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

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

(b) The Leasehold Mortgagee shall have the same period after receipt of notice of default to remedy the default, or cause the same to be remedied, as is given to Lessee after Lessee’s receipt of notice of default, plus, in each instance, the following additional time periods: (i) sixty (60) days, for a total of one hundred twenty (120) days after receipt of the notice of default in the event of any monetary default; and (ii) sixty (60) days, for a total of one hundred twenty (120) days after receipt of the notice of default in the event of any non-monetary default, provided that such one hundred twenty (120) day period shall be extended for the time reasonably required to complete such cure, including the time required for the Leasehold Mortgagee to perfect its right to cure such non-monetary default by obtaining possession of the Property (including possession by a receiver) or by instituting foreclosure proceedings, provided the Leasehold Mortgagee acts with reasonable and continuous diligence. The Leasehold Mortgagee shall have the absolute right to substitute itself for Lessee and perform the duties of Lessee hereunder for purposes of curing such defaults. Landowner expressly consents to such substitution, agrees to accept such performance, and authorizes the Leasehold Mortgagee (or its employees, agents, representatives or contractors) to enter upon the Property to complete such performance with all the rights, privileges and obligations of the original Lessee hereunder. Landowner shall not, and shall have no right to, terminate this Agreement prior to expiration of the cure periods available to a Leasehold Mortgagee as set forth above.

(c) During any period of possession of the Property by a Leasehold Mortgagee (or a receiver requested by such Leasehold Mortgagee) and/or during the pendency of any foreclosure proceedings instituted by a Leasehold Mortgagee, the Leasehold Mortgagee shall pay or cause to be paid all other monetary charges payable by Lessee hereunder which have accrued and are unpaid at the commencement of said period and those which accrue thereafter during said period. Following acquisition of Lessee’s Leasehold Estate by the Leasehold Mortgagee or its assignee or designee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Agreement shall continue in full force and effect and the Leasehold Mortgagee or party acquiring title to Lessee’s Leasehold Estate shall, as promptly as reasonably possible, commence the cure of all defaults hereunder and thereafter diligently process such cure to completion, whereupon Landowner’s right to terminate this Agreement based upon such defaults shall be deemed waived; provided, however, the Leasehold Mortgagee or party acquiring title to Lessee’s Leasehold Estate shall not be required to cure those non-monetary defaults, if any, which are not reasonably susceptible of being cured or performed by such party (“Non-Curable Defaults”). Non-Curable Defaults shall be deemed waived by Landowner upon completion of foreclosure proceedings or acquisition of Lessee’s interest in this Agreement by such party.

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

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



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

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

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

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

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

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

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

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

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

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

## **10. Default and Termination.**

10.1. Landowner's Right to Terminate. Except as qualified by any subsequent actions and approvals of Landowner pursuant to Section 9, Landowner shall have the right to terminate this Agreement if (a) a material default in the performance of Lessee's obligations under this Agreement shall have occurred and remains uncured, (b) Landowner notifies Lessee in writing of the default, which notice sets forth in reasonable detail the facts pertaining to the default and specifies the method of cure, and (c) the default shall not have been remedied within sixty (60) days after Lessee receives such written notice, or, if cure will take longer than sixty (60) days, Lessee has not begun diligently to undertake the cure within the relevant time period and thereafter prosecute the cure to completion. In the event this Agreement is terminated by Landowner in accordance with this paragraph, Landowner and Lessee shall thereafter execute and record a notice of termination evidencing such termination. No termination of this Agreement pursuant to this paragraph shall be effective unless a notice of termination has been executed and recorded in accordance with this paragraph.

10.2. Effect of Termination or Expiration. Upon the termination or expiration of this Agreement, whether as to the entire Property or only as to part, Lessee shall, as soon as practicable thereafter, unless otherwise mutually agreed upon, (a) remove from the Property (or applicable portion thereof) all above surface grade Power Facilities and other personal property owned, located, installed or constructed by or on behalf of Lessee thereon, (b) remove (from the Property or applicable portion thereof) concrete footings, foundations and other fixtures of Lessee, (c) cover up all pit holes, trenches and other borings and excavations made by or on behalf of Lessee on the Property (or applicable portion thereof) , (d) leave the surface of the Property (or applicable portion thereof) free from debris arising from the foregoing or from the operations or activities of Lessee and (e) otherwise restore any portion of the Property (or applicable portion thereof) disturbed by Lessee to a condition reasonably similar to its original condition, consistent with the uses permitted by this Agreement. Reclamation shall include, as reasonably required, repair or replacement of damaged drainage tile, leveling, terracing, mulching and other reasonably necessary measures to prevent soil erosion. Landowner shall provide Lessee with reasonable access to the Property during the performance of such removal and other work by Lessee for a period of twelve (12) months following the termination or expiration of this Agreement. During such period, Lessee shall not be required to pay the amounts set forth in Section 3 or other rent. If Lessee fails to remove any Power Facilities within twelve (12) months following the termination or expiration of this Agreement, or such longer period as Landowner may provide by extension, Landowner may do so, in which case Lessee shall reimburse Landowner for reasonable and documented costs of removal and restoration incurred by Landowner, net of any amounts reasonably recoverable by Landowner with respect to the salvage value of any such Power Facilities.

10.3. Mitigation Duty. Notwithstanding anything contained in this Agreement to the contrary, both parties shall use commercially reasonable efforts to mitigate their damages in the event of a default hereunder.

10.4. Default by Landowner. In the event that Landowner fails to comply with or perform any or all of the obligations, covenants, warranties or agreements to be performed, honored or observed by Landowner hereunder, or interferes with Lessee's use of the Property in accordance with the terms of this Agreement, which default continues for more than thirty (30) days after Lessee's delivery of written notice to Landowner specifying

such default, or if such default is of a nature to require more than thirty (30) days for remedy and continues beyond the time reasonably necessary to cure (and Landowner has not undertaken procedures to cure such default within such thirty (30) day period and diligently pursued such efforts to complete such cure), Lessee may exercise any right or remedy available to Lessee at law or in equity, including but not limited to obtaining an injunction.

## **11. Miscellaneous.**

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

b. Condemnation; Casualty. All payments made on account of any taking or threatened taking of the Property or any part thereof in condemnation proceedings or by inverse condemnation by a government agency, governmental body or private party under the exercise of the right of eminent domain may be made to Landowner, except that Lessee shall be entitled to, and Landowner shall request that such condemning authority make payment directly to Lessee of: (i) any removal and relocation costs of the Power Facilities, (ii) any loss of or damage to any Power Facilities, (iii) the loss of use of any portion of the Property by Lessee (including impediments to or interference with the receipt of sunlight) and (iv) Lessee's lost profits, measured in each case with regard to the effect on Lessee's use of the Property and any effect on Lessee's use of other property. If such condemning authority makes all payments to Landowner, then Landowner shall forthwith make payment to Lessee of the award to which Lessee is entitled. Lessee shall have the right to participate in any condemnation settlement proceedings and Landowner shall not enter into any binding settlement agreement without the prior written consent of Lessee, which consent shall not be unreasonably withheld. Should title to or possession of all of the Property be permanently taken, or should a partial taking render the remaining portion of the Property unsuitable for Lessee's use (as determined by Lessee), then Lessee may terminate this Agreement upon such vesting of title or taking of possession. In the event of a casualty that damages or destroys more than ten percent (5%) of the Power Facilities, Lessee shall have the right to terminate this Lease upon written notice to Landowner.

c. Confidentiality. To the fullest extent allowed by law, Landowner shall maintain in the strictest confidence (i) the terms of (including the amounts payable under) this Agreement, (ii) any information regarding Lessee's Development Activities and (iii) any other information that is proprietary or that Lessee requests be held confidential, in each such case whether disclosed by Lessee or discovered by Landowner ("Confidential Information"). Excluded from the foregoing is any such information that is in the public domain by reason of prior publication through no act or omission of Landowner. Landowner shall not use Confidential Information for its own benefit or publish or otherwise disclose it to others; provided, however, that Landowner may disclose Confidential Information to (a) Landowner's personal advisors, (b) any prospective purchaser of the Property or (c) pursuant to lawful process, subpoena or court order; so long as in making such disclosure Landowner advises the person receiving the Confidential Information of the confidentiality thereof and obtains the agreement of said person not to disclose such Confidential Information. The foregoing obligation shall survive the termination of this Agreement.

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

e. Memorandum of Lease Agreement. Landowner and Lessee shall execute in recordable form, and Lessee shall then record, a memorandum of this Agreement satisfactory in form and substance to Landowner and Lessee. If a party requests to record the Agreement with the Country Recorder, the requesting party shall pay all costs of recording such memorandum. Landowner hereby consents to the recordation of the interest of an Assignee in the Property.

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

If to Landowner:

If to Lessee:

Name:  
Title:

Name: Haj Young  
Title: CEO, Econergy Development LLC

**Address:**

**Address:** 1720 West Division Street,  
Chicago, IL 60622

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

g. Further Assurances; Cooperation. Landowner shall fully support and cooperate with Lessee in the conduct of its Development Activities and the exercise of its rights hereunder (including with Lessee's efforts to obtain from any governmental authority or any other person or entity any environmental impact review, use permit, building permit, any other permit of any nature, entitlement, approval, authorization or other rights to sell, assign, transfer or finance any Power Facilities or interest in the Leasehold Estate or under this Agreement or obtain any financing), and Landowner shall perform all such acts (including executing and delivering maps, instruments and documents within ten (10) days after receipt of a written request made from time to time by Lessee) as Lessee may reasonably specify to fully effectuate each and all of the purposes and intent of this Agreement. Without limiting the generality of the foregoing, Landowner shall not oppose, in any way, whether directly or indirectly, any application by Lessee for any permit, approval or entitlement at any administrative, judicial, legislative or other level.

h. Estoppel Certificates. Landowner shall, within ten (10) days after a written request by Lessee, any Assignee or any Leasehold Mortgagee, execute, acknowledge and deliver to the requesting party such estoppel certificates (certifying as to such matters as may reasonably be requested, including, without limitation, that this Agreement is unmodified and in full force and effect (or modified and stating the modifications), the dates to which the payments and any other charges have been paid, and that, to Landowner's knowledge, there are no

defaults existing (or that defaults exist and stating the nature of such defaults)) and/or consents to assignment (whether or not such consent is actually required) and/or non-disturbance agreements as Lessee, any Assignee or any Leasehold Mortgagee may reasonably request from time to time during the term of this Agreement. At Lessee's option, such certificates, consents and agreements may be recorded and Landowner consents to such recording.

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

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

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

l. Governing Law. The terms and provisions of this Agreement shall be interpreted in accordance with the laws of the state in which the Property is located applicable to contracts made and to be performed within such state and without reference to the choice of law principles of such state or any other state.

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

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

o. Other General Provisions. Except with respect to the rights conferred hereunder upon Leasehold Mortgagees (which Leasehold Mortgagees and their respective successors and assigns are hereby expressly made

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

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

q. Recitals. The recitals set forth herein are, by this reference, incorporated into and deemed a part of this Agreement.

*[Signature page follows immediately]*

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

**Landowner:**

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

**LESSEE:**

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

**EXHIBIT A**

**To be provided by LESSOR.**



**EXHIBIT B**

**Title Matters**

Per Section 7 above please disclose any liens or encumbrances.

**EXHIBIT C**

**RENT SCHEDULE**

<b><u>Year(s)</u></b>	<b><u>Annual Lease</u></b>
1-5	\$1
6-10	\$1
11-15	\$1
16-20	\$1
21-25	\$1

## **ROOFTOP LEASE AGREEMENT**

This ROOFTOP LEASE AGREEMENT (this “Agreement”) is made, dated and effective as of \_\_\_\_\_, 2024 (the “Effective Date”), between Joliet Township High School District 204 (“Landowner”), and Econergy Development LLC a Wyoming limited liability company (“Lessee”), in light of the following facts and circumstances:

### **RECITALS**

WHEREAS, Lessee is in the business of developing, constructing, erecting, and operating solar energy conversion systems and power generation facilities for the production of electrical energy;

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

WHEREAS, Lessee desires to lease the Property.

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

### **AGREEMENT**

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

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

1.2. Purpose. The foregoing leasehold estate and grant of rents, royalties, credits and profits created by this Agreement (collectively, the “Leasehold Estate”) are for (i) the production of energy, including solar energy, and for any and all related or ancillary purposes, including storage of any energy so produced, and Lessee shall have the exclusive right to use the Property and the unobstructed receipt of and access to sunlight across the Property for solar energy purposes, to convert all of the solar resources of the Property and to derive all profits therefrom, (all of the foregoing activities, collectively, (“Development Activities”), including, without limitation:

(a) determining the feasibility of solar energy conversion and power generation on the Property, including studies of available sunlight and other data and extracting soil samples;

(b) constructing, reconstructing, erecting, installing, improving, replacing, relocating and removing from time to time, and maintaining, repairing, using and operating, any new, existing, additional or repowered (i) solar power generating equipment, inverters, mounting and tracking systems, monitoring systems, solar collectors, solar energy conversion systems and other power generation facilities, of any type or technology (the “Solar Equipment”); (ii) transmission facilities, including without limitation, overhead and underground transmission, distribution or collector lines, circuit breakers, conduits, foundations, footings, towers, poles, crossarms, guy lines, anchors and wires; (iii) overhead and underground control, communications and radio relay systems; (iv) substations, power blocks, interconnection and/or switching facilities and electric transformers; (v) energy storage facilities such as backup battery cabinets to protect the district in case of a power outage; (vi) sunlight measurement, research or development equipment; (vii) control, maintenance and administration buildings; (viii) utility installations; (ix) safety protection facilities; (x) signs and fences (collectively, “Power Facilities”), on the Property; and Lessee acknowledges that the Property is a public school district, and access to

the Property shall be strictly for the reasons outlined in this Section 1.2, and that Lessee's activities are not intended to change the Landowner's continued use of its facilities as public schools. Lessee shall secure Landowner's written permission before engaging in any activity involving excavation, earth-moving, facility construction, or permanently affixing fixtures or other items to Landowner's facilities (other than the Solar Equipment on the facility rooftops).

(c) exercising rights of vehicular and pedestrian ingress and egress upon, over and across the Property, for purposes of conducting Development Activities and accessing the Power Facilities (whether such Development Activities are conducted, or Power Facilities are located, on the Property, adjacent to the Property or elsewhere) upon, over and across any and all now existing or hereafter constructed access routes or such new or alternative access routes as Lessee and Landowner shall determine, including the right to use roads and road-related structures on the Property; and

(d) undertaking any other activities, whether accomplished by Lessee or a third party authorized by Lessee, that Lessee reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing purposes, subject to Landowner approval, which shall not be unreasonably withheld.

1.3. Included Rights and Easements. The following rights and easements shall be included within the Leasehold Estate. Upon Lessee's request, Landowner shall execute and deliver to Lessee one (1) or more documents in recordable form, satisfactory in form and substance to Landowner and Lessee, evidencing the rights and easements granted pursuant to this Section 1.3, and Lessee may cause such documents to be recorded in the official real estate records of the county in which the Property is located.

(a) Sunlight Easement. An easement for receipt of and access to sunlight throughout the Property. Any obstruction to the receipt of and access to sunlight throughout the entire area of the Property is prohibited.

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

(c) Clearance Rights. An easement to trim, cut down and remove all trees (whether natural or cultivated), brush, vegetation and fire and electrical hazards now or hereafter existing on the Property which might obstruct receipt of or access to sunlight throughout the Property or interfere with or endanger the Power Facilities or Lessee's Development Activities, as determined by Lessee in its sole discretion.

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

(e) Utility Lines. An easement for the maintenance, repair and use of utility lines and equipment, including, without limitation, for water, natural gas and electrical transmission and interconnection. Any work by Lessee involving water or natural gas lines requires Landowner's prior written approval.

(f) Signage. An easement to place signs on or proximate to Lessee's Power Facilities.

(g) Access. A non-exclusive easement for access, ingress and egress to and from the Property, in such locations as reasonably selected by Lessee.

**2. Term.**

**2.1 Original Term and Renewal Terms.** This Agreement shall be for an initial term (the “Original Term”) commencing on the Effective Date and continuing until the twenty-fifth (25th) anniversary of the Operations Date (as defined below). As used herein, “Term” shall mean collectively, the Original Term and Renewal Term (as defined below).

**2.2 Operations Date.** For purposes of this Agreement, “Operations Date” shall mean the date the Power Facilities are installed on the Property and begin delivering electricity to the power purchaser.

**2.3 Renewal Terms.** Landowner shall have the option, per direction from Lessee to extend and renew the Original Term of this Agreement for up to two (2) periods of five (5) years each (the “Renewal Term”). Landowner may exercise such option by written notice delivered to Lessee not later than one hundred eighty (180) days prior to the expiration of the Original Term.

