

The University of Minnesota Law School
Environmental Law Clinic

In Conjunction
With:

Minnesota Renewable Energy Society (MRES)

Presents:

A Guide to Sample
Community Solar Garden
Leases

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SOLAR GARDEN LEASE DISCLAIMER

This lease is not legal advice nor a final, binding lease; it only provides information and guidance and should only be used as an example. This lease should not be duplicated without consideration of an individual's particular situation; it does not cover each and every project lease between the landowner and the developer. This lease cannot anticipate the parties' specific needs and should be negotiated and changed to fit your particular situation.

A solar garden lease is a complex document and subjects a person who signs it to legal obligations. Due to this complexity, you should consult an attorney in your area before making any contractual commitment or signing any agreement. Due to variations in state laws, certain provisions included in this lease may not be enforceable or specifically address your situation. An attorney can solve this particular issue.

This lease includes multiple interchangeable provisions that may be changed in order to satisfy your specific project. Additional or alternative provisions should be added when appropriate.

Nothing contained in these sample lease should be construed to constitute a recommendation or endorsement of any organization, product, service, law firm or attorney.

Definitions

A word to the wise:

The following definitions are only common legal definitions to some of the words that appear in this lease. They are not the exact definitions of the words in the lease. If you are unsure about the meaning of a word in the lease, you must discuss it with the other party and come to a mutual understanding of the word.

Access easement: An interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose (such as to cross it for access to a public road). The land benefiting from an easement is called the *dominant estate*; the land burdened by an easement is called the *servient estate*. Unlike a lease or license, an easement may last forever, but it does not give the holder the right to possess, take from, improve, or sell the land.

Act of God: An overwhelming, unpreventable event caused exclusively by forces of nature, such as an earthquake, flood, or tornado. The definition has been statutorily broadened to include all natural phenomena that are exceptional, inevitable, and irresistible, the effects of which could not be prevented or avoided by the exercise of due care or foresight.

Affiliate: A corporation that is related to another corporation by shareholdings or other means of control; a subsidiary, parent, or sibling corporation.

Alternative Energy Expenditure: A sum paid out from the energy source in question.

Amendments or Modifications: Official, mutually agreed upon changes to a legal document or agreement.

Applicable Law: All law affecting or relating to a particular person, group, or situation; having direct relevance.

Assessments: The process of documents, judging, and quantifying certain things.

Assignments: the transfer of rights held by one party—the assignor—to another party—the assignee.

Audit: A formal examination of an individual's or organization's accounting records, financial situation, or compliance with some other set of standards.

Beneficiary: Someone who is designated to receive the advantages from an action or change; esp., one designated to benefit from an appointment, disposition, or assignment (as in a will, insurance policy, etc.), or to receive something as a result of a legal arrangement or instrument.

Bond: A written promise to pay money or do some act if certain circumstances occur or a certain time elapses.

Brokerage Fee: the amount of money that a broker charges.

Broker: One who is engaged for another, on a commission, to negotiate contracts relating to property in which he or she has no custodial or proprietary interest.

Collateral Assignment: Property that is pledged as security against a debt; the property subject to a security interest or agricultural lien.

Commercially Unfeasible: A deal that would not produce an economic benefit to one or more parties involved.

Condemnation: An official pronouncement that a building is unfit for habitation.

Condemnor: A person or entity that expropriates property for public use.

Contingent or Success Fee Basis: Dependent on something that might or might not happen in the future; conditional upon the success of the operation.

Conveyance: The voluntary transfer of a right or of property.

Counterpart: One of two or more copies or duplicates of a legal instrument.

Covenant: A formal agreement or promise, usu. in a contract or deed, to do or not do a particular act; a compact or stipulation.

CRP Contract: The Conservation Reserve Program (CRP) is a land conservation program administered by the Farm Service Agency. In exchange for a yearly rental payment, farmers enrolled in the program agree to remove environmentally sensitive land from agricultural production and plant species that will improve environmental health and quality. Contracts for land enrolled in CRP are 10-15 years in length.

Debtor-in-possession: Chapter 11 or 12 debtor that continues to operate its business as a fiduciary to the bankruptcy estate. With certain exceptions, the debtor-in-possession has all the rights, powers, and duties of a Chapter 11 trustee.

Deed of Trust: any written instrument that is signed, sealed, and delivered and that conveys some interest in property.

Default: The omission or failure to perform a legal or contractual duty; esp., the failure to pay a debt when due.

Delinquent Payment: Payment for a past failure to perform.

Designee: Someone who has been designated to perform some duty or carry out some specific role.

Due Diligence: The attention and care required from a person in a given situation; care; heedfulness.

Easement: An interest in land owned by another person, consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose.

Effective Date: The date on which the contract becomes enforceable or otherwise takes effect. This date sometimes differs from the date on which the instrument was enacted or signed.

Embargo: The unilateral or collective restrictions on the import or export of goods, materials, capital, or services into or from a specific country or group of countries for political or security reasons

Eminent Domain: The inherent power of a governmental entity to take privately owned property, esp. land, and convert it to public use, subject to reasonable compensation for the taking.

Encumbrance: A claim or liability that is attached to property or some other right and that may lessen its value, such as a lien or mortgage; any property right that is not an ownership interest. a right, other than an ownership interest, in real property.

Enforcement: The act or process of compelling compliance with a law, mandate, command, decree, or agreement.

Escrow: A legal document or property delivered by a promisor to a third party to be held by the third party for a given amount of time or until the occurrence of a condition, at which time the third party is to hand over the document or property to the promisee. Also termed *escrow account*; *impound account*; *reserve account*.

Estoppel: A bar that prevents one from asserting a claim or right that contradicts what one has said or done before or what has been legally established as true.

Equity: Fairness; impartiality; evenhanded dealing.

Exclusive Easement: An easement that the holder has the sole right to use.

Exclusive Right: the right to do something to the exclusion of all others.

Fee Simple: An interest in land that, being the broadest property interest allowed by law, endures until the current holder dies without heirs.

Fee title: the owner's legal interest in the land.

Fiduciary Relationship: A relationship in which one person is under a duty to act for the benefit of another on matters within the scope of the relationship. Fiduciary relationships usu. arise in one of four situations: (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognized as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer.

Foreclosure: A legal proceeding to terminate a mortgagor's interest in property, instituted by the lender (the mortgagee) either to gain title or to force a sale in order to satisfy the unpaid debt secured by the property.

Force Majeure: An event or effect that can be neither anticipated nor controlled. The term includes both acts of nature (e.g., floods and hurricanes) and acts of people.

Foresight: care or provision for the future; provident care; prudence.

Forfeiture: The divestiture of property without compensation. The loss of a right, privilege, or property because of a crime, breach of obligation, or neglect of duty. Title is instantaneously transferred to another, such as the government, a corporation, or a private person.

FSA Records: Farm Service Agency records; part of the United States Department of Agriculture.

Good Faith: A state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage.

Hazardous Wastes: Waste that — because of its quantity, concentration, or physical, chemical, or infectious characteristics — may cause or significantly contribute to an increase in mortality or otherwise harm human health or the environment.

In Gross: Undivided; still in one large mass.

Indemnify: To reimburse (another) for a loss suffered because of a third party's or one's own act or default. To promise to reimburse (another) for such a loss.

Ingress: The act of entering. The right or ability to enter

Egress: The act of going out or leaving. The right or ability to leave; a way of exit.

Injunction: A court order commanding or preventing an action.

Insolvency: The condition of being unable to pay debts as they fall due or in the usual course of business. The inability to pay debts as they mature.

Inure: To take effect; to come into use

Investment Grade Company: refers to a companies credit. Most companies are issued a rating based on their financial strength, future prospects and past history. Companies that have manageable levels of debt, good earnings potential and a good debt-paying records will have good credit ratings.

Invitee: person who has an express or implied invitation to enter or use another's premises, such as a business visitor or a member of the public to whom the premises are held open.

Joint Venture: A business undertaking by two or more persons engaged in a single defined project. The necessary elements are (1) an express or implied agreement; (2) a common purpose that the group intends to carry out; (3) shared profits and losses; and (4) each member's equal voice in controlling the project.

Jury Trial: A trial in which the factual issues are determined by a jury, not by the judge.

Jurisdiction: A government's general power to exercise authority over all persons and things within its territory; or, a court's power to decide a case or issue a decree

Lease: A contract by which a rightful possessor of real property conveys the right to use and occupy the property in exchange for consideration, usu. rent. The lease term can be for life, for a fixed period, or for a period terminable at will, and possibly including all covenants

Leasehold Interest: A lessor's or lessee's interest under a lease contract.

Lessee: Someone who has a possessory interest in real or personal property under a lease

Letter of Credit: *Commercial law.* An instrument under which the issuer (usu. a bank), at a customer's request, agrees to honor a draft or other demand for payment made by a third party (the *beneficiary*), as long as the draft or demand complies with specified conditions, and regardless of whether any underlying agreement between the customer and the beneficiary is satisfied.

