

FIRST AMENDMENT TO SOLAR LEASE AND SHORT FORM

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

(Space above this line for Recorder's use only)

FIRST AMENDMENT TO SOLAR LEASE AND SHORT FORM

THIS **FIRST AMENDMENT TO SOLAR LEASE AND SHORT FORM** ("First Amendment") is made and entered into as of Sept. 28, 2022, by and between The City of Grand Junction whose address is 250 N 5th Street, Grand Junction, CO 81501 ("Owner"), and Pivot Solar 27 LLC, a Colorado limited liability company, whose address is 1750 15th, Suite 400, Denver, CO 80202 ("Company") (Owner and Company the "Parties" and each a "Party"), and provides as follows:

RECITALS

WHEREAS, Owner and Pivot Energy Colorado LLC ("Original Company"), entered into a Solar Lease (as amended, restated, supplemented or otherwise modified from time to time, the "Agreement") dated as of November 17, 2021 ("Effective Date"). The Agreement granted the Original Company exclusive rights in and to certain land as well as in and to any easements, rights-of-way, and other rights and benefits relating or appurtenant to the Land, more particularly described in Exhibit B ("Property"). The Agreement also restricts certain uses of and grants certain interests in and to the Property.

WHEREAS, the Owner and the Original Company entered in that certain Short Form of Solar Lease dated November 17, 2021 and recorded on May 3, 2022 as Instrument No. 3029702 in the offices of the Clerk of Recorder in Mesa County, Co. ("Original Short Form").

WHEREAS, Original Company assigned its interests to the Company via an Assignment and Assumption Agreement recorded on May 4, 2022 as Instrument No. 3029834 in the offices of the Clerk and Recorder in Mesa County, CO.

WHEREAS, the Parties now seek to amend the Agreement, and Original Short Form by way of this First Amendment.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and promises to set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree that:

1. Amendment to the Agreement and Short Form.

- a. Amendment to Exhibit A. Exhibit A is hereby deleted in its entirety in both the Agreement, Original Short Form and replaced with **Exhibit A** attached to this First Amendment.
 - b. Amendment to Exhibit B. Exhibit B is hereby deleted in its entirety in both the Agreement, Original Short Form and replaced with **Exhibit B** attached to this First Amendment.
 - c.
2. Effect of Amendment. After giving effect to this First Amendment, the Agreement and Original Short Form shall remain in full force and effect and are hereby ratified, approved and confirmed in each and every respect. The amendments set forth herein are limited as written, and except as specifically provided in this First Amendment, no amendments, revisions or changes to, or other waivers of the terms of the Agreement or Original Short Form are hereby made or permitted.
 3. Governing Law. This First Amendment, and any instrument or agreement required hereunder (to the extent not otherwise expressly provided for therein), shall be governed by and construed in accordance with the laws of the State listed in the Agreement, without reference to conflicts of law provisions thereof.

[SIGNATURE PAGES FOLLOW]

**EXHIBIT A TO
FIRST AMENDMENT TO SOLAR LEASE AND SHORT FORM**

"EXHIBIT A"
PAGE 1 OF 2

SOLAR LEASE AREA:

A SOLAR LEASE AREA EXISTING WITHIN A PORTION OF LOT 2, GIRARDI SUBDIVISION BEING WITHIN THE SOUTHWEST QUARTER, OF SECTION 17, TOWNSHIP 1 SOUTH, RANGE 1 EAST, OF THE UTE P.M., COUNTY OF MESA, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 2, BEING A FOUND #5 REBAR WITH 2" ALUMINUM CAP LS 18469 AS SHOWN AND DESCRIBED HEREON, AND CONSIDERING THE SOUTH LINE OF SAID LOT 2 TO BEAR SOUTH 88°03'59" EAST TO A FOUND #5 REBAR WITH A 1 1/2" ALUMINUM CAP LS 27279 AS SHOWN AND DESCRIBED HEREON; THENCE NORTH 32°43'21" EAST, A DISTANCE OF 58.20 FEET TO A POINT BEING 50 FEET NORTH OF THE SOUTH LINE OF SAID LOT 2, AND THE POINT OF BEGINNING; THENCE NORTH 02°59'58" EAST, A DISTANCE OF 21.89 FEET; THENCE NORTH 87°25'36" WEST, A DISTANCE OF 28.70 FEET; THENCE NORTH 01°56'01" EAST, A DISTANCE OF 355.72 FEET; THENCE SOUTH 55°55'20" EAST, A DISTANCE OF 288.95 FEET; THENCE SOUTH 56°56'49" EAST, A DISTANCE OF 280.68 FEET; THENCE SOUTH 00°02'35" WEST, A DISTANCE OF 115.20 FEET MORE OR LESS TO THE NORTH LINE OF AN EXISTING 14 FOOT LANDSCAPING EASEMENT, RECEPTION NUMBER 2700167, THENCE NORTH 88°03'59" WEST ALONG SAID NORTH LINE OF THE LANDSCAPING EASEMENT, A DISTANCE OF 75.24 FEET MORE OR LESS TO THE EAST LINE OF AN EXISTING 50' ACCESS EASEMENT, RECEPTION NUMBER 2700167, THENCE NORTH 01°56'01" EAST ALONG SAID EAST LINE OF THE ACCESS EASEMENT, A DISTANCE OF 36.00 FEET MORE OR LESS TO THE NORTH LINE OF SAID ACCESS EASEMENT; THENCE NORTH 88°03'59" WEST ALONG THE NORTH LINE OF SAID ACCESS EASEMENT BEING 50 FEET NORTH OF AND PARALLEL TO THE SOUTH LINE OF SAID LOT 2, A DISTANCE OF 385.21 FEET MORE OR LESS TO THE POINT OF BEGINNING. SAID DESCRIBED SOLAR LEASE AREA CONTAINING 112,261 SQUARE FEET, OR 2.577 ACRES MORE OR LESS.



GREEN MOUNTAIN SURVEYING
SAMUEL A. KNIGHT
CO PLS# 38,127

PROJECT LOCATION:
P527
SW 1/4 S17, T15, R1E, UTE P.M.
COUNTY OF MESA,
STATE OF COLORADO.

"EXHIBIT A"
PAGE 2 OF 2

SOLAR LEASE AREA LINE TABLE:

1)	N 32°43'21" E	58.20'
2)	N 02°59'58" E	21.89'
3)	N 87°25'36" W	28.70'
4)	N 01°56'01" E	355.72'
5)	S 55°55'20" E	288.95'
6)	S 56°56'49" E	280.68'
7)	S 00°02'35" W	115.20'
8)	N 88°03'59" W	75.24'
9)	N 01°56'01" E	36.00'
10)	N 88°03'59" W	385.21'

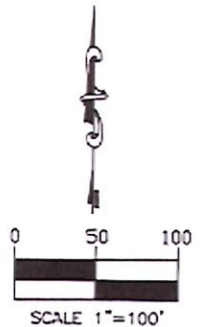
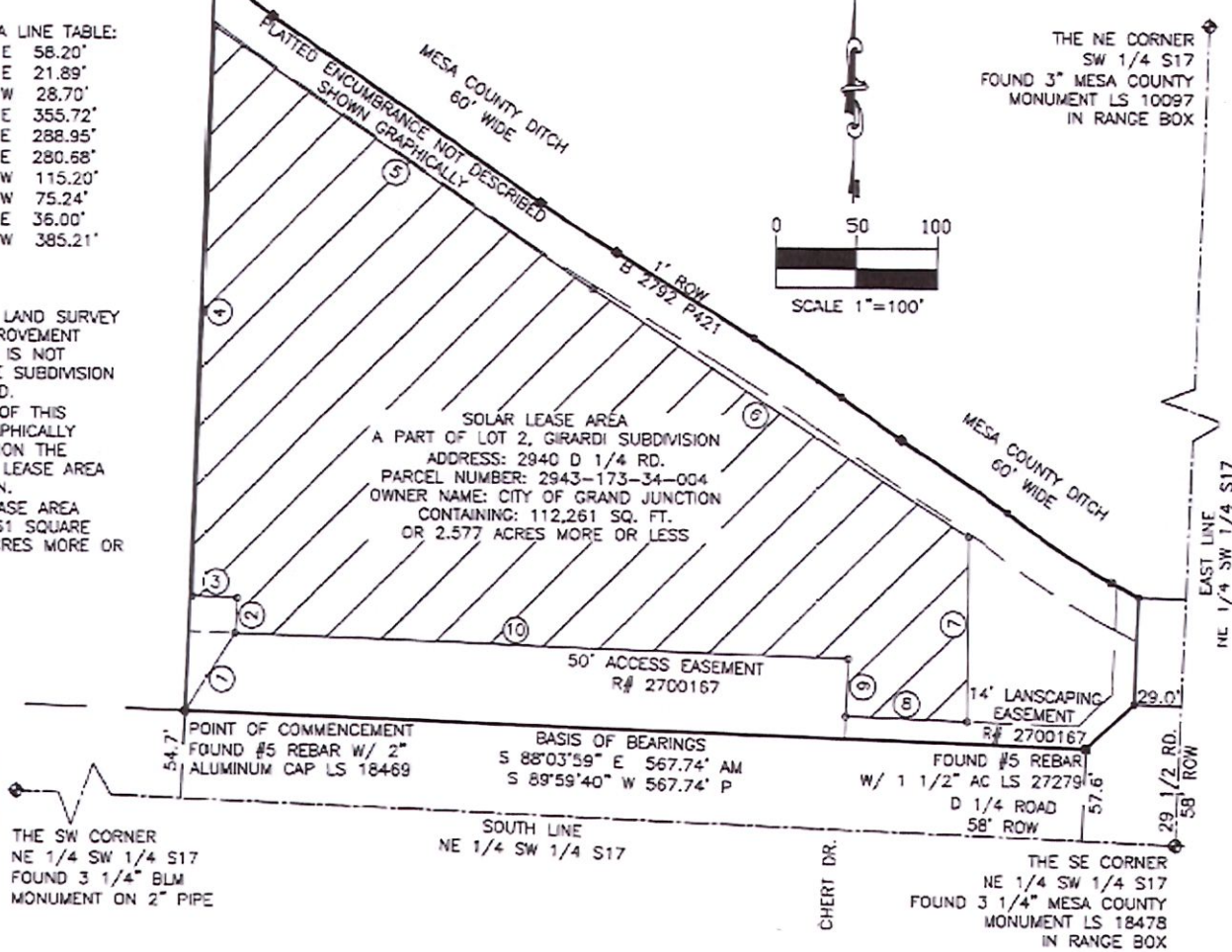
NOTES:

