

**GROUND LEASE**

Between

**The City of Aurora**

("Landlord")

And

**Ameresco SPE**

("Tenant")

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

## Table of Contents

<b>Table of Contents</b> .....	<b>i</b>
<b>Article I. DEFINITIONS</b> .....	<b>1</b>
<b>Article II. LEASE AND RENT</b> .....	<b>4</b>
2.01 Lease.....	4
2.02 Rent.....	5
2.03 Lease Term. ....	5
<b>Article III. USE OF THE LEASED PREMISES; TAXES; INSURANCE</b> .....	<b>6</b>
3.01 Permitted Uses. ....	6
3.02 Non-Interference with Insolation. ....	7
3.03 Title to Solar Facility. ....	7
3.04 Operation and Maintenance.....	7
3.05 Utilities.....	8
3.06 Taxes.....	9
3.07 Insurance. ....	9
3.08 Mechanics Liens.....	10
<b>Article IV. LANDLORD UNDERTAKINGS; CASUALTY; FORCE MAJEURE</b> .....	<b>11</b>
4.01 Landlord’s Representations. ....	11
4.02 Landlord Covenants.....	11
4.03 Quiet Enjoyment. ....	12
4.04 Landlord’s Consent.....	12
4.05 Hazardous Materials.....	12
4.06 Casualty & Condemnation. ....	13
4.07 Force Majeure. ....	14
<b>Article V. DEFAULT AND TERMINATION</b> .....	<b>14</b>
5.01 Default.....	14
5.02 Surrender of Possession. ....	16
<b>Article VI. INDEMNIFICATION</b> .....	<b>16</b>
6.01 Indemnification by Tenant.....	16
6.02 Indemnification by Landlord. ....	16
6.03 Notice of Claims.....	17
6.04 Survival of Provisions.....	17
<b>Article VII. ASSIGMENT</b> .....	<b>17</b>
7.01 Generally.....	17

<b>Article VIII. DISPUTE RESOLUTION.....</b>	<b>19</b>
8.01 Resolution by Parties. ....	19
8.02 Exceptions to Mediation.....	19
<b>Article IX. MISCELLANEOUS .....</b>	<b>19</b>
9.01 Notices. ....	19
9.02 Additional Documents. ....	20
9.03 Confidentiality. ....	20
9.04 Integration; Attachments. ....	21
9.05 Liens.....	21
9.06 Amendments. ....	21
9.07 Waiver.....	21
9.08 Cumulative Remedies. ....	21
9.09 Governing Law; Jurisdiction; Forum. ....	22
9.10 Waiver of Jury Trial.....	22
9.11 Severability.....	22
9.12 Relation of the Parties.....	22
9.13 Injunctive Relief.....	22
9.14 No Third-Party Beneficiaries.....	22
9.15 Counterparts.....	23
9.16 No Public Utility. ....	23
9.17 No Recourse to Affiliates. ....	23
9.18 Non-Merger of Estates. ....	23
9.19 Covenants Run With Land. ....	23

**EXHIBITS**

<b>Exhibit A</b>	<b>The Property</b>
<b>Exhibit B</b>	<b>The Leased Premises</b>
<b>Exhibit C</b>	<b>Access Easement</b>
<b>Exhibit D</b>	<b>Transmission Easement</b>
<b>Exhibit E</b>	<b>Form of Notice of Lease</b>

## **GROUND LEASE**

This GROUND LEASE (this “Agreement” or “Lease”) is made and entered into as of \_\_\_\_\_ (the “Effective Date”) by and between The City of Aurora with an address of 44 East Downer Place, Aurora, Illinois, 60506 (“Landlord”), and Ameresco SPE, a Delaware limited liability company with an address in c/o Ameresco, Inc., 111 Speen Street, Suite 410, Framingham, MA 01701 (“Tenant” and, together with Landlord, each, a “Party” and together, the “Parties”).

## **BACKGROUND**

WHEREAS, Landlord owns that certain real property, along with any and all easements, rights, privileges and appurtenances associated therewith, more particularly described on Exhibit A attached hereto (the “Property”); and

WHEREAS, Landlord desires to lease a portion of the Property to Tenant for the purpose of constructing, installing, operating, maintaining and removing a solar facility, as further defined herein; and

WHEREAS, this Agreement is entered into following a competitive procurement of Landlord.

NOW, THEREFORE, in consideration of the rents, covenants and agreements herein contained on the part of Tenant and Landlord, the Parties agree as follows:

## **ARTICLE I. DEFINITIONS**

1.01 Definitions. Where capitalized, the following terms shall have the following meanings:

“Access Easement Area” has the meaning set forth in Section 2.01(b) hereto.

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such first Person.

“Agreement” is as defined in the introductory paragraph hereto.

“Applicable Legal Requirements” means any constitutional provision, law, statute, rule, regulation, ordinance, order, decree, judgment, permit, authorization, Governmental Approval of any Governmental Authority which is applicable to Parties’ rights and obligations hereunder, including, without limitation (i) the Tenant’s leasehold, access and easement interests in and to the Leased Premises or any part thereof in connection with the Permitted Use, and (ii) construction, operation, ownership, maintenance, repair, decommissioning and removal of the Solar Facility.

“Commercial Operation Date” means the date that the Solar Facility begins regular, daily production, as designated by Tenant in a notice to Landlord.

“Costs” means (i) all reasonable attorney’s fees and expenses incurred by the relevant Party in connection with the termination of this Agreement, and (ii) all reasonable costs and expenses incurred by the relevant Party in removal of the Solar Facility and (iii) breakage fees related to Tenant’s financing or early termination of purchase and sale contracts for Environmental Attributes; provided that the relevant Party uses commercially reasonable efforts to mitigate such Costs.

“Designated Third Party” has the meaning set forth in Section 7.05.

“Energy” means the electrical energy generated by the Solar Facility. Energy does not include Environmental Attributes or Environmental Incentives.

“Environmental Attributes” means the characteristics of electric power generation by the Solar Facility that have intrinsic value separate and apart from the energy and arising from the perceived environmental benefit of the Solar Facility or the energy produced by the Solar Facility including but not limited to all environmental attributes or renewable energy credits, including carbon trading credits, or certificates, emissions reduction credits, emissions allowances, green tags and tradable renewable credits, environmental and other attributes that differentiate the Solar Facility or energy produced by the Solar Facility from energy generated by fossil fuel based generation units, fuels or resources, characteristics of the Solar Facility that may result in the avoidance of environmental impacts on air, soil or water, such as the absence of emission of any oxides of nitrogen, sulfur or carbon or mercury, or other base or chemical, soot particulate matter or other substances attributable to the Solar Facility or the compliance of the Solar Facility or energy with the law, rules and standards of the United Nations Framework convention on Climate Changes or the Kyoto Protocol or the UNFCCC or crediting “early action” with a view thereto, or laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency or successor administrator of any state or federal entity given jurisdiction over a program involving transferability of rights arising from Environmental Attributes and Reporting Rights. Environmental Attributes does not include Environmental Incentives.

“Environmental Incentives” means any credit, benefit, reduction, offset, financial incentive, tax credit and other beneficial allowance that is in effect as of the date of this agreement or may come into effect in the future, including, to the extent applicable and without limitation, (i) greenhouse gas offsets under the Regional Greenhouse Gas Initiative, (ii) tax credits, incentives or depreciation allowances established under any federal or state law, (iii) fuel-related subsidies or “tipping fees” that may be paid to accept certain fuels, and (iv) other financial incentives in the form of credits, tax write-offs, reductions or allowances under Applicable Legal Requirements attributable to the Solar Facility or Energy, and all Reporting Rights with respect to such incentives.

“Environmental Law” means all Applicable Legal Requirements regulating Hazardous Materials, including but not limited to, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Federal Clean Water Act, the Federal Clean Air Act, the Toxic Substances Control Act, and all other analogous state and local laws, in each case as amended, and all rules, regulations, arising under all such laws.

“Event of Default” has the meaning set forth in Article VI hereof.

“Facility Loss” means loss, theft, damage or destruction of the Solar Facility or any portion thereof, or any other occurrence or event that prevents or materially limits the Solar Facility from operating in whole or in significant part.

“Financing Party” is as defined in Section 9.05 hereof.