Liability: A financial or pecuniary obligation in a specified amount

License: A permission, usually revocable, to commit some act that would otherwise be unlawful; especially an agreement that it is lawful for the licensee to enter the licensor's land to do some act that would otherwise be illegal.

Liens: A legal right or interest that a creditor has in another's property, lasting usually until a debt or duty that it secures is satisfied. Typically, the creditor does not take possession of the property on which the lien has been obtained

Material: significantly and substantially affecting the merits of a case

Memorandum of Lease: An informal written note or record outlining the terms of a transaction or contract of the lease

Memorializing: the process of writing an abstract of a legal record

Metes and Bound Description: The description of territorial limits of real property as measured by distances and angles from designated landmarks and in relation to adjoining properties. Metes and bounds are usually described in deeds and surveys to establish the boundary lines of land.

Mortgage: A lien against property that is granted to secure an obligation (such as a debt) and that is extinguished upon payment or performance according to stipulated terms.

Negligent Act: An act that creates an unreasonable risk of harm to another.

Intentional Act: An act resulting from the actor's will directed to that end. An act is intentional when it is foreseen and desired by the doer, and this foresight and desire resulted in the act through the operation of the will.

Non-Disturbance Agreement: Non disturbance agreement refers to an agreement between a tenant and the landlord's lender to ensure the tenant will remain in possession of the leased property, despite any foreclosure action against the landlord.

Subordination Agreement: Formal document acknowledging that one party's claim or interest is inferior to that of the other party or parties. If consent forms a part of a larger agreement, it is called a subordination clause.

Nuisance: A condition, activity, or situation (such as a loud noise or foul odor) that interferes with the use or enjoyment of property especially a nontransitory condition or persistent activity that either injures the physical condition of adjacent land or interferes with its use or with the enjoyment of easements on the land or of public highways. Liability might or might not arise from the condition or situation.

Omission: A failure to do something especially a neglect of duty - material omission is an omission that significantly affects a person's decision-making.

Owner: Someone who has the right to possess, use, and convey something. An owner may have complete property in the thing or may have parted with some interests in it (as by granting an easement or making a lease).

Penalties: An extra charge against a party who violates a contractual provision.

Premises: A house or building, along with its grounds especially the buildings and land that a shop, restaurant, company, and etc. uses.

Proprietary: Of, relating to, or holding as property

Punitive Damage (Exemplary Damage): Damages awarded in addition to actual damages when the defendant acted with recklessness, malice, or deceit specifically damages assessed by way of penalizing the wrongdoer or making an example to others. Punitive damages, which are intended to punish and thereby deter blameworthy conduct, are generally not recoverable for breach of contract.

Quiet Use and Enjoyment (Covenant of Quiet Enjoyment): A covenant ensuring that the tenant will not be evicted or disturbed by the grantor or a person having a lien or superior title

Reasonable: Fair, proper, or moderate under the circumstances; sensible

Reasonable Notice: Notice that is fairly to be expected or required under the particular circumstances.

Recordable/recordation: To set down in writing or the like, as for the purpose of preserving evidence.

Reimburse: The primary meaning of this word is "to pay back." It means to make return or restoration of an equivalent for something paid, expended, or lost; to indemnify, or make whole.

Remitting (Remit): To send or transmit as to remit money. To give up, annul, relinquish as to remit a fine.

Revocation: The recall of some power, authority, or thing granted, or a destroying or making void of some deed that had existence until the act of revocation made it void. It may be either general, of all acts and things done before; or special, to revoke a particular thing.

Right of Way: The right of passage or of way. The term would be used in an unusual sense, by applying it to an absolute purchase of the fee-simple of lands to be used for a railway or any other kind of a way.

Right to assign or convey: Right to make or set over to another, to transfer as to assign property, or some interest therein.

Run with the Premises (Run with the land): A convention where covenants on land are passed from one owner to the next.

Salvage Value: The residual value of a product when it has reached the end of its productive life but still has a value if salvaged for recycling or reselling its parts.

Solar Energy Generating Equipment: Any equipment generate energy through the use of sun (such as solar panels), or any equipment that aids in generation, such as transmission wires or meter. This is a broad term.

Solid Waste: A semi-solid and solid waste from demolition, mining, agriculture, sewage and garbage. The more concrete definition is defined in section 261.2 of the Resource Conservation and Recovery Act.

Sublease: A lease by a tenant to another person of a part of the premises held by him.

Subpoena: The process by which the attendance of a witness is required is called a "subpoena." It is a writ or order directed to a person, and requiring his attendance at a particular time and place to testify as a witness.

Subordinate: An employee who is ranked below another employee in the office seniority or hierarchy. Subject to or under the authority of a superior.

Subsurface Interests (Subsurface Rights): Rights of the landowner to water and substances below the surface of their land.

Surrender: A yielding up of an estate for life or years to him who has an immediate estate in reversion or remainder, by which the lesser estate is merged in the greater by mutual agreement.

Survival of Covenants: The contract shall continue for the duration of the contact even if one of the signing parties is no longer employed or passes away.

Termination (Terminate): Customer cancellation of remaining work of a contract.

Toxic Substance: According to EPA, A toxic substance means any chemical or mixture that may be harmful to the environment and to human health if inhaled, swallowed, or absorbed through the skin.

Transferees (Transfer): A person to whom a transfer is made.

Transmission: The act or process of transmitting. A transference of motive force or power.

Trustee: The person appointed, or required by law, to execute a trust; one in whom an estate, interest, or power is vested, under an express or implied agreement to administer or exercise it for the benefit or to the use of another.

Venue: A neighborhood, place, or county in which an injury or fact are declared to have happened. Venue also denotes the county in which an action or prosecution is brought for trial, and which is to furnish the panel of jurors.

Waive (Waiver): The renunciation, repudiation, abandonment, or surrender of some claim, right, privilege, or of the opportunity to take advantage of some select, irregularity, or wrong. The passing by of an occasion to enforce a legal right, whereby the right to enforce the same is lost.

Warranty (Warrant): In conveyance, to assure the title to property sold, by an express covenant to that effect in the deed of conveyance. To stipulate by an express covenant that the title of a grantee shall be good, and his possession undisturbed. In contracts, to engage or promise that a certain fact or state of facts, in relation to the subject matter, is, or shall be, as it is represented to be.

Waste: Useless consumption or expenditure; use without adequate return; an act or instance of wasting.

Written Notice: A legal notification or warning that is delivered in a written format or through a formal announcement.

Written Approval: An official approbation in a written format.

A word to the wise:

The following are plain language explanations to each provision for both leases. These explanations are only meant to shed light on what each provision means, why it is important to the lease, and point out some place where changes could be made. The customizability portions are not all inclusive, nor are they all exclusive. The lease contains the only true meanings, if you have any questions about a provision, you should discuss them with the other party and come to a mutual understanding.

Land Lease

ARTICLE I. Premises.....	1
Section 1.1..... General.....	1

(a) Lease of Premises for Solar Energy Purposes

Why have this provision: The provision is to designate that the premises is solely used for community solar garden that includes, but not limited to, solar energy generating equipment, solar facilities, and other uses in connection to solar energy generation purposes.

Customizability: Most importantly, the provision states that the parties intend to be “legally bound” by the terms of the lease. The parties (both landowner and developer) should determine the scope and extent of the actual premises under the provision as well as the operations that are permitted under the designated premises. In fact, the parties can even narrow down what operations may and may not be allowed and define the terms in further detail, such as “time to time.” The provision also states that “general description of the premises described in Exhibit A attached to this lease on the effective date may not be a precise legal description of the premises. The owner and Developer hereby acknowledge and confirm that, notwithstanding any insufficiency in the legal description attached as Exhibit A, the parties desire to enter this lease and to be fully and legally bound by the lease.” However, the parties can ensure later that the precise legal description of the premises is met by the effective date, which too has to be determined by the parties, through a separate supplementary document. This is also written under the provision as “metes and bounds description” being substituted for Exhibit A pursuant to amendments.

(b) Access Easement

Why have this provision: The provision prescribes that the landowner acknowledges that the developer will need access easement in order to ingress and egress from the solar facilities to operate its functions and it further provides the scope of such right and to whom it will be applicable to.

Customizability: The parties can explicitly state the term instead of referring to other provisions for the exact term, and amend what rights the scope of access

easement retains, and to whom it will be binding to. In the model provision, it binds the parties (landowner and developer), their heirs, personal representatives, transferees, successors, and assigns, and all persons claiming under them.

(c) Transmission Easement

Why have this provision: The provision is to mainly define what is included under the term “transmission facilities” and what rights and obligations it entails for the parties.

Customizability: The parties can explicitly state the term (which is equivalent to the lease as stated in the provision). The provisions transmission easement binds the parties (landowner and developer), transferees, successors, assigns, and all persons claiming under them. This may, however, be amended between the parties upon their agreement before entering into the contract.