- 1) THIS IS NOT A LAND SURVEY PLAT NOR AN IMPROVEMENT SURVEY PLAT AND IS NOT INTENDED FOR THE SUBDIVISION NOR SALE OF LAND.
- 2) THE PURPOSE OF THIS EXHIBIT IS TO GRAPHICALLY DEPICT THE LOCATION THE DESCRIBED SOLAR LEASE AREA AS SHOWN HEREON.
- 3) SAID SOLAR LEASE AREA CONTAINING 112,261 SQUARE FEET OR 2.577 ACRES MORE OR LESS.

SOLAR LEASE AREA
A PART OF LOT 2, GIRARDI SUBDIVISION
ADDRESS: 2940 D 1/4 RD.
PARCEL NUMBER: 2943-173-34-004
OWNER NAME: CITY OF GRAND JUNCTION
CONTAINING: 112,261 SQ. FT.
OR 2.577 ACRES MORE OR LESS



GREEN MOUNTAIN SURVEYING
SAMUEL A. KNIGHT
CO PLS# 38127



THE NE CORNER
SW 1/4 S17
FOUND 3" MESA COUNTY
MONUMENT LS 10097
IN RANGE BOX

EAST LINE
NE 1/4 SW 1/4 S17

THE SW CORNER
NE 1/4 SW 1/4 S17
FOUND 3 1/4" BLM
MONUMENT ON 2" PIPE

SOUTH LINE
NE 1/4 SW 1/4 S17

CHERT DR.

THE SE CORNER
NE 1/4 SW 1/4 S17
FOUND 3 1/4" MESA COUNTY
MONUMENT LS 18478
IN RANGE BOX

PROJECT LOCATION:
PS27
SW 1/4 S17, T15S, R1E UTE P.M.
COUNTY OF MESA,
STATE OF COLORADO.

**EXHIBIT B TO
FIRST AMENDMENT TO SOLAR LEASE AND SHORT FORM**

ACCESS EASEMENT

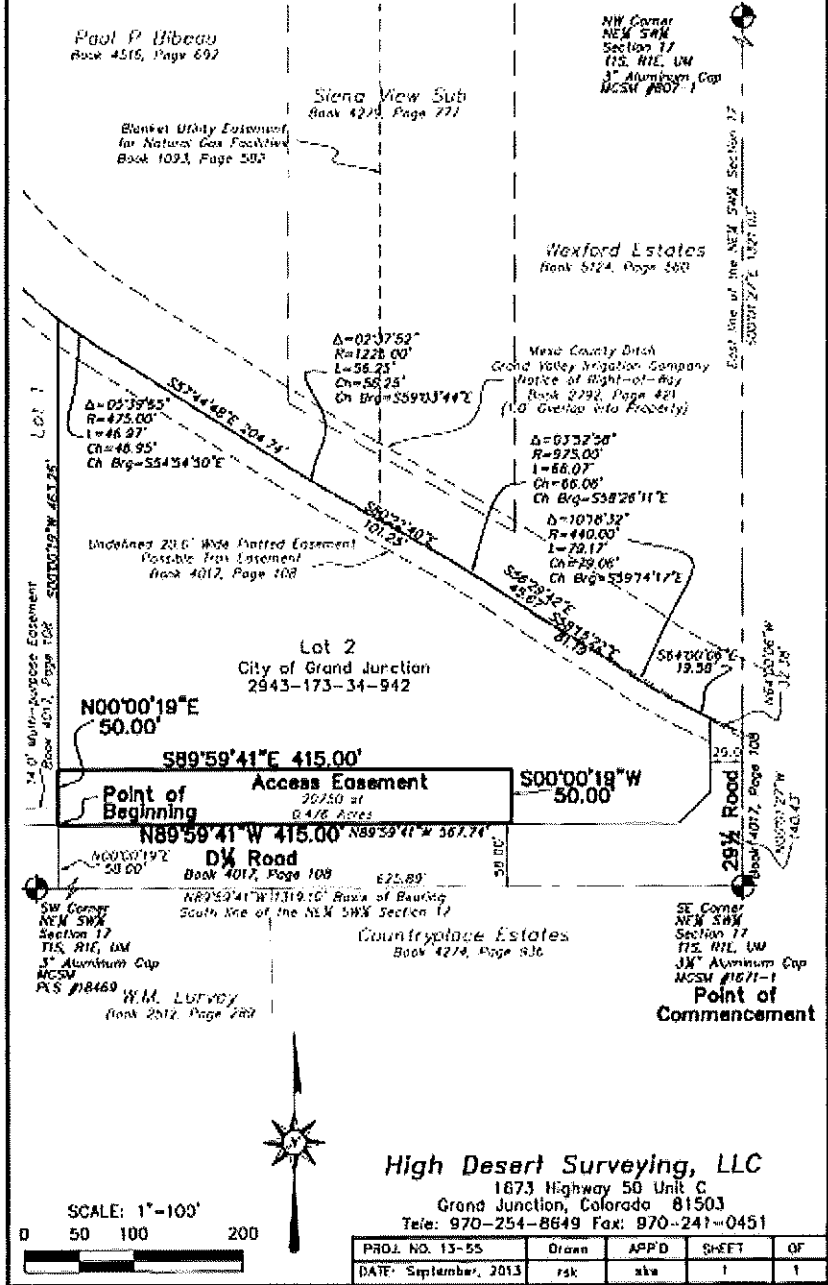
A tract for a 50.00 foot wide access easement, for the use of Lot 1 of Girardi Subdivision, as shown on plat recorded in Book 4017, Page 108, Mesa County records, across that parcel of land located in the Northeast Quarter of the Southwest Quarter (NE¼ SW¼) of Section 17, Township 1 South, Range 1 South of the Ute Meridian, located in Grand Junction, Mesa County, Colorado and described as follows:

That certain portion Lot 2 of Girardi Subdivision shown and described on the attached Exhibit B-1 labeled "Access Easement", and as shown on plat recorded in Book 4017, Page 108, Mesa County records, and being more particularly described as follows:

Commencing at the Southeast corner of said NE¼ SW¼ of Section 17, whence the Southwest corner of said NE¼ SW¼ of Section 17 North bears North 89°59'41" West, a distance of 1319.10 feet for a basis of bearings, with all bearings contained herein relative thereto; thence North 89°59'41" West, a distance of 625.89 feet, along the South line of said NE¼ SW¼ of Section 17; thence North 00°00'19" East, a distance of 58.00 feet to the POINT OF BEGINNING at the Southwest corner of said Lot 2 of Girardi Subdivision; thence North 00°00'19" East, a distance of 50.00 feet, along the West line of said Lot 2; thence South 89°59'41" East, a distance of 415.00 feet, 50.00 feet offset and parallel to the South lot line of said Lot 2; thence South 00°00'19" West, a distance of 50.00 feet, to a point on said South line of said Lot 2; thence North 89°59'41" West, a distance of 415.00 feet, along said South line of said Lot 2, to the POINT OF BEGINNING.

Said parcel having an area of 0.476 Acres, as described.