**3. Payments to Landowner.** Commencing with the Operations Date and continuing annually until the expiration or sooner termination of this Agreement, Lessee shall pay Owner the base annual fee set forth on Exhibit C. Such annual fees shall be payable each year within forty-five (45) days following the Operations Date or following each anniversary of the Operations Date (as applicable) and shall be prorated (or retroactively adjusted) for any partial one (1) year period preceding the expiration or sooner termination of this Agreement.

**4. Ownership of Power Facilities.** Landowner shall have no ownership or other interest in any Power Facilities installed on the Property, or any profits derived therefrom, and Lessee may mortgage, sell, lease or remove any or all Power Facilities at any time. Landowner shall have no lien or security interest and may not attempt to create a lien or security interest, in the Power Facilities, and expressly waives any statutory lien, landlord’s lien or other lien or security interest. Except for the payments described in Section 3 above, Landowner shall not be entitled to any payments, credits, benefits, emissions reductions, offsets, incentives, grants or allowances of any kind, howsoever entitled, attributable to the Power Facilities or the electric energy, capacity or other generator-based products produced therefrom, all of which shall accrue solely to the benefit of Lessee. Landowner shall have no ownership or other interest in any scientific or engineering data at any point in time or for any duration of time collected at the Power Facilities or on the Property. Such scientific or engineering data is the sole and exclusive property of Lessee. Possession of such data by Landowner shall not constitute ownership of such data.

**5. Taxes.** Lessee shall be responsible for and shall timely pay before the same become delinquent, any taxes, assessments or other governmental charges that shall or may during the Term be imposed on the Power Facilities. Landowner shall be responsible for and shall timely pay before the same become delinquent, all taxes, assessments or other governmental charges that shall or may during the Term be imposed on or arise in connection with the Property itself as a result of the installation of the Power Facilities. Lessee shall pay directly for any increase in such taxes, assessments or other governmental charges accruing during the Term to the extent resulting directly and solely from the presence of the Power Facilities on the Property. Landowner shall deliver to Lessee copies of all notices of or relating to all such charges no later than the earlier of two (2) weeks following Landowner’s receipt of each such notice or forty-five (45) days prior to the date that any such charge is due and payable. Except as specifically provided in this paragraph, Lessee shall not be responsible for any property taxes, assessments or other governmental charges or fees levied against the Property. If Landowner should fail to timely pay any taxes, assessments or other governmental charges for which Landowner is responsible hereunder and foreclosure thereof shall be threatened, then, without limiting Lessee’s other remedies under this Agreement or otherwise, Lessee may (but shall not be obligated to) pay the same, and Landowner shall reimburse Lessee, or Lessee may set off against amounts due from Lessee to Landowner under this Agreement, all such amounts paid, including any late fees or interest, together with any court costs and reasonable attorneys’ fees incurred by Lessee in connection therewith.

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

6.1. Insurance. Lessee shall, at its expense, prior to entering the Property to conduct Development Activities, have in place, and shall thereafter maintain, a broad form comprehensive coverage policy of public liability insurance insuring Lessee and Landowner (as an additional insured) against loss or liability caused by Lessee's occupation and use of the Property under this Agreement, in an amount not less than One Million Dollars (\$1,000,000) of combined single limit liability coverage per occurrence, accident or incident. Such coverage may be provided as part of a blanket policy covering other properties. Certificates of such insurance shall be provided to Landowner upon written request.

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

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

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

6.5. Hazardous Materials. Lessee shall not violate, and shall indemnify Landowner against any violation by Lessee or Lessee's agents or contractors of, any federal, state or local law, ordinance, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local law, ordinance, or regulation, on or under the Property.

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

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

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

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

7.2. **Title to Property.** Except as disclosed on Exhibit B attached hereto and by this reference made a part hereof, Landowner's fee simple title to the Property is free and clear of all liens, encumbrances, easements, leases, mortgages, deeds of trust, security interests, fractured interests, mineral, oil or gas rights, options to purchase or lease, claims and disputes (collectively, "Liens"), and there are no tenants on or other parties in possession of the Property. Landowner shall (i) obtain a commercially reasonable subordination, non-disturbance and attornment agreement or other appropriate agreement from each party holding a Lien (recorded or unrecorded) or in possession of the Property that might interfere with Lessee's rights under this Agreement; (ii) remove any Liens from Landowner's fee simple title to the Property; and (iii) secure the written consent of any Lien holder to this Agreement as necessary to comply with the agreement underlying any such Lien. A subordination, non-disturbance and attornment agreement is an agreement between Lessee and the holder of a Lien providing that the holder of the Lien shall not disturb Lessee's possession or rights under this Agreement or terminate this Agreement so long as Landowner is not entitled to terminate this Agreement under the provisions of this Agreement. Landowner shall not grant, create, allow or suffer any Lien or other encumbrance on title to the Property in addition to those set forth on Exhibit B.

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

7.4. **No Interference.** Landowner's activities and any grant of rights Landowner makes to any person or entity, whether located on the Property or elsewhere, shall not, currently or prospectively, interfere with (i) the construction, installation, maintenance, operation or removal of the Power Facilities; (ii) access over the Property to such Power Facilities; (iii) any Development Activities; or (iv) the undertaking of any other activities permitted hereunder. Without limiting the generality of the foregoing, Landowner shall not engage in any activity that might cause a decrease in the output or efficiency of the Power Facilities. Any grant of rights by Landowner to any person or entity as to the Property shall be subordinate to this Agreement.

7.5. **Siting and Setbacks.** Landowner consents to Lessee's siting of Power Facilities at any location upon the Property. To the fullest extent applicable and permitted by law, Landowner waives enforcement of, and any and all rights it may have to pursue any remedies under, any state, zoning or local rules, ordinances or requirements related to siting of Power Facilities upon the Property, including setback requirements applicable to the Power Facilities from lot lines and improvements, and agrees not to bring any complaint, suit or action or intervene in any investigation or inquiry by any person or entity with respect thereto. Pursuant to Section 7.6 hereof, Landowner agrees to use commercially reasonable efforts to assist, cooperate and participate in any proceeding and/or petition prepared by Lessee in connection with any modification or variance to an existing siting or setback requirement, including but not limited to bringing such action, or filing such petition, in the name of Landowner.

7.6. Cooperation. Landowner shall assist and fully cooperate with Lessee, at no out-of-pocket expense to Landowner, in complying with or obtaining any land use permits and approvals, building permits, environmental impact reviews or any other approvals required for the financing, construction, installation, replacement, relocation, maintenance, operation or removal of Power Facilities, including execution of applications for such approvals. Landowner shall make available to Lessee copies of all field tiling surveys, plans, entitlement-related studies, and other geotechnical and other site assessments, surveys, environmental assessments, reports, test results, correspondence to or from any governmental agency, and other such records of Landowner relating to the Property.

7.7. Indemnity. Landowner will indemnify Lessee against liability for physical damage to the Property (including any improvements thereon) and for physical injuries to Lessee or the public (including any of Landowner's employees, contractors or agents that have gained access to the Property), to the extent caused by Landowner's activities or the activities of Landowner's employees, contractors or agents on the Property or the adjoining property, except to the extent such damage or injury is caused by the operations, activities, negligence or willful misconduct of Lessee. Landowner shall take reasonable safety measures to reduce the risk that Landowner's activities will cause harm to Lessee or the public. Landowner's obligations under this Section 7.7 shall survive the termination or expiration of this Agreement.

Lessee will indemnify Landowner against liability for physical damage to Landowner's facilities (including any improvements thereon) and for physical injuries to Landowner's employees, students, or the public to the extent caused by Lessee's activities or the activities of Lessee's employees, contractors, or agents on the Property or the adjoining property, except to the extent such damage or injury is caused by the operations, activities, negligence or willful misconduct of Landowner. Lessee shall take reasonable safety measures to reduce the risk that Lessee's activities will cause harm to Landowner or the public. Lessee's obligations under this Section 7.7 shall survive the termination or expiration of this Agreement.

7.8. No Brokers. No brokers' commission, finders' fees or other charges are due any broker, agent or other party in connection with Landowner's execution of this Agreement, or if any are now due or shall become due in the future, then Landowner shall promptly pay the same from its own funds and shall indemnify, hold harmless and defend Lessee against any and all claims and demands therefor made by any such broker, finder, agent or other party, or any of their respective successors and assigns or other parties claiming through them.

7.9. No Litigation. No litigation is pending, and, to Landowner's knowledge, no actions, claims or other legal or administrative proceedings are pending, threatened or anticipated with respect to, or that could affect, the Property, this Agreement or Lessee's rights hereunder.

7.10. Hazardous Materials. Landowner shall be responsible for any and all costs associated with investigation, remediation, or monitoring associated in any way with the cleanup or transportation of any environmental conditions on, under, emanating from, or otherwise associated with the Property.

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

7.12. Landowner's Authority. Landowner has the unrestricted right and authority to execute this Agreement and to grant to Lessee the rights granted hereunder. Each person signing this Agreement on behalf of



Landowner is authorized to do so. When signed by Landowner, this Agreement constitutes a valid and binding agreement enforceable against Landowner in accordance with its terms. Landowner is not the subject of any bankruptcy, insolvency or probate proceeding.

## **8. Assignment.**

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

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

9. **Mortgage Protection.** In the event that any mortgage, deed of trust or other security interest in this Agreement or any Power Facilities is entered into by Lessee or an Assignee, including a sale-leaseback (i.e., a transaction in which Lessee sells its interest in this Agreement and/or the Power Facilities and then leases those interests back from the purchaser) (a “Leasehold Mortgage”), then any person who is the mortgagee or beneficiary of a Leasehold Mortgage, including the purchaser in a sale-leaseback transaction (a “Leasehold Mortgagee”) shall, for so long as its Leasehold Mortgage is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth in this Section 9. Lessee or any Leasehold Mortgagee shall send written notice to Landowner of the name and address of any such Leasehold Mortgagee, as well as any change of the name or address of any Leasehold Mortgagee.

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

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

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

(b) The Leasehold Mortgagee shall have the same period after receipt of notice of default to remedy the default, or cause the same to be remedied, as is given to Lessee after Lessee’s receipt of notice of default, plus, in each instance, the following additional time periods: (i) sixty (60) days, for a total of one hundred twenty (120) days after receipt of the notice of default in the event of any monetary default; and (ii) sixty (60) days, for a total of one hundred twenty (120) days after receipt of the notice of default in the event of any non-monetary default, provided that such one hundred twenty (120) day period shall be extended for the time reasonably required to complete such cure, including the time required for the Leasehold Mortgagee to perfect its right to cure such non-monetary default by obtaining possession of the Property (including possession by a receiver) or by instituting foreclosure proceedings, provided the Leasehold Mortgagee acts with reasonable and continuous diligence. The Leasehold Mortgagee shall have the absolute right to substitute itself for Lessee and perform the duties of Lessee hereunder for purposes of curing such defaults. Landowner expressly consents to such substitution, agrees to accept such performance, and authorizes the Leasehold Mortgagee (or its employees, agents, representatives or contractors) to enter upon the Property to complete such performance with all the rights, privileges and obligations of the original Lessee hereunder. Landowner shall not, and shall have no right to, terminate this Agreement prior to expiration of the cure periods available to a Leasehold Mortgagee as set forth above.

(c) During any period of possession of the Property by a Leasehold Mortgagee (or a receiver requested by such Leasehold Mortgagee) and/or during the pendency of any foreclosure proceedings instituted by a Leasehold Mortgagee, the Leasehold Mortgagee shall pay or cause to be paid all other monetary charges payable by Lessee hereunder which have accrued and are unpaid at the commencement of said period and those which accrue thereafter during said period. Following acquisition of Lessee’s Leasehold Estate by the Leasehold Mortgagee or its assignee or designee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Agreement shall continue in full force and effect and the Leasehold Mortgagee or party acquiring title to Lessee’s Leasehold Estate shall, as promptly as reasonably possible, commence the cure of all defaults hereunder and thereafter diligently process such cure to completion, whereupon Landowner’s right to terminate this Agreement based upon such defaults shall be deemed waived; provided, however, the Leasehold Mortgagee or party acquiring title to Lessee’s Leasehold Estate shall not be required to cure those non-monetary defaults, if any, which are not reasonably susceptible of being cured or performed by such party (“Non-Curable Defaults”). Non-Curable Defaults shall be deemed waived by Landowner upon completion of foreclosure proceedings or acquisition of Lessee’s interest in this Agreement by such party.

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

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

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

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

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

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

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

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

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

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

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

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

## **10. Default and Termination.**

10.1. Landowner's Right to Terminate. Except as qualified by any subsequent actions and approvals of Landowner pursuant to Section 9, Landowner shall have the right to terminate this Agreement if (a) a material default in the performance of Lessee's obligations under this Agreement shall have occurred and remains uncured, (b) Landowner notifies Lessee in writing of the default, which notice sets forth in reasonable detail the facts pertaining to the default and specifies the method of cure, and (c) the default shall not have been remedied within sixty (60) days after Lessee receives such written notice, or, if cure will take longer than sixty (60) days, Lessee has not begun diligently to undertake the cure within the relevant time period and thereafter prosecute the cure to completion. In the event this Agreement is terminated by Landowner in accordance with this paragraph, Landowner and Lessee shall thereafter execute and record a notice of termination evidencing such termination. No termination of this Agreement pursuant to this paragraph shall be effective unless a notice of termination has been executed and recorded in accordance with this paragraph.

10.2. Effect of Termination or Expiration. Upon the termination or expiration of this Agreement, whether as to the entire Property or only as to part, Lessee shall, as soon as practicable thereafter, unless otherwise mutually agreed upon, (a) remove from the Property (or applicable portion thereof) all above surface grade Power Facilities and other personal property owned, located, installed or constructed by or on behalf of Lessee thereon, (b) remove (from the Property or applicable portion thereof) concrete footings, foundations and other fixtures of Lessee, (c) cover up all pit holes, trenches and other borings and excavations made by or on behalf of Lessee on the Property (or applicable portion thereof), (d) leave the surface of the Property (or applicable portion thereof) free from debris arising from the foregoing or from the operations or activities of Lessee and (e) otherwise restore any portion of the Property (or applicable portion thereof) disturbed by Lessee to a condition reasonably similar to its original condition, consistent with the uses permitted by this Agreement. Reclamation shall include, as reasonably required, repair or replacement of damaged drainage tile, leveling, terracing, mulching and other reasonably necessary measures to prevent soil erosion. Landowner shall provide Lessee with reasonable access to the Property during the performance of such removal and other work by Lessee for a period of twelve (12) months following the termination or expiration of this Agreement. During such period, Lessee shall not be required to pay the amounts set forth in Section 3 or other rent. If Lessee fails to remove any Power Facilities within twelve (12) months following the termination or expiration of this Agreement, or such longer period as Landowner may provide by extension, Landowner may do so, in which case Lessee shall reimburse Landowner for reasonable and documented costs of removal and restoration incurred by Landowner, net of any amounts reasonably recoverable by Landowner with respect to the salvage value of any such Power Facilities.

10.3. Mitigation Duty. Notwithstanding anything contained in this Agreement to the contrary, both parties shall use commercially reasonable efforts to mitigate their damages in the event of a default hereunder.

10.4. Default by Landowner. In the event that Landowner fails to comply with or perform any or all of the obligations, covenants, warranties or agreements to be performed, honored or observed by Landowner hereunder, or interferes with Lessee's use of the Property in accordance with the terms of this Agreement, which default continues for more than thirty (30) days after Lessee's delivery of written notice to Landowner specifying

such default, or if such default is of a nature to require more than thirty (30) days for remedy and continues beyond the time reasonably necessary to cure (and Landowner has not undertaken procedures to cure such default within such thirty (30) day period and diligently pursued such efforts to complete such cure), Lessee may exercise any right or remedy available to Lessee at law or in equity, including but not limited to obtaining an injunction.

## **11. Miscellaneous.**

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

b. Condemnation; Casualty. All payments made on account of any taking or threatened taking of the Property or any part thereof in condemnation proceedings or by inverse condemnation by a government agency, governmental body or private party under the exercise of the right of eminent domain may be made to Landowner, except that Lessee shall be entitled to, and Landowner shall request that such condemning authority make payment directly to Lessee of: (i) any removal and relocation costs of the Power Facilities, (ii) any loss of or damage to any Power Facilities, (iii) the loss of use of any portion of the Property by Lessee (including impediments to or interference with the receipt of sunlight) and (iv) Lessee's lost profits, measured in each case with regard to the effect on Lessee's use of the Property and any effect on Lessee's use of other property. If such condemning authority makes all payments to Landowner, then Landowner shall forthwith make payment to Lessee of the award to which Lessee is entitled. Lessee shall have the right to participate in any condemnation settlement proceedings and Landowner shall not enter into any binding settlement agreement without the prior written consent of Lessee, which consent shall not be unreasonably withheld. Should title to or possession of all of the Property be permanently taken, or should a partial taking render the remaining portion of the Property unsuitable for Lessee's use (as determined by Lessee), then Lessee may terminate this Agreement upon such vesting of title or taking of possession. In the event of a casualty that damages or destroys more than ten percent (5%) of the Power Facilities, Lessee shall have the right to terminate this Lease upon written notice to Landowner.

c. Confidentiality. To the fullest extent allowed by law, Landowner shall maintain in the strictest confidence (i) the terms of (including the amounts payable under) this Agreement, (ii) any information regarding Lessee's Development Activities and (iii) any other information that is proprietary or that Lessee requests be held confidential, in each such case whether disclosed by Lessee or discovered by Landowner ("Confidential Information"). Excluded from the foregoing is any such information that is in the public domain by reason of prior publication through no act or omission of Landowner. Landowner shall not use Confidential Information for its own benefit or publish or otherwise disclose it to others; provided, however, that Landowner may disclose Confidential Information to (a) Landowner's personal advisors, (b) any prospective purchaser of the Property or (c) pursuant to lawful process, subpoena or court order; so long as in making such disclosure Landowner advises the person receiving the Confidential Information of the confidentiality thereof and obtains the agreement of said person not to disclose such Confidential Information. The foregoing obligation shall survive the termination of this Agreement.