“Force Majeure” means any event or circumstance having an adverse effect upon a Party’s ability to perform pursuant to this Agreement if such event or circumstance is beyond the Party’s reasonable control. “Force Majeure” events or circumstances may include but are not restricted to events of the following kinds: an act of God, an act of war, insurrection, riot or civil disturbance, fire, explosion, flood, epidemics, unusually severe and extraordinary weather conditions, acts of government or regulatory

authorities, and strikes or lockouts which materially affect, impact or impede obligations under this Agreement.

“Governmental Approval” means any approval, consent, permit, certificate, license or authorization issued by or on behalf of any applicable Governmental Authority.

“Governmental Authority” means the United States of America, the State of Illinois, and any political or municipal subdivision thereof (including but not limited to Landlord), and any agency, department, commission, board, bureau, or instrumentality of any of them, and any independent electric system operator in each case having or acquiring jurisdiction over the Property or the use and improvement thereof.

“Hazardous Materials” means those substances defined, classified, or otherwise denominated as a “hazardous substance”, “toxic substance”, “hazardous material”, “hazardous waste”, “hazardous pollutant”, “toxic pollutant” or oil in the Applicable Legal Requirements or in any regulations promulgated pursuant to the Applicable Legal Requirements.

“Interconnection Agreement” means one or more interconnection services agreements between Tenant and/or Landlord and the local electric utility which authorize interconnection of the Solar Facility with the local electric distribution system.

“Landlord” is as defined in the recitals hereto.

“Landlord Hazardous Materials” has the meaning set forth in Section 4.05 hereof.

“Lease Term” has the meaning set forth in Section 2.03.

“Lease Year” means a period of 365 days commencing on the Commercial Operation Date, and each subsequent 365-day period.

“Leased Premises” means that portion of the Property leased to Tenant under this Agreement as further described on Exhibit A.

“Lender” shall mean any third party providing any type of financing to Tenant with respect to a Solar Facility.

“Notice of Lease” shall mean the notice in the form attached hereto as Exhibit E.

“Permitted Transferee” has the meaning set forth in Section 7.02.

“Permitted Use” means the uses permitted under this Agreement as described in Section 3.01 hereto.

“Person” means an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, firm or other entity, or a Governmental Authority.

“PPA” means a Solar Power Purchase Agreement or Net Metering Credit Purchase Agreement that Tenant may enter into with any user of the Energy or purchaser of net metering credits associated with the Energy.

“Property” is as defined in the recitals hereto.

“Rent” has the meaning set forth in Section 2.02 hereof.

“Solar Facility” means the solar photovoltaic facility to be constructed, owned, operated and maintained by Tenant together with all appurtenant facilities including but not limited to photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, switches, conduits, wiring devices and wiring and interconnections with the local electric utility, together with any additions, replacements or modifications thereto, all to be located on or adjacent to the Leased Premises.

“Tenant” is as defined in the recitals hereto.

“Utility” means the local distribution company providing electric service to the Property.

“Transmission Easement Area” has the meaning set forth in Section 2.02(c).

## **ARTICLE II. LEASE AND RENT**

### **2.01 Lease.**

(a) Pursuant to the terms and conditions of this Agreement, Landlord hereby leases, rents and demises to Tenant, and Tenant hereby leases and accepts from Landlord, the Leased Premises. The leasehold granted hereunder includes the exclusive right of Tenant to occupy the Leased Premises. A preliminary depiction of the Leased Premises is shown on Exhibit B hereto. The Parties may amend or modify Exhibit B by mutual written consent, not to be unreasonably withheld, conditioned or delayed.

(b) Landlord hereby grants to Tenant (for use by Tenant, Tenant’s contractors, subcontractors, employees, officers, consultants and advisors) an easement (“Access Easement”) appurtenant to the Leased Premises for vehicular and pedestrian ingress and egress to and from the Leased Premises over and across the Property to the nearest public ways (the “Access Easement Area”). A preliminary description, depiction, or map of the Access Easement Area is shown on Exhibit C hereto which exhibit may be amended from time to time in accordance with the provisions of this Lease. Landlord shall be responsible for snow removal and all maintenance of the Access Easement Area.

(c) Landlord hereby grants to Tenant (for use by Tenant, Tenant’s contractors, employees, officers, consultants and advisors) an easement (“Transmission Easement”) appurtenant to the Leased Premises in, on, under, or over and across both the Property and adjacent property owned by Landlord (“Transmission Easement Area”) for the purpose of developing, designing, erecting, installing, constructing, operating, reconstructing, repairing, replacing, relocating, removing, inspecting, testing, maintaining utility infrastructure including the following items: (i) wires, cables, conduits for transmission of electrical energy and/or for communication purposes, and all necessary and proper foundations, footings, and other appliances, (ii) one or more electrical transformers and substations, (iii) such other interconnection facilities as are needed to interconnect the Solar Facility to the Utility’s distribution system (“Transmission Facilities”). A preliminary description, depiction or map of the Transmission Easement Area is shown on Exhibit D which exhibit may be amended from time to time in accordance with the provisions of this Lease. Landlord agrees to grant the Utility an easement on the Utility’s standard forms to install the Utility’s Transmission Facilities on Landlord’s property to the extent required by either the Utility or the interconnection agreement for the interconnection of the Solar Facility to the Utility’s electric distribution Solar Facility. Landlord agrees that Tenant shall have the right to mow, trim and cut any trees, bushes, grass or other vegetation within the Transmission Easement Area. The width of the Transmission Easement Area may be up to [TBD] feet.

(d) At Tenant's or Tenant's Lender's request, Landlord shall execute recordable easements confirming the Access Easement and Transmission Easement. Landlord shall cooperate with Tenant in granting Tenant such other rights in, on or under the Property and adjacent property as may be reasonably requested by Tenant in connection with the construction, installation, operation and maintenance of the Solar Facility.

(e) Landlord hereby grants to Tenant the exclusive right to receive sunlight on the Leased Premises during every hour of each day that sunlight can be received by the Solar Facility. Landlord shall not permit any vegetation, structures or other objects or airborne matter to obstruct the passage of sunlight on or to the Leased Premises.

(f) Landlord and Tenant agree to execute a notice of lease in the form of Exhibit E hereto which Tenant may record in the registry of deeds where the Property is located.

(g) At all times throughout the Lease Term, Tenant and its employees, agents, contractors, officers, consultants and advisors and subcontractors shall have access twenty-four hours a day, seven days a week to the Leased Premises for the design, development, construction, installation, maintenance, inspection, testing, repair, replacement and operation of the Solar Facility and any utilities serving the Property.

(h) Landlord agrees to provide Tenant with reasonably sufficient space on the Property near the Leased Premises for construction laydown including the storage and assembly of materials to construct, erect, install, repair, replace and remove the Solar Facility. Upon completion of construction, Tenant shall remove all materials from such site and shall restore such area as nearly as possible to the condition in which it existed prior to the commencement of such activity. All materials kept or placed in such areas shall be kept, placed or stored at the risk of Tenant and Landlord shall not be responsible for damage or theft except for damage, loss or theft caused by the negligence or willful misconduct of Landlord.

## 2.02 Rent.

Commencing on the Commercial Operation Date and continuing throughout the Lease Term, Tenant shall pay to Landlord annual rent ("Rent") in the amount of \$8,500 per Lease Year, payable on July 1<sup>st</sup> of each year in annual installments in advance to Landlord. No other rent shall be due under the terms of this Lease.

## 2.03 Lease Term.

(a) The term of this Agreement ("Initial Term") shall commence on the Effective Date and, unless sooner terminated pursuant to the provisions of this Lease, shall continue until 11:59 pm on the day preceding the twentieth (20<sup>th</sup>) anniversary of the Commercial Operation Date.

(b) At the expiration of the Initial Term, Tenant shall have the option to extend the term for up to two (2) consecutive periods of five (5) years each, upon 60 days advance written notice to Landlord prior to expiration of the then-current term and, if extended, shall be on the same terms and conditions set forth herein. Any extension shall be referred to as the "Extension Term." The Initial Term and the Extension Term, if the latter is permitted and exercised, shall be referred to collectively as the "Lease Term."