EXHIBIT B ACCESS EASEMENT



SOLAR LEASE FOR THE STATE OF COLORADO

This SOLAR LEASE (“Agreement”) is made as of this 17 day of November, 2021 (“Effective Date”) by and between Pivot Energy Colorado LLC, a Colorado limited liability company, doing business as Pivot Energy, with a place of business at 1750 15th Street, Suite 400, Denver CO, 80202, its affiliates and subsidiaries (“Pivot Energy”, “Company”), and The City of Grand Junction with a primary address at 250 N 5th Street, Grand Junction, CO 81501 (“Owner”). (Each individual may be referred to as “Party” or collectively as “Parties”).

RECITALS

- A. Owner owns that certain real property described and generally depicted in the attached Exhibit A (“Land”), together with any easements, rights-of-way, and other rights and benefits relating or appurtenant to the Land (all of the foregoing, collectively, the “Property”).
- B. Company wants to develop, construct, own and operate a solar energy collection, conversion, generation, transmission and distribution facility (as amended from time to time and as described below, the “Project”) on the Property.
- C. Company wants to lease the Property from Owner and Owner wants to lease the Property to Company for purposes of the Project.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Owner and Company agree:

1. Property Granted to Company and Definitions.

1.1 Grant of Property. Owner leases the Property to Company and grants Company the rights, and Company leases the Property from Owner and accepts the rights granted Company by Owner, all as further set forth in, and subject to the conditions and terms of this Agreement.

1.2 Property. As used in this Agreement, Property means the entire right, title and interest of Company in and to the Owners land, as created by this Agreement, or leasehold estate.

“Development Rent”	Means one thousand five hundred and 00/100 dollars (\$1,500.00) per year.
“Development Term”	Means the period starting on the Effective Date and ending on the earlier of (a) the date that is three (3) years after the Effective Date, (b) Company’s termination of this Agreement or, (c) the start of the Operations Term.
“Escalator”	Means 1.5% per annum.
“Operations Rent”	Means four thousand and 00/100 dollars (\$4,000.00) per year.

“Operations Term”	Means the period starting on the earlier of (a) Company’s notice to Owner of the start of the Operations Term, (b) the date that is twelve (12) months after the Construction Start Date, or, (c) COD and continuing thereafter until the date that is twenty-one (21) years after this date. Upon conclusion of Operations Term, Company shall have exclusive right to enter into lease renewal conversations.
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1.3 Additional definitions. The following additional terms as used this Agreement have the following meanings:

“Acreage”	Means the number of acres of the Land subject to this Agreement. As of the Effective Date, the Acreage is the number of acres of set forth in Exhibit A.
“Affiliate”	Means with respect to a person or entity any other person or entity that, directly or indirectly controls, is controlled by, is under common control with or is related by blood or marriage to, such person or entity. The term “control” (including with correlative meaning, the terms “controlled by” and “under common control with”) as used with respect to any person or entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting securities, by contract, judicial order or otherwise.
“Agreement”	Has the meaning set forth in the introductory paragraph.
“Applicable Law”	Means all applicable laws, statutes, rules, ordinances, orders and regulations of any and all governmental authorities with jurisdiction over the Property, the Parties, the Project, and the Intended Use, including zoning and land use laws and regulations.
“Business Day”	Means all days other than Saturday, Sunday or any day that is a national holiday in which governmental offices are closed in the State in which the Property is located.
“COD”	The first day the Project delivers electricity in commercial quantities (excluding test energy), commercial quantities is defined as when the project generates revenue based upon the terms of the power purchase agreement.
“Company”	Has the meaning set forth in the recitals.
“Company's Interest”	Has the meaning set forth in Section 14.1.

“Company Taxes”	Has the meaning set forth in Section 17.1.
“Conservation Program”	Means any Conservation Reserve Program, Environmental Quality Incentives Program, Agricultural Conservation Easement Program, the Conservation Security Program, or any similar federal, state, or local program.
“Construction Start Date”	Means the date for the start of construction of the Project as set forth in a notice from Company to Owner.
“Development”	Means (a) all actions, studies, and tests related to the evaluation and investigation by Company of the suitability of the Property for solar energy development and Company’s other business purposes directly related to this purpose, all as Company determines in its sole discretion are necessary, including: (i) inspecting and surveying the Property; (ii) performing archaeological, avian, geologic, and soils studies and tests; (iii) performing electrical interconnection and transmission studies and tests; (iv) performing environmental inspections, studies, and surveys; (v) the operation of equipment for the purpose of evaluating, measuring, and monitoring meteorological conditions; and, (vi) conducting meteorological studies and tests and (b) construction of the Project including those systems authorized to be located on the Property during the Operations Term.
“Effective Date”	Has the meaning set forth in introductory paragraph.
“Event of Default”	Has the meaning set forth in Section 14.3.2.
“Fee Mortgage”	Has the meaning set forth in Section 14.4.1.
“Fee Mortgagee”	Has the meaning set forth in Section 14.4.1.
“Force Majeure Event”	Has the meaning set forth in Section 23.
“Hazardous Materials”	Means any substance that is regulated by or is defined as a toxic, dangerous or hazardous substance or pollutant under any laws.
“Improvements”	Has the meaning set forth in Section 4.1.1.
“Indemnified Party”	Intentionally Omitted.
“Indemnifying Party”	Intentionally Omitted.
“Intended Use”	Has the meaning set forth in Section 4.1.
“Land”	Has the meaning set forth in the recitals.

“Lease Documents”	Has the meaning set forth in Section 13.1.2.
“Lender”	Has the meaning set forth in Section 14.1.
“Material Adverse Effect”	Means a material adverse effect on the Project, the Intended Use, or the business, results of operations or financial condition of the impacted Party taken as a whole or a material adverse effect on the impacted Party’s ability to consummate the transactions or realize the benefits contemplated in this Agreement.
“Modifications”	Has the meaning set forth in Section 14.4.1.
“Mortgage”	Has the meaning set forth in Section 14.1.
“Non-Curable Defaults”	has the meaning set forth in Section 14.3.2.
“Notice of Claim”	Intentionally Omitted.
“Owner”	Has the meaning set forth in the introductory paragraph.
“Owner's Interest”	Has the meaning set forth in Section 14.4.2.
“Party” and “Parties”	“Party” means Owner or Company, and “Parties” means Owner and Company.
“Permitted Encumbrances”	Means those matters of record with the Clerk and Recorder for the County in which the Land is located as of the Effective Date.
“Project”	Has the meaning set forth in the recitals.
“Property”	Has the meaning set forth in the recitals.
“Rent”	Means Development Rent and Operations Rent.
“Short Form”	Has the meaning set forth in Section 24.14.
“Solar Easement”	Has the meaning set forth in Section 6.
“Sublease”	Has the meaning set forth in Section 14.1.
“Sublessee”	Has the meaning set forth in Section 14.1.
“Term”	Means the Development Term and the Operations Term.

2. Rent.

2.1 Development Rent. Within thirty (30) days after the later of the Effective Date or Company's receipt of two (2) original copies of this Agreement and the Short Form fully executed by Owner and a W9 executed by Owner, Company will pay Owner (for the first year's Development Rent) one (1) year's Development Rent divided by three hundred sixty-five (365) multiplied by the number of days remaining in the calendar year in which the Effective Date occurs. Thereafter, on or before January 31 of each year during the Development Term until the start of the Operations Term, Company will pay Owner the Development Rent. The Development Rent for a partial calendar year will be prorated based on the number of days elapsed during that calendar year, and Company may offset any unused portion of the Development Rent against any future amounts Company owes Owner. The Development Rent will not be due after the start of the Operations Term.

2.2 Operations Rent. On or before the first January 31 after the first day of the Operations Term, Company will pay Owner the Operations Rent divided by three hundred sixty-five (365) and multiplied by the number of days remaining in the calendar year after the first day of the Operations Term, and on or before each January 31 thereafter during the Operations Term, Company will pay Owner the Operations Rent. The Operations Rent for a partial calendar year will be prorated based on the number of days elapsed during that calendar year, and Company may offset any unused portion of such rent against any future amounts Company owes Owner.

2.3 Escalator. On the second January 1 of the Operations Term and on each January 1 thereafter during the Operations Term, the Operations Rent will increase by an amount equal to the Escalator.

3. Use of Property during Development Term. During the Development Term, Company will have the exclusive right to perform Development on the Property. Owner expressly reserves the right to use the Property during the Development Term for uses that do not and will not interfere with the Development including farming, provided, however, that: (a) neither Owner nor any party claiming through Owner may use the Property in a manner inconsistent with Company's use of any access rights; (b) any such use of the Property will not include any energy development (including mineral development or leasing) or the installation or use of any facilities related to energy development or generation; (c) any easements or leases entered into or rights granted by Owner with respect to the Property after the Effective Date will expressly provide that they are subject and subordinate in all respects to this Agreement and to the rights of Company under this Agreement; and (d) neither Owner nor any party claiming through Owner will have any right to use any part of the Property after the Construction Start Date and until COD. All Development information will be Company's sole property.

4. Use of Property during Operations Term.

4.1 Company's Rights. During the Operations Term, Company will have exclusive use and possession of the Land and to the extent permitted under the pertinent grant to Owner exclusive right to all other parts of the Property, subject only to the Permitted Encumbrances. Company will have the right to use the Property for Development and for testing, permitting, construction, operation, equipment maintenance, vegetation management, livestock grazing, repair,

replacement, repowering and decommissioning of the Project and for all uses contemplated in the permits or authorizations relating to the Project, including all activities necessary, incidental or convenient to that use, and any other lawful uses consistent with the operation of the Project, including without limitation, the following activities (collectively, the "Intended Use"):

4.1.1 Solar Energy Systems. As Company deems necessary in its sole discretion, , Company may erect, relocate, repair, replace, maintain, operate and remove (a) on and from the Land solar energy measurement, collection, conversion, and generation systems and equipment of any type necessary or useful for the conversion of solar energy into electricity and for the storage of such electricity and (b) and on and from the Property transmission, distribution, and communication lines, poles, anchors, support structures, underground cables, and associated equipment and appurtenances, and roads Any equipment, facilities or other improvements erected or constructed on the Property pursuant to this Section will collectively be referred to as the "Improvements."

4.1.2 Waiver of Setback Requirements. Owner consents to Company's location of the Improvements at any location upon the Property, including at or near property lines. If any private agreements or restrictions or any Applicable Laws impose setback requirements or otherwise restrict the location of any Improvement on the Property or upon any adjacent properties, Owner will cooperate with Company in connection with such requirements and/or restrictions, including, without limitation, to obtain all waivers or variances from such requirements and/or restrictions as Company deems necessary.

4.1.3 Improvements Affecting the Project. Company may, as it deems necessary, remove, trim, prune, top or otherwise control the growth of any tree, shrub, plant or other vegetation or dismantle, demolish, and remove any improvement, structure, embankment, impediment, berm, wall, fence or other object, on or that intrudes (or could intrude) into the Property or that could obstruct, interfere with or impair the Project or the Intended Use. Company will have the right to perform grading on the Property and install security device as Company determines is necessary in connection with the Intended Use.

4.1.4 Specific Right to Use and Demolish Existing Structures. Without limitation of any other rights under this Agreement, Company will have the specific right to occupy, use, renovate, rebuild, demolish, and/or remove any existing structures on the Property for any and all purposes related to the Intended Use, including use of any structures, to the extent permitted by Applicable Law, as office or living quarters in connection with construction, operation, and management of the Project.

4.1.5 Right to Control Access. Subject to the terms of this Agreement and Applicable Law, Company will have the right under the Agreement to control and restrict access onto and over and across the Land and to exclude others (other than any parties with preexisting easement rights of record or other rights approved in advance and in writing by Company) from the Property.

4.2 Quiet Possession. Owner represents and warrants that it has fee title to the Property and the right to lease the Property for the Term, and covenants that Company will have the

peaceable and quiet possession of the Property for the Term in accordance with the terms of this Agreement.

4.3 Owner's Rights. During the Operations Term, Owner will have access to the Property at reasonable intervals and at reasonable times and upon reasonable notice to Company to inspect the Property. Any such access will not interfere with Company's Intended Use in any way. Notwithstanding the foregoing, Company may restrict Owner's access to the Property during construction.

4.4 Waiver of Nuisance. Owner has been informed by Company and understands that the presence and operations of the Improvements on the Property or any adjacent property will potentially result in some nuisance to Owner, And Owner hereby accepts such nuisance and waives any right Owner may have to object to such nuisance.

5. Grant of Easements. Owner hereby grants Company easements for access and utility installations (including transmission, water, and communications) as set forth in Exhibits B1 and B2. Upon Company's request from time to time, Owner promptly will grant Company or any other person designated by Company, one (1) or more other easements for access or utility purposes related to the Intended Use and on, over, and across the Property or any adjacent Owner property, and in such locations as may be designated by Company. Each such other easement(s) (a) will be at no cost to Company. (b) may (in Company's discretion) be separate from this Agreement (in which case the pertinent conditions and terms of this Agreement will be incorporated in to such easement(s)), (c) will be recorded by Company (in its discretion and at its cost), and (d) will run with the Land for the Term.

6. Solar Easement. This Agreement grants a solar easement as described in Colorado Revised Statutes 38-32.5-100.3 et seq (and as may be amended) on the Land for the benefit of Company ("Solar Easement"). The Solar Easement will terminate upon the termination of this Agreement (in its entirety). To the extent not provided for in this Agreement, Owner will not place any vegetation, structure, or other object on or adjacent to the Land that would obstruct the passage of sunlight through the Solar Easement. The Solar Easement is measured at angles of three hundred sixty (360) degrees horizontally and three hundred sixty (360) degrees vertically from the boundaries of the Land.

7. Separability. Company may divide the Property between two or more separate collections of associated Projects.

8. Mineral Leasing and Development. To the extent Owner holds or controls any mineral interests connected to the Property, Owner grants to Company a surface use relinquishment of

such interest such that neither Owner nor any Owner party may use the surface of the Property so long as this Agreement is in effect.

9. No Wind or Solar Agreements. Neither the Property nor any other property of Owner (or of any Owner Affiliate) is as of the Effective Date subject to a solar or wind energy access or cooperation agreement, easement, lease, option, or similar agreement.

10. No Severance. The development and/or solar rights associated with the Property (or any revenue associated with them) have not been severed from the Property, and Owner will not attempt to sever any such rights from the Property during the Term.

11. Transfers. Owner will give Company at least thirty (30) days written notice before any Transfer of all or a portion of the Property identifying the transferee, the portion of the Property to be transferred and the proposed date of transfer, and on the date of the transfer Owner or the transferee will deliver a copy of the subject instrument to Company. If a transfer occurs during the Development Term, then Owner will pay the transferee the Development Rent paid Owner and that corresponds to the Acreage subject to the transfer and to the period remaining in the calendar year after the date of the transfer, and thereafter Company will pay all such Rent to the transferee. If a transfer occurs during the Operations Term, then Company will pay the transferee all Operations Rent that corresponds to the Acreage subject to the transfer for the calendar year in which the transfer occurred, and thereafter Company will continue to pay all such Rent to the transferee. Owner waives any claim to the amounts described in this Section and that are to be paid Owner's transferee.

12. Construction of Improvements.

12.1 Governmental Permits. Company will be responsible for obtaining, maintaining and complying with (a) any existing or future development rights and entitlements and (b) all Applicable Laws with respect to obtaining any approvals or licenses necessary or appropriate for the construction and

12.2 Company's Activities. Owner acknowledges Company is intending to use the Property for the Intended Use. Owner will not (a) grant any rights under this Agreement to any other party which would be reasonably expected to impair Company's rights under this Agreement without Company's prior written consent. Owner will give Company prompt notice of any damage or defective condition in any part or appurtenance of the Property of which Owner is aware and that could reasonably be expected to affect the Project or Intended Use, and as of the Effective Date. Notwithstanding any other part of this Agreement but subject to the applicable notice and cure periods, the Parties agree that (A) Company would be irreparably harmed by a breach of the provisions of this Section, (B) an award of damages would be inadequate to remedy such a breach, and (C) Company will be entitled to equitable relief, including specific performance, to compel compliance with the provisions of this Section.

12.3 Mechanics' Liens. Company will pay all costs for any construction done by it or caused to be done by it on the Property. Company will keep the Property free and clear of all mechanics' liens resulting from construction done by or for Company on the Property, and Company will have sixty (60) days after first becoming aware of any mechanics' lien encumbering

the Property to (i) pay such mechanics' lien or (ii) contest the correctness or the validity of any such mechanics' liens if, within such sixty (60) day period, Company procures and records a bond in an amount sufficient to satisfy the claim of the lien or otherwise removes such lien from the Property.

12.4 Ownership of Improvements. The Project, all development rights and entitlements, and all Improvements to be constructed or installed on the Property are, and will remain, the property of Company; the Improvements may be removed by Company in its sole discretion, at any time, and Owner will have no right, title or interest in the Improvements. The Parties agree that all Improvements constructed or installed on the Property are severed by agreement and intention of the Parties and will remain severed from the Property, will be considered with respect to the interests of the Parties as the property of Company or another party designated by Company, and, even though attached to or affixed to or installed upon the Property, will not be considered to be fixtures or a part of the Property and will not be or become subject to the lien of any mortgage or deed of trust placed on the Property by Owner. Owner waives all liens or rights, statutory or common law, or claims that it may have in the Improvements including, without limitation, any right of distraint.

13. Representations and Warranties of Owner and Company.

13.1 Representations and Warranties of Owner. Owner makes the following representations and warranties to Company as of the Effective Date:

13.1.1 Formation. If Owner is an entity, Owner is duly formed, validly existing and in good standing under the laws of its State of organization and is authorized to transact business in State in which the Property is located.

13.1.2 Authority. Owner has all requisite power and authority to own and lease the Property. Owner has the power and authority to enter into, deliver and perform this Agreement and the Short Form (collectively, the "Lease Documents"). The execution, delivery and performance of the Lease Documents by Owner have been duly and validly approved by Owner and any and all persons or entities whose approval is necessary to their validity, and no other action on the part of Owner is necessary to approve the Lease Documents and/or to consummate the transactions contemplated in the Lease Documents..

13.1.3 No Violations or Defaults. Neither the execution and delivery of the Lease Documents by Owner nor the consummation by Owner of the transactions contemplated in the Lease Documents, nor compliance by Owner with the terms and provisions of the Lease Documents will (a) violate any provision of the instruments or agreements by which Owner is formed and/or governed or (b) violate any of the terms or provisions of any instrument or obligation encumbering the Property and/or by which Owner or any Affiliate of Owner is bound.

13.1.4 Consents and Approvals. No consents or approvals of, or filings or registrations with any court, administrative agency or commission or other governmental authority or instrumentality or with any other third party by Owner are necessary in connection with the execution, delivery and performance of the Lease Documents by Owner.

13.1.5 Legal Proceedings. Neither Owner nor any Affiliate of Owner is a party to any claim, and to Owner's actual knowledge, there are no pending or threatened legal, administrative, arbitral or other proceedings, claims, actions or governmental or regulatory investigations of any kind or nature whatsoever against Owner or any Affiliate of Owner or pertaining to the Property or challenging the validity or propriety of the Lease Documents and/or transactions contemplated in the Lease Documents.

13.1.6 Hazardous Materials. To Owner's actual knowledge, there are no Hazardous Materials on or under the Property and Hazardous Materials have not been stored, handled, disposed of or released on or about any part of the Property. Owner has not released or generated on the Property any Hazardous Materials, except to the extent permitted by Applicable Law.

13.1.7 No Conservation Programs. To Owner's actual knowledge, there are no Conservation Programs, including but not limited to the Conservation Reserve Program, Agricultural Conservation Easement Program, Environmental Quality Incentives Program, and the Conservation Security Program, that burden the land and could impact the Intended Use. Owner has the duty to inform Company of any such program and shall provide documentation of such program in Exhibit C.

13.1.8 No Brokers. Owner has not dealt with any broker, investment banker, agent or other person that may be entitled to any commission or compensation in connection with the transaction contemplated hereby.

13.2 Representations and Warranties of Company. Company makes the following representations and warranties to Owner as of the Effective Date:

13.2.1 Formation. Company is a limited liability company duly formed, validly existing and in good standing under the laws of its State of organization and its authorized to transact business in the State in which the Property is located.

13.2.2 Authority. Company has all requisite power and authority to lease deliver and perform the Lease Documents.

13.2.3 No Violations or Defaults. Neither the execution and delivery of the Lease Documents by Company nor the consummation by Company of the transactions contemplated in the Lease Documents will violate any of the terms or provisions of any instrument or obligation by which Company is bound.

13.2.4 Consents and Approvals. No consents or approvals of , or filings or registrations with any court, administrative agency or commission or other governmental authority or instrumentality or with any other third party by Company are necessary in connection with the execution, delivery and performance of the Lease Documents by Company.

13.2.5 Legal Proceedings. Company is not a party to any litigation that will have a direct impact on this transaction.. To Company's actual knowledge, there is no injunction, which imposes any restrictions on Company with respect to the Lease Documents or the Property.

13.2.6 No Brokers. Company has not dealt with any broker, investment banker, agent or other person that may be entitled to any commission or compensation in connection with the transaction contemplated hereby.

14. Assignment; Subletting; Mortgage.

14.1 Right to Mortgage, Assignment and Subletting. Company or any Sublessee (and their assignees) may assign, mortgage, transfer or sublease this Agreement or the Property to any person or entity, without the prior written consent of Owner, as follows: (i) if to an Affiliate of Company or any Sublessee; (ii) if to any entity that acquires all or substantially all of Company's interest in the Project or the Project assets; (iii) Company or any Sublessee may grant subleases, separate easements, co-easements, subeasements, licenses or similar rights (however denominated) to one or more assignees or other third parties (including easements and similar associated rights to construct, operate, and maintain transmission, collection, distribution, interconnection or switching lines or facilities), provided that Company is not released from its obligations under this Agreement in connection with these grants; (iv) Company or any Sublessee may collaterally assign all or any part of their interests under this Agreement; or (v) Company or any Sublessee may mortgage, grant or pledge its right, title or interest under this Agreement and/or in the Improvements, to any Lender as security for the repayment of any indebtedness and/or the performance of any obligation ("Mortgage"). Any other assignment will require Owner's prior written approval, which Owner will not unreasonably condition, delay, or withhold;

Any person or entity to whom Company assigns its right, title and interest under this Agreement and in the Property is included within the definition of "Company." Any person or entity that receives a sublease, separate easement, co-easement, subeasement, license or similar right of Company's right, title and interest under this Agreement and in the Property ("Sublease"), is referred to as a "Sublessee." Any assignor hereunder will be released from all obligations under this Agreement that accrue after the date of its assignment. As used in this Agreement, the term "Lender" includes any financial institution or other person or entity that from time to time provides secured financing to Company or a Sublessee secured by some or all of the Improvements or the Project, and any agent, security agent, collateral agent, indenture trustee, loan trustee, loan participant or participating or syndicated lenders involved in whole or in part in such financing, and their respective representatives, successors and assigns.

14.2 Notice To Owner. Company or any Sublessee that has entered into a transfer, assignment or Sublease or has granted a Mortgage will give notice of the same (including the name and address of the assignee, Sublessee or Lender, as the case may be) to Owner; provided, however that the failure to give such notice will not constitute a default or Event of Default (as defined below)

14.3 Lender and Sublessee Protections. Notwithstanding any other provision of this Agreement:

14.3.1 A Lender will have the absolute right to do one, some or all of the following: (a) assign its Mortgage; (b) enforce its Mortgage; (c) in the event of a default under its Mortgage:

(i) acquire title (whether by foreclosure, assignment in lieu of foreclosure or other means) to this Agreement or the Sublease (as the case may be); (ii) take possession of and operate the Improvements or the Project; (iii) assign or transfer this Agreement or the Sublease (as the case may be) to a third party; (iv) exercise any rights of Company or a Sublessee with respect to this Agreement or the Sublease (as the case may be); or, (v) cause a receiver to be appointed to do any of the foregoing. Owner's consent will not be required for any of the foregoing or for any third party to acquire title via foreclosure or assignment in lieu of foreclosure; and, upon acquisition of this Agreement or the Sublease (as the case may be) by a Lender or any other third party who acquires the same from or on behalf of the Lender or via foreclosure or assignment in lieu of foreclosure, Owner will recognize the Lender or such other party (as the case may be) as Company's or such Sublessee's (as the case may be) proper successor, and this Agreement or the Sublease (as the case may be) will remain in full force and effect.

14.3.2 Each Lender and Sublessee will have the same period of time after receipt of a notice of default to remedy the default or Event of Default, or cause the same to be remedied, as is given to Company after Company's receipt of the notice of default, plus, in each instance, the following additional time periods: (i) sixty (60) additional days in the event of any monetary default or Event of Default; and (ii) ninety (90) additional days in the event of any non-monetary default or Event of Default; provided, however, that (a) such ninety (90) day period will be extended for the time reasonably required by the Lender or Sublessee to complete such cure, including the time reasonably required for the Lender to obtain possession of the Property or subleasehold estate, as the case may be (including possession by a receiver), institute foreclosure proceedings or otherwise perfect its right to effect such cure and (b) neither the Lender nor such Sublessee will be required to cure those Events of Default which are not reasonably susceptible of being cured or performed by Company ("Non-Curable Defaults"). Each Lender and Sublessee will have the absolute right to substitute itself for Company and perform the duties of Company under this Agreement or with respect to the Property or subleasehold estate (as the case may be) for purposes of curing such default or Event of Default. Owner expressly consents to such substitution, agrees to accept such performance, and authorizes each Lender and Sublessee (and their respective employees, agents, representatives or contractors) to enter upon the Property to complete such performance with all of the rights and privileges of Company under this Agreement. Owner will not seek to terminate this Agreement before expiration of the cure periods available to each Lender and Sublessee as set forth above. Further, (1) neither the bankruptcy nor the insolvency of Company, by themselves, will be grounds for terminating this Agreement as long as the Rent and all other amounts payable by Company under this Agreement are paid by a Lender or Sublessee in accordance with the terms thereof and (2) Non-Curable Defaults will be deemed waived by Owner upon the Lender's completion of foreclosure proceedings or other acquisition of the Property or subleasehold estate (as the case may be).

14.3.3 If any default or Event of Default by Company under this Agreement cannot be cured by a Lender without its obtaining possession of all or part of the Property, then such default or Event of Default will nonetheless be deemed remedied if: (i) within ninety (90) days after receiving notice from Owner, a Lender acquires possession of the Property, or commences appropriate judicial or nonjudicial proceedings to obtain the same; (ii) so long as all monetary defaults have been cured and the Lender is prosecuting any such proceedings to completion with commercially reasonable diligence; and, (iii) after gaining possession thereof, the Lender performs all other obligations of Company (other than in connection with Non-Curable Defaults) as and

when the same are due in accordance with the terms of this Agreement. If a Lender is prohibited by any process or injunction issued by any court or by reason of any action of any court having jurisdiction over any bankruptcy or insolvency proceeding involving Company or a Sublessee, as the case may be, from commencing or prosecuting the proceedings described above, then the ninety (90) day period specified above for commencing such proceedings will be extended for the period of such prohibition.

14.3.4 A Lender that does not directly hold an interest in the Property or sublease hold estate (as the case may be), or that holds a Mortgage, will not have any obligation under this Agreement before the time that such Lender succeeds to absolute title to such estate; and such Lender will be liable to perform obligations under this Agreement only for and during the period of time that such Lender directly holds such absolute title. Further, if a Lender elects to (i) perform Company's obligations under this Agreement, (ii) continue Company's or any Sublessee's operations on the Property, (iii) acquire any portion of Company's or a Sublessee's right, title or interest in the Property or under this Agreement or a Sublease (as the case may be) or (iv) enter into a new agreement as provided in this Agreement, then such Lender will not have any personal liability to Owner in connection therewith, and Owner's sole recourse in the event of default by such Lender will be to execute against such Lender's interest in the Property or sublease hold estate (as the case may be), the Improvements and the Project. Moreover, any Lender or other party who acquires the Property or subleasehold estate (as the case may be) pursuant to foreclosure or an assignment in lieu of foreclosure will not be liable to perform any obligations under this Agreement to the extent the same are incurred or accrue after such Lender or other party no longer has ownership of such Property or subleasehold estate.

14.3.5 If this Agreement is rejected pursuant to bankruptcy law or any other law affecting creditor's rights or is terminated for any reason (except for a termination by Company in its discretion), then, Owner will, immediately upon written request from a Lender, if made within ninety (90) days after such termination, rejection, or disaffirmance, and so long as such Lender within this time-frame has cured any monetary Event of Default as provided for in this Agreement, without demanding additional consideration, enter into a new agreement in favor of such Lender, which new agreement will (i) contain the same covenants, agreements, terms, provisions and limitations as this Agreement (except for any requirements that have been fulfilled by Company or a Sublessee before such termination, rejection or disaffirmance), (ii) be for a term commencing on the date of such termination, rejection or disaffirmance, and continuing for the remainder of the Term before giving effect to such termination, rejection or disaffirmance including any rights to extend the Term and (iii) enjoy the same priority as this Agreement over any lien, encumbrance or other interest created by Owner; and, until such time as such new agreement is executed and delivered, the Lender may enter, use and enjoy the Property and conduct operations on the Property as if this Agreement were still in effect. At the option of the Lender, the new agreement may be executed by a designee of such Lender, without the Lender assuming the burdens and obligations of Company thereunder. If more than one Lender makes a written request for a new agreement pursuant hereto, then the same will be delivered to the Lender whose Mortgage is senior in priority.

14.3.6 If Owner has been given written notice of the name and mailing address of a Lender and/or Sublessee, (i) Owner will not agree to any material modification or amendment to this Agreement and (ii) Owner will not accept a surrender or termination of this Agreement; in each such case without the prior written consent of each such Lender and Sublessee.

14.3.7 At Company's request, Owner will use its commercially reasonable efforts to cooperate in a prompt manner with Company and any Sublessee in Company's or such Sublessee's (as applicable) efforts to obtain financing from a Lender, including the amendment of this Agreement to include any provision that may reasonably be requested by an existing or proposed Lender, and will execute such additional documents as may reasonably be required to evidence such Lender's rights under this Agreement.

14.4 Owner Mortgages.

14.4.1 Owner will be entitled to grant a lien or otherwise encumber Owner's fee estate in the Land or interest in this Agreement ("Fee Mortgage") to a Fee Mortgagee; provided, such grant or encumbrance will be subject to this Agreement, any modifications or extensions of this Agreement or any new lease entered after the termination of this Agreement as provided for in this Agreement ("Modifications"), and all rights of Company under this Agreement (including Lender, Sublessee and any party claiming by and through Company). The grant of a lien or encumbrance by Owner in favor of a Fee Mortgagee will be subordinate to and will not be a lien prior to this Agreement, any Modifications, or any Mortgage placed thereon. Any encumbrance by Owner will not be deemed to give any such assignee any greater rights than Owner under this Agreement or the right to cancel the Agreement or any Modifications. As used in this Agreement, the term "Fee Mortgagee" collectively includes any financial institution or other person or entity that from time to time provides financing to Owner secured by the Land, and any agent, security agent, collateral agent, indenture trustee, loan trustee, loan participant or participating or syndicated lenders involved in whole or in part in such financing, and their respective representatives, successors and assigns.

14.4.2 If Owner's interest in the Land is encumbered by a Fee Mortgage, if requested by Company, Owner will obtain and deliver to Company a non-disturbance agreement and subordination agreement from the applicable Fee Mortgagee in a form reasonably acceptable to Company and the Lender (if any) evidencing compliance with the requirements of this Agreement, which agreements will be recorded.

14.5 Conveyances, Other Agreements, and Owner's Cooperation. Notwithstanding any part of this Agreement to the contrary and without limiting Company's rights under this Agreement, in connection with the exercise of the rights of Company under this Agreement, Owner will consent, to, join in, or grant directly such interests to Sublessees as Company may request in order to give effect to the Intended Use .

15. Indemnity. Intentionally Omitted.

16. Insurance. Company will maintain or cause to be maintained at all times proper and adequate insurance, without lapse in coverage, with insurers authorized to issue insurance in the State in which the Property is located and in amounts as are customary in the industry and for projects like the Project.

17. Taxes.

17.1 Taxes Payable; Tax Cooperation. Intentionally omitted.

17.2 Tax Credits. All tax credits, tax incentives or tax related grants or benefits relating to the Project are, and will remain, the property of Company.

18. Utilities. Company will pay, before delinquency, all charges for extension of utility facilities to the Property for water, gas, electricity, heat, light, power, telephone and other public services used by Company in or upon the Property.

19. Default. Subject to the rights of Lender and Sublessees as provided in this Agreement, each of the following events will constitute an "Event of Default" by a Party (a) the failure or omission by a Party to pay amounts required to be paid pursuant to this Agreement when due, and such failure or omission has continued for sixty (60) days after written notice from the other Party or (b) the failure or omission by a Party to observe, keep or perform any of the other material terms, agreements or conditions set forth in this Agreement, and such failure or omission has continued for ninety (90) days (or such longer period as may reasonably be required to cure such failure or omission, provided that cure has commenced and such Party is diligently proceeding to complete such cure) after written notice from the other Party.

20. Remedies.

20.1 Company Monetary Event of Default. Upon the occurrence of a monetary Event of Default by Company, Owner may, at its option, (a) terminate this Agreement by notice to Company and in conformity with the procedures required by this Agreement and by Applicable Law, and/or (b) enforce, by all proper and legal suits and other means, its rights under this Agreement, including the collection of sums due under this Agreement.

20.2 Company Non-monetary Event of Default. Upon the occurrence of a non-monetary Event of Default by Company, Owner may, at its option, (a) cure the Company Event of Default on Company's behalf, in which event Company will reimburse Owner on demand for all sums so expended by Owner, or (b) enforce, by all proper and legal suits and other means, its rights under this Agreement, including the collection of sums due under this Agreement.

20.3 Owner Event of Default. Upon the occurrence and during the continuation of an Owner Event of Default, Company may, at its option (a) cure the Owner Event of Default on Owner's behalf, in which event Owner will reimburse Company on demand for all sums so expended by Company, (b) terminate this Agreement by notice to Owner and in conformity with procedures required by this Agreement and by Applicable Law, or (c) enforce, by all proper and legal suits and other means, its rights under this Agreement.

20.4 Limitation on Remedies. Notwithstanding any part of this Agreement or any rights or remedies Owner has at law or in equity, Owner will not (and hereby waives the right to) start or pursue any action to cancel, reform, rescind, or terminate this Agreement. By this limitation, Owner does not limit or waive its right to pursue damages or performance (as may be due) from Company as set forth in this Agreement.

21. Company Satisfaction of Owner Assessments. Company will have the right, but not the obligation after providing at least ten (10) days' notice to Owner, to perform, acquire, or satisfy any assessment, charge, lien, encumbrance, agreement or obligation of Owner which is or may become a lien or encumbrance on the Property or Improvements, and Owner will reimburse such

amounts to Company upon demand, and/or Company may deduct these amounts from future Rent due Owner from Company.

22. Termination.

22.1 Company by notice to Owner may, in its discretion, terminate all or any part of this Agreement at any time, and in the case of any such termination(s) that affects the Acreage total, such termination will reduce prospectively the amounts due from Owner to Company under this Agreement.

22.2 Unless terminated pursuant to any applicable provision of this Agreement, this Agreement will continue until the end of the Term as may be extended.

22.3 Upon the termination of this Agreement, Company will, with respect to the part(s) of the Property to which the termination applies, remove all Improvements and personal property of Company within twelve (12) months of the date of termination and will record a release of its interest under this Agreement. Operations Rent will continue to be payable until Company has completed the removal of its Improvements and personal property from the Property; provided that Operations Rent will be paid monthly in arrears on the first day of each calendar month in proportion to the portion of the Property that is cleared of Company's Improvements and personal property as of the last day of the prior calendar month. Company will also restore the Property to substantially the same condition existing on the Effective Date Company will have the nonexclusive right to occupy the Property for a period of no longer than one (1) year after termination or expiration as reasonably required to promptly complete such restoration activities.

23. Force Majeure. If either Party's performance under this Agreement is prevented or delayed, despite such Party's commercially reasonable efforts to perform, by causes beyond such Party's reasonable control, including strikes, riots, fires, floods, lightning, rain, earthquake, extraordinary wind or other weather events, war, invasion, insurrection, civil commotion, unavailability of resources due to national defense priorities, any act of God, binding orders, actions or inactions of any court or governmental authority, local, state or federal laws, regulations or ordinances, technological impossibility or any other similar or dissimilar cause beyond its reasonable control and not attributable to its neglect (each, a "Force Majeure Event"), then upon such claiming Party providing notice in reasonable detail to the other Party the requirement of performing such obligation will be postponed by a period equal to the period of time such Party's performance under this Agreement is prevented or delayed by such Force Majeure Event.

24. General Provisions.

24.1 Approvals and Consents Generally. Whenever in this Agreement the approval or consent of either Party is required or contemplated, unless otherwise specified such approval or consent will not be unreasonably withheld, conditioned and/or delayed.

24.2 Binding Effect. This Agreement will bind the Parties, their personal representatives, successors and assigns.

24.3 Confidentiality. Owner will maintain in the strictest confidence all information pertaining to the financial terms of or payments under this Agreement, Company's site or product design, methods of operation and the like, whether disclosed by Company or discovered by Owner.

24.4 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which will be deemed to be one and the same instrument. Executed copies of this Agreement will be regarded as originals.

24.5 Dispute resolution; Attorneys' Fees. The Parties will attempt amicable resolution of any disputes arising out of or related to this Agreement. If thirty (30) days after initiation amicable resolution fails, as either Party determines in its discretion, then either Party may file suit. Venue will be in the County where the Property is located. In the event of any action between the Parties, the non-prevailing Party will pay to the prevailing Party all costs and expenses, including reasonable attorneys' fees.

EACH PARTY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A JURY TRIAL IN ANY ACTION BASED ON THIS AGREEMENT, 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 ANY PARTY. EACH PARTY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT OR HAS NOT BEEN WAIVED. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH PARTY'S ENTERING THIS AGREEMENT.

24.6 Entire Agreement. This Agreement contains all agreements of the Parties with respect to its subject matter. No prior agreement or understanding pertaining to any such matter will be effective. This Agreement may be modified only by a writing signed by the Parties. All exhibits and schedules attached to this Agreement are incorporated by this reference.

24.7 Estoppel Certificate; Finance-Related Amendments. Owner will at any time upon not less than fifteen (15) days' prior written notice from Company execute, acknowledge and deliver a statement in writing (a) certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying that this Agreement, as so modified, is in full force and effect) and the date to which the Rent and other charges have been paid, (b) acknowledging that there are not, to Owner's knowledge, any uncured Events of Default, or specifying such uncured Events of Default if any are claimed and (c) certifying or acknowledging any other reasonably requested information. Any such statement may be conclusively relied upon by any lender or any prospective assignee of the Project. Owner acknowledges Company will be obtaining financing to develop, construct, own and operate the Project and agrees to make such commercially reasonable amendments to this Agreement as may be reasonably required in order to facilitate such financing; provided that such amendments do not adversely affect Owner's rights under this Agreement or otherwise adversely affect any of the economic terms of this Agreement.

24.8 Further Assurances. Owner agrees to perform such further acts and execute such further documents as may be necessary or appropriate to carry out the express intents and purposes of this Agreement.

24.9 Law. This Agreement will be construed and enforced in accordance with and governed by the internal laws (and not the conflicts law) of the State in which the Property is located.

24.10 No Joint-Venture or Partnership. Nothing contained in this Agreement will be deemed or construed to create or constitute a partnership, joint venture, or other co-ownership by and between the Parties.

24.11 No other covenants, representations, or warranties. Company makes no covenants except as expressly set forth in this Agreement.

24.12 Notices; Payments. The address of each Party for all notices required or permitted to be given under this Agreement will be as follows:

If to Owner:
City of Grand Junction
Attn: City Manager
250 N 5th Street
Grand Junction, CO 81501

If to Company:
Pivot Energy Colorado LLC
1750 15th St. # 400
Denver, CO 80202
Attention: Project Manager

All notices will be in writing, and may be delivered by any of the following methods, with all delivery charges and/or postage pre-paid: personal delivery (including delivery by private courier services), reputable overnight courier service (e.g. Federal Express, UPS, DHL), or United States first class certified mail with return-receipt requested, email transmission with receipt confirmed by reply email, or facsimile transmission with receipt confirmed. Payments will be made to Owner, at Owner's election, either (a) by wire transfer to an account designated by Owner, or (b) by check delivered to Owner's address as set forth in this Section, or such other address specified by Owner.

24.13 Severability. If any term or provision of the Agreement or its application to any person or circumstance will, to any extent, be determined by judicial order or decision to be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held to be invalid or unenforceable will not be affected, and each such remaining term and provision of this Agreement will remain valid and will be enforced to the fullest extent permitted by Applicable Law.

24.14 Short Form. Neither Owner nor Company will record this Agreement. Concurrently with their execution of this Agreement, the Parties have executed the short form of

this agreement attached as Exhibit D (“Short Form”), which Company will record with the Clerk and Recorder for the County in which the Property is located.

24.15 Survival. Upon the expiration or other termination of this Agreement, the respective rights and obligations of the Parties hereto shall survive such expiration or other termination to the extent necessary to carry out the intentions of the Parties under this Agreement.

24.16 Waiver. No waiver by Owner or Company of any provision of this Agreement will be deemed a waiver of any other provision of this Agreement or of any subsequent breach of the same or any other provision. A Party’s consent to or approval of any act will not be deemed to render unnecessary the obtaining of such Party’s consent to or approval of any subsequent act.

25. Additional Provisions.

None if nothing listed.

[Signature Pages Follow]

Done and signed.

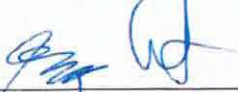
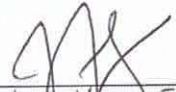
Owner: City of Grand Junction  By: _____ Its: City Manager	Company: Pivot Energy Colorado LLC  By: Jonathan Fitzpatrick Its: Authorized Representative
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EXHIBIT A

Legal Description and General Depiction

DESCRIPTION OF THE LAND

THAT CERTAIN REAL PROPERTY LOCATED IN MESA COUNTY, COLORADO,
DESCRIBED AS:

Parcel	Township	Range	Section	Portion of Section	Acreage
2943-173-34-004	1S	1E	17		3.78
				Total Acreage	3.78



Property Information (Record Date: 9/13/2021)

Parcel Number: 2943-173-34-004
 Account Number: R044363
Property Use: Exempt
 Location Address: 2940 D 1/4 RD
 GRAND JUNCTION, CO 81504
 Mailing Address: 250 N 5TH ST
 GRAND JUNCTION, CO 81501
 Owner Name: CITY OF GRAND JUNCTION
 Joint Owner Name:
 Neighborhood: AREA 19 (19.00)
 Associated Parcel: N/A
 Approx. Latitude: 39.067053
 Approx. Longitude: -108.507220

[TAC \(Tax Area Code\) Book](#)
[Manufactured Homes Purging Titles/Classifying to Real Property](#)
[Real Property Valuation F.A.Q.'s](#)



Legal Description

LOT 2 GIRARDI SUBDIVISION SEC 17 1S 1E - 3.78AC

EXHIBIT B

Easements- Access & Utility

EXHIBIT C

Conservation Program

If applicable, Owner shall provide Company with a copy of any Conservation Program contract and all amendments and modifications to it.