(d) Owner’s Retained Rights

Why have this provision: The provision grants the landowner his/her right to use the premise that is not used for solar energy purposes, in a manner consistent with the developer’s right under the lease, thereby protecting the landowner’s right to use the premise to some extent.

Customizability: The landowner should understand what is a “use not consistent with Developer’s rights” under the lease by discussing with the developer so that the landowner can protect himself/herself from any compensation incurred upon breach of the provision. The landowner is also protected for the loss incurred, if the initial construction happens during the period of hunting season.

(e) Location of Solar Facilities

Why have this provision: The provision is to ensure that the developer makes good faith effort in consulting on its development plan prior to protect the landowner.

(f) Part of a Larger Project

Why have this provision: The provision is to provide prior notice to the landowner that the developer may further include “project properties” within the premises.

Section 1.2..... Solar Easement..... 3

(a) Open Access to Sun

Why have this provision: “Open and unobstructed access to the sun” is significantly important for the purpose of the project and the provision thereby states the landowner grants and conveys exclusive easement to the developer.

Customizability: There is no really a way out to change or opt out of this provision as it is the crux of the project to operate.

Refer to Solar Easement in Minnesota Statute § 500.30

(b) Owner Improvements

Why have this provision: The provision is to provide whether the landowner may have further improvements on the premises based on developer’s judgment, and determine the scope of them. Yet, the provision protects the landowner’s improvements located before the date of lease and allows him/her to make improvements upon written approval from the developer.

Customizability: The requirements are customizable depending on the parties’ intention and consent. There are two requirements set out in the provision – (a) and (b). (a) relates back to Section 1.2 (a) and so it would be hardly possible for the requirement of no interference be changed. (b), however, can be amended by the parties. The distance, especially, is one element of the provision that is subject to customizability.

(c) No interference

Why have this provision: The provision is to reinstate that landowner himself/herself or any other party should not materially interfere with access to sun.

Customizability: The parties may incorporate within the provision the circumstances where the landowner or any other party may interfere with access to sun.

ARTICLE II. Lease Term..... 4

Section 2.1..... Development Period; Operating Term; Renewal Terms... 4

(a) Development Period

Why have this provision: The provision states the exact term of the “development period” in which both parties are bound to.

Customizability: The current provision states as follows: “the development period commences on the effective date of this lease and expires on December 31, 201_.” The parties shall decide the expiration date and even decide to explicitly state the effective date of the lease for clarity.

(b) Operating Term

Why have this provision: The provision states that the “operating term” of 25 years will begin from the earlier of either the “operation term” or the “operating term notice date,” following the end of “development period.”

(c) Renewal Term

Why have this provision: The provision is to permit the developer to extend its operating term upon the requirement established in the provision.

Customizability: The current provision states that the “Developer will have the right, at its option, to extend the operating term for one additional period of ten years.” The parties are to determine the length of period. Once the length is determined – assume ten years for example, the parties may even decide if they would like to prefer one additional period of ten years or two, successive five year periods.

The current provision also states that the “renewal term will be the same terms and conditions applicable during the operation term.” However, the landowner may want to set forth a new monthly payment rate under the renewed lease based on the assessment of then-current fair market value of the system.

The renewal process set out in the provision can be stated with more details. It currently states “Developer must deliver a written extension notice to owner prior to the expiration of the operating term.” The provision, however, can be amended as follows:

“Owner will send renewal forms three months prior to the expiration of the lease term, which forms shall set forth the new monthly payments due under the renewed lease, based on assessment of the then current fair market value of the System. If the Developer wants to renew and is in compliance with this lease, complete the renewal forms and return them to owner at least one month prior to the expiration of the lease term. In the event that Developer does not agree to the new monthly payments, the lease shall expire by its terms on the termination date.”

(d) Entire Term

Why have this provision: The provision states that the entire term is comprised of developing, operating, and renewable (if applicable) term.

Section 2.2..... Termination of Lease..... 5

Why have this provision: The provision lays out the different circumstances in which the lease will be terminated.

Customizability: This provision should not be considered as an exhaustive list of circumstances in which the lease should/will be terminated. For example, it should consider Force Majeure, default of parties, and one party’s intention to terminate due to material breach of the lease.

An example of amended provision may be amended as follows:

Termination

“Either party may terminate this agreement in the event a material event of default pursuant to events of default by owner or events of default by Developer prevents operation of the solar facilities for twelve months, except with respect to Force

Majeure events. Developer shall terminate this agreement in the event that Developer abandons the solar facilities prior to the operating period.”

Default

Events of default in this section are subject to specific performance and monetary damages.

1. Events of Default by Owner

Owner breaches any material obligation under this agreement, and fails to cure, despite good faith effort to cure such breach within one hundred eighty business days after notification by Developer of the breach. If any material representation or warranty made by owner proves to have been misleading or false in any material respect when made and to have a material adverse effect on Developer, and does not cure the underlying facts so as to make such representation or warranty correct and not misleading within ten business days of written notice from Developer. Any other material breach of this agreement, which proves to have a material adverse effect on Developer, not specifically enumerated above.

2. Events of Default by Developer

Developer breaches any material obligation under this agreement, and fails to cure such breach within one hundred eighty business days after notification by owner of the breach. If any material representation or warranty made by Developer proves to have been misleading or false in any material respect when made and to have a material adverse effect on owner, and does not cure the underlying facts so as to make such representation or warranty correct and not misleading within ten business days of written notice from owner. Any other material breach of this agreement, which proves to have a material adverse effect on owner, not specifically enumerated above.

Force Majeure

Notwithstanding termination, events of default by owner, and events of default by Developer, if by reason of force majeure either party is unable to carry out, either in whole or in part, its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that:

- The non-performing party, as soon as practicable (and in any event within five business days after the force majeure events first prevents performance), gives the other party hereto written notice describing the particulars of the occurrence;
- The suspension of performance be of no greater scope and of no longer duration than is required by the force majeure event;
- No obligations of the party which were to be performed prior to the occurrence causing the suspension of performance shall use excused as a result of the occurrence; and
- The non-performing party shall use commercially reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. If an event of force majeure continues for a period of one hundred eighty days or longer, either party may treat such an event as an event of termination, and may immediately terminate this

agreement by sending the non-performing owner written termination notice setting forth the termination date, provided, however, that the other party may not terminate this agreement if the non-performing party is using commercially reasonable efforts to remedy the event of termination and the non-performing party provides reasonable written assurances that it will be able to remedy such event of termination within an additional one hundred eighty days.

Section 2.3..... Survival of Covenants..... 5

Why have this provision: This provision states that the developer’s covenants, conditions, rights and restrictions will be considered as a part of the project and remains valid throughout the “entire term.”

ARTICLE III. Payments and Taxes..... 6

Section 3.1..... Payments..... 6

Why have this provision: The provision states that the payments will be made according to Exhibit D.

Section 3.2..... Taxes, Assessments and Utilities..... 6

Tax is a very important issue and the land in which the project is to be operated is subject to class 3a. If the real property upon which a solar energy generating system is located is used primarily for solar energy production subject to the production tax under Minn. Stat. § 272.0295, the real property shall be classified as class 3a.

According to class rate schedule for taxes payable in 2015, if the land’s market value is over \$150,000, the class rate would be 2%. If the land’s market value is under \$150,000, the rate would be 1.5%. Also, the property’s taxable market value will be multiplied by the class rates to determine the property’s tax base (net tax capacity). Additionally, this class will not be subjected to state general tax but subjected to school district operating referendum levies. All voter-approved levies, except school district levies for bonded debt, are levied on referendum market value. School district levies for bonded debt are levied on the net tax capacity of all types of property. Meanwhile, MN excludes the value added by PV Systems from real property taxation; the land on which PV System is located remains taxable (Minn. Stat. § 272.02; Minn. Stat. § 272.028; Minn. Stat. § 272.029; H.F. 1298, Article 2, Sec. 12).

This tax issue is an ongoing issue. For example, according to H.B. 3167 in Minnesota, beginning with tax payable in 2015, personal property consisting of solar energy generating system is exempt from property taxation, but the real property (i.e. the land on which the solar energy generating system is located) is still subject to property tax. As to the personal property tax, in lieu of this property tax on large solar energy generating systems, a production tax is set beginning

with taxes payable in 2015. The production tax for electricity generated by solar is \$1.20 per MW for systems exceeding 1MC (AC); systems 1 MW (AC) or less are exempt from the production tax. The wording in this section introduces some methods for tax payments based on the rent payment methods.

There are also differences between systems which are or are not subject to the production tax. Based on the size, location, valuation, and production differences, the land is expected to face a unique tax effect vs. lease rate in each instance.

1MW is an important dividing line for this tax issue. As the Bill 3167, any solar array up to 1MW will be production tax free. Not only that, as to the classification of land, if the solar array produces more than 1MW, agricultural land will be classified as class 3a (commercial-industrial property) and is taxed at a rate of \$1.20 per megawatt hour produced.