(c) Early Termination. If, prior to the commercial operation of the Solar Facility, any of the following events occurs, Tenant shall have right (A) to terminate this Agreement upon notice to Landlord



without penalty and without triggering any default provisions in this Agreement or incurring any liability under this Agreement and (B) in the case where any installation work has been initiated, to remove any and all Solar Facility infrastructure or components from the Property:

- (i) Tenant is unable to obtain all interconnection approvals or any other government or utility approvals or permits required at law or by the Utility to be obtained for construction, installation or operation of the Solar Facility, all on terms and conditions acceptable to Tenant in its sole discretion;
- (ii) Tenant determines that the Solar Facility, if constructed, would be in violation of Landlord's zoning bylaws, and Tenant is unable to get zoning approval for installation of the Solar Facility on terms and conditions acceptable to Tenant in its sole discretion and without Tenant having to incur expenses and obtain such approvals which Tenant considers unreasonable in its sole discretion;
- (iii) Upgrades are required to Landlord's or the Utility's existing electrical infrastructure and Landlord will not or does not pay for such upgrades;
- (iv) Tenant is unable to enter into the PPA (or multiple PPAs) for 100% of the energy generated by the Solar Facility in a form acceptable to Tenant;
- (v) Tenant determines there exist site conditions at the Leased Premises (including environmental site conditions) or construction requirements which, despite Tenant's examination of the Leased Premises before execution of this Agreement, were not known as of the Effective Date, and which will substantially increase the cost of the construction of the Solar Facility;
- (vi) Tenant is unable to obtain all Governmental Approvals and any related permits and approvals of any Governmental Authority or from the Utility for installation and operation of the Solar Facility and for the sale and delivery of Energy an offtaker(s) pursuant to the PPA, on the terms and conditions contemplated by the terms of this Agreement and reasonably acceptable to Tenant;
- (vii) Tenant discovers any title defect, encumbrance, restriction or other lien that will materially impair or adversely affect Tenant's Permitted Uses and Landlord is unable to clear such encumbrance from the record title within ninety days after notice thereof.

### **ARTICLE III. USE OF THE LEASED PREMISES; TAXES; INSURANCE**

#### **3.01 Permitted Uses.**

Tenant shall use the Leased Premises for the sole purpose of developing, siting, designing, constructing, installing, operating, inspecting, testing, maintaining, repairing, replacing and removing the Solar Facility to generate Energy for sale. Landlord shall take reasonable measures with respect to which it has legal capacity to assist Tenant in obtaining all necessary governmental and utility approvals and other permits and approvals required for the construction, permitting, interconnection and commissioning of the Solar Facility. Tenant shall comply with all Applicable Legal Requirements in connection with the installation, operation, maintenance and removal of the Solar Facility. Tenant may engage subcontractors to perform the construction, installation, operation and maintenance work. Tenant shall provide to the Landlord copies of payment and performance bonds supplied by its subcontractors. All subcontractors shall possess licenses as required by Applicable Legal Requirements.

3.02 Non-Interference with Insolation.

Landlord will not construct buildings or structures, initiate or conduct activities, plant trees or vegetation of any type or allow any trees or other vegetation on the Property or any adjacent property owned by Landlord that would overshadow or otherwise block access of sunlight to the Solar Facility. Landlord hereby grants Tenant the right, but not the obligation, from time to time and upon at least 7 days prior notice to Landlord, to trim and to cut down and clear away or otherwise destroy any and all trees, vegetation and brush now or hereafter on the Property (or adjacent land under Landlord's control) which now or hereafter in the reasonable opinion of Tenant may be a hazard to the Solar Facility, block access of sunlight to the Solar Facility and/or interfere with the exercise of Tenant's rights hereunder.

3.03 Title to Solar Facility.

All rights to, title to and possession of the Solar Facility (including without limitation, all additions, alterations, and improvements thereto or replacements thereof, all appurtenant fixtures, machinery and equipment installed therein, all transmission infrastructure), Environmental Attributes and Environmental Incentives belong solely to Tenant and shall remain the personal property of Tenant, and no part of the Solar Facility shall attach to or be deemed a part of, or fixture to, Landlord's real property. The Solar Facility (together with all other tangible property of Tenant on the Leased Premises) shall at all times retain the legal status of personal property as described under the provisions of the applicable state Uniform Commercial Code, and Tenant shall have the right to file a precautionary UCC Statement in the county land records or applicable filing office confirming that no part of the Solar Facility shall be deemed a fixture to the land.

3.04 Operation and Maintenance.

Tenant, at its sole cost and expense, shall operate and maintain the Solar Facility throughout the Lease Term, including, without limitation, making all necessary repairs and replacements to the Solar Facility, as determined by Tenant in its reasonable discretion, but in all cases in accordance with Applicable Legal Requirements. Tenant shall have the right, but not the obligation, at any time and from time to time during the Lease Term, at its expense, to make additions, changes, alterations, or improvements, structural or otherwise, to the Solar Facility.

3.05 Landfill Area.

(a) Tenant agrees to obtain at its sole cost and expense, all Governmental Approvals, including, but not limited to, a Post-Closure Use Permit, if required, (the "PCU Permit") from the Illinois Environmental Protection Agency ("IEPA") to allow Tenant to use the Leased Premises for the Permitted Uses. Tenant acknowledges and agrees that the PCU Permit may impose certain conditions and requirements which are related to the Tenant's use of the Leased Premises and/or the installation, construction and/or operation of the Solar Facility. Landlord acknowledges that the PCU Permit may impose certain conditions and requirements on Landlord related to maintenance of the landfill and landfill cap.

(b) Tenant agrees that it (i) shall not conduct any activities on the Leased Premises that will or are reasonably likely to penetrate any Landfill capping material or otherwise threaten the integrity of any Landfill cap; (ii) shall not violate Applicable Legal Requirements, including but not limited to the PCU Permit, (iii) deleted, and (iv) shall not unreasonably interfere with or disrupt (A) Landlord's access to the Landfill, or (B) Landlord's performance of any duties required of Landlord under Applicable Legal Requirements, including but not limited to any laws, regulations, codes, and agreements with respect to the

Landfill. Landlord agrees and acknowledges that Tenant shall submit an application for the PCU Permit, if require, on behalf of and in the name of the Landlord.

(c) Tenant shall submit the PCU Permit application for Landlord's review and approval prior to submission to IEPA. Tenant shall comply with conditions in the PCU Permit related to construction, operation and maintenance of the Solar Facility and interconnection of the Solar Facility to the electrical distribution Solar Facility ("Tenant's PCU Permit Obligations"). If Tenant fails to materially comply with Tenant's PCU Permit Obligations, Landlord may, after written notice to Tenant and Tenant's failure to act within ten (10) days thereafter, take such reasonable action as it deems necessary to prevent cancellation of the PCU Permit, except that Landlord may not operate the Solar Facility, except in the case of an emergency where immediate action on the part of Landlord is reasonably necessary for safety reasons. Notwithstanding the foregoing, Landlord shall have no right, and no obligation to, and shall not perform any maintenance or repair on the Solar Facility, except in the case of an emergency where immediate action on the part of Landlord is reasonably necessary for safety reasons, in which event, Landlord shall have the right, but not the obligation, to shut down or disconnect the Solar Facility and provide immediate notice to Tenant. Tenant shall reimburse Landlord for any documented, reasonable costs incurred by Landlord in preventing cancellation of the PCU Permit. Landlord shall comply with conditions in the PCU Permit related to ongoing monitoring, maintenance, repair of the Landfill and any gas venting infrastructure. To the extent the PCU Permit requires Landlord to perform any work within the Leased Premises, Tenant shall provide Landlord access to such area upon prior written notice; provided that the Landlord shall minimize interference with the Solar Facility during such access and agrees to comply with Tenant's access, security and safety protocols, and indemnify, save, defend, and hold harmless Tenant against, of, and from all costs, liabilities, suits, penalties, claims and demands, including reasonable attorneys' fees and Tenant's documented lost revenue for the sale of Electricity and Environmental Attributes, resulting from the activities, acts or omissions of the Landlord Parties (as defined below) during such access. Each of Landlord and Tenant shall provide reasonable cooperation and assistance with the other party in providing information that a party may require to meet the PCU Permit conditions. If Landlord fails to comply with the PCU Permit, Tenant may, after written notice to Landlord and Landlord's failure to act within ten (10) days thereafter, take such reasonable action as it deems necessary to prevent cancellation of the PCU Permit. Landlord shall reimburse Tenant for any documented, reasonable costs incurred by Tenant in preventing cancellation of the PCU Permit. If the Landlord's failure to comply with the PCU Permit results in cancellation or revocation of the PCU Permit, then Tenant may terminate this Lease and in such case Landlord shall pay the User Termination Payment. Tenant shall not be responsible for any costs, fees or expenses for ongoing maintenance, repair or monitoring of the Landfill.