EXHIBIT D

FORM OF
SHORT FORM

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

(Space above this line for Recorder's use only)

SHORT FORM OF SOLAR LEASE

THIS SHORT FORM OF SOLAR LEASE ("Short Form") is made and entered into as of November 17, 2021, by and between The City of Grand Junction whose mailing address is 250 N 5th Street, Grand Junction, CO 81501 ("Owner"), and Pivot Energy Colorado LLC, a Colorado Limited Liability Corporation, whose address is 1750 15th Street Suite 400, Denver, CO 80202 ("Company") (Owner and Company the "Parties" and each a "Party"), and provides as follows:

WITNESSETH

The Parties agree:

1. The Parties have entered into a Solar lease ("Agreement") dated as of November 17, 2021 ("Effective Date"). The Agreement grants Company exclusive rights in and to certain land more particularly described in the attached Exhibit A ("Land") as well as in and to any easements, rights-of-way, and other rights and benefits relating or appurtenant to the Land ("Property"). The Agreement also restricts certain uses of and grants certain interests in and to the Property.
2. Generally, the Agreement: (a) concerns the development of solar energy project(s) by Company involving the Property ("Project"); (b) grants Company easements, leases, and other rights related to the Property; and, (c) limits, prohibits, and restricts other development or use(s) of the Property that interfere with the rights granted Company by the Agreement.
3. The Agreement consists of two periods – a "Development Term" and an "Operations Term" (together the "Term").

The Development Term is Three (3) years from the Effective Date.

The Operations Term starts on the earlier of: (a) Company's notice to Owner of the start of the Operations Term; (b) the date that is twelve (12) months after the date of the start of construction of the Project as set forth in a notice from Company to Owner; or, (c) the first day the Project delivers electricity in commercial quantities (excluding test energy) and continuing thereafter until

the date that is twenty one (21) years after this date. By notice to Owner, Company has the exclusive right to enter into lease renewal conversations.

4. By the Agreement, Owner grants Company certain exclusive and non-exclusive rights.

For the Development Term, Owner grants Company exclusive rights to the Property for performing "Development," which means (a) all actions, studies, and tests related to the evaluation and investigation by Company of the suitability of the Property for solar energy development, including performing the following on the Property: (i) inspections and surveys; (ii) archaeological, avian, geologic, and soils studies and tests; (iii) electrical interconnection and transmission studies and tests; (iv) environmental inspections, studies, and surveys; (v) the operation of equipment for evaluating, measuring, and monitoring meteorological conditions; and, (vi) conducting meteorological studies and tests and (b) construction of the Project including of those systems authorized to be located on the Property during the Operations Term.

For the Operations Term, Company will have exclusive use and possession of the Land and to the extent permitted under the pertinent grant/right to Owner exclusive right to all other parts of the Property. Company will have the right to use the Property for Development and for testing, permitting, construction, operation, maintenance, repair, replacement, repowering and decommissioning of the Project and for all uses contemplated in the permits or authorizations relating to the Project, including all activities necessary, incidental or convenient to that use, and any other lawful uses consistent with the operation of the Project, including, the following activities (collectively, the "Intended Use"):

As Company deems necessary in its sole discretion, whether on or off the Property, Company may erect, relocate, repair, replace, maintain, operate and remove (a) on and from the Land solar energy measurement, collection, conversion, and generation systems and equipment of any type and quantity, including fences, foundations, racking systems, inverters, converters, substations, interconnection and switching facilities, tracking systems, buildings, and other equipment and improvements for the conversion of solar energy into electricity and for the storage of such electricity and (b) on and from the Property transmission, distribution, and communication lines, poles, anchors, support structures, underground cables, and associated equipment and appurtenances, and roads. Any such equipment, facilities or other improvements erected or constructed on the Property are referred to as the "Improvements";

Company may remove, trim, prune, top or otherwise control the growth of any tree, shrub, plant or other vegetation or dismantle, demolish, and remove any improvement, structure, embankment, impediment, berm, wall, fence or other object, on or that intrudes (or could intrude) into the Property or that could obstruct, interfere with or impair the Project or the Intended Use, as well as perform grading on the Property;

Company may occupy, use, renovate, rebuild, demolish, and/or remove any existing structures on the Property, including use of any structures as office or living quarters in connection with construction, operation, and management of the Project; and,

Company may control and restrict access onto and over and across the Property.

Owner consents to Company's location of the Improvements at any location on the Property, including at or near property lines.

5. The Agreement also, among other things: (a) restricts Owner's access to the Property during the Term; (b) requires Owner to grant such further easements for access and utility purposes as Company may require; (c) prohibits any activities, whether on or off the Property, that interfere with the passage of sunlight on to the Property; (d) includes an express grant of a solar easement as described in Colorado Revised Statutes 38-32.5-100.3 et seq; (e) includes a mechanism for dividing the Property into multiple separate leases for separate projects; (f) includes a waiver by Owner of any interest in the Improvements, including any potential lien rights; (g) addresses the rights of the Parties in the case of a condemnation of all or part of the Property; (h) authorizes Company to satisfy Owner's obligations that may become a lien or encumbrance on the Property or Improvements; (i) includes limited remedies and prohibits certain remedies; and, (j) includes limited bases for termination.

6. The Agreement runs with the Property and includes a quiet enjoyment clause.

7. The Agreement includes broad assignment and finance-related provisions in favor of Company, including: (a) the right of Company and its assignees to assign (including by assignment, lease, or sublease, or a grant of licenses, easements, sub-easements or co-easements) all or part of their rights under the Agreement and/or the Improvements, including for collateral security purposes; (b) the right of Company or its assignees to mortgage the Leasehold Estate and the Improvements; (c) the obligation of Owner to give Company and Lender notice of defaults; (d) the right of Lender or assignees to exercise Company's rights under the Agreement and/or take title to the Leasehold Estate, Improvements, and/or Company's rights under the Agreement (but as provided for in the Agreement Lender have no obligations under the Agreement unless and until they hold a direct interest in the Property); (e) limited bases for termination (i.e. only in the case of uncured monetary defaults and after expiration of all applicable cure periods); (f) cure rights in favor of Company, assign and Lenders and separate cure periods for Company and Lenders ; and, (f) the obligation of Owner to execute a new lease if the Agreement is terminated.

8. The conditions, covenants, definitions (including the definition of capitalized terms not defined in this Short Form), limitations, restrictions, and terms governing the encumbrances imposed on the Property, restrictions on use of the Property, and rights granted in and to the Property are set forth in the Agreement. Without limitation, and except as expressly authorized by the Agreement, these include Owner's covenant to not grant any third party any rights to evaluate or develop the Property. Also, the Agreement specifies limitations, requirements, and/or restrictions, on: (a) the conveyance and development of mineral rights associated with the Property (including a surface use relinquishment by Owner, as well as a requirement that any mineral interest owners enter a surface use or accommodation agreement with Company); (b) interference with the Project and/or with the rights granted in the Agreement; and/or, (c) "severance" of solar rights associated with the Property or revenue related to the Agreement.

9. Also by the Agreement Owner covenants: (a) to obtain for the benefit of Company a non-disturbance and subordination agreement from each holder of an interest in the Property; (b) to

amend the Agreement as Company may request in connection with its financing; and, (c) to execute consents and estoppel certificates as Company may request from time-to-time.

10. The Parties have executed and recorded this Short Form for the purpose of giving record notice of the Agreement, of the exclusive easements, leases, and rights it grants, and of certain restrictions it imposes. All of the conditions, covenants, and terms regarding the Agreement are more particularly set forth in the Agreement, which is incorporated by this reference. In the event of any conflict between the conditions and terms set forth in this Short Form and the conditions and terms set forth in the Agreement, the conditions and terms of the Agreement will control and govern. This Short Form may be executed and/or recorded in counterparts.

SIGNATURE PAGES FOLLOW

EXHIBIT A TO
SHORT FORM OF SOLAR LEASE

DESCRIPTION OF THE LAND

THAT CERTAIN REAL PROPERTY LOCATED IN MESA COUNTY, COLORADO,
DESCRIBED AS:

Parcel	Township	Range	Section	Portion of Section	Acreage
2943-173-34-004	1S	1E	17		3.78
				Total Acreage	3.78



Property Information (Report Date: 9/13/2021)

Parcel Number: 2943-173-34-004
 Account Number: R044363
Property Use: Exempt
 Location Address: 2940 D 1/4 RD
 GRAND JUNCTION, CO 81504
 Mailing Address: 250 N 5TH ST
 GRAND JUNCTION, CO 81501
 Owner Name: CITY OF GRAND JUNCTION
 Joint Owner Name:
 Neighborhood: AREA 19 (19.00)
 Associated Parcel: N/A
 Approx. Latitude: -39.067053
 Approx. Longitude: -108.507220

[TAC \(Tax Area Code\) Book](#)
[Manufactured Homes Purging Titles/Classifying to Real Property](#)
[Real Property Valuation F.A.Q.'s](#)



Legal Description

LOT 2 GIRARDI SUBDIVISION SEC 17 1S 1E - 3.78AC