Please refer to the model contract provision Section 3.2(b) in relevance to this.

(a) Owner Taxes and Assessments

Why have this provision : The provision states the responsibility of the landowner to pay both real property and personal property taxes, and to clarify the consequences upon failure.

Customizability: An alternative way to include the tax provision can be as follows:

“Owner agrees to pay any applicable sales or use taxes on the monthly payments due under this lease. If this lease contains a purchase option at the end of the lease term, Developer agrees to pay any applicable tax on the purchase price for the project. Developer also agrees to pay as invoiced any applicable personal property taxes on the project that the party’s local jurisdiction may levy. The total estimated amount landowner will pay for taxes over the lease term is _____.

(b) Developer Taxes and Assessments

Why have this provision: The provision states the responsibility of the developer to pay taxes. It also protects the landowner in case the real property taxes increases due to the changes in classifications of the land. The developer will be paying/reimbursing if the landowner provides applicable statements with documentation.

(c) Tax Contests

Why have this provision: The provision provides both parties to contest the validity or amount of the tax.

(d) Developer Utilities

Why have this provision: The provision states the developer’s responsibility to pay for the utilities in regards to the solar facilities, thereby relieving the landowner from the responsibility to pay for the utilities.

Section 3.3..... Audit [*Only if there is Royalty Payment*]..... 6

Why have this provision: The provision is applicable only if there is a royalty payment and the landowner may be able to view the records on its own expense. Royalty payment is a periodic charge that the developer will have to pay to the landowner some percent of either the overall or net sales of the business and the payment is required each week, month, quarter, or year.

ARTICLE IV. Developer’s Covenants..... 7

Section 4.1..... Mechanics Liens..... 7

Why have this provision: The provision states the developer’s responsibility to keep the premises free and clear from all liens and thereby protecting the landowner from potential harms incurred upon lien or any encumbrance.

Section 4.2..... Permits and Laws..... 7

Why have this provision: This provision states the developer’s responsibility to comply with all legal requirements. It also states that the developer will have the right to contest the validity/applicability of legal requirement if needed, with the cooperation of the landowner. Landowner will be reimbursed for any out-of-pocket expenses incurred while cooperating. This provision thereby protects landowner from any potential liability resulting from failure in meeting legal requirements.

Customizability: In the current lease agreement, there is no provision in relation to first obtaining the legal requirements or zoning – compliance should come afterwards. The parties can determine whether additional provision is needed accordingly. The language for such provision could be as follows:

“Developer shall obtain at its sole cost all permits required for Developer’s use of premises, the permitted use, and the solar facilities from any and all governmental authorities having jurisdiction in the matter. Owner shall reasonably cooperate with Developer in producing such permits.”

Section 4.3..... Developer’s Improvements..... 8

Why have this provision: This provision states that the improvements established by developer will remain as its sole property and that the responsibility of removing any construction debris that may result from the improvements lies upon developer, protecting the landowner’s premises.

Customizability: Note that the current lease agreement states that the improvements established by developer will remain as its sole property, and not the landowner. The parties can decide to break down the provision into two different provisions as follows:

Maintenance; Repair; Management Responsibilities

1. Developer shall properly maintain the solar facilities, conduct all required maintenance, and make all repairs thereto in accordance with good engineering practice. Developer shall be responsible for all costs related to the solar facilities, including, but not limited to, those costs necessary to construct, operate, maintain, repair, and remove the solar facilities.

Alteration

1. Developer shall have the right from time to time both before and after the completion of the project and at Developer's sole cost and expense to make additions, alterations and changes, structural or otherwise in or to the premises as is reasonably required to conduct the permitted use in compliance with the provisions of this agreement.

The provision, if amended as above, would protect the landowner from any damages or claims derived from mismanagement of the developer. It would also ensure that developer alters the project only subject to the provisions of this agreement. This provision exists to protect a landowner from any unexpected situations such that the alteration of the system can harm the leased premises or other parts of the owner’s land which is not leased.

Section 4.4..... Removal of Developer’s Improvements..... 8

(a) Developer will Remove Solar Facilities

Why have this provision: The provision states the developer’s responsibility of removing the project at the end of the term and the period of time in which it must be completed by.

Customizability: The date of termination could be varied upon the involved parties’ agreed terms.

There could also be a provision in regards to site restoration and decommissioning at the time of termination. The provision language could be as follows:

Site Restoration and Decommissioning

On the termination date, Developer shall peaceably and quietly leave, surrender, and yield up unto owner the leased premises. Following the termination date of this agreement, Developer shall have ___days to remove the solar facilities from the leased premises, and to restore the leased premises to the condition that existed as of the effective date.

Such provision is to ensure the condition of the leased premises of the landowner once the developer is to exit on the effective date. In regards to the decommissioning, the financial resource could be done in the form of a “bond.”

(b) Owner’s Right to Remove Solar Facilities Upon Failure by Developer

Why have this provision: The provision is invoked when the developer fails to fulfill its responsibility of removing the project upon termination. The provision is to protect the landowner from any abandonment left on the leased premises.

Customizability: The provision of the model contract does not state whether the landowner can retain all or any portion of it when abandoned. However, force majeure should be an exception to this provision’s application. Another exemplary provision which includes such statement is as follows:

“Notwithstanding anything to the contrary contained in this agreement, any waiver in whole or in part of the requirement to remove the solar facilities shall require the written approval of owner. Any of the solar facilities left on the leased premises after the passage of ___days after the termination date shall be deemed abandoned. Owner shall provide written notice to Developer within_____days of expiration of such ____day period, of its election to retain all or any of the solar facilities as its property, or dispose of all or any of the solar facilities in such reasonable manner as owner may see it fit and at Developer’s sole cost. It should be provided, however, that owner’s election to retain all or any portion of the solar facilities as its property shall relieve Developer from any liability for its failure to remove such solar facilities and provided further, however, that the foregoing shall not apply to any of the solar facilities that is not timely removed if the failure to remove is caused by an event of force majeure or the negligent acts or omissions of owner (in which in either case the time period for removal shall be extended on a day for day basis).”

(c) Security for Removal

Why have this provision: The provision states that the developer will be establish a fund called “restoration security” cover obligations for removing the project.

Customizability: The parties can determine the length of period of the provision.

Section 4.5..... Hazardous Wastes..... 9

Why have this provision: The provision states the developer’s responsibility to protect the premises from hazardous material substance, thereby protecting landowner’s premises.

Section 4.6..... Insurance..... 9

Why have this provision: The provision states the developer’s responsibility to obtain and maintain insurance covering the project and its activities on the premises.

Customizability: The provision could definitely be more expanded in details by using the following language.

Insurance

1. At all time during the term of this lease, the Developer shall maintain in full force a comprehensive public liability insurance policy covering Developer's operations, activities, and liabilities on the leased premises.
2. In insurance policy, the following liabilities can be included but not limited to; workers' compensation and employers liability, commercial general liability, excess liability, professional liability, or property insurance.
3. Any insurance policy purchased by Developer must be written by an insurance carrier which has a current rating and must be authorized by law.
4. In the event Developer fails to procure, maintain and/or pay for any insurance required by this lease, owner may (but without obligation to do so), upon ___ business days' prior notice to Developer, procure such insurance and pay the premium thereof. In such event, Developer shall repay owner all sums so paid by owner, together with interest thereon and any costs or expenses incurred by owner in connection therewith, within ___ days following owner's written demand to Developer for such payment.
5. Owner shall be furnished with satisfactory evidence (i.e. a certificate of insurance) that the foregoing insurance is in effect, and owner shall be notified ___ days prior to the cancellation or material change of any such coverage. Owner and its affiliates shall be named as additional insured with respect to Developer's activities under this agreement.
6. Maintenance by Developer of the insurance required herein shall in no way be interpreted as relieving Developer of any other obligations it may have under this agreement.
7. Developer's insurance coverage shall be primary coverage without right of contribution from any other insurance carried by owner. Insurance maintained by owner is for the exclusive benefit and shall not inure to the benefit of Developer. All policies procured by Developer shall require the insurer to waive subrogation against owner.

So what does the amended provision do? Note that the insurance policy should have limits on the amount of money should be given, for example, not less than \$____. Also, such policy shall name a landowner as an additional insured under such policy as the landowner's interests may appear.

Liability insurance is considered in the amended provisions number two as it protects the insured from the risks of liabilities imposed by lawsuits and similar claims. Public liability insurance should also be included to cover a business if a third party was to suffer an injury as a result of its business activities. Here, if the a third party, gets injured because of the project, the developer can be protected by this public liability insurance.

Excess liability insurance means a liability insurance that is in excess of specified other policies and also potentially primary insurance for losses not covered by the other policies. If other policies would not protect the developer, this insurance coverage may do protection.

Commercial general liability insurance is a coverage protecting a business in the event that a business owner is was against a suit. It is to protect against claims of either bodily injury or property damage.