### 3.06 Temporary Removal of Solar Facility.

(a) In the event that the Leased Premises require repairs during the Term of this Agreement, including replacement of all or a portion of the Landfill cap, whether for compliance with requirements of a Governmental Authority or to remedy damage caused by Tenant, the Tenant agrees that it shall remove the Solar Facility or any part thereof to the extent necessary to allow such repairs to be undertaken. In the event Landlord undertakes any such repairs except for repairs directly resulting from damage caused by Tenant or by those for whom the Tenant is legally liable, the Landlord shall be responsible for all costs of removal, storage, and reinstallation of the Solar Facility, along with any additional fees or costs charged by the LDC for reconnecting the Solar Facility to the Utility system. In addition, Landlord shall pay Tenant for any documented lost revenue for sales of Energy and documented lost revenue for Environmental Attributes that would have been generated and received by Tenant, in each case based upon the estimated energy production capacity of the Solar Facility during the period of time the Solar Facility was not operating on account of such repairs, with such estimate to be prepared using the inputs on the PV SYST Report (or updated thereto) prepared by Tenant. In the

event of repairs directly resulting from damage caused by Tenant or by those for whom the Tenant is legally liable, all cost and expense of such repairs shall be paid by Tenant, with no liability or penalty to Landlord.

(c) Landlord and Tenant shall cooperate and, subject to Applicable Legal Requirements, use commercially reasonable efforts to ensure that any repair does not materially increase the cost of operating and maintaining the Solar Facility. In the event of repairs related to compliance with requirements of a Governmental Authority, Tenant shall be entitled to participate in the communications between Landlord and the Governmental Authority relating to the determination of need to remove any portion of the Solar Facility to effect the repairs, and the means and methods of implementing the repairs and the duration thereof.

### 3.07 Utilities.

Tenant shall pay charges imposed for water and other utilities used or consumed by Tenant on the Leased Premises during Tenant's occupancy of the Leased Premises.

### 3.08 Taxes.

(a) Tenant shall be responsible for paying the taxing authority personal property taxes assessed against the Solar Facility. Landlord shall be responsible for all other taxes assessed against the Leased Premises and the remainder of Landlord's property. The Tenant shall use reasonable efforts to obtain from the taxing authorities a separate assessment of personal property taxes for the Solar Facility. If such separate assessment shall be obtained, the personal property taxes assessed against the Solar Facility shall be paid by Tenant directly to the taxing authority on or before the date due. Landlord agrees to give Tenant prompt notice of any separate assessment sent to Landlord to allow Tenant time to avoid penalties.

(b) Tenant shall have the right in its own name, or in the name of Landlord, to make and prosecute application(s) for abatement of taxes or appeals for correction of assessments which relate to the Solar Facility, and Landlord agrees to cooperate fully with Tenant in this regard. Landlord agrees to sign all necessary instruments in connection with such application or appeal. Landlord shall not settle any such application or appeal without Tenant's prior written approval in each instance. If the Property is re-assessed for tax purposes because of transfer of ownership of the Property or other change in use by Landlord of the Property (other than use of the Leased Premises by Tenant for generation of Energy) during the Lease Term, the Tenant shall not be responsible for payment of any increase in taxes, charges and assessments attributable to such re-assessment, which increase shall be the sole responsibility of Landlord.

### 3.09 Insurance.

(a) During the Lease Term, Tenant, at its sole cost and expense, shall procure and maintain the following insurance:

(i) Workers' Compensation Insurance as required by the laws of the State of Illinois and employer's liability insurance in the amount of \$500,000 by accident, each accident/\$500,000 by disease, each employee/\$500,000 by disease, policy limit.

(ii) Commercial General Liability Insurance, \$1,000,000 each occurrence and \$2,000,000 aggregate limit. Commercial General Liability insurance shall include personal injury

liability, broad form property damage liability, products/completed operations liability and broad form contractual liability.

(iii) Automobile Liability Insurance - Combined single limit of \$1,000,000.

(iv) Professional Liability Insurance, covering errors and omissions, \$1,000,000 each occurrence and \$2,000,000 aggregate limit.

(v) Excess Liability Insurance, Umbrella Form - \$2,000,000 each occurrence and \$2,000,000 aggregate, which shall be following form, providing coverage over commercial general liability insurance, automobile liability insurance, professional liability insurance, and employer's liability under workers' compensation insurance

The Landlord shall be named as an additional insured on each such policy of Commercial General Liability Insurance and Automobile Liability Insurance. Tenant shall provide Landlord with certificates evidencing such insurance within thirty days after the Effective Date. All insurance proceeds paid under the insurance policies maintained by Tenant shall be paid to Tenant.

(b) During the Term, Landlord shall, at its sole cost and expense, maintain the insurance coverage under subsection (a)(i) through (iii) above and naming Tenant as additional insured.

### 3.10 Mechanics Liens.

Tenant shall not create or suffer to be created or to remain, and shall promptly discharge, any mechanic's, laborer's, or materialmen's lien upon the Leased Premises and Tenant will not suffer any other matter arising out of Tenant's use and occupancy of the Leased Premises where the estate, rights and interests of Landlord in the Leased Premises or any part thereof might be impaired, except in accordance with and subject to the provisions of this Agreement.

If any mechanic's, laborer's, or materialman's lien shall at any time be filed against the Leased Premises, Tenant within thirty (30) days after notice to Tenant of the filing thereof, shall cause such lien to be discharged of record or bonded over by payment, deposit, bond, insurance, or otherwise.

### 3.11 Tenant Representations.

Tenant hereby represents and warrants to Landlord as of the Effective Date that:

(a) The execution of this Agreement by Tenant will not constitute a violation of nor be in conflict with nor constitute a default under any term or provision of any agreement or instrument to which Tenant is a party.

(b) The execution of this Lease has been duly authorized and each person executing this Lease on behalf of Tenant has authority to do so and to bind Tenant.

(c) There are no pending or threatened actions, suits, proceedings, inquiries or investigations before or by any judicial court or administrative or law enforcement agency against or affecting Landlord or its properties wherein any unfavorable decision, ruling or finding would adversely affect the validity or enforceability of this Lease or Landlord's ability to carry out its obligations under this Lease.

## **ARTICLE IV. LANDLORD UNDERTAKINGS; CASUALTY; FORCE MAJEURE**

### **4.01 Landlord's Representations.**

Landlord hereby represents and warrants to Tenant as of the Effective Date that:

(a) Landlord represents, warrants, and covenants that it is the fee owner of and has good, lawful and marketable title to the Property free of any liens, encumbrances, restrictions or covenants which may impact Tenant's proposed occupancy. Landlord shall deliver to Tenant copies of any title policies, deeds, orders of taking or other instruments evidencing the fact of Landlord's fee ownership of the Property. In the event that any encumbrance, easement, restriction, covenant or similar instrument is found to impact, prohibit or adversely affect Tenant's ability to install, maintain or operate the Solar Facility, or interferes with insolation to the Solar Facility, Landlord shall make all commercially reasonable efforts to discharge, modify, amend or subordinate any such instrument so that Tenant's rights hereunder are not adversely impacted.

(b) There are no outstanding written or oral leases, purchase or sale agreements or other agreements or restrictions encumbering, or in any way affecting the Property, the Leased Premises or the rights granted to Tenant hereunder, and no person or entity has any right with respect to the Property, whether by option to purchase, contract or otherwise, that would prevent or interfere with any of Tenant's rights under this Agreement.

(c) The execution of this Agreement will not constitute a violation of nor be in conflict with nor constitute a default under any term or provision of any agreement or instrument to which Landlord is a party or by which the Property or any part thereof is bound.

(d) Landlord has no knowledge of any pending or threatened proceedings in eminent domain, or for a sale in lieu thereof, affecting the Property or any portion thereof, or of any plans for a possible widening of the streets abutting the Property.

(e) The Property is in compliance with all Applicable Legal Requirements including all Environmental Laws. Landlord is unaware of any site conditions that would materially increase the cost of installing the Solar Facility at the Leased Premises or that would materially adversely affect the ability of the Solar Facility as designed to produce Energy once installed. Landlord has not received written notice from any governmental authority or of any actual or potential violation of or liability under any Environmental Laws with respect to the Property. To the best of Landlord's knowledge, there are no Hazardous Materials present on, in or under the Property in violation of any Applicable Legal Requirements, and there are no underground storage tanks located on or under the Property.