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

e. Memorandum of Lease Agreement. Landowner and Lessee shall execute in recordable form, and Lessee shall then record, a memorandum of this Agreement satisfactory in form and substance to Landowner and Lessee. If a party requests to record the Agreement with the Country Recorder, the requesting party shall pay all costs of recording such memorandum. Landowner hereby consents to the recordation of the interest of an Assignee in the Property.

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

If to Landowner:

If to Lessee:

Name:  
Title:

Name: Haj Young  
Title: CEO, Econergy Development LLC

**Address:**

**Address:** 1720 West Division Street,  
Chicago, IL 60622

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

g. Further Assurances; Cooperation. Landowner shall fully support and cooperate with Lessee in the conduct of its Development Activities and the exercise of its rights hereunder (including with Lessee's efforts to obtain from any governmental authority or any other person or entity any environmental impact review, use permit, building permit, any other permit of any nature, entitlement, approval, authorization or other rights to sell, assign, transfer or finance any Power Facilities or interest in the Leasehold Estate or under this Agreement or obtain any financing), and Landowner shall perform all such acts (including executing and delivering maps, instruments and documents within ten (10) days after receipt of a written request made from time to time by Lessee) as Lessee may reasonably specify to fully effectuate each and all of the purposes and intent of this Agreement. Without limiting the generality of the foregoing, Landowner shall not oppose, in any way, whether directly or indirectly, any application by Lessee for any permit, approval or entitlement at any administrative, judicial, legislative or other level.

h. Estoppel Certificates. Landowner shall, within ten (10) days after a written request by Lessee, any Assignee or any Leasehold Mortgagee, execute, acknowledge and deliver to the requesting party such estoppel certificates (certifying as to such matters as may reasonably be requested, including, without limitation, that this Agreement is unmodified and in full force and effect (or modified and stating the modifications), the dates to which the payments and any other charges have been paid, and that, to Landowner's knowledge, there are no

defaults existing (or that defaults exist and stating the nature of such defaults)) and/or consents to assignment (whether or not such consent is actually required) and/or non-disturbance agreements as Lessee, any Assignee or any Leasehold Mortgagee may reasonably request from time to time during the term of this Agreement. At Lessee's option, such certificates, consents and agreements may be recorded and Landowner consents to such recording.

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

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

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

l. Governing Law. The terms and provisions of this Agreement shall be interpreted in accordance with the laws of the state in which the Property is located applicable to contracts made and to be performed within such state and without reference to the choice of law principles of such state or any other state.

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

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

o. Other General Provisions. Except with respect to the rights conferred hereunder upon Leasehold Mortgagees (which Leasehold Mortgagees and their respective successors and assigns are hereby expressly made

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

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

q. Recitals. The recitals set forth herein are, by this reference, incorporated into and deemed a part of this Agreement.

*[Signature page follows immediately]*



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

**Landowner:**

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

**LESSEE:**

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

**EXHIBIT A**

**To be provided by LESSOR.**

**EXHIBIT B**

**Title Matters**

Per Section 7 above please disclose any liens or encumbrances.

**EXHIBIT C**

**RENT SCHEDULE**

<b><u>Year(s)</u></b>	<b><u>Annual Lease</u></b>
1-5	\$1
6-10	\$1
11-15	\$1
16-20	\$1
21-25	\$1

## SOLAR POWER PURCHASE AGREEMENT

THIS SOLAR POWER PURCHASE AGREEMENT (“Agreement” or “PPA”) is entered into this day of \_\_\_\_\_, 2024 (the “Effective Date”) between **Econergy Development LLC**, a Wyoming limited liability company (“Seller”) and **Joliet Township High School District 204** (“Purchaser”). Seller and Purchaser are sometimes referred to in this Agreement as a “Party” and collectively as the “Parties.” Capitalized terms used throughout this Agreement shall, except as otherwise provided herein, have the same meanings as the definitions set forth in Exhibit A hereto.

### 1. TERM AND CONDITIONS PRECEDENT.

- 1.a. Term. This Agreement shall be effective and enforceable as of the Effective Date and shall terminate on the twenty-fifth (25th) anniversary of the Commercial Operation Date (the “Term”).
- 1.b. Seller’s Conditions Precedent. The obligations of the Seller under this Agreement are expressly conditioned upon the satisfaction (or written waiver by Seller) of all of the following conditions:
- i) There is a suitable electrical interconnection point of sufficient capacity to accommodate the System as designed;
  - ii) There exist no unknown site conditions or construction requirements that would materially increase the cost of Installation Work or adversely affect the electricity production from the System as designed;
  - iii) If the System is to be located on a rooftop, then the structural integrity of the roof, as is, is sufficient to accommodate the System; alternatively, if the System is to be ground-mounted, then the soil and subsurface conditions are sufficient to accommodate the System; and
  - iv) Solar Renewable Energy Credits (“SREC”) Prices do not decrease from the current Public-School price of \$59.81 per MWh (Group A – ComEd, Public School, AC Interconnect of 200-500 kW) as set by the Illinois Power Agency. If prices do change, Econergy Development LLC will seek to increase the PPA price to make up for this projected decrease in revenue. If block prices are increased, Econergy Development will share in the increase with the School District by reducing the PPA price. Any decrease or increase in the PPA will only happen after Purchaser has been given 30 days written notice by Seller.

If any one of the conditions precedent above is not satisfied by the date that is twelve (12) months after the Effective Date, Seller may terminate this Agreement without liability.

- 1.c. Purchaser’s Conditions Precedent. In the event that Seller has not initiated Development Activities by the date that is twelve (12) months after the Effective Date for reasons other than a breach by Purchaser of its obligations hereunder, Purchaser may terminate this Agreement without liability.

## 2. INSTALLATION OF SYSTEM.

- 2.a. Installation. Seller shall cause the System to be designed, engineered, installed, and constructed substantially in accordance with Applicable Law and prudent industry practice by the engineering, procurement, and construction company (EPC). Purchaser shall be given the opportunity to review and satisfy itself that the System, if installed according to the plans, will not damage Purchaser's property or interfere with Purchaser's operations—such review and approval not to be unreasonably withheld or delayed. If Purchaser fails to approve or to reject such construction plans within five (5) Business Days of receipt, such plans shall be deemed to be approved by Purchaser. Any approval or deemed approval of construction plans by Purchaser shall not relieve Seller of its obligations under this Agreement. Seller shall procure all materials and equipment for the installation of the System and maintain the same at the Premises. Seller shall make reasonable commercial efforts to procure and install the particular brand of components (including solar panels and inverters) as identified in Exhibit B; however, Seller may, in its discretion, substitute any components of the System with components of a reasonably similar nature and quality. Seller's EPC shall perform the installation of the System in a manner that minimizes inconvenience to and interference with Purchaser's existing use of the premises. Seller and its EPC may use contractors and subcontractors to perform its obligations under this Agreement.
- 2.b. Permits and Approvals. Seller and its EPC shall be responsible for and bear all costs associated with applying for and obtaining all permits, licenses and approvals required for the installation, operation, and maintenance of the System. Purchaser shall cooperate with Seller and the EPC in connection with obtaining such approvals and permits.
- 2.c. Notice of COD. Seller shall notify Purchaser when the System is capable of Commercial Operation (such date, the "Commercial Operation Date"), in the form of a notice, and shall in such notice specify to Purchaser the Commercial Operation Date.

## 3. O&M; OWNERSHIP OF SYSTEM AND ENVIRONMENTAL ATTRIBUTES.

- 3.a. Ownership. The System and the associated Environmental Attributes shall be owned by Seller or its Financing Party and shall be operated by Seller at its sole cost and expense. The Parties agree that the System is personal property and shall not be deemed a part of, or fixture to, the Premises.
- 3.b. Operation & Maintenance. "System Operation(s)" means all actions, including monitoring and maintaining the System, necessary for Seller to meet its obligations herein. Any repair or maintenance (including emergency repairs) of the System shall be completed by or for Seller, at its sole cost and expense, for Seller's benefit as legal and beneficial owner or lessee of the System. The System shall at all times retain the

legal status of personal property and not as a fixture. Purchaser shall not attempt or perform any operation or maintenance of the System except as otherwise expressly set forth in this Agreement. All maintenance procedures required hereby shall be undertaken and completed in accordance with the manufacturer's recommended procedures, and by properly trained, licensed, and certified maintenance sources and maintenance personnel, so as to keep the System in as good operating condition as upon the Commercial Operation Date of such System, ordinary wear and tear excepted. Seller shall bear all risk of loss with respect to the System.

- 3.c. Metering Equipment. The EPC shall install, and the Operations & Maintenance Provider shall maintain a kilowatt-hour (kWh) meter for the measurement of electrical energy provided to the System as may be required for use at the Premises in accordance with Applicable Laws.
- 3.d. Emergencies. Except as otherwise set forth herein, the Parties each shall notify the other within twenty-four (24) hours following their discovery of any material malfunction in the operation of the System or of their discovery of an interruption in the supply of Solar Services.
- 3.e. Prohibition. Purchaser shall not make or attempt to make any repairs, adjustments, modifications or any other changes to the System or the System meter.

#### 4. PRICE AND SALE OF SOLAR SERVICES.

- 4.a. Purchase and Sale of Solar Services. Commencing on the Commercial Operation Date, Seller shall make available to Purchaser, and Purchaser agrees to purchase one hundred percent (100%) of the Solar Services of the System.
- 4.b. Price. As consideration for Solar Services produced by the System during each calendar month, Purchaser shall pay to Seller a monthly payment ("Monthly Payment") equal to the product (x) of Actual Monthly Service Production for the System for the relevant month multiplied by (y) the price per kWh for Solar Services as specified in Exhibit C (the "kWh Rate").
- 4.c. Invoices & Payment. Seller shall provide an invoice to Purchaser on or about the fifth (5th) day of each month (each an "Invoice Date"), commencing on the first Invoice Date to occur after the Commercial Operation Date. All invoices shall be sent to the address for the applicable Party as set forth in Section 13. Purchaser shall pay all amounts due within thirty (30) days after the applicable Invoice Date. In the event a Party disputes all or a portion of an invoice, or any other claim or adjustment arises, that Party shall pay the undisputed portion when due and provide the other Party notice of the dispute and the amount in dispute. In such event, the Parties shall first use good faith, reasonable, diligent efforts to resolve such dispute within a reasonable period of time not to exceed thirty (30) days from the date of such notice.

## 5. CERTAIN ADDITIONAL COVENANTS OF PURCHASER.

- 5.a. Site Access. Purchaser shall provide Seller and its EPC with access, at all times, to the Premises to allow Seller to perform the Solar Services as contemplated herein, including ingress and egress rights to the Premises.
- 5.b. Security. Purchaser agrees that its normal security measures, practices, and policies which apply to its own Premises shall also apply to the System. Purchaser shall take all commercially reasonable steps to limit access by third parties to areas of the Premises on which the System is situated. Such steps shall include, but not be limited to, fencing any ground mounted System and locking roof access for any rooftop System. Purchaser shall be liable to Seller for all damage caused to the System by the result of actions (or negligence) of third parties who access the System in contravention of the preceding sentence of this Section 5.b to the extent such access is a result of Purchaser's negligence and then only to the extent such damage is not covered by the Seller's insurance.
- 5.c. Liens.
- i) Purchaser shall not directly or indirectly cause to exist any lien on the System.
  - ii) Purchaser represents that as of the Effective Date, the mortgagee (if any) identified in Exhibit B is the only holder of a lien on the Premises, and, to Purchaser's knowledge, the only party that has the legal right to place a lien on the Premises.
  - iii) Purchaser shall use reasonable commercial efforts to notify all parties having an interest in or lien upon the real property comprising the Premises (a) of the existence of the System and (b) of the legal status or classification of the System as personal property.
- 5.d. Roof Warranty or Soil Warranty; Repairs. In the event that the System is mounted on the roof of any structure on the Premises, Purchaser represents and warrants that each such said roof is structurally sound, free of defects, and is in such a condition as adequately to be able to support the installation of the System; alternatively, in the event that the System is mounted on the ground / soil of the Premises, Purchaser represents and warrants that it has no actual or constructive knowledge of any latent defect in the ground or soil that would cause such ground or soil to be unsuitable for the purposes of supporting the System. The roof and soil warranties (as applicable) set forth in the preceding sentence do not constitute any warranty by Purchaser concerning the output of the System, the ability of the System to generate electricity, or the ability of the System to generate income at the levels estimated by Seller—Purchaser specifically does not make any such warranties to Seller. If Purchaser or Purchaser's landlord decides to repair or remediate the Premises (including, if the System is roof-mounted, the roof thereof) for any reason not directly related to damage



caused by the System, and if such repair requires the partial or complete temporary disassembly or relocation of the System, Purchaser shall pay Seller for (i) all work required by Seller to disassemble or move the System, and (ii) Seller's reasonable estimate of its reduced revenue (from Solar Services and Environmental Attribute sales) that occurred as a consequence of such roof repair or remediation. Purchaser shall not move, disassemble, or otherwise alter the System.

- 5.e. Tax on Sale of Solar Services. Purchaser shall be responsible for any taxes imposed or by any Government Authority and paid by Seller due to Seller's sale of the Solar Services to Purchaser (other than income taxes imposed directly upon Seller). Seller shall notify Purchaser in writing with a detailed statement of such amounts, which will be invoiced by Seller.
- 5.f. Notice of Damage. Purchaser shall promptly notify Seller it is aware of any damage to or loss of the use of the System that could reasonably be expected to adversely affect the System or the provision of the Solar Services.
- 5.g. Shading. Purchaser shall use all commercially reasonable means to prevent any shading of the System by any party. In the event Purchaser tolerates or causes any shading of the System, Purchaser shall be liable to Seller for Seller's lost revenue—as reasonably calculated by Seller—as a result of such shading.
- 5.h. Excavation. Purchaser shall not dig or excavate under a ground-mounted system, nor permit excavation, so near the sides of or underneath the Power Facilities or take any other actions that would undermine or otherwise adversely affect their stability and/or jeopardize the System without the consent of the Seller. Such consent will not be unreasonably withheld.

## 6. CERTAIN ADDITIONAL COVENANTS OF SELLER; SELLER WARRANTIES.

- 6.a. Removal of System at Expiration or Termination of Agreement. Within one hundred and eighty days (180) days after the expiration or earlier termination of this Agreement, Seller shall, at its expense, remove the System from the Premises, and return the ground or roof surface to its original condition, ordinary wear and tear excluded.
- 6.b. System Condition. Seller shall take all actions reasonably necessary to ensure that the System is capable of providing Solar Services at a commercially reasonable continuous rate.
- 6.c. Compliance with Law. Seller shall comply with all Applicable Law in connection with this Agreement, including those related to health and safety.
- 6.d. Structure Warranty. If Seller (or any of their respective contractors or subcontractors) alters, modifies or penetrates any structure, improvements or any portion thereof located on the Premises in performing the installation, repair, maintenance, or removal

services, Seller shall promptly repair such damage to Purchaser's reasonable satisfaction and Seller hereby warrants any repairs made to the structure(s) or improvement(s) by Seller (or its contractor(s) or subcontractor(s)) (the "Structure Warranty").