Section 4.7..... Gates and Fences..... 9

Why have this provision: The provision provides that the developer will make gates and fences based on mutual agreement or landowner may require the developer to install a cattle guard.

Section 4.8..... Site Rules..... 10

Why have this provision: The provision states developer’s responsibility to comply with site rules attached on Exhibit E. The site rules are to protect the premise of the landowner.

Customizability: The provisions set out in the site rules are protecting landowner’s premise. Yet, there are provisions that could be customized based upon parties intent and agreement – such as provision (f) and (g) of the site rules. The landowner may want to require a notice before the developer burn, remove, and clear wood plants, and brush on the premises for provision (f) and change the numbers of provision (g) as needed.

ARTICLE V. Owner Covenants..... 10

Section 5.1..... Title and Authority..... 10

Why have this provision: The provision grants the landowner the title in the premises in fee simple and states that the lease is valid and binding agreement.

Section 5.2..... Cooperation to Eliminate Lien Interference..... 10

Why have this provision: The provision provides that the parties will cooperate to obtain non-disturbance and subordination agreements necessary to eliminate any actual or potential interference.

Section 5.3..... Quiet Enjoyment..... 10

Why have this provision: The provision provides that the developer will be granted the right of quiet use and enjoyment in the premises by the landowner. The landowner is to ensure such right, so that it is not materially interfered for the purpose of the project.

Customizability: The current lease agreement states no exceptions in which the landowner may be permitted (to a certain extent) to interfere with the developer’s right of quiet use and enjoyment. Thus, the provision could be amended as follows:
Quiet Enjoyment

1. Owner covenants that Developer shall quietly have and enjoy the premises throughout the term and any extensions thereof. Owner agrees that, throughout the term and any extensions thereof the premises shall be dedicated to Developer's use for conducting the permitted use and designing, constructing, operating, maintaining, repairing, and expanding the solar facilities, except as provided for in the following in this section.
 - A. Owner shall protect Developer's quiet enjoyment of its rights hereunder. In the event of an emergency, owner shall have the right to enter upon the premises for the purposes of preventing damage or harm to property or people. The owner shall, when possible and feasible, make attempt to provide the Developer as much notice as possible, prior to entering the premises. Such access to the premises shall not be considered a breach of the covenant of quiet enjoyment.
 - B. Except as specifically set forth below, owner shall not itself conduct any other use, nor shall Developer allow any third party to conduct any other use, on the premises. The only exceptions to the foregoing are; Owner retains the right to enter or access the property and to use the premises if doing so is required in order for the owner to complete tasks necessary to protect the environment. Owner retains the right to maintain drainage swales and other storm water retention and diversion features required to prevent flooding or erosion or to maintain animal habitats.

Section 5.4..... Exclusivity..... 11

Why have this provision: The provision reinstates the sole and exclusive right of the developer to install and operate project on the premises.

Customizability: This provision is rather a straightforward provision in which states that the landowner will not be able to enter into another contract that will allow others to construct, build, or locate solar energy facility other than the developer that the landowner has entered into contract with. Depending on how the parties want it, they can expand on the provision by stating what procedure should happen if it should be allowed in certain circumstances (the developer may fail to complete the project) or what the compensation would be for the landowner's breach of contract under this provision.

Section 5.5..... Hazardous Materials..... 11

Why have this provision: The provision states the landowner's responsibility to comply with all legal requirements regarding hazardous materials on the premises.

Customizability: As stated in the current provision, the landowner is allowed to use, store, dispose of or release on the premises, or cause or permit to exist or be

used, stored, disposed of or released on the premises as a result of owner’s operations to such quantity that may be required in the operations, and only if such use in full compliance with all legal requirements. Since the owner will have to ensure/warrant the statue of “no hazardous materials in compliance with all requirements” from the date the lease begins, it may be helpful to look at Standards Applicable to Generators of Hazardous Waste under <https://www.revisor.mn.gov/rules/?id=7045> to meet full compliance.

Minnesota Administrative Rules 7045.0020 states the definitions of “hazardous wastes.”

Section 5.6 Mineral Rights and Lateral Support..... 11

Why have this provision: The provision is to protect both the landowner’s subsurface interests and the developer’s project. It defines subsurface interests and prescribes the duties and rights of both parties depending on whether the landowner owns more or less than 100 percent of the subsurface interests.

Customizability: The current provision Section 5.6(d) states (in the case that landowner owns 100 percent of the subsurface interests in and under the premises), that “neither owner nor its successors or assigns will be entitled to use, or authorize the use of, any portion of the surface of the premises located within 300 feet of any existing or proposed solar facility or within one hundred feet of any existing or proposed transmission line.” These numbers are customizable, however, it will be worthwhile to consult with an expert as well as the Developer on how much distance is actually required to maximize the use for the landowner while not hindering upon the project.

Minnesota Statute on lands and minerals are available at:
<https://www.revisor.mn.gov/statutes/?view=part&header=LANDS+AND+MINERALS>

Section 5.7..... Operation of the Solar Facilities..... 12

Why have this provision: The provision prevents Landowner from asserting any possible legal claims, for example, nuisance claims by making clear that Landowner admits the fact that the solar facilities may impact the view of the premises.

Customizability: Because the Solar Facilities may impact the view not only on the Premises where the Facilities is located, but also on adjacent Premises, Landowner should consider that the negative visual impacts on neighbors’ Premises may sometimes create opposition to solar installations.

ARTICLE VI. Indemnification..... 12

Section 6.1..... Indemnification..... 12

Why have this provision: This provision sets and limits the scope of indemnification to prevent any possible legal claims arising from unclarified scope of indemnification.

Customizability: Landowner should consider whether this provision should survive the termination of this Lease. If this provision survives the termination of this Lease, Landowner should then determine how long this indemnity obligation can be maintained after the termination of the Lease. Lastly, Landowner should consider whether there should be a monetary limitation on the extent of the indemnity.

Section 6.2..... Damage to Owner’s Property..... 12

Why have this provision: This provision explains what kinds of damage should be considered and provides appropriate resolutions for each types of damage. The resolutions can be further negotiated by both parties. Also, it limits the scope of indemnification for each damage.

Customizability: As to the drain tile or irrigation system damage, it is good to set an alternative damage measurement in case the Developer fails to repair, restore, replace or rebuild the damaged drain tile or irrigation system. Also, Landowner should make sure that the effect of this provision shall not terminate upon the termination or expiration of the Lease until damages are fully compensated.

Section 6.3..... Conservation Reserve Program 13

Why have this provision: This provision states that reimbursement made by the Developer to Owner can be operated differently if the Owner is a party to Conservation Reserve Program contract. Before entering this agreement, it is a duty for Landowner to provide Developer with a true and complete copy of such CRP Contract.

Customizability: Before entering this agreement, Landowner who is a party to a CRP Contract should make sure whether he/she breaches the CRP contract or not. Obtaining any exemptions allowed under the CRP for the use of Solar Facilities on the Premises covered by a CRP contract will be an important matter. Landowner should discuss this provision with his/her legal counsel.

ARTICLE VII. Assignment; Encumbrance of Lease..... 14
 Section 7.1..... Right to Encumber..... 14

Why have this provision: This provision deals with a situation when the Developer mortgages all or any part of its interest in the Lease and rights under this Lease and/or enter into a collateral assignment of all or any part of its interest in the Lease or rights under this Lease to any entity without the consent of Landowner. Because this mortgage can be done without the consent of Landowner, this provision sets Landowner’s right to encumber in case of Developer default.

Customizability:
 Developer will want the flexibility of mortgaging his/her interest as collateral for financing, as well as the flexibility of foreclosure. Landowner should be able to provide the flexibilities, but Landowner should make sure that there is assurance that any foreclosing lender cures outstanding defaults under the lease.
 Meanwhile, Landowner must evaluate any potential conflicts that the solar lease may have with any existing mortgage terms. Especially, Landowner should consider that it would be difficult to remortgage their lands. Lenders can be reluctant to Landowner who enters into this kind of Lease on the basis that a land-lease agreement is usually a 25-year lease agreement. For lenders, a 25 years is too burdensome.
 Regarding (d) and (f), Landowner can customize numbers. (30 days period for notification to Lender in case of Developer default, and 60 days period for Lender to request new lease after the rejection or termination of this Lease.) Landowner should discuss it with his/her legal counsel.

Section 7.2..... Assignment of Developer’s Interest..... 15

Why have this provision: This provision sets examples of Developer’s right to assign without need for Owner’s consent.

Customizability: Unlike this provision, any agreement between Landowner and Developer that prohibits assignment can be fully binding and enforceable. If Landowner does not want Developer’s assignment to any successors or does not want that the assignment is made without his/her consent, Landowner can customize this provision. Landowner should discuss the customization with his/her legal counsel.

Section 7.3..... Continuing Nature of Obligations..... 15

Why have this provision: This provision explains the nature of easements and rights granted by Landowner to Developer. When those kinds of right and easement are assigned or succeeded, this provision will guide which party will have the benefit of those.