(f) The execution of this Lease has been duly authorized and each person executing this Lease on behalf of Landlord has authority to do so and to bind Landlord.

(g) There are no pending or threatened actions, suits, proceedings, inquiries or investigations before or by any judicial court or administrative or law enforcement agency against or affecting Landlord or its properties wherein any unfavorable decision, ruling or finding would adversely affect the validity or enforceability of this Lease or Landlord's ability to carry out its obligations under this Lease.

### **4.02 Landlord Covenants.**

(a) Landlord covenants and agrees to give Tenant possession of the Leased Premises during the Lease Term, free and clear of all structures, tenants and occupants. Landlord shall have no right to

enter onto the Leased Premises during the Lease Term except upon bona fide emergency to protect life and property (subject to Section 3.05) and except for the purpose of inspection. Landlord and its employees and invitees and contractors shall not interfere with or handle any of Tenant's equipment or the Solar Facility without written authorization from Tenant.

(b) In the event Landlord encumbers the Property subsequent to the date of this Agreement, (i) the Lease shall be in a first priority position (i.e., no senior monetary liens may encumber the Property other than real estate taxes and assessments that are a lien not yet due and payable), or (ii) the holder of each mortgage, deed of trust or other monetary encumbrances (i.e., mechanics' liens, judgment liens, tax liens, etc.) shall execute and deliver to Tenant a fully executed and acknowledged non-disturbance agreement in a commercially reasonable form, and reasonably acceptable to Tenant and any Financing Party.

(c) Landlord shall during the Lease Term comply with all Applicable Legal Requirements applicable to the Property. Without limiting the foregoing, Landlord covenants that it will not take any action to cause any Governmental Authority to revoke any Governmental Approval necessary for Tenant's use. Landlord agrees to comply with any covenant or undertakings in any Applicable Legal Requirements to the extent required to be undertaken or performed after the date of this Agreement.

(d) Landlord shall be responsible for all on-going monitoring, maintenance and repair of the landfill in accordance with Applicable Legal Requirements and the PCU Permit. Landlord shall be responsible for any on-going filing requirements in the PCU Permit related to the operation of the Landfill (as opposed to filing requirements regarding construction and operation of the Solar Facility).

#### 4.03 Quiet Enjoyment.

Landlord covenants and agrees the Tenant's quiet and peaceful enjoyment of the Leased Premises shall not be disturbed or interfered with by the Landlord, or any person claiming by, through or under the Landlord.

#### 4.04 Landlord's Consent.

Landlord agrees that whenever it is provided in this Agreement that the prior consent or approval of Landlord is required, Landlord will not unreasonably withhold, condition or delay the giving of such consent or approval.

#### 4.05 Hazardous Materials.

(a) Landlord Hazardous Materials. Tenant shall not be responsible for any liabilities, damages, costs, or expenses related to: (i) any pre-existing Hazardous Materials encountered at, released from, or transported from the Property; or (ii) any Hazardous Materials brought onto the Property or released by Lessor or Lessor's agents, employees, contractors, subcontractors, licensees, or invitees (items (i) and (ii) together ("Landlord Hazardous Materials"). Landlord shall indemnify and hold harmless Tenant from any liability, damages, costs or expenses (including reasonable attorneys' fees) incurred by Tenant arising out of or related to the Landlord Hazardous Materials. Upon encountering any materials that Tenant suspects may constitute Landlord Hazardous Materials, Tenant shall immediately notify Landlord and may suspend work in the affected area as reasonably necessary until such materials are properly remediated by Landlord; provided, however, that Tenant shall not be responsible for any liabilities, damages, costs or expenses related to such Lessor Hazardous Materials.

(b) Landlord Remediation. If Landlord Hazardous Materials are encountered at the Property in violation of any Applicable Legal Requirements and prevent or interfere with the installation of the Solar Facility, Landlord shall remediate such Landlord Hazardous Materials at its own cost and expense. Tenant shall stop work in the affected area until Landlord can demonstrate that all required remediation is complete. After the Commercial Operation Date, if Landlord Hazardous Materials are encountered at the Leased Premises, and Landlord is required by Applicable Legal Requirements to remediate the Landlord Hazardous Materials, then Landlord shall notify Tenant in writing of the extent of Landlord's planned remediation. If the Solar Facility must be removed for or Tenant's ability to operate, inspect, test, maintain, repair or replace the Solar Facility is hindered in any way by, Landlord's performance of such remediation, Landlord shall be responsible for all costs incurred by Tenant to remove, store and reinstall the Solar Facility or any part thereof, and lost revenue due to such downtime, and the Lease Term shall be extended day for day for each day of interruption due to Landlord's remediation.

(c) Tenant Hazardous Materials. Tenant shall not introduce or use any Hazardous Materials on, in or under the Leased Premises in violation of any Applicable Legal Requirements. If Tenant directly causes a release of Hazardous Materials, Tenant shall perform all required remediation. Tenant shall indemnify and hold harmless Landlord from any costs or expenses incurred by Landlord due to any release of Hazardous Materials on the Leased Premises caused by Tenant or its subcontractors in excess of quantities allowed under Applicable Legal Requirements.

(d) The Parties agree and understand that solely by reason of the demise of the Leased Premises to Tenant, Tenant's acceptance of the Leased Premises as stated herein, Tenant's entry upon the Leased Premises and Tenant's use of the Leased Premises in accordance with the terms of this Agreement, neither Tenant nor any of its members, partners, agents, contractors, employees, offices, directors, lenders, successors or assigns shall be deemed by Landlord to have, in any way, become an Operator of the Landfill, or shall be deemed by Landlord to have assumed any liability or obligation for the operation, maintenance, closure, monitoring or repair of the Landfill, or with respect to any materials deposited at the Landfill by any person other than Tenant and its contractors from and after the Commencement Date.

#### 4.06 Casualty & Condemnation.

(a) In the event that, through no fault of Tenant, the Leased Premises are so damaged or destroyed by fire or other casualty so as to make the use of the Leased Premises entirely unsuitable for the operation of the Solar Facility, Tenant may terminate this Lease upon thirty (30) days written notice to Landlord. In the event of such termination, Tenant shall remove the Solar Facility and restore the Premises to its original condition in accordance with Section 5.

(b) In the event that the whole or any part of the Leased Premises, the Access Easement Area or Transmission Easement Area are taken by any governmental agency or utility under the power of eminent domain such that the operation of the Solar Facility becomes, in the reasonable discretion of Tenant, impractical, then this Agreement shall terminate no later than the date possession of the Leased Premises or such easement area is transferred to the taking authority. Both Parties shall pursue their own damage awards with respect to any such taking, provided, however, that Tenant shall be entitled to the award in connection with any condemnation insofar as the same represents compensation for or damage to the Solar Facility, fixtures paid for or installed by Tenant, equipment, or other property on the Leased Premises or Property and adjacent property, moving expenses, alteration expenses, and the loss of Tenant's leasehold interest (the unexpired balance of the Lease Term immediately prior to the taking) including without limitation Tenant's anticipated lost revenues. Landlord shall be entitled to the entirety of any award insofar as same represents compensation for or damage to Landlord's fee title to the Leased



Premises. Tenant's rights to a condemnation award as described herein shall survive the termination of this Agreement.

4.07 Force Majeure.

To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the "**Claiming Party**") gives written notice and details of the Force Majeure to the other Party as soon as practicable, then the Claiming Party will be excused from the performance of its obligations under this Agreement (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure, but the period of time to pay shall be extended if Landlord is prevented from paying due to Force Majeure). The Party affected by Force Majeure will use commercially reasonable efforts to eliminate or avoid the Force Majeure and resume performing its obligations; provided, however, that neither Party is required to settle any strikes, lockouts or similar disputes except on terms acceptable to such Party, in its sole discretion. The non-Claiming Party will not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure for so long as the claim of Force Majeure continues.

**ARTICLE V. DEFAULT AND TERMINATION**

5.01 Default.

(a) Default by Landlord. Any of the following events shall constitute an Event of Default by Landlord:

(i) Landlord fails to keep, observe or perform any of the material terms set forth herein, and such failure continues for more thirty (30) days after a written notice from Tenant to Landlord; provided that if such breach cannot be cured within such 30-day period, then Landlord shall have an additional period of time to cure as may be reasonable under the circumstances; or

(ii) Fraud or intentional misrepresentation by Landlord with respect to any provision in this Lease; or

(iii) Landlord (A) is dissolved other than pursuant to a merger, (B) becomes insolvent; (C) makes a general assignment for the benefit of its creditors; (D) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within ninety (90) days thereafter; (E) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights; (F) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; or (G) has a secured party take possession of all or substantially all of its assets.