## 7. ASSIGNMENT.

- 7.a. Assignments by Seller. Seller shall at all times have the right to sell, assign, encumber, transfer or grant equal or subordinate rights and interests (including co-leases, separate leases, subleases, licenses or similar rights (however denominated)) in, the Leasehold Estate and/or any or all right or interest in this Agreement, or any or all right or interest of Purchaser in the Property or in any or all of the Power Facilities that Seller may now or hereafter install on the Property, to one or more persons (an "Assignee"), in each case without Purchaser's consent; provided, however, that any and all such transfers and transferees shall be subject to all of the terms, covenants and conditions of this Agreement. Seller shall notify Purchaser in writing of any such sale, assignment, transfer or grant. Upon Seller's assignment of its entire interest hereunder as to all or any portion of the Property, or as may otherwise be provided in the applicable sale, assignment, transfer or grant document, Purchaser shall recognize the Assignee as Seller's proper successor, the Assignee shall have all of the assigned rights, benefits and obligations of Seller under and pursuant to this Agreement, and Seller shall be relieved of all of its obligations relating to the assigned interests under this Agreement that relate to acts or omissions that occur or accrue following the effective date of such sale, assignment, transfer or grant.
- 7.b. Assignments by Landowner. The burdens of this Agreement and other rights contained herein shall run with and against the Property and shall be a charge and burden thereon for the duration of this Agreement and shall be binding upon and against Purchaser and its successors and assigns. Purchaser shall notify Seller in writing of any sale, assignment or transfer of any of Purchaser's interest in the Property, or any part thereof. Until such notice is received, Seller shall have no duty to any successor Purchaser, and Seller shall not be in default under this Agreement if it continues to make all payments to the original Purchaser before notice of sale, assignment or transfer is received. Purchaser agrees it will not assign the rights to payments due to Purchaser under this Agreement except to a successor owner of the Property, and in no case shall Purchaser sever or attempt to sever the Property's solar energy rights or interests from the Property's fee title or otherwise convey, assign or transfer or attempt to convey, assign or transfer this Agreement, except to a successor owner of the Property.
- 7.c. Cooperation with Financing.
- i) Purchaser acknowledges that Seller may be financing the acquisition and installation of the System through a System equipment lessor, lender and/or one or more financial institutions (each, a "Financing Party") and that Seller may sell or assign the System or may secure Seller's obligations by, among other

collateral, a pledge or collateral assignment of this Agreement and a senior security interest in the System. Purchaser shall cooperate with Seller and Financing Parties in connection with such financing of the System, including (a) the furnishing of such information, and (b) the giving of such certificates regarding factual matters, as Seller and Financing Parties may reasonably request.

- ii) Upon Seller's notice to Purchaser of the identity and address of the Financing Party that will provide financing to Seller in respect of the System, such Financing Party shall become a third-party beneficiary of this Agreement.

## 8. INSURANCE.

8.a. Generally. The Parties shall each maintain the following insurance coverages in full force and effect throughout the Term, either through insurance policies or acceptable self-insured retentions a broad form comprehensive coverage policy of public liability insurance insuring Seller and Purchaser (as an additional insured) against loss or liability caused by Seller's occupation and use of the Property under this Agreement, in an amount not less than One Million Dollars (\$1,000,000) of combined single limit liability coverage per occurrence, accident or incident. Such coverage may be provided as part of a blanket policy covering other properties. Seller shall carry adequate property loss insurance on the System which need not be covered by the Purchaser's property coverage. The policy amounts set forth in the first sentence of this Section 8.a are policy minimums—either Party may obtain insurance at any time during the Term in excess of the aforementioned minimum amounts. Each Party also may obtain such other, additional insurance as it deems prudent in its sole discretion.

8.b. Certificates of Insurance. If requested by the other Party, a Party shall furnish current certificates evidencing that the insurance required under Section 8.a is being maintained.

## 9. EVENTS OF DEFAULT; REMEDIES EVENTS OF DEFAULT.

9.a. Event of Default. An "Event of Default" means, with respect to a Party (the Party defaulting), the occurrence of any of the following:

- i) the failure to make, when due, any payment required under this Agreement if such failure is not remedied within thirty (30) days;
- ii) the failure to perform any material covenant or obligation set forth in this Agreement, if such failure is not remedied within thirty (30) days after receipt of notice; provided, however, that if such material covenant or obligation may be cured, but not within such thirty (30) day period, and the defaulting party has commenced curing such default and is at all times diligently pursuing the cure thereof, such further period as may be necessary for up to an additional sixty (60) days;

- iii) such Party (a) applies for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (b) admits in writing its inability, or be generally unable, to pay its debts as such debts become due; (c) makes a general assignment for the benefit of its creditors; (d) commences a voluntary case under any bankruptcy law; (e) files a petition seeking to take advantage of any other relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (f) fails within one hundred eighty (180) days of the filing against it of an involuntary case under any bankruptcy law to have such involuntary case dismissed; or
  - iv) such Party fails to provide or maintain in full force and effect any required insurance coverage, if such failure is not remedied within ten (10) Business Days after receipt of notice from the non-defaulting Party to the defaulting party.
- 9.b. Remedies. If an Event of Default has occurred, the non-defaulting Party shall have the right (without limiting any other rights or remedies available under Applicable Law), by notice to the defaulting Party, to terminate this Agreement. If the non-defaulting Party is Seller, and Seller elects to terminate this Agreement, Purchaser shall pay to Seller as liquidated damages an amount equal to the greater of (i) the applicable Early Termination Fee, or (ii) the Fair Market Value of the System on the date of such demand by Seller. Should Purchaser pay such liquidated damages, they would retain ownership of the system.
- 9.c. Remedies Are Cumulative. No remedy herein conferred upon or reserved to a Party is intended to be exclusive of any other remedies provided for in this Agreement, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy of such Party given hereunder or now or hereafter existing at law, in equity, by contract or otherwise. Every right, power and remedy given to a Party by this Agreement, at law, in equity, by contract or otherwise shall be concurrent and may be pursued separately, successively or together against the other applicable Party hereto, and every right, power and remedy given to such Party by this Agreement, at law, in equity, by contract or otherwise may be exercised from time to time as often as may be deemed expedient by such Party.
- 9.d. Duty to Mitigate. Each Party agrees to undertake reasonable commercial efforts to mitigate any loss or damage it may suffer as a result of a breach or default by any other Party. In the Event of Default by Purchaser, Seller may seek to mitigate damages by selling power to the applicable power grid.
- 9.e. Interest. Unpaid sums (including unpaid liquidated damages) will accrue interest at the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed by law.

## 10. FORCE MAJEURE.

- 10.a. Definition. “Force Majeure Event” means any act or event that prevents the affected Party from performing its obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party. Subject to the foregoing conditions, a Force Majeure Event shall include without limitation the following acts or events: (i) sabotage, riots or civil disturbances; (ii) acts of God; (iii) acts of the public enemy; (iv) terrorist acts affecting the Premises; (v) volcanic eruptions, earthquake, hurricane, flood, ice storms, explosion, fire, lightning, landslide or similarly cataclysmic occurrence; (vi) any action or inaction by any Governmental Authority or applicable local utility which prevents or prohibits the Parties from carrying out their respective obligations under this Agreement, including but not limited to curtailment or reduction of energy production required by the utility or grid operator, or a power or voltage surge caused by someone other than Seller; (vii) general strikes and labor disturbances; (viii) economic collapse of the United States of America or the state or commonwealth within the United States of America in which the Premises are located; (ix) the independence, separation from, or other termination of association (regardless of cause) from the United States of America by the state or commonwealth within which the Premises are located; and (x) bankruptcy, insolvency, or other failure of a Party’s general banking institution.
- 10.b. Excused Performance. Except as otherwise specifically provided in this Agreement, neither Party shall be considered in breach of this Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay amounts due hereunder), if (but only to the extent that) such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 10 shall promptly (i) notify the other Party in writing of the existence of the Force Majeure Event and (ii) exercise all commercially reasonable efforts necessary to minimize delay caused by such Force Majeure Event.
- 10.c. Termination in Consequence of Force Majeure. If a Force Majeure Event shall have occurred that has affected Seller's performance of its obligations hereunder and that has continued for a period of one hundred eighty (180) consecutive days or three hundred and sixty-five (365) days in the aggregate, then Purchaser shall be entitled to terminate this Agreement without further liability.

## 11. REPRESENTATIONS AND WARRANTIES.

- 11.a. Representations and Warranties. Each Party represents and warrants to the other as of the Effective Date that:
- i) This Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by

applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

- ii) It is duly organized and validly existing and in good standing in the jurisdiction of its organization;
- iii) It has taken all requisite corporate or other action to approve the execution, delivery, and performance of this Agreement; and
- iv) It has the full right and authority to enter into, execute, deliver, and perform its obligations under this Agreement.
- v) Purchaser further represents and warrants to Seller that no hazardous substances have been released at or in vicinity of the Premises that could reasonably be expected to have a material adverse impact on Seller's ability to perform its obligations hereunder or otherwise result in liability to Seller.

## 12. MUTUAL INDEMNITY.

- 12.a. Mutual Indemnity. To the extent allowable by law, each Party (the "Indemnitor") hereby indemnifies and agrees to defend and hold harmless the other Party (the "Indemnitee") from and against any and all third party claims, to the extent arising from injury to persons or property caused by negligence, or any material breach of this Agreement by the Indemnitor or any of its directors, officers, employees or agents; provided, however, that the Indemnitor shall not have any obligation to indemnify the Indemnitee from or against any losses, liabilities, damages, costs, expenses, and attorneys' fee, to the extent caused by, resulting from, relating to or arising out of the negligence or intentional misconduct of the Indemnitee or any of its directors, officers, employees or agents.

## 13. NOTICES.

- 13.a. Notice Addresses. Unless otherwise provided herein, all notices and communications concerning this Agreement will be in writing and addressed to the other Party as set forth as follows:

Notices to be sent to:

Attn: Haj Young  
Seller: Econergy Development LLC  
Address: 1720 West Division Street  
City Chicago, IL 60622  
Email: Haj@Econergy.net

Notices to be sent to:

Attn: \_\_\_\_\_  
Purchaser: Joliet Township High School District 204  
Address: \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Email: \_\_\_\_\_

- 14.b. Notice. Any notice or other communications hereunder shall be deemed to have been received (unless otherwise set forth herein) (i) on delivery if in person; (ii) on the second day following deposit with an overnight express agency, fees prepaid, or mailed by United States express, certified or registered mail, postage prepaid, return receipt requested; or (iii) on the same day if sent via email, to the other Party at the preceding addresses, or to such other address as shall be later provided in writing by one Party to the other

14. CONFIDENTIALITY / PROPRIETARY INFORMATION.

- 14.a. Proprietary Information. The Parties to this Agreement shall hold in confidence, and withhold from third parties, any and all Proprietary Information (as defined below) disclosed by one Party to the other and shall use the other Party's Proprietary Information only for the purposes stated herein (the "Permitted Purposes") and for no other purpose unless the disclosing Party shall agree herein or hereafter in writing. Each Party agrees to safeguard from theft, loss, and negligent disclosure the other Party's Proprietary Information received pursuant to this Agreement by utilizing the same degree of care as the receiving Party utilizes to safeguard its own Proprietary Information of a similar character from theft, loss, and negligent disclosure, but in no event less than reasonable care. Each Party agrees to limit access to Proprietary Information to those officers, directors, and employees within the receiving Party's organization, and to the Party's subcontractors, who reasonably require such access to accomplish the Permitted Purposes. Each Party agrees not to reproduce or copy by any means the Proprietary Information of the other Party except as reasonably required to accomplish the Permitted Purposes. The Parties shall not remove any trademark or proprietary rights legend from the Proprietary Information of the other Party. All Proprietary Information disclosed pursuant to this Agreement shall be and remain the property of the disclosing Party or its third-party suppliers. Except as expressly specified in this Agreement, neither Party to this Agreement acquires any license, right, title, or interest in and to the Proprietary Information received from the other Party. Each Party shall inform such employees of the non-disclosure obligations set forth herein and shall obligate in writing any subcontractors to comply with the non-disclosure requirements stated herein. Each Party shall give prompt written notice to the other Party upon becoming aware of any unauthorized use or disclosure of the Proprietary Information. Each Party agrees to use its best efforts to remedy such unauthorized use or disclosure of the Proprietary Information at its own expense. Each Party acknowledges and agrees that in the event of an unauthorized use, reproduction, distribution, or disclosure of any Proprietary Information, the other Party will not

have an adequate remedy at law and, therefore, injunctive or other equitable relief would be appropriate to restrain such use, reproduction, distribution, or disclosure, threatened or actual. Neither Party shall be liable for use nor disclosure of what would otherwise be considered Proprietary Information if it can establish by contemporaneous, clear, and convincing written evidence that such information, in substantially the same form and content: (i) is or becomes a part of the public knowledge without breach of the Agreement by the receiving Party; (ii) is known to the receiving Party without restriction as to further disclosure when received; (iii) is independently developed by the receiving Party without the use, directly or indirectly, of information received under this or other obligation of confidentiality with the disclosing party; (iv) becomes known to the receiving Party from a third party who had a lawful right to disclose it without breaching the Agreement; (v) is approved in writing for release or use by an authorized employee of the other Party; or (vi) is disclosed in response to a valid order of a court of competent jurisdiction or other governmental body of the United States of America or any political subdivision thereof, or is otherwise required to be disclosed by law; provided, however, that the receiving Party shall first have given prompt written notice to the disclosing Party in order to allow objection by the disclosing Party to any such order or requirement, or to otherwise protect the rights of the disclosing Party and its suppliers prior to the disclosure. If a particular portion or aspect of the Proprietary Information becomes subject to any of the foregoing exceptions, all other portions or aspects of such information shall remain subject to all of the above non-disclosure provisions. Examples of Proprietary Information include, but are not limited to, System designs and pricing information.

- 14.b. Publicity. Each Party, without permission from the other Party hereto, may advertise and announce the existence of the System upon the Premises and the participation of the Parties in the project; such advertisement and announcements may be for any lawful purpose. Each Party may take, distribute, and otherwise use photographs of the System in connection therewith. Purchaser, however, shall not disclose the kWh Rate or material terms of this Agreement concerning System finances without the prior written consent of the Seller except as to Affiliates of Purchaser.

#### 15. MISCELLANEOUS TERMS; INTERPRETATION.

- 15.a. Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Purchaser.
- 15.b. Captions; Headings. The captions or headings in this Agreement are for convenience only and shall not be considered in interpreting the Agreement.
- 15.c. Integration and Exhibits. This Agreement consists of fourteen (14) pages followed by one (1) signature page and three (3) exhibits, each of which are fully incorporated hereunto: Exhibit A: Definitions; Exhibit B: Description of Premises



and System; Exhibit C: Principal Commercial Terms. This Agreement, together with the exhibits attached hereto, constitutes the entire agreement and understanding between Seller and Purchaser with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof.

- 15.d. Severability. If any term, covenant, or condition in this Agreement shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law.
- 15.e. Limited Effect of Waiver. The failure of Seller or Purchaser to enforce any of the provisions of this Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.
- 15.f. Liquidated Damages Not Penalty. Purchaser acknowledges that the Early Termination Fee constitutes liquidated damages, and not penalties, in lieu of Seller's actual damages resulting from the early termination of this Agreement. Purchaser further acknowledges that Seller's actual damages may be impractical and difficult to accurately ascertain, and in accordance with Purchaser's rights and obligations under this Agreement, the Early Termination Fee constitutes fair and reasonable damages to be borne by Purchaser in lieu of Seller's actual damages. Seller acknowledges that the Lost Savings constitutes liquidated damages, and not penalties, in lieu of Purchaser's actual damages resulting from deficient performance by Seller under this Agreement.
- 15.g. Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Illinois and without reference to any choice of law principles.
- 15.h. Consent to Jurisdiction. THE PARTIES HERETO EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE DESIGNATED, EXCLUSIVE AND PROPER VENUE OF ANY LEGAL DISPUTE, QUESTION OR INTERPRETATION, CLAIM, DECLARATORY JUDGMENT ACTION, BANKRUPTCY OR OTHER LITIGATION WITH RESPECT TO THIS AGREEMENT SHALL BE EXCLUSIVELY AND SOLELY A FEDERAL OR STATE COURT IN THE COUNTY OF COOK, STATE OF ILLINOIS. THE PARTIES HERETO HEREBY EXPRESSLY CONSENT TO THE EXERCISE OF PERSONAL JURISDICTION BY, LAYING OF VENUE IN AND EXCLUSIVE JURISDICTION OF, SUCH COURT.
- 15.i. Successors and Assigns. This Agreement and the rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of Seller and Purchaser and their respective permitted successors and assigns.

- 15.j. Relation of the Parties. The relationship between Seller and Purchaser shall not be that of partners, agents, or joint ventures for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purpose.
- 15.k. Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. Facsimile or electronic signatures shall have the same effect as original signatures and each Party consents to the admission in evidence of a facsimile, electronic copy, or photocopy of this Agreement in any court or arbitration proceedings between the Parties.
- 15.l. Records. Each Party shall use commercially reasonable efforts to keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement.

*[REST OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, the Parties hereto have duly executed and delivered this Agreement as of the Effective Date.

**SELLER: Econergy Development LLC**

Signature:

Print Name:

Title:

Date:

**PURCHASER: Joliet Township High School District 204**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT A

### DEFINITIONS

In addition to other terms specifically defined elsewhere in this Agreement, where capitalized, the following words and phrases shall be defined as follows:

“Actual Monthly Service Production” means the amount of energy recorded by Seller’s metering equipment during each calendar month of the Term, pursuant to Section 4.b.

“Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such first Person.

“Agreement” means this Solar Power Purchase Agreement, including the preamble and the Exhibits attached hereto and incorporated herein by reference.

“Applicable Law” or “Applicable Laws” means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, order, decree, judgment, decision, or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity.