Customizability: An easement in gross intended to benefit Developer regardless of whether he/she owns any lands. The purpose is to benefit a holder of the easement right. Also, Landowner should consider a negative easement issue. A negative easement is an obligation not to use land in specified ways. This may prevent Landowner from using his/her land in ways he/she wants to. By entering into a written agreement with neighbors, Landowner can prohibit the neighbors from doing anything that would impede access to solar energy. Restricting the height or shape of new buildings can be one of the examples. Also, regarding solar easements, please consider Minnesota Statute §500.30

According to section 7.3, because Landowner grants easements in gross to Developer and the burdens of the easements will run with and against the Premises and will be binding upon and against Owner and its successor, Landowner should consult with an attorney about whether there is any possibility that the nature of easements can change from easement in gross to other types of easement, which could impact the benefit of Landowner.

ARTICLE VIII. Condemnation.....

16

Section 8.1..... Effect of Condemnation..... 16

Why have this provision: This provision gives Developer options to terminate or amend this Lease when the construction, installation or operation of Solar Facilities is adversely affected because of condemnation.

Section 8.2..... Condemnation Proceeds..... 16

Why have this provision: This provision states the right of Developer to participate in condemnation proceedings and to what extent Developer will be entitled to get payment for condemnation.

Customizability (ARTICLE VIII): As against eminent domain proceedings, a principal concern is the payment of just compensation once the right to take for a public purpose has been established. The effect of condemnation to this leasehold interest begins with the condemnation clause in this Lease. Once the contractual rights between Landowner and Developer are settled, the parties must look to the law of eminent domain to determine whether damages exist to the leasehold and how those damages should be measured.

In this Lease, it is Developer’s discretion, either amending this Lease or terminating this Lease in the event of eminent domain proceedings. However, the parties can discuss this issue by

dividing condemnation issue into “Acquisition of part of the leased property” and “Acquisition of the entire leased Premises.” In the case of the latter, the parties can settle that the termination of this Lease is automatic and no written notice is required. In the case of “Acquisition of part of the leased property”, there are several issues the parties must decide. First, they must decide who can decide whether the partial taking is sufficient to terminate the lease – both, Landowner, Developer or either. Second, if the termination of this Lease is decided, they should determine whether written notice of the termination of this Lease is required.

ARTICLE IX. Default/Termination..... 16
 Section 9.1..... Events of Default..... 16

Why have this provision: This provisions sets conditions to constitute a “Breach” that will permit the non-defaulting party to terminate the Lease or pursue other remedies.

Customizability: 30-days requirement can be customized. In this section, only two cases can be said as a “Breach”, but Landowner may want to add more examples that can be said as a “Breach”. For example, if either party has provided any false or misleading financial or other information to obtain this Lease, it can be a breach. Landowner should discuss it with his/her legal counsel.

Section 9.2..... Surrender..... 17

Why have this provision: This provision explains what Developer should do upon the termination or expiration of this Lease; Removal of Solar Facilities. Also, this provision solves the issue whether Developer should pay the rent fee after expiration or termination of this Lease but before the removal of Facilities.

Customizability: The date could be varied upon the involved parties’ agreed terms. The financial resource of decommissioning can be done in the form of “bond.” Landowner should discuss this provision with his/her legal counsel.

Section 9.3..... Specific Performance..... 17

Why have this provision: This provision introduces other ways to recover damages caused by Landowner. Developer will have the right to seek specific enforcement of this Lease under certain conditions.

Customizability: In general, a Party who is suing for any breach of a land contract is almost always given the option specific performance. In many jurisdictions, this is a flat rule or regarded as a presumption.

Section 9.4..... Damages..... 17

Why have this provision: This provision will be one of the key material provisions which induce or deduce parties to enter into this Lease. Under this provision, any rights to recover consequential, incidental and punitive damages will be waived. This provision should be considered with other provisions dealing with damages to clarify what the impact of this provision will be.

Customizability: This provision does not release each Party from any liability to the other Party, but instead apportions the potential liability between the parties. In general, the law permits parties having relatively equal bargaining power to decide to limit the liability of one party to other. Several courts have ruled that this kind of provision may be valid if the limitation clause has been freely negotiated by parties with relatively equal bargaining power; the limitation clause is conspicuous and clearly set forth in the agreement; and there exists no public policy prohibiting the enforcement of the limitation of liability provision. However, whether this provision will induce Landowner to enter into this Lease should be consulted with Landowner’s legal counsel first.

Section 9.5..... Waiver of Jury Trial..... 17

Why have this provision: This provision will be another one of the key material provisions which induce or deduce parties to enter into this Lease. However, it can certainly prevent certain Landowner which does want to install Solar Facilities on their premises but does not want to waive the right to a trial by jury.

Customizability: Like Section 9.4, whether this provision will induce Landowner to enter into this Lease should be consulted with an attorney first. Meanwhile, here are other ways to resolute dispute arising under this Lease.
First: Dispute Negotiation. In the event of any dispute arising under this Agreement (a “Dispute”), within __ Days following the delivered date of a written request by either Party, (1) each Party shall appoint a representative (individually, a “Party Representative”, together,

the “Parties’ Representatives”), and (2) the Parties’ Representatives shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively.

Second: Non-Binding Mediation. In the event the Parties’ Representatives cannot resolve the Dispute within __ Days after commencement of negotiations pursuant to dispute negotiation the Parties shall submit to non-binding mediation.

Third: Arbitration. In the event that the Parties are unable to resolve their dispute through non-binding mediation pursuant to non-binding mediation within __ Days following the initiation of such mediation, either Party may seek binding arbitration.

Such methods also aim to prevent contract disputes from going through litigation, which may cost more than these alternatives to court action and take longer, but it does not need to waive the rights for court action.

Section 9.6..... Delinquent Payments..... 18

Why have this provision: This provision sets payment rate in case of delinquent payments, which will eliminate wide discrepancies in rate and the amount of payment.

Customizability: The rate can be customized. For example, a rate of ten percent can be twelve percent if an agreement is made between Landowner and Developer. This customization can be discussed with Landowner’s legal counsel.

Also, another example that can be raised from this provision is the late charge of monthly payments. In this case, Landowner will want to make sure to obtain this late charge by setting another provision stating that Developer agrees that this is a Net Lease and the obligation to pay all monthly payments and all other amounts due under this Lease shall be absolute and unconditional under all circumstances and shall not be subject to any abatement, defense, counterclaim, setoff, recoupment or reduction for any reason whatsoever, it being the express intent of the parties that all amounts payable by Developer hereunder shall be and continue to be payable in all events including by its heirs and estate.

ARTICLE X. Miscellaneous..... 18

Section 10.1..... Notice..... 18

Why have this provision: This provisions explains how notices, consents or other documents required or permitted by this Lease can be given to either party, and sets presumption on delivery if certain conditions are satisfied, which is similar to common law mailbox rule.

Customizability: Parties can state more options. For example, each Party shall deem a document faxed or sent via PDF as an original document. Another example is this: Whenever this Agreement requires or Permits delivery of a “notice” or requires a Party to “notify”, the Party with such right or obligation shall provide a written communication in the manner specified below. A notice sent by facsimile, transmission, or e-mail will be recognized and shall be deemed received on the day on which such notice was transmitted if received before 5 p.m. Central Standard Time (and if received after 5 p.m., on the next day) and a notice by overnight mail or courier shall be deemed to have been received two (2) days after it was sent or such earlier time as is confirmed by the receiving Party unless it confirms a prior oral communication, in which case any such notice shall be deemed received on the day sent. A Party may change its addresses by providing notice in accordance with this provision.

Section 10.2..... Relationship of the Parties; No Third Party Beneficiaries..... 18

Why have this provision: This provision states the duties, obligations and liabilities of each parties should be several. Both parties will not bear one party’s responsibilities in the form of joint venture or fiduciary relationship. This provision clarifies the scope of responsibilities each party should bear.

Customizability: It is good to specify what kind of interpretation of this Lease should not be permitted. For example, the terms of this Lease shall not be construed to provide Landowner with any interest in nor any right to receive renewable energy credits, environmental attributes, state or federal subsidies including tax benefits, not the proceeds of any of the foregoing except as expressly provided herein.

Section 10.3..... Entire Agreement..... 18

Why have this provision: This provision clarifies this Lease will be the entire and final agreement that is agreed upon by both parties, and gets rid of any possible challenges by either party to amend this Lease by providing other prior statements or representations.

Customizability: If there is an agreement other than this Lease or any this Lease-related materials between Landowner and Developer, they can discuss about which agreement shall control in the event of a conflict between a provisions set forth in this Lease and the other agreement.

Section 10.4..... Governing Law..... 19

Why have this provision: This provision sets which state law will govern this Lease. This provision will solve disputes arising from the interpretation of this Lease. Also, this provision can solve any possible jurisdictional and venue issues in a lawsuit.

Customizability: There is another option to replace the right to go to court; Arbitration. Arbitration replaces the right to go to court, including the right to a jury and the right to participate in a class action or similar proceeding. In arbitration, a dispute is resolved by an arbitrator instead of a judge or jury. Landowner can discuss this option with Developer. But it would be much safer to discuss this issue after Landowner consult with his/her attorney.

Section 10.5..... Cooperation..... 19

Why have this provision: This provision requires both parties' cooperation to carry out the purposes and intent of this Lease and to fulfill the obligations of the respective parties. Because of this provision, either party cannot be knowingly uncooperative towards the other party. Also, this provision will reduce any possibilities to go to law when there are inaccuracies or insufficiencies in the legal description of the Premises. Under this provision, the first thing both parties have to do is to amend this Lease to correct the inaccuracies or insufficiencies.

Customizability: Neither party shall not unreasonably delay its compliance with any reasonable request made pursuant to this provision. It would be better to make sure that the parties acknowledge that they are entering into a long-term arrangement in which the cooperation of all of them will be required.

Section 10.6..... Waiver..... 19

Why have this provision: This provision sets conditions which should be done by a party to properly waive any provisions of this Lease. By this provision, both party will not be easily deemed to have waived any provision of this Lease without satisfying those conditions.

Customizability: This clause aims to ensure that a party's failure to enforce its contractual rights, whether intentionally or by oversight, does not result in an automatic waiver of those rights or remedies for their breach under certain conditions. Both parties can discuss further about whether they agree that the waivers and disclaimers set forth above shall survive the expiration or termination of this Lease.



Section 10.7. . . .Force Majeure..... 19

Why have this provision: this provision takes into account factors outside of the lease that could affect the lease. An outside factor is something that neither party caused or could predict, such as a storm or earthquake. Neither party will be at fault to the other party if such an unforeseen and outside factor prevents either party from meeting their obligation to the other party. Also, neither party can end the contract based on that inability to meet the obligation.

Section 10.8..... Confidentiality..... 19

Why have this provision: this provision protects personal information pertaining to and included in the lease from disclosure to non-contracting parties. Any information regarding the solar equipment, design, payments, or any other information within the contract cannot be disclosed by either party unless both parties allow the disclosure or the information is already public. This information may be disclosed to a party’s representatives, such as an attorney or accountant. These privacy rules continue to apply even after the contract expires.

Section 10.9..... Tax Credits..... 20

Why have this provision: developers, through their development and maintenance of the solar garden, may be eligible for government tax credits, benefits, or incentives. This provision protects the developers’ interest in such tax breaks coming from their percentage holdings in the garden; if the government changes the tax credit requirements, this provision requires the contract to be changed in order for the developers to meet those requirements.

Section 10.10..... Severability..... 20

Why have this provision: this provision keeps the overall contract working if any part or provision of the lease becomes invalid. The invalid provision is taken out and the parties follow the rest of the contract as if that invalid provision never existed. A provision may become invalid due to a change in the law, a judge’s ruling, the actions of the parties, or any outside factor.

Section 10.11..... Counterparts..... 20

Why have this provision: the final lease does not need to be executed all at once or all by the same parties. In dealing with a company as the other party, you may not be dealing with the same company representative the entire time. Also, a lease of this size may take more than one meeting to complete. Instead of requiring the lease to be completed in one sitting by the same parties, this provision allows both sides to complete the final lease

piecemeal due to time or availability of the parties. Once all provisions are agreed to, the parts of the lease completed at each meeting will be combined to form the final lease.

Section 10.12..... Memorandum of the Lease..... 20

Why have this provision: this provision states how the lease will be recorded once completed. This provision also states that, once the parties sign the lease, they are consenting to the included interests and obligations within that lease.

ROOF LEASE

Section 1.2..... Lease to Use and Access to Rooftop..... 1

1.2.1

Why have this provision: this provision states that, by accepting and signing the lease, the roof owner provides the developer the right to use the roof-top for the installation, operation, and maintenance of the solar garden. The cost of these actions falls solely on the developer. Included in this right to use the rooftop is an easement, providing the developer the ability to use stairs or other ways to access the rooftop at its leisure in order to install, operate, or maintain the solar garden. Each of these rights granted to the developer are subject to the other provisions of the lease that may limit or expand those rights.

1.2.2

Why have this provision: this provision provides that by agreeing to this lease the developer states that it inspected the roof itself, that the roof owner did not guarantee that the roof is suitable for the solar garden, and that the roof owner has not obligation to make sure that the roof is suitable for the garden. Each of these statements are subject to any other provisions within the lease requiring the roof owner to do anything with the roof. Overall, this provision takes away any responsibilities of the roof owner to the developer in regards to the condition of the roof.

Section 1.3..... Equipment Space..... 2

Why have this provision: this provision clearly states that the developer will install the roof-top equipment and will do so at its own expense. Also, installation is subject to any other provisions within the lease that limit or expand the rights and obligations of the developer and roof owner in regards to installation and expenses.

Section 1.4..... Term of Rooftop Lease..... 2

Why have this provision: this provision provides how long the lease lasts, and also what each party must do once the lease ends. Specifically, this provision provides that, once the lease ends, the developer will remove the equipment at its own expense, make any necessary repairs in order to leave the roof in good condition, and that if the developer at

any time defaults on any of its obligations under the lease the roof owner may hold onto the equipment as collateral.

Section 1.5..... Fees Paid for Rooftop Lease..... 2

Why have this provision: this provision describes what will be paid, by who, and when for the developer's use of the roof-top.

Section 1.6..... Responsibilities of Tenant..... 2

1.6.1

Why have this provision: this provision provides that the developer will design, operate, and maintain the roof-top solar garden equipment. These actions will be at the sole expense of the developer. All plans must be shared with the roof owner.

1.6.2

Why have this provision: this provision limits the use and maintenance of the rooftop equipment by the developer. For instance, the developer cannot use the roof for anything illegal, dangerous, creating a nuisance, or increasing the insurance costs of the building. This includes using or storing environmentally hazardous materials. Also, the roof-top equipment must be stored securely at all times, a responsibility of both the developer and roof owner. Ownership, operation, and maintenance of the equipment still falls on the developer.

1.6.3

Why have this provision: this provision lists the duties of the developer in caring for the roof. For instance, the developer will not injure the roof and must keep it in good condition. Any equipment not necessary will be removed in order to keep the rooftop clean and accessible. Once the lease terminates, the developer will leave the roof in good condition.

1.6.4

Why have this provision: this statement provides that the developer will comply with any and all building and site standards. Such standards may come from city, county, state, or federal laws and regulations.

1.6.5

Why have this provision: this provision describes what happens during the removal of any installed equipment. The amount of time the developer has to remove the equipment is included and may be contracted or expanded upon both parties' wishes. The developer will repair any damages from the use and removal of the equipment that are not caused by the general wear and tear that a roof regularly receives. The developer cannot remove the equipment if in default to the rooftop owner for any reason. If the developer does not remove the equipment, the equipment will be considered abandoned and in possession of the roof owner to do with as he or she pleases. If the developer asks the roof owner for an

extension of time to keep the equipment in place after the lease expires, and the roof owner agrees to it, the equipment cannot be considered abandoned if not removed by the end of the lease.

Section 1.7..... Responsibilities of Landlord..... 3

1.7.1

Why have this provision: this provision provides what duties or things the roof owner has to provide to the developer. Specifically, the roof owner will provide the developer and its employees with access to the roof in order to operate or maintain the equipment.

1.7.2

Why have this provision: under this provision, the roof owner cannot do anything to interfere with the work of the equipment. This prohibition includes engaging in activity that would negatively affect the use or effectiveness of the equipment, or allowing someone else to negatively affect the equipment's use or effectiveness.

Section 2.1..... Use of Electrical Services by Tenant..... 4

Why have this provision: this provision provides how the project will get power, and who will pay for that power. The roof owner will provide electrical power access to the developer, but the developer will pay for increased electricity costs to the roof owner from the projects' electricity usage. The roof owner is not liable for any temporary power outages, but the roof owner must do whatever is reasonable to restore power if able to do so.

Section 2.2..... Construction, Alteration, Maintenance.....4

Why have this provision: this provision describes what regulations the parties must comply with during construction, alteration, and maintenance of the equipment. These regulations are added on the any other regulations or rules that must be complied with under the lease. The rules are in an attached appendix, and may also include any additional rules that the roof owner creates.

Section 2.3..... Law and Regulations..... 4

Why have this provision: under this provision, the developer needs to follow all laws and regulations that pertain to creating and maintaining a roof lease. Such laws and regulations may be from local, state, or federal government entities. The developer also agrees that all the equipment they use will meet, and continue to meet, industry standards. The developer is solely responsible for maintaining the solar equipment. Also, the developer will use its best efforts not to interfere with the roof owner's business or actions. If the developer's solar equipment does present interference, they must make adjustments to correct the interference. Nothing in this section limits developer's obligations or roof owner's rights under Article 1.7.5, and the developer still agrees to

indemnify the roof owner for any issues or damage arising under the contents of this section.