(b) Default by Tenant. Any of the following shall constitute an Event of Default by Tenant:

(i) Tenant fails to make any payment due under this Lease within sixty (60) days after such payment is due unless such payment is contested, and payment of any uncontested amount is not made within thirty days of written notice to Tenant.

(ii) Tenant fails to keep, observe or perform any of the material terms set forth herein, and such failure continues for more sixty (60) days after a written notice from Landlord to Tenant; provided that if such breach cannot be cured within such 60-day period, then Tenant shall have an additional period of time to cure as may be reasonable under the circumstances;

(iii) Fraud or intentional misrepresentation by Tenant with respect to any provision in this Lease; or

(iv) Tenant (A) is dissolved other than pursuant to a merger, (B) becomes insolvent; (C) makes a general assignment for the benefit of its creditors; (D) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within ninety (90) days thereafter; (E) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights; (F) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; or (G) has a secured party take possession of all or substantially all of its assets.

None of the foregoing circumstances shall be grounds for terminating this Lease as long as all Rent and any other monetary charges payable by Tenant under this Lease are promptly paid by Tenant's Financing Party or a Designated Third Party in accordance with the terms of this Lease.

(c) Remedies.

(i) Subject to the applicable notice and cure provisions of the Agreement, if at any time an Event of Default has occurred and is continuing, the non-defaulting Party, without limiting any rights or remedies available to it under this Agreement or Applicable Legal Requirements, but subject to Section 5.01(c)(ii) with respect to an Event of Default by Tenant, shall have the right, but shall not be obligated to, (A) terminate this Lease by providing written notice of such termination to the defaulting Party or (B) remedy such default for the account of the defaulting Party after the non-defaulting Party notifies the defaulting Party of its intention to remedy the default; provided, that Landlord shall not perform any maintenance or repair of the Solar Facility. All costs reasonably incurred by the non-defaulting Party to remedy such default shall be at the expense of the defaulting Party. The non-defaulting Party may exercise any right or remedy which may be available to it at law or equity including without limitation termination of this Agreement. Landlord acknowledges that Tenant will incur significant expenses in reliance on this Lease and that Tenant's access rights and right to receive sunlight as set forth in this Lease are essential to Tenant's business purpose and operation of the Solar Facility.

(ii) Landlord shall not suspend or terminate this Agreement unless it has provided Financing Parties with at least ninety days written notice or such longer period of time as may be agreed to in writing between Landlord and Financing Parties. If a Financing Party (including a purchaser or transferee) pursuant to an exercise of remedies by such Financing Party shall acquire title to or control of Tenant's assets and shall cure all defaults under this Agreement existing as of the date of such change in title or control in the manner required by this Agreement and which are capable of cure by a third person nor entity, then such person or entity shall no longer be in default under this Agreement, and this Agreement shall continue in full force and effect. Any Financing Party shall be an intended third-party beneficiary of this Section 5.01(c). Neither

Tenant being bankrupt nor the insolvency of Tenant shall be grounds for terminating this Lease as long as all Rent and all other monetary charges payable by tenant under this Lease are promptly paid by a Financing Party in accordance with the terms of this Lease. In calculating the amounts to be paid by Tenant following a termination for a Default by Tenant, Tenant shall be credited with the net proceeds of any rent obtained by Landlord by reletting the Leased Premises after deducting all of Landlord's reasonable expenses in connection with such reletting.

(iii) Landlord acknowledges and agrees that should Landlord breach any of its obligations hereunder or otherwise fail to permit Tenant to exercise any of the rights and privileges granted herein, damages would be difficult to calculate and money damages would not be sufficient to compensate Tenant for such breach, and therefore, Landlord agrees that Tenant will have the right to seek specific enforcement of this Lease. In that event, Landlord agrees that Tenant has no adequate remedy at law, and that an order of specific performance may be granted in favor of Tenant.

#### 5.02 Surrender of Possession.

Within one hundred eighty (180) days after the expiration or earlier termination of this Agreement, Tenant shall remove the Solar Facility from the Leased Premises and return the Leased Premises to a neat and clean condition, reasonable wear and tear and damage by fire or other casualty and condemnation excepted; provided that (i) Tenant shall not be required to plant any trees or shrubs or re-sod, (ii) Tenant shall not be required to remove any concrete foundations installed for the Solar Facility, provided that any protrusions from such foundations are cut off at a minimum of two feet below grade; (iii) roadways may remain in place, (iv) buried conduit may remain in place, subject to consent of Landlord, and (v) other below ground components of the Solar Facility shall be left in place subject to consent of Landlord. Thereafter Tenant shall peaceably and quietly leave, surrender and yield up to Landlord the Leased Premises, free of subtenancies. In connection with such removal, Landlord shall continue to provide Tenant with access to the Leased Premises without payment of further Rent or consideration during said 180-day period. Any improvements not removed from the Leased Premises within the foregoing 180-day period shall be moved to a storage facility if Tenant has identified such a location and entered into an agreement with said storage facility to pay all moving and storage costs. If Tenant fails to identify such a facility, the Solar Facility shall be deemed abandoned and Landlord may deal with them as such. The provisions of this Section shall survive expiration or earlier termination of this Lease.

### ARTICLE VI. INDEMNIFICATION

#### 6.01 Indemnification by Tenant.

Tenant shall indemnify and hold harmless Landlord from and against any and all liabilities, costs, claims, and expenses incurred by Landlord in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by the negligence or willful misconduct of Tenant or its agents or employees or others under Tenant's control during the Lease Term; *provided, however*, that Tenant's obligations pursuant to this Section shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of Landlord.

#### 6.02 Indemnification by Landlord.

Landlord shall indemnify and hold harmless Tenant from and against any and all liabilities, costs, claims, and expenses incurred by Tenant in connection with or arising from any claim by a third party for

physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by the negligence or willful misconduct of Landlord or its agents or employees or others under Landlord's control during the Lease Term; provided, however, that Landlord's obligations pursuant to this Section shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of Tenant.

6.03 Notice of Claims.

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

6.04 Survival of Provisions.

The provisions of this Article VI shall survive the expiration or termination of this Agreement.

**ARTICLE VII. ASSIGNMENT**

7.01 Assignment; Binding Effect.

Except as provided in this Agreement, neither Party shall have the right to assign or transfer, whether voluntarily or by operation of law, any of its rights, duties or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

7.02 Permitted Assignment by Tenant.

Notwithstanding anything to the contrary herein, Tenant may assign all or a portion of its rights and obligations hereunder to (i) to one or more Affiliates of Tenant, (ii) to any person succeeding to all or substantially all of the assets of Tenant, (iii) to an entity that acquires the Solar Facility or, prior to the construction of the Solar Facility, the development rights thereto (each, a "Permitted Transfer"). In the event of any such assignment, Tenant shall provide advance written notice to Landlord of the existence of such assignment, together with the name and address of the assignee, and documentation establishing that the assignee has assumed (or as of the closing of such transaction will assume) all or a portion of the Tenant's rights and obligations under this Agreement. Landlord agrees to promptly execute any document reasonably requested in acknowledgement of such assignment and in consent thereto in accordance with the provisions hereof. If such assignment is a full assignment of all of Tenant's rights, and obligations under this Agreement, then Tenant shall have no further liability arising under this Agreement after the effective date of the assignment. Subject to the foregoing restrictions on assignment, this Agreement will inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

7.03 Cooperation.

Landlord agrees that this Agreement shall survive any transfer of the Properties. In furtherance of the foregoing, Landlord agrees that it shall cause any purchaser, assignee, or mortgagee of the Properties to execute and deliver to Tenant an assignment and assumption of this Agreement simultaneously with

the transfer of the Properties to such purchaser, assignee or mortgagee. Such assignment and assumption agreement shall contain an acknowledgement by the purchaser, assignee or mortgagee that it has no interest in the Solar Facility and shall not gain any interest in the Solar Facility by virtue of the transfer, other than the rights of Landlord hereunder.