“Business Day” or “Business Days” means any day other than Saturday, Sunday or any other day on which banking institutions in Chicago, Illinois, are required or authorized by Applicable Law to be closed for business.

“Commercial Operation” means that the system is ready for regular operation, is connected to the Premises’ electrical system, and is capable of producing electricity.

“Commercial Operation Date” has the meaning set forth in Section 2.c.

“Confidential Information” means any non-public confidential or proprietary information (whether conveyed orally, electronically or in hard copy) of a Party or its Affiliates relating to this Agreement, and identified as confidential by the disclosing party; provided, however “Confidential Information” shall not include information that (i) is required to be disclosed by a Governmental Authority, (ii) is independently developed by the receiving Party, or (iii) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

“Early Termination Fee” means the greater of the Fair Market Value set forth in this Exhibit A or the Total Projected Revenue minus Operating Expenses as set forth in this Exhibit A for the remainder of the Term of this Agreement discounted at 6% per annum.

“Effective Date” has the meaning set forth in the preamble hereof.

“Environmental Attributes” means, without limitation, carbon trading credits, renewable energy credits or certificates, production-based incentives, emissions reduction credits, investment tax credits, installation or production tax credits or tax grants, emissions allowances, green tags,

tradable renewable credits, Green-e® products, accelerated depreciation, and all other solar or renewable energy subsidies and incentives.

“Estimated Annual Production” means Seller’s estimated annual production of the System as described in Exhibit C.

“Event of Default” has the meaning set forth in Section 9.a.

“Fair Market Value” means, with respect to any tangible asset or service, the price that would be negotiated in an arm’s-length, free market transaction, for cash, between an informed, willing seller and an informed, willing buyer, neither of whom is under compulsion to complete the transaction.

“Financing Party” has the meaning set forth in Section 7.c.

“Force Majeure Event” has the meaning set forth in Section 10.a.

“Governmental Authority” means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Installation Work” means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Seller at the Premises.

“Indemnitee” has the meaning set forth in Section 12.a.

“Indemnitor” has the meaning set forth in Section 12.a.

“Invoice Date” has the meaning set forth in Section 4.c.

“kWh Rate” has the meaning set forth in Section 4.b, as set forth in Exhibit C.

“MACRS” stands for modified accelerated cost recovery system. It is the tax depreciation system used in the United States to calculate asset depreciation.

“Monthly Payment” has the meaning set forth in Section 4.b.

“Operating Expenses” means general operating costs for Insurance, management fees and system maintenance.

“Party” or “Parties” has the meaning set forth in the preamble hereof.

“Permitted Purposes” has the meaning set forth in Section 14.a.

“Person” means an individual, partnership, corporation, limited liability company, Governmental

Authority, or other entity.

“Premises” means the premises described in of Exhibit B, including the entirety of any structures and underlying real property located at the address described in Exhibit B.

“Proprietary Information” has the meaning set forth in Section 14.a.

“Purchaser” has the meaning set forth in the preamble hereof.

“Routine Maintenance” means commercially reasonable maintenance of the System, including but not limited to maintenance recommended by System component manufacturers.

“Seller” has the meaning set forth in the preamble hereof.

“Solar Services” means the supply of on-site electrical energy output from the System together with certain peak load coincident reductions, possible building energy conservation (if specifically described in Exhibit B hereto), and other on-site energy services or efficiencies associated with the solar energy production described herein.

“System” means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, batteries, energy storage systems, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, more specifically described in Exhibit B and interconnected with the local electric utility, owned or leased by Seller and installed at the Premises.

“System Operations” has the meaning set forth in Section 3.b.

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

“Term” has the meaning set forth in Section 1.a.

“Total Projected Revenue” means the product of the total projected kWh production of the System multiplied by the sum of the kWh Rate and the SREC price set forth in Section 1.b. The total kWh production is calculated by the average annual system production for the past three consecutive years. If the System has not produced for three consecutive years, the total kWh production will instead be calculated by the average annual electricity consumption as provided independently by the utility of record. In addition, this value includes any benefits derived from Tax Credits and MACRS depreciation equal to 85% of the system value.

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**EXHIBIT B**

DESCRIPTION OF PREMISES AND SYSTEM

Premises & Solar System Location: Rooftop System to be installed at

Joliet Central High School, East Buildings  
201 East Jefferson Street, Joliet, IL 60432

Owner of Premises as of Effective Date: Joliet Township High School District 204

Mortgage of Premises as of Effective Date: N/A

Anticipated Solar System Size (DC): 411 kw

Modules: \_\_\_\_\_, or equivalent.

Inverters: \_\_\_\_\_, or equivalent.

Purchaser's Current Utility Name: Commonwealth Edison

Purchaser's Utility Hourly Rate for Energy (as of Effective Date): \_\_\_\_\_

System Components Include:

Solar panels, support system, inverter system, wire kits, and data monitoring system.

System size may be reduced during final design if, for example, structure issues are identified with respect to the roof.

*[REST OF PAGE INTENTIONALLY LEFT BLANK]*

## EXHIBIT C

### PRINCIPAL COMMERCIAL TERMS

1. kWh Rate.

kWh Rate: **\$.0789** escalated by **2.0%** on each anniversary of the Commercial Operation Date.

2. Estimated Year 1 Yield: 513,584 kWh

This estimated annual production amount is a good faith estimate of Seller as of the Effective Date and does not constitute a production guaranty.



## SOLAR POWER PURCHASE AGREEMENT

THIS SOLAR POWER PURCHASE AGREEMENT (“Agreement” or “PPA”) is entered into this day of \_\_\_\_\_, 2024 (the “Effective Date”) between **Econergy Development LLC**, a Wyoming limited liability company (“Seller”) and **Joliet Township High School District 204** (“Purchaser”). Seller and Purchaser are sometimes referred to in this Agreement as a “Party” and collectively as the “Parties.” Capitalized terms used throughout this Agreement shall, except as otherwise provided herein, have the same meanings as the definitions set forth in Exhibit A hereto.

### 1. TERM AND CONDITIONS PRECEDENT.

- 1.a. Term. This Agreement shall be effective and enforceable as of the Effective Date and shall terminate on the twenty-fifth (25th) anniversary of the Commercial Operation Date (the “Term”).
- 1.b. Seller’s Conditions Precedent. The obligations of the Seller under this Agreement are expressly conditioned upon the satisfaction (or written waiver by Seller) of all of the following conditions:
- i) There is a suitable electrical interconnection point of sufficient capacity to accommodate the System as designed;
  - ii) There exist no unknown site conditions or construction requirements that would materially increase the cost of Installation Work or adversely affect the electricity production from the System as designed;
  - iii) If the System is to be located on a rooftop, then the structural integrity of the roof, as is, is sufficient to accommodate the System; alternatively, if the System is to be ground-mounted, then the soil and subsurface conditions are sufficient to accommodate the System; and
  - iv) Solar Renewable Energy Credits (“SREC”) Prices do not decrease from the current Public-School price of \$59.81 per MWh (Group A – ComEd, Public School, AC Interconnect of 200-500 kW) as set by the Illinois Power Agency. If prices do change, Econergy Development LLC will seek to increase the PPA price to make up for this projected decrease in revenue. If block prices are increased, Econergy Development will share in the increase with the School District by reducing the PPA price. Any decrease or increase in the PPA will only happen after Purchaser has been given 30 days written notice by Seller.

If any one of the conditions precedent above is not satisfied by the date that is twelve (12) months after the Effective Date, Seller may terminate this Agreement without liability.

- 1.c. Purchaser’s Conditions Precedent. In the event that Seller has not initiated Development Activities by the date that is twelve (12) months after the Effective Date for reasons other than a breach by Purchaser of its obligations hereunder, Purchaser may terminate this Agreement without liability.

## 2. INSTALLATION OF SYSTEM.

- 2.a. Installation. Seller shall cause the System to be designed, engineered, installed, and constructed substantially in accordance with Applicable Law and prudent industry practice by the engineering, procurement, and construction company (EPC). Purchaser shall be given the opportunity to review and satisfy itself that the System, if installed according to the plans, will not damage Purchaser's property or interfere with Purchaser's operations—such review and approval not to be unreasonably withheld or delayed. If Purchaser fails to approve or to reject such construction plans within five (5) Business Days of receipt, such plans shall be deemed to be approved by Purchaser. Any approval or deemed approval of construction plans by Purchaser shall not relieve Seller of its obligations under this Agreement. Seller shall procure all materials and equipment for the installation of the System and maintain the same at the Premises. Seller shall make reasonable commercial efforts to procure and install the particular brand of components (including solar panels and inverters) as identified in Exhibit B; however, Seller may, in its discretion, substitute any components of the System with components of a reasonably similar nature and quality. Seller's EPC shall perform the installation of the System in a manner that minimizes inconvenience to and interference with Purchaser's existing use of the premises. Seller and its EPC may use contractors and subcontractors to perform its obligations under this Agreement.
- 2.b. Permits and Approvals. Seller and its EPC shall be responsible for and bear all costs associated with applying for and obtaining all permits, licenses and approvals required for the installation, operation, and maintenance of the System. Purchaser shall cooperate with Seller and the EPC in connection with obtaining such approvals and permits.
- 2.c. Notice of COD. Seller shall notify Purchaser when the System is capable of Commercial Operation (such date, the "Commercial Operation Date"), in the form of a notice, and shall in such notice specify to Purchaser the Commercial Operation Date.

## 3. O&M; OWNERSHIP OF SYSTEM AND ENVIRONMENTAL ATTRIBUTES.

- 3.a. Ownership. The System and the associated Environmental Attributes shall be owned by Seller or its Financing Party and shall be operated by Seller at its sole cost and expense. The Parties agree that the System is personal property and shall not be deemed a part of, or fixture to, the Premises.
- 3.b. Operation & Maintenance. "System Operation(s)" means all actions, including monitoring and maintaining the System, necessary for Seller to meet its obligations herein. Any repair or maintenance (including emergency repairs) of the System shall be completed by or for Seller, at its sole cost and expense, for Seller's benefit as legal and beneficial owner or lessee of the System. The System shall at all times retain the

legal status of personal property and not as a fixture. Purchaser shall not attempt or perform any operation or maintenance of the System except as otherwise expressly set forth in this Agreement. All maintenance procedures required hereby shall be undertaken and completed in accordance with the manufacturer's recommended procedures, and by properly trained, licensed, and certified maintenance sources and maintenance personnel, so as to keep the System in as good operating condition as upon the Commercial Operation Date of such System, ordinary wear and tear excepted. Seller shall bear all risk of loss with respect to the System.

- 3.c. Metering Equipment. The EPC shall install, and the Operations & Maintenance Provider shall maintain a kilowatt-hour (kWh) meter for the measurement of electrical energy provided to the System as may be required for use at the Premises in accordance with Applicable Laws.
- 3.d. Emergencies. Except as otherwise set forth herein, the Parties each shall notify the other within twenty-four (24) hours following their discovery of any material malfunction in the operation of the System or of their discovery of an interruption in the supply of Solar Services.
- 3.e. Prohibition. Purchaser shall not make or attempt to make any repairs, adjustments, modifications or any other changes to the System or the System meter.

#### 4. PRICE AND SALE OF SOLAR SERVICES.

- 4.a. Purchase and Sale of Solar Services. Commencing on the Commercial Operation Date, Seller shall make available to Purchaser, and Purchaser agrees to purchase one hundred percent (100%) of the Solar Services of the System.
- 4.b. Price. As consideration for Solar Services produced by the System during each calendar month, Purchaser shall pay to Seller a monthly payment ("Monthly Payment") equal to the product (x) of Actual Monthly Service Production for the System for the relevant month multiplied by (y) the price per kWh for Solar Services as specified in Exhibit C (the "kWh Rate").
- 4.c. Invoices & Payment. Seller shall provide an invoice to Purchaser on or about the fifth (5th) day of each month (each an "Invoice Date"), commencing on the first Invoice Date to occur after the Commercial Operation Date. All invoices shall be sent to the address for the applicable Party as set forth in Section 13. Purchaser shall pay all amounts due within thirty (30) days after the applicable Invoice Date. In the event a Party disputes all or a portion of an invoice, or any other claim or adjustment arises, that Party shall pay the undisputed portion when due and provide the other Party notice of the dispute and the amount in dispute. In such event, the Parties shall first use good faith, reasonable, diligent efforts to resolve such dispute within a reasonable period of time not to exceed thirty (30) days from the date of such notice.

## 5. CERTAIN ADDITIONAL COVENANTS OF PURCHASER.

- 5.a. Site Access. Purchaser shall provide Seller and its EPC with access, at all times, to the Premises to allow Seller to perform the Solar Services as contemplated herein, including ingress and egress rights to the Premises.
- 5.b. Security. Purchaser agrees that its normal security measures, practices, and policies which apply to its own Premises shall also apply to the System. Purchaser shall take all commercially reasonable steps to limit access by third parties to areas of the Premises on which the System is situated. Such steps shall include, but not be limited to, fencing any ground mounted System and locking roof access for any rooftop System. Purchaser shall be liable to Seller for all damage caused to the System by the result of actions (or negligence) of third parties who access the System in contravention of the preceding sentence of this Section 5.b to the extent such access is a result of Purchaser's negligence and then only to the extent such damage is not covered by Seller's insurance.
- 5.c. Liens.
- i) Purchaser shall not directly or indirectly cause to exist any lien on the System.
  - ii) Purchaser represents that as of the Effective Date, the mortgagee (if any) identified in Exhibit B is the only holder of a lien on the Premises, and, to Purchaser's knowledge, the only party that has the legal right to place a lien on the Premises.
  - iii) Purchaser shall use reasonable commercial efforts to notify all parties having an interest in or lien upon the real property comprising the Premises (a) of the existence of the System and (b) of the legal status or classification of the System as personal property.
- 5.d. Roof Warranty or Soil Warranty; Repairs. In the event that the System is mounted on the roof of any structure on the Premises, Purchaser represents and warrants that each such said roof is structurally sound, free of defects, and is in such a condition as adequately to be able to support the installation of the System; alternatively, in the event that the System is mounted on the ground / soil of the Premises, Purchaser represents and warrants that it has no actual or constructive knowledge of any latent defect in the ground or soil that would cause such ground or soil to be unsuitable for the purposes of supporting the System. The roof and soil warranties (as applicable) set forth in the preceding sentence do not constitute any warranty by Purchaser concerning the output of the System, the ability of the System to generate electricity, or the ability of the System to generate income at the levels estimated by Seller—Purchaser specifically does not make any such warranties to Seller. If Purchaser or Purchaser's landlord decides to repair or remediate the Premises (including, if the System is roof-mounted, the roof thereof) for any reason not directly related to damage

caused by the System, and if such repair requires the partial or complete temporary disassembly or relocation of the System, Purchaser shall pay Seller for (i) all work required by Seller to disassemble or move the System, and (ii) Seller's reasonable estimate of its reduced revenue (from Solar Services and Environmental Attribute sales) that occurred as a consequence of such roof repair or remediation. Purchaser shall not move, disassemble, or otherwise alter the System.

- 5.e. Tax on Sale of Solar Services. Purchaser shall be responsible for any taxes imposed or by any Government Authority and paid by Seller due to Seller's sale of the Solar Services to Purchaser (other than income taxes imposed directly upon Seller). Seller shall notify Purchaser in writing with a detailed statement of such amounts, which will be invoiced by Seller.
- 5.f. Notice of Damage. Purchaser shall promptly notify Seller it is aware of any damage to or loss of the use of the System that could reasonably be expected to adversely affect the System or the provision of the Solar Services.
- 5.g. Shading. Purchaser shall use all commercially reasonable means to prevent any shading of the System by any party. In the event Purchaser tolerates or causes any shading of the System, Purchaser shall be liable to Seller for Seller's lost revenue—as reasonably calculated by Seller—as a result of such shading.
- 5.h. Excavation. Purchaser shall not dig or excavate under a ground-mounted system, nor permit excavation, so near the sides of or underneath the Power Facilities or take any other actions that would undermine or otherwise adversely affect their stability and/or jeopardize the System without the consent of the Seller. Such consent will not be unreasonably withheld.

## 6. CERTAIN ADDITIONAL COVENANTS OF SELLER; SELLER WARRANTIES.

- 6.a. Removal of System at Expiration or Termination of Agreement. Within one hundred and eighty days (180) days after the expiration or earlier termination of this Agreement, Seller shall, at its expense, remove the System from the Premises, and return the ground or roof surface to its original condition, ordinary wear and tear excluded.
- 6.b. System Condition. Seller shall take all actions reasonably necessary to ensure that the System is capable of providing Solar Services at a commercially reasonable continuous rate.
- 6.c. Compliance with Law. Seller shall comply with all Applicable Law in connection with this Agreement, including those related to health and safety.
- 6.d. Structure Warranty. If Seller (or any of their respective contractors or subcontractors) alters, modifies or penetrates any structure, improvements or any portion thereof located on the Premises in performing the installation, repair, maintenance, or removal

services, Seller shall promptly repair such damage to Purchaser's reasonable satisfaction and Seller hereby warrants any repairs made to the structure(s) or improvement(s) by Seller (or its contractor(s) or subcontractor(s)) (the "Structure Warranty").

## 7. ASSIGNMENT.

- 7.a. Assignments by Seller. Seller shall at all times have the right to sell, assign, encumber, transfer or grant equal or subordinate rights and interests (including co-leases, separate leases, subleases, licenses or similar rights (however denominated)) in, the Leasehold Estate and/or any or all right or interest in this Agreement, or any or all right or interest of Purchaser in the Property or in any or all of the Power Facilities that Seller may now or hereafter install on the Property, to one or more persons (an "Assignee"), in each case without Purchaser's consent; provided, however, that any and all such transfers and transferees shall be subject to all of the terms, covenants and conditions of this Agreement. Seller shall notify Purchaser in writing of any such sale, assignment, transfer or grant. Upon Seller's assignment of its entire interest hereunder as to all or any portion of the Property, or as may otherwise be provided in the applicable sale, assignment, transfer or grant document, Purchaser shall recognize the Assignee as Seller's proper successor, the Assignee shall have all of the assigned rights, benefits and obligations of Seller under and pursuant to this Agreement, and Seller shall be relieved of all of its obligations relating to the assigned interests under this Agreement that relate to acts or omissions that occur or accrue following the effective date of such sale, assignment, transfer or grant.
- 7.b. Assignments by Landowner. The burdens of this Agreement and other rights contained herein shall run with and against the Property and shall be a charge and burden thereon for the duration of this Agreement and shall be binding upon and against Purchaser and its successors and assigns. Purchaser shall notify Seller in writing of any sale, assignment or transfer of any of Purchaser's interest in the Property, or any part thereof. Until such notice is received, Seller shall have no duty to any successor Purchaser, and Seller shall not be in default under this Agreement if it continues to make all payments to the original Purchaser before notice of sale, assignment or transfer is received. Purchaser agrees it will not assign the rights to payments due to Purchaser under this Agreement except to a successor owner of the Property, and in no case shall Purchaser sever or attempt to sever the Property's solar energy rights or interests from the Property's fee title or otherwise convey, assign or transfer or attempt to convey, assign or transfer this Agreement, except to a successor owner of the Property.
- 7.c. Cooperation with Financing.
- i) Purchaser acknowledges that Seller may be financing the acquisition and installation of the System through a System equipment lessor, lender and/or one or more financial institutions (each, a "Financing Party") and that Seller may sell or assign the System or may secure Seller's obligations by, among other

collateral, a pledge or collateral assignment of this Agreement and a senior security interest in the System. Purchaser shall cooperate with Seller and Financing Parties in connection with such financing of the System, including (a) the furnishing of such information, and (b) the giving of such certificates regarding factual matters, as Seller and Financing Parties may reasonably request.

- ii) Upon Seller's notice to Purchaser of the identity and address of the Financing Party that will provide financing to Seller in respect of the System, such Financing Party shall become a third-party beneficiary of this Agreement.

## 8. INSURANCE.

8.a. Generally. The Parties shall each maintain the following insurance coverages in full force and effect throughout the Term, either through insurance policies or acceptable self-insured retentions a broad form comprehensive coverage policy of public liability insurance insuring Seller and Purchaser (as an additional insured) against loss or liability caused by Seller's occupation and use of the Property under this Agreement, in an amount not less than One Million Dollars (\$1,000,000) of combined single limit liability coverage per occurrence, accident or incident. Such coverage may be provided as part of a blanket policy covering other properties. Seller shall carry adequate property loss insurance on the System which need not be covered by the Purchaser's property coverage. The policy amounts set forth in the first sentence of this Section 8.a are policy minimums—either Party may obtain insurance at any time during the Term in excess of the aforementioned minimum amounts. Each Party also may obtain such other, additional insurance as it deems prudent in its sole discretion.

8.b. Certificates of Insurance. If requested by the other Party, a Party shall furnish current certificates evidencing that the insurance required under Section 8.a is being maintained.

## 9. EVENTS OF DEFAULT; REMEDIES EVENTS OF DEFAULT.

9.a. Event of Default. An "Event of Default" means, with respect to a Party (the Party defaulting), the occurrence of any of the following:

- i) the failure to make, when due, any payment required under this Agreement if such failure is not remedied within thirty (30) days;
- ii) the failure to perform any material covenant or obligation set forth in this Agreement, if such failure is not remedied within thirty (30) days after receipt of notice; provided, however, that if such material covenant or obligation may be cured, but not within such thirty (30) day period, and the defaulting party has commenced curing such default and is at all times diligently pursuing the cure thereof, such further period as may be necessary for up to an additional sixty (60) days;

- iii) such Party (a) applies for or consent to the appointment of, or the taking of possession by, a receiver, custodian, trustee or liquidator of itself or of all or a substantial part of its property; (b) admits in writing its inability, or be generally unable, to pay its debts as such debts become due; (c) makes a general assignment for the benefit of its creditors; (d) commences a voluntary case under any bankruptcy law; (e) files a petition seeking to take advantage of any other relating to bankruptcy, insolvency, reorganization, winding up, or composition or readjustment of debts; or (f) fails within one hundred eighty (180) days of the filing against it of an involuntary case under any bankruptcy law to have such involuntary case dismissed; or
  - iv) such Party fails to provide or maintain in full force and effect any required insurance coverage, if such failure is not remedied within ten (10) Business Days after receipt of notice from the non-defaulting Party to the defaulting party.
- 9.b. Remedies. If an Event of Default has occurred, the non-defaulting Party shall have the right (without limiting any other rights or remedies available under Applicable Law), by notice to the defaulting Party, to terminate this Agreement. If the non-defaulting Party is Seller, and Seller elects to terminate this Agreement, Purchaser shall pay to Seller as liquidated damages an amount equal to the greater of (i) the applicable Early Termination Fee, or (ii) the Fair Market Value of the System on the date of such demand by Seller. Should Purchaser pay such liquidated damages, they would retain ownership of the system.
- 9.c. Remedies Are Cumulative. No remedy herein conferred upon or reserved to a Party is intended to be exclusive of any other remedies provided for in this Agreement, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy of such Party given hereunder or now or hereafter existing at law, in equity, by contract or otherwise. Every right, power and remedy given to a Party by this Agreement, at law, in equity, by contract or otherwise shall be concurrent and may be pursued separately, successively or together against the other applicable Party hereto, and every right, power and remedy given to such Party by this Agreement, at law, in equity, by contract or otherwise may be exercised from time to time as often as may be deemed expedient by such Party.
- 9.d. Duty to Mitigate. Each Party agrees to undertake reasonable commercial efforts to mitigate any loss or damage it may suffer as a result of a breach or default by any other Party. In the Event of Default by Purchaser, Seller may seek to mitigate damages by selling power to the applicable power grid.
- 9.e. Interest. Unpaid sums (including unpaid liquidated damages) will accrue interest at the lesser of one and one-half percent (1.5%) per month or the maximum rate allowed by law.



## 10. FORCE MAJEURE.

- 10.a. Definition. “Force Majeure Event” means any act or event that prevents the affected Party from performing its obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party. Subject to the foregoing conditions, a Force Majeure Event shall include without limitation the following acts or events: (i) sabotage, riots or civil disturbances; (ii) acts of God; (iii) acts of the public enemy; (iv) terrorist acts affecting the Premises; (v) volcanic eruptions, earthquake, hurricane, flood, ice storms, explosion, fire, lightning, landslide or similarly cataclysmic occurrence; (vi) any action or inaction by any Governmental Authority or applicable local utility which prevents or prohibits the Parties from carrying out their respective obligations under this Agreement, including but not limited to curtailment or reduction of energy production required by the utility or grid operator, or a power or voltage surge caused by someone other than Seller; (vii) general strikes and labor disturbances; (viii) economic collapse of the United States of America or the state or commonwealth within the United States of America in which the Premises are located; (ix) the independence, separation from, or other termination of association (regardless of cause) from the United States of America by the state or commonwealth within which the Premises are located; and (x) bankruptcy, insolvency, or other failure of a Party’s general banking institution.
- 10.b. Excused Performance. Except as otherwise specifically provided in this Agreement, neither Party shall be considered in breach of this Agreement or liable for any delay or failure to comply with the Agreement (other than the failure to pay amounts due hereunder), if (but only to the extent that) such delay or failure is attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section 10 shall promptly (i) notify the other Party in writing of the existence of the Force Majeure Event and (ii) exercise all commercially reasonable efforts necessary to minimize delay caused by such Force Majeure Event.
- 10.c. Termination in Consequence of Force Majeure. If a Force Majeure Event shall have occurred that has affected Seller's performance of its obligations hereunder and that has continued for a period of one hundred eighty (180) consecutive days or three hundred and sixty-five (365) days in the aggregate, then Purchaser shall be entitled to terminate this Agreement without further liability.

## 11. REPRESENTATIONS AND WARRANTIES.

- 11.a. Representations and Warranties. Each Party represents and warrants to the other as of the Effective Date that:
- i) This Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited by

applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to creditors' rights generally;

- ii) It is duly organized and validly existing and in good standing in the jurisdiction of its organization;
- iii) It has taken all requisite corporate or other action to approve the execution, delivery, and performance of this Agreement; and
- iv) It has the full right and authority to enter into, execute, deliver, and perform its obligations under this Agreement.
- v) Purchaser further represents and warrants to Seller that no hazardous substances have been released at or in vicinity of the Premises that could reasonably be expected to have a material adverse impact on Seller's ability to perform its obligations hereunder or otherwise result in liability to Seller.

## 12. MUTUAL INDEMNITY.

- 12.a. Mutual Indemnity. To the extent allowable by law, each Party (the "Indemnitor") hereby indemnifies and agrees to defend and hold harmless the other Party (the "Indemnitee") from and against any and all third party claims, to the extent arising from injury to persons or property caused by negligence, or any material breach of this Agreement by the Indemnitor or any of its directors, officers, employees or agents; provided, however, that the Indemnitor shall not have any obligation to indemnify the Indemnitee from or against any losses, liabilities, damages, costs, expenses, and attorneys' fee, to the extent caused by, resulting from, relating to or arising out of the negligence or intentional misconduct of the Indemnitee or any of its directors, officers, employees or agents.

## 13. NOTICES.

- 13.a. Notice Addresses. Unless otherwise provided herein, all notices and communications concerning this Agreement will be in writing and addressed to the other Party as set forth as follows:

Notices to be sent to:

Attn: Haj Young  
Seller: Econergy Development LLC  
Address: 1720 West Division Street  
City Chicago, IL 60622  
Email: Haj@Econergy.net

Notices to be sent to:

Attn: \_\_\_\_\_  
Purchaser: Joliet Township High School District 204  
Address: \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
Email: \_\_\_\_\_

- 14.b. Notice. Any notice or other communications hereunder shall be deemed to have been received (unless otherwise set forth herein) (i) on delivery if in person; (ii) on the second day following deposit with an overnight express agency, fees prepaid, or mailed by United States express, certified or registered mail, postage prepaid, return receipt requested; or (iii) on the same day if sent via email, to the other Party at the preceding addresses, or to such other address as shall be later provided in writing by one Party to the other

14. CONFIDENTIALITY / PROPRIETARY INFORMATION.

- 14.a. Proprietary Information. The Parties to this Agreement shall hold in confidence, and withhold from third parties, any and all Proprietary Information (as defined below) disclosed by one Party to the other and shall use the other Party's Proprietary Information only for the purposes stated herein (the "Permitted Purposes") and for no other purpose unless the disclosing Party shall agree herein or hereafter in writing. Each Party agrees to safeguard from theft, loss, and negligent disclosure the other Party's Proprietary Information received pursuant to this Agreement by utilizing the same degree of care as the receiving Party utilizes to safeguard its own Proprietary Information of a similar character from theft, loss, and negligent disclosure, but in no event less than reasonable care. Each Party agrees to limit access to Proprietary Information to those officers, directors, and employees within the receiving Party's organization, and to the Party's subcontractors, who reasonably require such access to accomplish the Permitted Purposes. Each Party agrees not to reproduce or copy by any means the Proprietary Information of the other Party except as reasonably required to accomplish the Permitted Purposes. The Parties shall not remove any trademark or proprietary rights legend from the Proprietary Information of the other Party. All Proprietary Information disclosed pursuant to this Agreement shall be and remain the property of the disclosing Party or its third-party suppliers. Except as expressly specified in this Agreement, neither Party to this Agreement acquires any license, right, title, or interest in and to the Proprietary Information received from the other Party. Each Party shall inform such employees of the non-disclosure obligations set forth herein and shall obligate in writing any subcontractors to comply with the non-disclosure requirements stated herein. Each Party shall give prompt written notice to the other Party upon becoming aware of any unauthorized use or disclosure of the Proprietary Information. Each Party agrees to use its best efforts to remedy such unauthorized use or disclosure of the Proprietary Information at its own expense. Each Party acknowledges and agrees that in the event of an unauthorized use, reproduction, distribution, or disclosure of any Proprietary Information, the other Party will not

have an adequate remedy at law and, therefore, injunctive or other equitable relief would be appropriate to restrain such use, reproduction, distribution, or disclosure, threatened or actual. Neither Party shall be liable for use nor disclosure of what would otherwise be considered Proprietary Information if it can establish by contemporaneous, clear, and convincing written evidence that such information, in substantially the same form and content: (i) is or becomes a part of the public knowledge without breach of the Agreement by the receiving Party; (ii) is known to the receiving Party without restriction as to further disclosure when received; (iii) is independently developed by the receiving Party without the use, directly or indirectly, of information received under this or other obligation of confidentiality with the disclosing party; (iv) becomes known to the receiving Party from a third party who had a lawful right to disclose it without breaching the Agreement; (v) is approved in writing for release or use by an authorized employee of the other Party; or (vi) is disclosed in response to a valid order of a court of competent jurisdiction or other governmental body of the United States of America or any political subdivision thereof, or is otherwise required to be disclosed by law; provided, however, that the receiving Party shall first have given prompt written notice to the disclosing Party in order to allow objection by the disclosing Party to any such order or requirement, or to otherwise protect the rights of the disclosing Party and its suppliers prior to the disclosure. If a particular portion or aspect of the Proprietary Information becomes subject to any of the foregoing exceptions, all other portions or aspects of such information shall remain subject to all of the above non-disclosure provisions. Examples of Proprietary Information include, but are not limited to, System designs and pricing information.

- 14.b. Publicity. Each Party, without permission from the other Party hereto, may advertise and announce the existence of the System upon the Premises and the participation of the Parties in the project; such advertisement and announcements may be for any lawful purpose. Each Party may take, distribute, and otherwise use photographs of the System in connection therewith. Purchaser, however, shall not disclose the kWh Rate or material terms of this Agreement concerning System finances without the prior written consent of the Seller except as to Affiliates of Purchaser.

#### 15. MISCELLANEOUS TERMS; INTERPRETATION.

- 15.a. Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Purchaser.
- 15.b. Captions; Headings. The captions or headings in this Agreement are for convenience only and shall not be considered in interpreting the Agreement.
- 15.c. Integration and Exhibits. This Agreement consists of fourteen (14) pages followed by one (1) signature page and three (3) exhibits, each of which are fully incorporated hereunto: Exhibit A: Definitions; Exhibit B: Description of Premises

and System; Exhibit C: Principal Commercial Terms. This Agreement, together with the exhibits attached hereto, constitutes the entire agreement and understanding between Seller and Purchaser with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof.

- 15.d. Severability. If any term, covenant, or condition in this Agreement shall, to any extent, be invalid or unenforceable in any respect under Applicable Law, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Law.
- 15.e. Limited Effect of Waiver. The failure of Seller or Purchaser to enforce any of the provisions of this Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.
- 15.f. Liquidated Damages Not Penalty. Purchaser acknowledges that the Early Termination Fee constitutes liquidated damages, and not penalties, in lieu of Seller's actual damages resulting from the early termination of this Agreement. Purchaser further acknowledges that Seller's actual damages may be impractical and difficult to accurately ascertain, and in accordance with Purchaser's rights and obligations under this Agreement, the Early Termination Fee constitutes fair and reasonable damages to be borne by Purchaser in lieu of Seller's actual damages. Seller acknowledges that the Lost Savings constitutes liquidated damages, and not penalties, in lieu of Purchaser's actual damages resulting from deficient performance by Seller under this Agreement.
- 15.g. Governing Law. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Illinois and without reference to any choice of law principles.
- 15.h. Consent to Jurisdiction. THE PARTIES HERETO EXPRESSLY ACKNOWLEDGE AND AGREE THAT THE DESIGNATED, EXCLUSIVE AND PROPER VENUE OF ANY LEGAL DISPUTE, QUESTION OR INTERPRETATION, CLAIM, DECLARATORY JUDGMENT ACTION, BANKRUPTCY OR OTHER LITIGATION WITH RESPECT TO THIS AGREEMENT SHALL BE EXCLUSIVELY AND SOLELY A FEDERAL OR STATE COURT IN THE COUNTY OF COOK, STATE OF ILLINOIS. THE PARTIES HERETO HEREBY EXPRESSLY CONSENT TO THE EXERCISE OF PERSONAL JURISDICTION BY, LAYING OF VENUE IN AND EXCLUSIVE JURISDICTION OF, SUCH COURT.
- 15.i. Successors and Assigns. This Agreement and the rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of Seller and Purchaser and their respective permitted successors and assigns.

- 15.j. Relation of the Parties. The relationship between Seller and Purchaser shall not be that of partners, agents, or joint ventures for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purpose.
- 15.k. Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument. Facsimile or electronic signatures shall have the same effect as original signatures and each Party consents to the admission in evidence of a facsimile, electronic copy, or photocopy of this Agreement in any court or arbitration proceedings between the Parties.
- 15.l. Records. Each Party shall use commercially reasonable efforts to keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement.

*[REST OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]*

IN WITNESS WHEREOF, the Parties hereto have duly executed and delivered this Agreement as of the Effective Date.

**SELLER: Econergy Development LLC**

Signature:

Print Name:

Title:

Date:

**PURCHASER: Joliet Township High School District 204**

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT A

### DEFINITIONS

In addition to other terms specifically defined elsewhere in this Agreement, where capitalized, the following words and phrases shall be defined as follows:

“Actual Monthly Service Production” means the amount of energy recorded by Seller’s metering equipment during each calendar month of the Term, pursuant to Section 4.b.

“Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such first Person.

“Agreement” means this Solar Power Purchase Agreement, including the preamble and the Exhibits attached hereto and incorporated herein by reference.

“Applicable Law” or “Applicable Laws” means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, order, decree, judgment, decision, or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity.

“Business Day” or “Business Days” means any day other than Saturday, Sunday or any other day on which banking institutions in Chicago, Illinois, are required or authorized by Applicable Law to be closed for business.

“Commercial Operation” means that the system is ready for regular operation, is connected to the Premises’ electrical system, and is capable of producing electricity.

“Commercial Operation Date” has the meaning set forth in Section 2.c.

“Confidential Information” means any non-public confidential or proprietary information (whether conveyed orally, electronically or in hard copy) of a Party or its Affiliates relating to this Agreement, and identified as confidential by the disclosing party; provided, however “Confidential Information” shall not include information that (i) is required to be disclosed by a Governmental Authority, (ii) is independently developed by the receiving Party, or (iii) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

“Early Termination Fee” means the greater of the Fair Market Value set forth in this Exhibit A or the Total Projected Revenue minus Operating Expenses as set forth in this Exhibit A for the remainder of the Term of this Agreement discounted at 6% per annum.

“Effective Date” has the meaning set forth in the preamble hereof.

“Environmental Attributes” means, without limitation, carbon trading credits, renewable energy credits or certificates, production-based incentives, emissions reduction credits, investment tax credits, installation or production tax credits or tax grants, emissions allowances, green tags,



tradable renewable credits, Green-e® products, accelerated depreciation, and all other solar or renewable energy subsidies and incentives.

“Estimated Annual Production” means Seller’s estimated annual production of the System as described in Exhibit C.

“Event of Default” has the meaning set forth in Section 9.a.

“Fair Market Value” means, with respect to any tangible asset or service, the price that would be negotiated in an arm’s-length, free market transaction, for cash, between an informed, willing seller and an informed, willing buyer, neither of whom is under compulsion to complete the transaction.

“Financing Party” has the meaning set forth in Section 7.c.

“Force Majeure Event” has the meaning set forth in Section 10.a.

“Governmental Authority” means any federal, state, regional, county, town, city, or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government.

“Installation Work” means the construction and installation of the System and the start-up, testing and acceptance (but not the operation and maintenance) thereof, all performed by or for Seller at the Premises.

“Indemnitee” has the meaning set forth in Section 12.a.

“Indemnitor” has the meaning set forth in Section 12.a.

“Invoice Date” has the meaning set forth in Section 4.c.

“kWh Rate” has the meaning set forth in Section 4.b, as set forth in Exhibit C.

“MACRS” stands for modified accelerated cost recovery system. It is the tax depreciation system used in the United States to calculate asset depreciation.

“Monthly Payment” has the meaning set forth in Section 4.b.

“Operating Expenses” means general operating costs for Insurance, management fees and system maintenance.

“Party” or “Parties” has the meaning set forth in the preamble hereof.

“Permitted Purposes” has the meaning set forth in Section 14.a.

“Person” means an individual, partnership, corporation, limited liability company, Governmental

Authority, or other entity.

“Premises” means the premises described in of Exhibit B, including the entirety of any structures and underlying real property located at the address described in Exhibit B.

“Proprietary Information” has the meaning set forth in Section 14.a.

“Purchaser” has the meaning set forth in the preamble hereof.

“Routine Maintenance” means commercially reasonable maintenance of the System, including but not limited to maintenance recommended by System component manufacturers.

“Seller” has the meaning set forth in the preamble hereof.

“Solar Services” means the supply of on-site electrical energy output from the System together with certain peak load coincident reductions, possible building energy conservation (if specifically described in Exhibit B hereto), and other on-site energy services or efficiencies associated with the solar energy production described herein.

“System” means the integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, batteries, energy storage systems, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring, more specifically described in Exhibit B and interconnected with the local electric utility, owned or leased by Seller and installed at the Premises.

“System Operations” has the meaning set forth in Section 3.b.

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

“Term” has the meaning set forth in Section 1.a.

“Total Projected Revenue” means the product of the total projected kWh production of the System multiplied by the sum of the kWh Rate and the SREC price set forth in Section 1.b. The total kWh production is calculated by the average annual system production for the past three consecutive years. If the System has not produced for three consecutive years, the total kWh production will instead be calculated by the average annual electricity consumption as provided independently by the utility of record. In addition, this value includes any benefits derived from Tax Credits and MACRS depreciation equal to 85% of the system value.

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**EXHIBIT B**

DESCRIPTION OF PREMISES AND SYSTEM

Premises & Solar System Location: Rooftop System to be installed at

Joliet Administration Building  
300 Caterpillar Drive, Joliet, IL 60436

Owner of Premises as of Effective Date: Joliet Township High School District 204

Mortgage of Premises as of Effective Date: N/A

Anticipated Solar System Size (DC): 485 kw

Modules: \_\_\_\_\_, or equivalent.

Inverters: \_\_\_\_\_, or equivalent.

Purchaser's Current Utility Name: Commonwealth Edison

Purchaser's Utility Hourly Rate for Energy (as of Effective Date): \_\_\_\_\_

System Components Include:

Solar panels, support system, inverter system, wire kits, and data monitoring system.

System size may be reduced during final design if, for example, structure issues are identified with respect to the roof.

*[REST OF PAGE INTENTIONALLY LEFT BLANK]*

## EXHIBIT C

### PRINCIPAL COMMERCIAL TERMS

1. kWh Rate.

kWh Rate: **\$.0786** escalated by **2.0%** on each anniversary of the Commercial Operation Date.

2. Estimated Year 1 Yield: 685,419 kWh

This estimated annual production amount is a good faith estimate of Seller as of the Effective Date and does not constitute a production guaranty.

## **ROOFTOP LEASE AGREEMENT**

This ROOFTOP LEASE AGREEMENT (this “Agreement”) is made, dated and effective as of \_\_\_\_\_, 2024 (the “Effective Date”), between Joliet Township High School District 204 (“Landowner”), and Econergy Development LLC a Wyoming limited liability company (“Lessee”), in light of the following facts and circumstances:

### **RECITALS**

WHEREAS, Lessee is in the business of developing, constructing, erecting, and operating solar energy conversion systems and power generation facilities for the production of electrical energy;

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

WHEREAS, Lessee desires to lease the Property.

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

### **AGREEMENT**

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

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

1.2. Purpose. The foregoing leasehold estate and grant of rents, royalties, credits and profits created by this Agreement (collectively, the “Leasehold Estate”) are for (i) the production of energy, including solar energy, and for any and all related or ancillary purposes, including storage of any energy so produced, and Lessee shall have the exclusive right to use the Property and the unobstructed receipt of and access to sunlight across the Property for solar energy purposes, to convert all of the solar resources of the Property and to derive all profits therefrom, (all of the foregoing activities, collectively, (“Development Activities”), including, without limitation:

(a) determining the feasibility of solar energy conversion and power generation on the Property, including studies of available sunlight and other data and extracting soil samples;

(b) constructing, reconstructing, erecting, installing, improving, replacing, relocating and removing from time to time, and maintaining, repairing, using and operating, any new, existing, additional or repowered (i) solar power generating equipment, inverters, mounting and tracking systems, monitoring systems, solar collectors, solar energy conversion systems and other power generation facilities, of any type or technology (the “Solar Equipment”); (ii) transmission facilities, including without limitation, overhead and underground transmission, distribution or collector lines, circuit breakers, conduits, foundations, footings, towers, poles, crossarms, guy lines, anchors and wires; (iii) overhead and underground control, communications and radio relay systems; (iv) substations, power blocks, interconnection and/or switching facilities and electric transformers; (v) energy storage facilities such as backup battery cabinets to protect the district in case of a power outage; (vi) sunlight measurement, research or development equipment; (vii) control, maintenance and administration buildings; (viii) utility installations; (ix) safety protection facilities; (x) signs and fences (collectively, “Power Facilities”), on the Property; and Lessee acknowledges that the Property is a public school district, and access to

the Property shall be strictly for the reasons outlined in this Section 1.2, and the Lessee's activities are not intended to change the Landowner's continued use of its facilities as public schools. Lessee shall secure Landowner's written permission before engaging in any activity involving excavation, earth-moving, facility construction, or permanently affixing fixtures or other items to Landowner's facilities (other than the Solar Equipment on the facility rooftops).

(c) exercising rights of vehicular and pedestrian ingress and egress upon, over and across the Property, for purposes of conducting Development Activities and accessing the Power Facilities (whether such Development Activities are conducted, or Power Facilities are located, on the Property, adjacent to the Property or elsewhere) upon, over and across any and all now existing or hereafter constructed access routes or such new or alternative access routes as Lessee and Landowner shall determine, including the right to use roads, and road-related structures on the Property; and

(d) undertaking any other activities, whether accomplished by Lessee or a third party authorized by Lessee, that Lessee reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing purposes, subject to Landowner approval, which shall not be unreasonably withheld.

1.3. Included Rights and Easements. The following rights and easements shall be included within the Leasehold Estate. Upon Lessee's request, Landowner shall execute and deliver to Lessee one (1) or more documents in recordable form, satisfactory in form and substance to Landowner and Lessee, evidencing the rights and easements granted pursuant to this Section 1.3, and Lessee may cause such documents to be recorded in the official real estate records of the county in which the Property is located.

(a) Sunlight Easement. An easement for receipt of and access to sunlight throughout the Property. Any obstruction to the receipt of and access to sunlight throughout the entire area of the Property is prohibited.

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

(c) Clearance Rights. An easement to trim, cut down and remove all trees (whether natural or cultivated), brush, vegetation and fire and electrical hazards now or hereafter existing on the Property which might obstruct receipt of or access to sunlight throughout the Property or interfere with or endanger the Power Facilities or Lessee's Development Activities, as determined by Lessee in its sole discretion.

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

(e) Utility Lines. An easement for the maintenance, repair and use of utility lines and equipment, including, without limitation, for water, natural gas and electrical transmission and interconnection. Any work by Lessee involving water or natural gas lines requires Landowner's prior written approval.

(f) Signage. An easement to place signs on or proximate to Lessee's Power Facilities.

(g) Access. A non-exclusive easement for access, ingress and egress to and from the Property, in such locations as reasonably selected by Lessee.

**2. Term.**

**2.1 Original Term and Renewal Terms.** This Agreement shall be for an initial term (the “Original Term”) commencing on the Effective Date and continuing until the twenty-fifth (25th) anniversary of the Operations Date (as defined below). As used herein, “Term” shall mean collectively, the Original Term and Renewal Term (as defined below).

**2.2 Operations Date.** For purposes of this Agreement, “Operations Date” shall mean the date the Power Facilities are installed on the Property and begin delivering electricity to the power purchaser.

**2.3 Renewal Terms.** Landowner shall have the option, per direction from Lessee to extend and renew the Original Term of this Agreement for up to two (2) periods of five (5) years each (the “Renewal Term”). Landowner may exercise such option by written notice delivered to Lessee not later than one hundred eighty (180) days prior to the expiration of the Original Term.

**3. Payments to Landowner.** Commencing with the Operations Date and continuing annually until the expiration or sooner termination of this Agreement, Lessee shall pay Owner the base annual fee set forth on Exhibit C. Such annual fees shall be payable each year within forty-five (45) days following the Operations Date or following each anniversary of the Operations Date (as applicable) and shall be prorated (or retroactively adjusted) for any partial one (1) year period preceding the expiration or sooner termination of this Agreement.

**4. Ownership of Power Facilities.** Landowner shall have no ownership or other interest in any Power Facilities installed on the Property, or any profits derived therefrom, and Lessee may mortgage, sell, lease or remove any or all Power Facilities at any time. Landowner shall have no lien or security interest and may not attempt to create a lien or security interest, in the Power Facilities, and expressly waives any statutory lien, landlord’s lien or other lien or security interest. Except for the payments described in Section 3 above, Landowner shall not be entitled to any payments, credits, benefits, emissions reductions, offsets, incentives, grants or allowances of any kind, howsoever entitled, attributable to the Power Facilities or the electric energy, capacity or other generator-based products produced therefrom, all of which shall accrue solely to the benefit of Lessee. Landowner shall have no ownership or other interest in any scientific or engineering data at any point in time or for any duration of time collected at the Power Facilities or on the Property. Such scientific or engineering data is the sole and exclusive property of Lessee. Possession of such data by Landowner shall not constitute ownership of such data.

**5. Taxes.** Lessee shall be responsible for and shall timely pay before the same become delinquent, any taxes, assessments or other governmental charges that shall or may during the Term be imposed on the Power Facilities. Landowner shall be responsible for and shall timely pay before the same become delinquent, all taxes, assessments or other governmental charges that shall or may during the Term be imposed on or arise in connection with the Property itself as a result of the installation of the Power Facilities. Lessee shall pay directly for any increase in such taxes, assessments or other governmental charges accruing during the Term to the extent resulting directly and solely from the presence of the Power Facilities on the Property. Landowner shall deliver to Lessee copies of all notices of or relating to all such charges no later than the earlier of two (2) weeks following Landowner’s receipt of each such notice or forty-five (45) days prior to the date that any such charge is due and payable. Except as specifically provided in this paragraph, Lessee shall not be responsible for any property taxes, assessments or other governmental charges or fees levied against the Property. If Landowner should fail to timely pay any taxes, assessments or other governmental charges for which Landowner is responsible hereunder and foreclosure thereof shall be threatened, then, without limiting Lessee’s other remedies under this Agreement or otherwise, Lessee may (but shall not be obligated to) pay the same, and Landowner shall reimburse Lessee, or Lessee may set off against amounts due from Lessee to Landowner under this Agreement, all such amounts paid, including any late fees or interest, together with any court costs and reasonable attorneys’ fees incurred by Lessee in connection therewith.

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

6.1. Insurance. Lessee shall, at its expense, prior to entering the Property to conduct Development Activities, have in place, and shall thereafter maintain, a broad form comprehensive coverage policy of public liability insurance insuring Lessee and Landowner (as an additional insured) against loss or liability caused by Lessee's occupation and use of the Property under this Agreement, in an amount not less than One Million Dollars (\$1,000,000) of combined single limit liability coverage per occurrence, accident or incident. Such coverage may be provided as part of a blanket policy covering other properties. Certificates of such insurance shall be provided to Landowner upon written request.

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

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

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

6.5. Hazardous Materials. Lessee shall not violate, and shall indemnify Landowner against any violation by Lessee or Lessee's agents or contractors of, any federal, state or local law, ordinance, or regulation relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any substance, material or waste which is now or hereafter classified as hazardous or toxic, or which is regulated under current or future federal, state or local law, ordinance, or regulation, on or under the Property.

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

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



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

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

7.2. **Title to Property.** Except as disclosed on Exhibit B attached hereto and by this reference made a part hereof, Landowner's fee simple title to the Property is free and clear of all liens, encumbrances, easements, leases, mortgages, deeds of trust, security interests, fractured interests, mineral, oil or gas rights, options to purchase or lease, claims and disputes (collectively, "Liens"), and there are no tenants on or other parties in possession of the Property. Landowner shall (i) obtain a commercially reasonable subordination, non-disturbance and attornment agreement or other appropriate agreement from each party holding a Lien (recorded or unrecorded) or in possession of the Property that might interfere with Lessee's rights under this Agreement; (ii) remove any Liens from Landowner's fee simple title to the Property; and (iii) secure the written consent of any Lien holder to this Agreement as necessary to comply with the agreement underlying any such Lien. A subordination, non-disturbance and attornment agreement is an agreement between Lessee and the holder of a Lien providing that the holder of the Lien shall not disturb Lessee's possession or rights under this Agreement or terminate this Agreement so long as Landowner is not entitled to terminate this Agreement under the provisions of this Agreement. Landowner shall not grant, create, allow or suffer any Lien or other encumbrance on title to the Property in addition to those set forth on Exhibit B.

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

7.4. **No Interference.** Landowner's activities and any grant of rights Landowner makes to any person or entity, whether located on the Property or elsewhere, shall not, currently or prospectively, interfere with (i) the construction, installation, maintenance, operation or removal of the Power Facilities; (ii) access over the Property to such Power Facilities; (iii) any Development Activities; or (iv) the undertaking of any other activities permitted hereunder. Without limiting the generality of the foregoing, Landowner shall not engage in any activity that might cause a decrease in the output or efficiency of the Power Facilities. Any grant of rights by Landowner to any person or entity as to the Property shall be subordinate to this Agreement.

7.5. **Siting and Setbacks.** Landowner consents to Lessee's siting of Power Facilities at any location upon the Rooftops of the Property. To the fullest extent applicable and permitted by law, Landowner waives enforcement of, and any and all rights it may have to pursue any remedies under, any state, zoning or local rules, ordinances or requirements related to siting of Power Facilities upon the Property, including setback requirements applicable to the Power Facilities from lot lines and improvements, and agrees not to bring any complaint, suit or action or intervene in any investigation or inquiry by any person or entity with respect thereto. Pursuant to Section 7.6 hereof, Landowner agrees to use commercially reasonable efforts to assist, cooperate and participate in any proceeding and/or petition prepared by Lessee in connection with any modification or variance to an existing siting or setback requirement, including but not limited to bringing such action, or filing such petition, in the name of Landowner.

7.6. Cooperation. Landowner shall assist and fully cooperate with Lessee, at no out-of-pocket expense to Landowner, in complying with or obtaining any land use permits and approvals, building permits, environmental impact reviews or any other approvals required for the financing, construction, installation, replacement, relocation, maintenance, operation or removal of Power Facilities, including execution of applications for such approvals. Landowner shall make available to Lessee copies of all field tiling surveys, plans, entitlement-related studies, and other geotechnical and other site assessments, surveys, environmental assessments, reports, test results, correspondence to or from any governmental agency, and other such records of Landowner relating to the Property.

7.7. Indemnity. Landowner will indemnify Lessee against liability for physical damage to the Property (including any improvements thereon) and for physical injuries to Lessee or the public (including any of Landowner's employees, contractors or agents that have gained access to the Property), to the extent caused by Landowner's activities or the activities of Landowner's employees, contractors or agents on the Property or the adjoining property, except to the extent such damage or injury is caused by the operations, activities, negligence or willful misconduct of Lessee. Landowner shall take reasonable safety measures to reduce the risk that Landowner's activities will cause harm to Lessee or the public. Landowner's obligations under this Section 7.7 shall survive the termination or expiration of this Agreement.

Lessee will indemnify Landowner against liability for physical damage to Landowner's facilities (including any improvements thereon) and for physical injuries to Landowner's employees, students, or the public to the extent caused by Lessee's activities or the activities of Lessee's employees, contractors, or agents on the Property or the adjoining property, except to the extent such damage or injury is caused by the operations, activities, negligence or willful misconduct of Landowner. Lessee shall take reasonable safety measures to reduce the risk that Lessee's activities will cause harm to Landowner or the public. Lessee's obligations under this Section 7.7 shall survive the termination or expiration of this Agreement.

7.8. No Brokers. No brokers' commission, finders' fees or other charges are due any broker, agent or other party in connection with Landowner's execution of this Agreement, or if any are now due or shall become due in the future, then Landowner shall promptly pay the same from its own funds and shall indemnify, hold harmless and defend Lessee against any and all claims and demands therefor made by any such broker, finder, agent or other party, or any of their respective successors and assigns or other parties claiming through them.

7.9. No Litigation. No litigation is pending, and, to Landowner's knowledge, no actions, claims or other legal or administrative proceedings are pending, threatened or anticipated with respect to, or that could affect, the Property, this Agreement or Lessee's rights hereunder.

7.10. Hazardous Materials. Landowner shall be responsible for any and all costs associated with investigation, remediation, or monitoring associated in any way with the cleanup or transportation of any environmental conditions on, under, emanating from, or otherwise associated with the Property.

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

7.12. Landowner's Authority. Landowner has the unrestricted right and authority to execute this Agreement and to grant to Lessee the rights granted hereunder. Each person signing this Agreement on behalf of

Landowner is authorized to do so. When signed by Landowner, this Agreement constitutes a valid and binding agreement enforceable against Landowner in accordance with its terms. Landowner is not the subject of any bankruptcy, insolvency or probate proceeding.

## **8. Assignment.**

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

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

9. **Mortgage Protection.** In the event that any mortgage, deed of trust or other security interest in this Agreement or any Power Facilities is entered into by Lessee or an Assignee, including a sale-leaseback (i.e., a transaction in which Lessee sells its interest in this Agreement and/or the Power Facilities and then leases those interests back from the purchaser) (a “Leasehold Mortgage”), then any person who is the mortgagee or beneficiary of a Leasehold Mortgage, including the purchaser in a sale-leaseback transaction (a “Leasehold Mortgagee”) shall, for so long as its Leasehold Mortgage is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth in this Section 9. Lessee or any Leasehold Mortgagee shall send written notice to Landowner of the name and address of any such Leasehold Mortgagee, as well as any change of the name or address of any Leasehold Mortgagee.

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

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

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

(b) The Leasehold Mortgagee shall have the same period after receipt of notice of default to remedy the default, or cause the same to be remedied, as is given to Lessee after Lessee’s receipt of notice of default, plus, in each instance, the following additional time periods: (i) sixty (60) days, for a total of one hundred twenty (120) days after receipt of the notice of default in the event of any monetary default; and (ii) sixty (60) days, for a total of one hundred twenty (120) days after receipt of the notice of default in the event of any non-monetary default, provided that such one hundred twenty (120) day period shall be extended for the time reasonably required to complete such cure, including the time required for the Leasehold Mortgagee to perfect its right to cure such non-monetary default by obtaining possession of the Property (including possession by a receiver) or by instituting foreclosure proceedings, provided the Leasehold Mortgagee acts with reasonable and continuous diligence. The Leasehold Mortgagee shall have the absolute right to substitute itself for Lessee and perform the duties of Lessee hereunder for purposes of curing such defaults. Landowner expressly consents to such substitution, agrees to accept such performance, and authorizes the Leasehold Mortgagee (or its employees, agents, representatives or contractors) to enter upon the Property to complete such performance with all the rights, privileges and obligations of the original Lessee hereunder. Landowner shall not, and shall have no right to, terminate this Agreement prior to expiration of the cure periods available to a Leasehold Mortgagee as set forth above.

(c) During any period of possession of the Property by a Leasehold Mortgagee (or a receiver requested by such Leasehold Mortgagee) and/or during the pendency of any foreclosure proceedings instituted by a Leasehold Mortgagee, the Leasehold Mortgagee shall pay or cause to be paid all other monetary charges payable by Lessee hereunder which have accrued and are unpaid at the commencement of said period and those which accrue thereafter during said period. Following acquisition of Lessee’s Leasehold Estate by the Leasehold Mortgagee or its assignee or designee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Agreement shall continue in full force and effect and the Leasehold Mortgagee or party acquiring title to Lessee’s Leasehold Estate shall, as promptly as reasonably possible, commence the cure of all defaults hereunder and thereafter diligently process such cure to completion, whereupon Landowner’s right to terminate this Agreement based upon such defaults shall be deemed waived; provided, however, the Leasehold Mortgagee or party acquiring title to Lessee’s Leasehold Estate shall not be required to cure those non-monetary defaults, if any, which are not reasonably susceptible of being cured or performed by such party (“Non-Curable Defaults”). Non-Curable Defaults shall be deemed waived by Landowner upon completion of foreclosure proceedings or acquisition of Lessee’s interest in this Agreement by such party.

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

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

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

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

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

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

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

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

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

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

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

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

## **10. Default and Termination.**

10.1. Landowner's Right to Terminate. Except as qualified by any subsequent actions and approvals of Landowner pursuant to Section 9, Landowner shall have the right to terminate this Agreement if (a) a material default in the performance of Lessee's obligations under this Agreement shall have occurred and remains uncured, (b) Landowner notifies Lessee in writing of the default, which notice sets forth in reasonable detail the facts pertaining to the default and specifies the method of cure, and (c) the default shall not have been remedied within sixty (60) days after Lessee receives such written notice, or, if cure will take longer than sixty (60) days, Lessee has not begun diligently to undertake the cure within the relevant time period and thereafter prosecute the cure to completion. In the event this Agreement is terminated by Landowner in accordance with this paragraph, Landowner and Lessee shall thereafter execute and record a notice of termination evidencing such termination. No termination of this Agreement pursuant to this paragraph shall be effective unless a notice of termination has been executed and recorded in accordance with this paragraph.

10.2. Effect of Termination or Expiration. Upon the termination or expiration of this Agreement, whether as to the entire Property or only as to part, Lessee shall, as soon as practicable thereafter, unless otherwise mutually agreed upon, (a) remove from the Property (or applicable portion thereof) all above surface grade Power Facilities and other personal property owned, located, installed or constructed by or on behalf of Lessee thereon, (b) remove (from the Property or applicable portion thereof) concrete footings, foundations and other fixtures of Lessee, (c) cover up all pit holes, trenches and other borings and excavations made by or on behalf of Lessee on the Property (or applicable portion thereof), (d) leave the surface of the Property (or applicable portion thereof) free from debris arising from the foregoing or from the operations or activities of Lessee and (e) otherwise restore any portion of the Property (or applicable portion thereof) disturbed by Lessee to a condition reasonably similar to its original condition, consistent with the uses permitted by this Agreement. Reclamation shall include, as reasonably required, repair or replacement of damaged drainage tile, leveling, terracing, mulching and other reasonably necessary measures to prevent soil erosion. Landowner shall provide Lessee with reasonable access to the Property during the performance of such removal and other work by Lessee for a period of twelve (12) months following the termination or expiration of this Agreement. During such period, Lessee shall not be required to pay the amounts set forth in Section 3 or other rent. If Lessee fails to remove any Power Facilities within twelve (12) months following the termination or expiration of this Agreement, or such longer period as Landowner may provide by extension, Landowner may do so, in which case Lessee shall reimburse Landowner for reasonable and documented costs of removal and restoration incurred by Landowner, net of any amounts reasonably recoverable by Landowner with respect to the salvage value of any such Power Facilities.

10.3. Mitigation Duty. Notwithstanding anything contained in this Agreement to the contrary, both parties shall use commercially reasonable efforts to mitigate their damages in the event of a default hereunder.

10.4. Default by Landowner. In the event that Landowner fails to comply with or perform any or all of the obligations, covenants, warranties or agreements to be performed, honored or observed by Landowner hereunder, or interferes with Lessee's use of the Property in accordance with the terms of this Agreement, which default continues for more than thirty (30) days after Lessee's delivery of written notice to Landowner specifying

such default, or if such default is of a nature to require more than thirty (30) days for remedy and continues beyond the time reasonably necessary to cure (and Landowner has not undertaken procedures to cure such default within such thirty (30) day period and diligently pursued such efforts to complete such cure), Lessee may exercise any right or remedy available to Lessee at law or in equity, including but not limited to obtaining an injunction.

## **11. Miscellaneous.**

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

b. Condemnation; Casualty. All payments made on account of any taking or threatened taking of the Property or any part thereof in condemnation proceedings or by inverse condemnation by a government agency, governmental body or private party under the exercise of the right of eminent domain may be made to Landowner, except that Lessee shall be entitled to, and Landowner shall request that such condemning authority make payment directly to Lessee of: (i) any removal and relocation costs of the Power Facilities, (ii) any loss of or damage to any Power Facilities, (iii) the loss of use of any portion of the Property by Lessee (including impediments to or interference with the receipt of sunlight) and (iv) Lessee's lost profits, measured in each case with regard to the effect on Lessee's use of the Property and any effect on Lessee's use of other property. If such condemning authority makes all payments to Landowner, then Landowner shall forthwith make payment to Lessee of the award to which Lessee is entitled. Lessee shall have the right to participate in any condemnation settlement proceedings and Landowner shall not enter into any binding settlement agreement without the prior written consent of Lessee, which consent shall not be unreasonably withheld. Should title to or possession of all of the Property be permanently taken, or should a partial taking render the remaining portion of the Property unsuitable for Lessee's use (as determined by Lessee), then Lessee may terminate this Agreement upon such vesting of title or taking of possession. In the event of a casualty that damages or destroys more than ten percent (5%) of the Power Facilities, Lessee shall have the right to terminate this Lease upon written notice to Landowner.

c. Confidentiality. To the fullest extent allowed by law, Landowner shall maintain in the strictest confidence (i) the terms of (including the amounts payable under) this Agreement, (ii) any information regarding Lessee's Development Activities and (iii) any other information that is proprietary or that Lessee requests be held confidential, in each such case whether disclosed by Lessee or discovered by Landowner ("Confidential Information"). Excluded from the foregoing is any such information that is in the public domain by reason of prior publication through no act or omission of Landowner. Landowner shall not use Confidential Information for its own benefit or publish or otherwise disclose it to others; provided, however, that Landowner may disclose Confidential Information to (a) Landowner's personal advisors, (b) any prospective purchaser of the Property or (c) pursuant to lawful process, subpoena or court order; so long as in making such disclosure Landowner advises the person receiving the Confidential Information of the confidentiality thereof and obtains the agreement of said person not to disclose such Confidential Information. The foregoing obligation shall survive the termination of this Agreement.

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

e. Memorandum of Lease Agreement. Landowner and Lessee shall execute in recordable form, and Lessee shall then record, a memorandum of this Agreement satisfactory in form and substance to Landowner and Lessee. If a party requests to record the Agreement with the Country Recorder, the requesting party shall pay all costs of recording such memorandum. Landowner hereby consents to the recordation of the interest of an Assignee in the Property.

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

If to Landowner:

If to Lessee:

Name:  
Title:

Name: Haj Young  
Title: CEO, Econergy Development LLC

**Address:**

**Address:** 1720 West Division Street,  
Chicago, IL 60622

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

g. Further Assurances; Cooperation. Landowner shall fully support and cooperate with Lessee in the conduct of its Development Activities and the exercise of its rights hereunder (including with Lessee's efforts to obtain from any governmental authority or any other person or entity any environmental impact review, use permit, building permit, any other permit of any nature, entitlement, approval, authorization or other rights to sell, assign, transfer or finance any Power Facilities or interest in the Leasehold Estate or under this Agreement or obtain any financing), and Landowner shall perform all such acts (including executing and delivering maps, instruments and documents within ten (10) days after receipt of a written request made from time to time by Lessee) as Lessee may reasonably specify to fully effectuate each and all of the purposes and intent of this Agreement. Without limiting the generality of the foregoing, Landowner shall not oppose, in any way, whether directly or indirectly, any application by Lessee for any permit, approval or entitlement at any administrative, judicial, legislative or other level.

h. Estoppel Certificates. Landowner shall, within ten (10) days after a written request by Lessee, any Assignee or any Leasehold Mortgagee, execute, acknowledge and deliver to the requesting party such estoppel certificates (certifying as to such matters as may reasonably be requested, including, without limitation, that this Agreement is unmodified and in full force and effect (or modified and stating the modifications), the dates to which the payments and any other charges have been paid, and that, to Landowner's knowledge, there are no



defaults existing (or that defaults exist and stating the nature of such defaults)) and/or consents to assignment (whether or not such consent is actually required) and/or non-disturbance agreements as Lessee, any Assignee or any Leasehold Mortgagee may reasonably request from time to time during the term of this Agreement. At Lessee's option, such certificates, consents and agreements may be recorded and Landowner consents to such recording.

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

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

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

l. Governing Law. The terms and provisions of this Agreement shall be interpreted in accordance with the laws of the state in which the Property is located applicable to contracts made and to be performed within such state and without reference to the choice of law principles of such state or any other state.

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

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

o. Other General Provisions. Except with respect to the rights conferred hereunder upon Leasehold Mortgagees (which Leasehold Mortgagees and their respective successors and assigns are hereby expressly made

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

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

q. Recitals. The recitals set forth herein are, by this reference, incorporated into and deemed a part of this Agreement.

*[Signature page follows immediately]*

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

**Landowner:**

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

**LESSEE:**

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

**EXHIBIT A**

**To be provided by LESSOR.**

**EXHIBIT B**

**Title Matters**

Per Section 7 above please disclose any liens or encumbrances.

**EXHIBIT C**

**RENT SCHEDULE**

<b><u>Year(s)</u></b>	<b><u>Annual Lease</u></b>
1-5	\$1
6-10	\$1
11-15	\$1
16-20	\$1
21-25	\$1