Section 2.4..... Building Rules..... 5

Why have this provision: under this provision the developer must follow all relevant building rules and regulations of the building created by the roof owner. This requirement also applies to all of the developer’s agents. Any changes by the roof owner to the rules must be sent in writing.

Section 2.5..... Entry by Landlord..... 5

Why have this provision: under this provision, developer gets entry to the land or roof at all reasonable hours and in case of emergencies. The developer must abide by the roof owner’s schedule, and not the other way around.

Section 2.6..... Assignment, Subletting and Transfers by Agreement..... 5

Why have this provision: this provision describes how the developer can pass its responsibilities under the lease to other parties. The developer has the power to give one of its agents, i.e. a corporation or a partner, the power to run day to day operations, but the developer will not be excused from any liability resulting from this lease.

Section 2.7..... Consent to Mortgage..... 5

2.7.1

Why have this provision: under this provision, the developer can mortgage its interest in the roof panels/garden whenever it wants to. This lease always comes before such mortgages or other agreements, requiring the developer to fulfill the lease before any such mortgages. If the developer does obtain a mortgage, they must give a copy to the roof owner. Any mortgages will not affect the roof owner's ownership of the property in any way.

2.7.2

Why have this provision: this provision describes the obligation of the roof owner to give information on the state of the agreement to the developer at the developer’s request. It is important that the developer be able to check on the status of this lease so that the developer can know where it stands with the roof owner, and if the developer needs to make any sort of adjustments to the lease. It is important for both parties to maintain good communication regarding the status of the lease.

Section 2.8..... Insurance..... 6

2.8.1

Why have this provision: this provision lists the forms of insurance that the developer needs to acquire insurance while building and maintaining the roof panels. The developer needs to acquire insurance that covers: workers compensation, employer’s liability,

automobile liability, builders risk insurance, and excess insurance. Each insurance has a required amount, most amount should be respected, but the excess liability portion should be discussed.

2.8.2

Why have this provision: each insurance policy under this provision will include the names of additional insured parties of the involved roof owner, its partners, directors, officers, agents and representatives, and affiliates as designated from time-to-time by the roof owner, as well as all other indemnity obligations as set forth in this lease. Each policy also requires thirty days prior notice of cancellation to each party.

2.8.3

Why have this provision: the developer must secure insurance before this lease is signed. The roof owner must inspect the developer’s insurance and make sure that it meets the amounts specified in this lease.

2.8.4

Why have this provision: if the developer uses any contractors or subcontractors in building or maintaining the equipment or roof structure, those contractors or subcontractors must abide by the provisions in this lease, including having necessary insurance.

Section 2.9..... Indemnity..... 7

Why have this provision: this provision is needed to protect the roof owner. If the developer or its agents cause any damage to property or person while building or maintaining the project then the developer is responsible for reimbursement for those damages. Thus, if the roof owner is sued by a damaged person or entity arising from the developer’s actions, the developer will pay for the roof owner’s expenses arising out of that suit. This provision does not apply in the case of gross or extreme negligence by the roof owner leading to damage or injury.

Section 2.10..... Casualty Damage..... 7

Why have this provision: this provision details what will happen in the event that the property is severely damaged in any way, such as by a building fire. If the event damages the building or panels too much, both parties will have the ability to terminate the lease. If both parties agree to continue, the roof owner is responsible fixing up the building so that the solar panels can be operated again. The developer and the developer alone is responsible for restoring the solar equipment. The roof owner will not be responsible for any loss of money suffered by the developer.

Section 2.11..... Condemnation..... 8

Why have this provision: this provision details what would happen if the building, or part of it, was to be taken over or seized by the government for public use. If the entire

building is taken by the government through eminent domain, then the lease will be terminated immediately. If only part of the building is taken, and it affects the operations of the solar facility, then the developer has the right to terminate the lease, but must give notice to the roof owner within 30 days of its decision to terminate.

Section 2.12..... Damages from Certain Causes..... 8

Why have this provision: this provision protects both parties from liability for any acts or circumstances that are beyond the roof owner or developers control. Examples of such acts include acts of God, war, riots, etc.

Section 2.13..... Events of Default/Remedies..... 8

2.13.1

Why have this provision: this provision states what constitutes default by the developer, and more importantly what happens if the developer breaks the lease in any way. The roof owner will not be able to recover more than twenty-four months of lease fees in case of a default. This provision proves very important because it details things that can and will end this agreement.

2.13.2

Why: If the developer does break the lease, the roof owner may take any legal actions to recover damages, including taking possession of the solar equipment.

2.13.3

Why: Any party that does not comply with an order to comply with this lease within thirty days will be in breach. If the roof owner is found to be in default, the developer's recovery shall not exceed twenty-four months rent. This provision has much room for negotiation. It is important that the roof owner has some protection, but the length of time and amount can and should be negotiated.

2.15..... Subordination To Mortgage.....9

Why: Existing agreements, such as a mortgage or deed, come first before this lease. This lease is subject to all pre-existing agreements. As such, both parties should be aware of any other agreements on the property.

3.1.....Attorneys' Fees.....9

Why: In case of a dispute, the losing party agrees to pay the fee for the other's lawyers. This is an important thing to consider before beginning any court proceedings. Although attorney's fees need to be reasonable, they can still be sizable.

3.2.....No Implied Waiver.....10

Why have this provision: If someone does not do what they are supposed to, and the other party does not immediately demand performance, the demanding party does not waive its right to demand performance. The demanding party can later demand performance. This provision is in place so that there is no trickery. Parties now know they will not be let off the hook by hiding a default for a certain amount of time. This Lease should be based on trust and full disclosure.

3.3.....Personal Liability.....10

Why have this provision: Neither party can be held liable to third parties, such as other tenants in the building. Parties should not be held responsible for things that are beyond their control.

3.4.....Notice.....10

Why have this provision: All communications required by this agreement must be in writing. And the postage must be prepaid by whoever sends the document. Communications in writing, although not full proof, are the best way to show that something actually happened.

3.5.....Severability.....11

Why have this provision: If any of the portions of this lease become invalid or unenforceable, the rest of the lease will still stand. It is not in either parties best interest to have this lease invalidated by a small provision no longer being enforceable.

3.6.....Recordation.....11

Why have this provision: If the developer wishes to have a Memorandum of the Lease, they are responsible for filing it themselves.

3.7.....Governing Law.....11

Why have this provision: Parties need to agree that this lease will be enforced under the laws of the state in which the land is located. This is important so parties may easily comply with the lease, and in case of a dispute, both parties have previously agreed which laws will apply. This will assure that either party is not unduly burdened in case of a lawsuit.

3.8.....Time of Performance.....11

Why have this provision: All acts will be performed swiftly by the developer so as to not cause unnecessarily delay.

3.9.....Transfers by Landlord.....3.9

Why have this provision: The roof owner may transfer their interest in this lease, such as by selling their land or building, as long as the new interest holder agrees to abide by this lease.

3.10.....Commissions.....11

Why have this provision: The roof owner will not pay for any brokerage fees in renewing this lease. If the developer chooses to use a broker, it is the developer’s responsibility to pay for the broker.

3.11.....Taxes.....11

Why have this provision: The developer needs to pay any taxes incurred from the project. The roof owner also needs to pay any taxes from its increase in revenue coming from the project.

3.12.....Regulatory Authority.....12

Why have this provision: It is the developer’s responsibility to obtain any permits to run the project. If the developer becomes aware that it will be unable to secure the necessary permits, it must immediately inform the roof owner.

3.13.....Independent Contractor.....12

Why have this provision: The developer cannot make the roof owner do anything beyond the scope of this lease. The developer agrees that any agents or independent contractors it uses represent the developer. This is important if an independent contractor that the developer uses does some harm; the developer cannot later claim that they are not responsible for the damage.

3.14.....Force Majeure.....12

Why have this provision: If some event happens, such as an earthquake or fire, that is beyond the control of either party, the affected party will be excused from performance. The affected party will make all reasonable efforts to get the solar facility back on track if possible. Force majeure means something that is beyond any one person control, such as a hurricane or act war. Neither party should be held responsible for something that is beyond their control; sometimes stuff happens.

3.16.....Ownership of Equipment.....12

Why have this provision: The developer holds all ownership right to the solar equipment. The roof owner does not have any say about maintenance of the equipment, as long as it takes place during the roof owner’s agreed upon and reasonable schedule. The roof owner is simply renting their space; they do not own anything that the developer puts in that

space, and the developer needs to be able to access their equipment without the burden of asking the roof owner's permission first.

3.17.....Entire Agreement.....12

Why have this provision: Both parties agree that this is the only lease between them. There can be no claims that parties agreed to anything else, only this lease is binding; if it is not in this lease, it is not binding and it does not apply. While verbal agreements and handshake deals can be binding contracts in other circumstances, they shall not apply in this case.