#### 7.04 Financing Provisions.

Notwithstanding any contrary provisions contained in this Agreement, including without limitation Section 7.01 and 7.02, Landlord specifically agrees, without any further request for prior consent but with advance written notice to Landlord, to permit Tenant to assign, transfer or pledge its rights under this Agreement and its rights to the Solar Facility as collateral for the purpose of obtaining financing or refinancing in connection with the Solar Facility (including, without limitation, pursuant to a sale-leaseback or partnership flip transaction) and to sign any agreement reasonably requested by Tenant or its Lenders to acknowledge and evidence such agreement. The Landlord agrees to cooperate with Tenant in the negotiation and execution of any reasonable amendment or addition to this Agreement required by the Financing Parties so long as such amendment or addition does not in any way materially alter or amend the rights and obligations of the Landlord herein.

#### 7.05 Third Party Rights.

(a) Notice to Designated Third Party. Landlord agrees to give copies of any notice provided to Tenant by Landlord under Section 9 to any assignee or transferee permitted pursuant to Section 7.04 (each, a “Designated Third Party”).

(b) Exercise of Tenant Rights. Any Designated Third Party, as collateral assignee and if allowed pursuant to its contractual arrangements with Tenant, shall have the right in the place of Tenant, to any and all rights and remedies of Tenant under this Agreement. Such Designated Third Party shall also be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement, subject to the terms of this Agreement.

(c) Performance of Tenant Obligations. A Designated Third Party shall have the right, but not the obligation, to pay all sums due under this Agreement and to perform any other act, duty or obligation required of Tenant hereunder or cause to be cured any default of Tenant hereunder in the time and manner provided by and subject to the terms of this Agreement. Nothing herein requires the Designated Third Party to cure any default of Tenant under this Agreement or (unless such party has succeeded to the Tenant’s interests under this Agreement) to perform any act, duty or obligation of Tenant under this Agreement, but Landlord hereby gives such party the option to do so, provided any such cure, act, duty or obligation is performed in accordance with the terms of this Agreement.

(d) Exercise of Remedies. Upon the exercise of secured party remedies, including any sale of the Solar Facility by a Designated Third Party, whether by judicial proceeding or under any power of sale contained therein, or any conveyance from Tenant to the Designated Third Party (or any assignee of the Designated Third Party) in lieu thereof, the Designated Third Party shall give notice to Landlord of the transferee or assignee of this Agreement. Any such exercise of secured party remedies shall not constitute a default under this Agreement, unless the act of exercising such remedy itself constitutes an Event of Default.

(e) Landlord agrees that each Designated Third Party is a third party beneficiary of the provisions of this Section.

(f) Landlord shall not exercise any rights to terminate or suspend this Agreement unless it shall have given the Designated Third Party a copy of prior written notice of its intent to terminate or suspend this Agreement specifying the condition giving rise to such right, and the Designated Third Party shall not have caused to be cured the condition giving rise to the right of termination or suspension within ninety (90) days after Tenant's cure period expires with respect to payment defaults and one hundred twenty (120) days with respect to all other defaults. The parties' respective obligations will otherwise remain in effect during any cure period.

(g) If pursuant to an exercise of remedies by a Designated Third Party, such party of its assignee shall acquire control of the Solar Facility and this Agreement, and shall within the time periods describe in the preceding paragraph (6) cure all defaults under this Agreement existing as of the date of such change in control in the manner required by this Agreement, then such person or entity shall no longer be in default under this Agreement and this Agreement shall continue in full force and effect.

7.06 Cooperation. Landlord agrees to cooperate with Tenant and its Financing Parties in connection with any financing or refinancing of all or a portion of the Solar Facility. In furtherance of the foregoing, as Tenant or its Financing Parties request from time to time, Landlord agrees, subject to the other provisions of this Agreement, to (i) execute any consents to assignment or acknowledgements, (ii) negotiate and deliver such reasonable estoppel certificate as an existing or prospective Designated Third Party may reasonably require, and (iii) furnish such reasonable information as Tenant and its Financing Parties may reasonably request.

## **ARTICLE VIII. DISPUTE RESOLUTION**

### 8.01 Resolution by Parties.

The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to the Agreement or the breach, interpretation, termination or validity thereof (a "Dispute") within forty-five (45) days after the date that a Party gives written notice of such Dispute to the other Party. If the Parties are unable to reach agreement within such forty-five (45) day period (or such longer period as the Parties may agree) then the Parties may within five days thereafter mutually agree to one day of non-binding mediation failing which each Party may resort to a judicial forum.

### 8.02 Exceptions to Mediation.

The provisions of Section 8.01 shall not apply to requests for preliminary injunctions, temporary restraining orders, specific performance or other procedures in a court of competent jurisdiction to obtain interim relief when deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual Dispute.

## **ARTICLE IX. MISCELLANEOUS**

### 9.01 Notices.

All notices, approvals, disapprovals or elections required or permitted to be given under this Agreement shall be in writing and shall be:

- (i) mailed, certified or registered mail, return receipt requested, or
- (ii) sent by Federal Express or other professional carrier, to the Parties at the following addresses:

**If to Landlord:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

**If to Tenant:** [Ameresco SPE]  
c/o Ameresco, Inc.  
111 Speen Street, Suite 410  
Framingham, MA 01701  
Attention: \_\_\_\_\_

**With a copy to:** Ameresco, Inc.  
111 Speen Street, Suite 410  
Framingham, MA 01701  
Attention: General Counsel

Notices shall be deemed given upon delivery or tender of delivery to the intended recipient. Any notice sent by the attorneys representing a Party shall qualify as notice under this Agreement.

9.02 Additional Documents.

Upon the receipt of a written request from another Party, each Party shall execute such additional documents, instruments, estoppels, consents, confirmations and assurances, and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. No Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section.

9.03 Confidentiality.

If either Party or its representatives provides to the other Party or its representatives confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the Solar Facility or of a Party's business ("Confidential Information"), the receiving Party shall protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, but in any event not less than a commercially reasonable degree of care, and refrain from using such Confidential Information except in the negotiation and performance of this Agreement. Confidential Information also includes the terms of this Agreement; provided that either Party may provide this Agreement to any bona fide consultant, lender, contractor, advisor, affiliate or prospective investor of such Party as reasonably necessary, and on the condition that such Person agree to treat this Agreement as Confidential Information. Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that: (i) becomes publicly available other than through the receiving Party; (ii) is required to be disclosed by a Governmental Authority, under Applicable Legal Requirements or pursuant to a validly issued subpoena, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement; (iii) is independently developed by the receiving Party; or (iv)

becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality. Notwithstanding the foregoing, Tenant shall be permitted to make public statements with respect to this Lease or the Solar Facility. Tenant may also issue press releases regarding the commissioning and operation of the Solar Facility without the need for obtaining Landlord's consent.

9.04 Integration; Attachments.

This Agreement, together with any Exhibits attached hereto, constitutes the entire agreement and understanding between Tenant and Landlord with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof. This Agreement cannot be changed or terminated orally.

9.05 Liens.

Landlord does not and shall not have a lien on any of Tenant's personal property, including, but not limited to, the Solar Facility, Tenant's trade fixtures, removable equipment, fixtures and all improvements ("Tenant's Assets"), and all of Tenant's Assets shall be deemed the personal property of Tenant in accordance with applicable state law and the UCC. Landlord expressly waives any lien, levy, rights of distraint or related rights, if any, granted or conferred upon Landlord by Applicable Legal Requirements on any of Tenant's Assets, and to the extent any such lien or other rights is nevertheless imposed upon Tenant's Assets, Landlord subordinates such lien to the lien of any Lender or mortgagee having a security interest in any of Tenant's Assets (a "Financing Party"), and will specifically acknowledge the rights of any Financing Party. This provision is operative without execution of any further documentation, and may be relied on by any Financing Party in extending credit to Tenant. Any Financing Party shall be a third-party beneficiary of this section of this Agreement and may take action against Landlord (i) to enforce its rights and Tenant's rights or (ii) in the event of a breach by Landlord of its duties under this provision.

9.06 Amendments.

This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Tenant and Landlord.

9.07 Waiver.

No waiver of any provision of this Agreement shall be effective unless set forth in writing signed by the Party granting such waiver, and any such waiver shall be effective only to the extent it is set forth in such writing. The failure of Tenant or Landlord 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. No single or partial exercise of any right under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right; and no waiver of any breach of or default under any provision of this Agreement shall constitute or be construed as a waiver of any subsequent breach of or default under that or any other provision of this Agreement.

9.08 Cumulative Remedies.

Except as set forth herein, any right or remedy of Tenant or Landlord shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.



9.09 Governing Law; Jurisdiction; Forum.

This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without reference to any choice of law principles. Any legal action or proceeding with respect to or arising out of this Agreement shall be brought in or removed to the Illinois state or federal courts located in Chicago, Illinois. By execution and delivery of this Agreement, Tenant and Landlord accept, generally and unconditionally, the jurisdiction of the aforesaid courts. Tenant and Landlord hereby waive any right to stay or dismiss any action or proceeding under or in connection with this Agreement brought before the foregoing courts on the basis of *forum non-conveniens*.

9.10 Waiver of Jury Trial.

TO THE EXTENT ENFORCEABLE UNDER APPLICABLE LEGAL REQUIREMENTS, EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE TENANT TO ENTER INTO THIS AGREEMENT.

9.11 Severability.

Any term, covenant or condition in this Agreement that to any extent is invalid or unenforceable in any respect in any jurisdiction shall, as to such jurisdiction, be ineffective and severable from the rest of this Agreement to the extent of such invalidity or prohibition, without impairing or affecting in any way the validity of any other provision of this Agreement, or of such provision in other jurisdictions. The Parties shall use good faith efforts to replace any provision that is ineffective by operation of this Section with an effective provision that as closely as possible corresponds to the spirit and purpose of such ineffective provision.

9.12 Relation of the Parties.

The relationship between Tenant and Landlord shall not be that of partners, agents or joint venturers for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Tenant and Landlord, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

9.13 Injunctive Relief.

The Parties acknowledge and agree that any violation or breach of the provisions of this Agreement may result in irreparable injury to a Party for which a remedy at law may be inadequate. In addition to any relief at law that may be available to a non-breaching Party for such a violation or breach, and regardless of any other provision contained in this Agreement, such Party shall be entitled to seek injunctive and other equitable relief and shall not be required to post any bond in connection therewith.

9.14 No Third-Party Beneficiaries.

Except as may be specifically stated herein, this Agreement is solely for the benefit of the Parties and their respective permitted successors and permitted assigns, and this Agreement shall not otherwise

be deemed to confer upon or give to any other third party any remedy, claim, liability, reimbursement, cause of action or other right except as expressly stated in this Agreement.

9.15 Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which constitute but one agreement. Any counterpart may be delivered by facsimile transmission or by electronic communication in portable document format (.pdf) or tagged image format (.tif), and the Parties agree that their electronically transmitted signatures shall have the same effect as manually transmitted signatures.

9.16 No Public Utility.

Nothing contained in this Agreement shall be construed as an intent by Tenant to dedicate its property to public use or subject itself to regulation as a public utility, an electric utility, an investor owned utility, a municipal utility, generation company or a merchant power plant otherwise known as an exempt wholesale generator.

9.17 No Recourse to Affiliates.

This Agreement is solely and exclusively between the Parties, and any obligations created herein on the part of either Party shall be the obligations solely of such Party. No Party shall have recourse to any parent, subsidiary, partner, member, affiliate, lender, director, officer or employee of the other Party for performance or non-performance of any obligation hereunder, unless such obligations were assumed in writing by the Person against whom recourse is sought.

9.18 Non-Merger of Estates.

The interests of Landlord and Tenant in the Property shall at all times be separate and apart, and shall in no event be merged, notwithstanding the fact that this Agreement or the leasehold estate treated hereby, or any interest therein, may be held directly or indirectly by or for the account of any person who shall own the fee title to the Property, or any portion thereof; and no such merger of estates shall occur by operation of law, or otherwise, unless and until all persons at the time having any interest in the Property, including any leasehold beneficiary, shall join in the execution of a written instrument effecting such merger of estates.

9.19 Covenants Run With Land.

The Parties hereto covenant and agree that all of the conditions, covenants, agreements, rights, privileges, obligations, duties, specifications and recitals contained in this Agreement shall be construed as covenants running with the land and as extending to, inuring to the benefit of, and being binding upon, Landlord and Tenant, and their respective successors and assigns, to the same extent as if such successors and assigns were named as original Parties to this Agreement, all to the end that this Agreement shall always bind the owner and holder of any fee or leasehold interest in or to the Property and the Leased Premises.

*[SIGNATURE PAGES TO FOLLOW]*

IN WITNESS WHEREOF, Landlord and Tenant have executed this Agreement on the date first above written.

LANDLORD: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

TENANT: [Ameresco SPE]

By: Ameresco, Inc., its sole member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A**  
**THE PROPERTY**

Landlord's Property is described in a deed recorded in the \_\_\_\_\_ Registry of Deeds at Book \_\_\_\_\_, Page \_\_\_\_\_ and is also shown on Assessor's Map \_\_\_\_\_, Lot \_\_\_\_\_ as a parcel containing approximately \_\_\_\_\_ acres.

**EXHIBIT B**  
**THE LEASED PREMISES**

The Leased Premises is a portion of Landlord's Property. The Leased Premises measures approximately \_\_\_\_ acres, and is shown as \_\_\_\_\_ on a plan titled \_\_\_\_\_.

**EXHIBIT C**  
**ACCESS EASEMENT**

No access easements are expected as access is available via SR 25.

**EXHIBIT D**  
**TRANSMISSION EASEMENT**

No transmission easements are expected.

**EXHIBIT E**

DOCUMENT PREPARED BY AND  
AFTER RECORDING, PLEASE RETURN TO:

Ameresco, Inc.  
111 Speen Street, Suite 410  
Framingham, MA 01701  
Attention: \_\_\_\_\_

**NOTICE OF LEASE**

This NOTICE OF LEASE is made and entered into as of \_\_\_\_\_, **by** and between, \_\_\_\_\_ (“Landlord” and “Grantor” for indexing purposes), and [Ameresco SPE], c/o Ameresco, Inc., 111 Speen Street, Suite 410, Framingham, Ma 01701 (“Tenant” and “Grantee” for indexing purposes).

In accordance with the provisions of \_\_\_\_\_, as amended, notice is hereby given of the following described lease:

Date of Lease: \_\_\_\_\_

Lessor:

Lessee: [Ameresco SPE]  
111 Speen Street, Suite 410  
Framingham, MA 01701

Landlord’s Property: Property commonly numbered as 15-10-126-004. For Landlord’s title, see Deed recorded at \_\_\_\_\_ County Registry of Deeds at Book \_\_\_\_\_, Page \_\_\_\_\_.

Leased Premises: TBD

Initial Term: The term of the Lease began on \_\_\_\_\_ and shall terminate twenty years after the Commercial Operation Date of the Solar Facility being installed.

Extensions: TBD.

Access and Easement Rights. Landlord has granted to Tenant an access easement for the right of ingress and egress to and from the Leased Premises over and across the Property to and from \_\_\_\_\_ Street as shown more particularly depicted and described on Exhibit B attached hereto. Landlord has granted to Tenant and easement in, on under or over and across the Property and adjacent property owned by Landlord for purposes of installing transmission facilities in the areas designated as “Utility Easement Area” more particularly depicted and described on Exhibit C attached hereto.

Ownership of the Solar Facility: Tenant or Tenant’s assigns, will at all times retain title to and be the legal and beneficial owner of the Solar Facility, which will at all times retain the legal status of personal property of Tenant as defined under Article 9 of the Uniform Commercial Code. The Solar Facility will not attach to or be deemed a part of, or a fixture to, the Site, notwithstanding the manner in which the Solar Facility



is or may be affixed to the real property of Landlord. The term "Solar Facility" is defined in the Lease as an integrated Solar Facility and assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, switches, wiring devices and wiring and interconnections with the local electric utility, to be installed by Tenant on the Site or within easement or access areas, inclusive of all other necessary and convenient equipment and appurtenances common to such a facility.

IN WITNESS WHEREOF, the Parties have caused this Notice of Lease to be duly executed under seal and delivered as of the date first written above.

LANDLORD:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

[STATE/Commonwealth] OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

On \_\_\_\_\_, before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacities, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public  
Print Name: \_\_\_\_\_  
My Commission Expires:

[Signatures continue on next page]

TENANT:  
[AMERESCO SPE]

By: Ameresco, Inc., its sole member

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

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

Its: \_\_\_\_\_

[STATE/Commonwealth] OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

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

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

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

My Commission Expires: