

**Execution Version****SOLAR FACILITIES OPTION TO LEASE AND LEASE AGREEMENT**

This SOLAR FACILITIES OPTION TO LEASE AND LEASE AGREEMENT (this “**Agreement**”) is made as of March 3, 2021 (the “**Effective Date**”) by and between Village of Croton-on-Hudson, NY (“**Landlord**”) and SCS Van Wyck 012823 Croton On Hudson, LLC, a Delaware limited liability company (“**Tenant**”). Landlord and Tenant are sometimes individually referred to as a “**Party**” and collectively as the “**Parties**.”

**RECITALS**

WHEREAS, Landlord is the fee owner of certain real property, currently used as a parking lot, located at 4 Veterans Plaza, Croton-on-Hudson, NY, 10520, more particularly described in **Exhibit A** attached hereto (the “**Property**”); and

WHEREAS, Landlord desires to lease a portion of the Property to Tenant, more particularly described in **Exhibit B** attached hereto (the “**Premises**”), for the development, construction, operation and maintenance of a solar electric generation facility, more particularly described in **Exhibit C** attached hereto (the “**System**”), to be located on the Premises, and associated uses necessary or ancillary thereto.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein, the sufficiency of which is acknowledged by both Parties, the Parties do hereby agree as follows:

**ARTICLE I**  
**OPTION TO LEASE, LEASE AND EASEMENTS**

**1.1 Grant and Exercise of Option.**

(a) **Grant of Option.** Landlord grants Tenant an exclusive, irrevocable option to lease the Premises (the “**Option**”), which Option shall be in effect during the Development Period for so long as the Option Price (as defined herein) is paid to Landlord by Tenant as set forth in Section 3.1. Tenant may, at its sole option, terminate this Agreement at any time during the Development Period. Any payments made to Landlord before this Agreement is terminated shall be Landlord’s property and need not be refunded in whole or in part. Landlord may terminate this Agreement at any time during the Development Period if Tenant fails to make any payment of the Option Price as required during the Development Period and Landlord has provided written notice of such failure to Tenant and provided thirty (30) days to cure such failure. Landlord shall also have the option to terminate during the Development Period based upon the results of Tenant’s soil investigation as set forth in Section 9.1(b) below.

(b) **Exercise of Option.** Tenant may exercise its Option by giving written notice of such exercise to Landlord (the “**Option Notice**”) at any time during the Development Period. Landlord and Tenant agree that as of the effective date set forth in the Option Notice, the date of the lease granted hereunder in accordance with Section 1.2 shall commence (the “**Lease Commencement Date**”) and the Development Period shall automatically terminate. If Tenant does not exercise such Option, then this Agreement shall terminate at the end of the Development

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Period, as set forth in Section 2.2, and this Agreement shall be of no further force or effect and all rights, duties and obligations of Landlord and Tenant under this Agreement shall terminate.

1.2 Lease of Premises. If Tenant exercises the Option set forth in Section 1.1 during the Development Period, then effective upon the Lease Commencement Date, Landlord hereby leases the Premises to Tenant, and Tenant hereby leases the Premises from Landlord, subject to the terms and conditions of this Agreement for the following purposes (collectively, the “**Permitted Use**”): (a) to monitor, test and evaluate the Premises for solar energy generation, including without limitation, conducting studies of solar radiation, solar energy, soils, and other meteorological and geotechnical data; and (b) to install, operate, maintain, improve, repair, replace and remove from time to time the System.

1.3 Access Easement. Landlord hereby grants to Tenant for the Term (as defined herein), an easement (the “**Access Easement**”) over, across and on the Property for ingress to and egress from the System by means of any existing roads and lanes.

1.4 Temporary Construction Easement. Landlord hereby grants to Tenant during the Construction Period and the Decommissioning Period (in each case as defined herein), a temporary easement (the “**Temporary Construction Easement**”) over, across and on that portion of the Property designated as the Temporary Construction Easement on **Exhibit B** attached hereto for the storage and assemblage of materials to construct, erect, install, maintain, operate, repair and remove the System. The rights herein granted shall include the non-exclusive right to the unobstructed access to the Temporary Construction Easement by Tenant, its agents, employees and contractors with all manner of men, machinery, supplies and equipment reasonably required for the construction, reconstruction or removal of the System on or from the Premises.

1.5 Transmission Easement. Landlord hereby grants to Tenant one or more easements (“**Transmission Easements**”) on, over and across the Property, on such portions of the Property as will be notified to Landlord by Tenant for electrical transmission and/or distribution and communications lines and related equipment, as further described on **Exhibit C** attached hereto (“**Transmission Facilities**”). Any such Transmission Easement will contain all of the rights and privileges granted to Tenant in relation to the System as set forth in this Agreement. The term of the Transmission Easements will be the same as the Term of this Agreement unless earlier terminated pursuant to the terms herein, and will not expire or be terminable by Landlord under any other circumstances. Tenant will have the right to assign or convey all or any portion of any Transmission Easement to the local utility without Landlord’s consent.

1.6 Solar Easement. Landlord hereby grants and conveys to Tenant an exclusive easement on, over and across the Property for the following purposes (such easement, the “**Solar Easement**”): granting open and unobstructed access to the sun and prohibiting any obstruction to the open and unobstructed access to the sun throughout the entire Premises to and for the benefit of the area existing horizontally three hundred and sixty degrees (360°) from any point where the System is or may be located at any time from time to time (such point referred to as a “**Site**”) and for a distance from the Site to the boundaries of the Premises, together vertically through all space located above the surface of the Premises, that is, one hundred eighty degrees (180°) or such greater number or numbers of degrees as may be necessary to extend from each point on and along a line

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drawn along the surface from each point along the exterior boundary of the Premises through each Site to each point and on and along such line to the opposite exterior boundary of the Premises.

1.7 Burdens Run With and Against the Land. The burdens of the Access Easement, the Temporary Construction Easement, the Solar Easement and the Transmission Easement (the “**Easements**”) and all other rights granted to Tenant in this Agreement will run with and against the Property and will be a charge and burden on the Property and will be binding upon and against Landlord and its successors, assigns, transferees, permittees, licensees, lessees, employees and agents. The Agreement and the Easements will inure to the benefit of Tenant and its successors, assigns, transferees, permittees, licensees, lessees, and all persons claiming under them.

## ARTICLE II TERM

2.1 Entire Term. The “**Term**” of this Agreement shall consist of the Development Period together with, if Tenant exercises the applicable options, the Construction Period, the Operating Period, the Decommissioning Period and the Renewal Term.

2.2 Development Period. The “**Development Period**” means the period commencing on the Effective Date and expiring on the earlier of: (i) the date specified by Tenant in the Option Notice, (ii) the date Tenant provides notice of lease cancellation, (iii) the date Landlord provides notice of lease cancellation as provided for in Section 9.1(b) below, or (iii) the date that is twelve (12) months after the Effective Date; provided, that Tenant shall have the right to extend the time period set forth in clause (iii) by up to six (6) additional months so long as Tenant is diligently proceeding in good faith with its due diligence activities. Tenant shall provide notice of its intent to extend the time period set forth in clause (iii) above at least thirty (30) days prior to the end of the initial twelve (12) month period. If Tenant determines, in its discretion, that the Property is not appropriate for Tenant’s intended use, then Tenant may terminate this Agreement upon written notice to Landlord at any time during the Development Period. Tenant makes no representation or warranty as to the likelihood that the System will be installed on the Property. If this Agreement is terminated during the Development Period, then and in such event, all Parties shall thereupon be relieved of further liability and obligations hereunder.

2.3 Construction Period. The “**Construction Period**” means the period commencing on the earlier date to occur of (i) the date specified by Tenant in the Option Notice and (ii) the day after the conclusion of the Development Period, and continuing until the earlier date to occur of (a) the commencement of the Operating Period and (b) the date that is twelve (12) months after the commencement of the Construction Period; provided, that Tenant shall have the right to extend the time period set forth in clause (b) by up to six (6) additional months so long as Tenant is diligently proceeding in good faith with its installation related activities. Tenant shall provide notice of its intent to extend the time period set forth in clause (b) above at least thirty (30) days prior to the end of the initial twelve (12) month period.

2.4 Operating Period. The “**Operating Period**” means the period commencing on the Commercial Operation Date and continuing for a period of twenty-five (25) years after the commencement thereof, unless terminated earlier or extended as provided herein. The

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**“Commercial Operation Date”** means the date on which Tenant notifies Landlord in writing that all testing and commissioning of the System has been successfully completed, the local electric power distribution company has issued permission to operate for the System and Tenant can start producing electricity for sale.

2.5 Decommissioning Period. The **“Decommissioning Period”** means the period commencing on the expiration of the Operating Period (including any extensions thereof) or earlier termination, and continuing for a period of one hundred and eighty (180) days thereafter.

2.6 Renewal Term. The Parties may, prior to the expiration of the Operating Period, mutually agree to extend the Operating Period for up to four (4) additional periods of five (5) years each (collectively, the **“Renewal Term”**) on the same terms and conditions applicable during the Operating Period. Either Party may provide written notice to the other Party, at least one hundred and eighty (180) days prior to the expiration of the Operating Period, of its desire to extend the Operating Period. If the Parties fail to mutually agree to extend the Operating Period at least thirty

(30) days prior to the expiration of the Operating Period, this Lease will terminate at the end of the Decommissioning Period (the **“Expiration Date”**).

## ARTICLE III RENT

3.1 Rent. In consideration for the Option, the lease of the Premises and the easements granted herein, Tenant agrees to pay rent to Landlord as follows (collectively, the **“Rent”**):

(a) *Development Period.* During the Development Period, Tenant shall pay to Landlord Four Thousand Seven Hundred Fifty-Three dollars (\$4,753.00) per month (the **“Option Price”**), payable in monthly installments, starting on the first day of the month immediately occurring after the Development Period commences (the first payment shall include a pro-rated payment covering the period of time commencing on the Effective Date and ending on the last day of the preceding month).

(b) *Construction Period.* During the Construction Period, Tenant shall pay to Landlord Four Thousand Seven Hundred Fifty-Three dollars (\$4,753.00) per month payable in monthly installments, starting on the first day of the month immediately occurring after the Construction Period commences.

(c) *Operating and Decommissioning Periods.* During the Operating and Decommissioning Periods, including any extensions thereof, Tenant shall pay to Landlord the anticipated annual amount of One Hundred Twenty-Four Thousand One Hundred and Thirty-Two and 13/100 dollars (\$124,132.13) per MW DC of the System’s capacity, pro-rated for partial years, in equal monthly installments, starting on the first day of the month immediately occurring after the Operating Period commences (the **“Operating Period Rent”**). Notwithstanding the prior sentence, the Operating Period Rent shall be subject to adjustment in accordance with Exhibit I. Operating Period Rent is based on a system size of 4,753 kWdc and an energy storage system size of 15,000 kWh.

3.2 Payment Method. Rent may be paid by check or wire transfer or immediately available funds. Upon request by Tenant, Landlord shall provide Tenant with account information

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to which wire transfers may be made. The Rent shall be payable and shall be paid to Landlord without notice or demand. Tenant, at its option, shall have the right to prepay any portion of the Rent.

## ARTICLE IV USE

4.1 Development Period Permitted Uses. During the Development Period, Tenant or its representatives (at Tenant's sole cost) shall have the right of access to the Premises for the purpose of installing equipment, (provided that such equipment does not interfere with Landlord's use of the Premises in any way), making surveys, physical inspections and investigations, including but not limited to solar and environmental studies considered necessary by Tenant in connection with its proposed use of the Premises. Tenant will provide Landlord with reasonable prior notification of any entry on the Premises. Tenant shall repair or reimburse Landlord for the cost of, any damages to property caused by its entry upon the Premises. Tenant shall make every reasonable effort not to interfere with Landlord or Landlord's use of the Premises and will during the Development Period provide a copy of its construction plan to Landlord. Tenant will comply with Applicable Law (as defined below) relating to Tenant's use or occupancy of the Premises and the System and the operation thereof. Without limiting the provisions of this Article IV, Landlord acknowledges and agrees that the Tenant's use of the Premises during the Development Period may be accomplished by Tenant or one or more third parties authorized by Tenant. Landlord shall provide reasonable cooperation and accommodation for any such third party to perform any activity contemplated by this Agreement. Tenant agrees to indemnify against and hold Landlord harmless from any claims, demands, damages, losses, liabilities, suits, actions, costs and expenses, including, without limitation, reasonable attorney's fees, arising out of or in connection with or related to any entry upon the Premises by Tenant, or any agents, contractors, or employees of Tenant during the Development Period, provided, however, that except as set forth in Section 9.1(c)(ii), Tenant shall not incur any obligation or liability to Landlord or any third party with respect to any pre-existing environmental conditions at, on or near the Premises as a result of any such entry and testing.

### 4.2 Permitted Use During Lease.

(a) Commencing on the Lease Commencement Date, Tenant shall use the Premises for the Permitted Use. Tenant will comply with Applicable Law (as defined below) relating to Tenant's use or occupancy of the Premises and the System and the operation thereof. Without limiting the provisions of this Article IV, Landlord acknowledges and agrees that the Permitted Use may, without Landlord's consent, be accomplished by Tenant or one or more third parties authorized by Tenant whose scope of work is less than one hundred fifty thousand dollars (\$150,000). Tenant shall be required to obtain Landlord's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, for any subcontractors whose scope of work exceeds one hundred fifty thousand dollars (\$150,000). Landlord shall provide reasonable cooperation and accommodation for any such third party to perform any activity contemplated by this Agreement. Tenant's use of the Premises is subject to the following:

(i) present and future zoning laws, ordinances, resolutions and regulations of the municipality in which the Premises lies, and all present and future ordinance,

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laws, regulations and orders of any governmental authority, now or hereafter having jurisdiction, so long as they permit or otherwise regulate the use of the Premises;

(ii) the condition and state of repair of the Premises as the same may be on the Effective Date; and

(iii) full compliance by Tenant in all respects with Applicable Law.

(b) An authorized representative of Tenant shall have access to the Premises twenty-four (24) hours per day, seven (7) days per week, during the Term.

(c) In connection with the Permitted Use, Tenant shall have the right to provide such reasonable security measures, including the posting of warning signs and the installation of a fence (only during the Construction Period and Decommissioning Period), as Tenant may deem, in its reasonable discretion, are or may be necessary for the protection of the System or to prevent injury or damage to persons or property, subject in all cases to Landlord's normal security procedures and Landlord's access rights.

(d) Landlord shall have the right to enter the Premises at any time provided that Landlord does not interfere with the installation, operation, maintenance or removal of the System. Landlord and its invitees may use the parking lot located at the Premises for parking and other activities customarily associated with such areas of the Premises; provided, however, that Landlord acknowledges that its access to the Premises may be limited during (i) installation of the System and (ii) removal of the System.

(e) For purposes of this Agreement, "**Applicable Law**" means any federal and New York state or municipal constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, governmental approval, consent or requirement of any governmental authority having jurisdiction over such person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such governmental authority.

### 4.3 System Construction, Installation and Operation.

(a) Landlord hereby consents to the construction of the System by Tenant on the Premises, including, without limitation, solar panels, mounting substrates or supports, wiring and connections, power inverters, service equipment, monitoring equipment, metering equipment and utility interconnections. Prior to the installation of the System, Tenant shall deliver to Landlord the final construction designs and plans (the "**Construction Plans**"), and shall deliver notice of any material changes thereto to Landlord.

(b) Tenant shall also have the right from time to time during the Term: (i) to install and operate the System on the Premises in accordance with the Construction Plans; (ii) to maintain, clean, repair, replace and dispose of part or all of the System; (iii) to temporarily add or remove the System or any part thereof (or on a temporary or permanent basis upon the occurrence of an Event of Default by Landlord or during the Decommissioning Period); and (iv) to perform (or cause to be performed) all tasks necessary or appropriate, as reasonably determined by Tenant.

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4.4 Removal. During the Decommissioning Period, Tenant shall at its sole cost and expense, remove the System from the Property, including all foundations, to a depth of three (3) feet below grade, and any associated equipment or personal property owned by Tenant, and restore forthwith the Premises to their original condition, ordinary wear and tear excluded (the “**Removal Requirements**”). Any damage to electrical systems and their appurtenances and any other connections, in each case caused by Tenant or its contractors, shall be forthwith fully repaired and shall not be considered ordinary wear and tear.

4.5 Decommissioning Bond. Commencing on or before the Construction Period, Tenant shall provide to Landlord a decommissioning bond in the amount of Seven Hundred Fifty Thousand and No/100 Dollars (\$750,000) (the “**Decommissioning Bond**”). Once in place, Tenant shall keep the Decommissioning Bond in force throughout the Operating Period and Decommissioning Period until Tenant has completed the Removal Requirements. Landlord shall release and return the Decommissioning Bond upon Landlord's reasonable satisfaction that Tenant has completed the Removal Requirements. If Tenant fails to complete the Removal Requirements by the end of the Decommissioning Period, Tenant shall be responsible for liquidated damages in the amount of one hundred dollars (\$100) per day the System remains on the Premises beyond the end of the Decommissioning Period. Landlord may provide notice to Tenant stating that Tenant has failed to remove the System (the “**Abandonment Notice**”). If Tenant fails to remove the System within thirty (30) days after receipt of the Abandonment Notice, Landlord shall have the right, at its option, in its sole discretion, to cause the removal the System by a qualified licensed contractor and complete restoration of the Premises, at Tenant's cost and expense. Landlord may draw on the Decommissioning Bond for such purpose, provided however Tenant shall remain responsible for any cost and expense in excess of the amount of the Decommissioning Bond. Tenant shall make payment of the liquidated damages and removal costs to Landlord within ten (10) days of receipt of notice of the same.

## ARTICLE V COVENANTS

### 5.1 Representations and Covenants of Landlord.

(a) Landlord represents and warrants that Landlord has good and marketable fee simple title to the Property. There are no encumbrances or liens (including other tenancies) against the Premises except those which are listed on Exhibit G attached hereto. Landlord shall obtain a non-disturbance agreement (“**NDA**”) from any third party who has, or obtains during the Term, a lienhold interest in the Premises, including any lenders (each, a “**Holder**”), which NDA shall (i) acknowledge and consent to this Agreement and Tenant's rights in the System and the Premises, (ii) acknowledge that the Holder has no interest in the System and shall not gain any interest in the System by virtue of the parties' performance or breach of this Agreement, and (iii) subordinates any lien (recorded or unrecorded) and any other right or interest of the Holder in the Premises to this Agreement in all respects, including without limitation any amendments, modifications, expansions or extensions hereof.

(b) Landlord shall (i) provide and maintain in good order and condition all roads, driveways, parking lots and walkways that are now and may be located on the grounds of the Property that are necessary or appropriate for proper ingress and egress to and from, and use

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and occupancy of, the Premises and (ii) take all actions necessary to maintain the Premises in a clean, safe, and orderly condition, to at least the same standard as it customarily maintains the Property, including, without limitation, parking lot sweeping, parking lot snow removal, parking lot repaving and restriping, and maintenance and repair of curbs, gutters and landscaping features within the Premises. Tenant shall be responsible for any damage to the Property or Premises caused by Tenant or persons within Tenant's reasonable control, including, without limitation, its employees, agents and contractors.

(c) Landlord shall provide certain specified utilities to the Premises as set forth in **Exhibit D** attached hereto in connection with Tenant's construction, start-up, maintenance, repair, replacement and operation of the System (if none are specified, then Landlord shall have no such obligation). Tenant shall maintain and repair all utilities installed by Tenant on the Premises.

(d) Landlord will not cause, and will not permit its employees, invitees, agents or contractors to cause, the electrical system at the Premises to shut down, temporarily or otherwise, unless same is necessary as the result of an emergency.

(e) Landlord will not, and will not permit its employees, invitees, agents or contractors to, conduct activities on, in or about the Property or the Premises that Landlord knows or reasonably should know may damage, impair or otherwise adversely affect the System or its function. Further, Landlord will not, and will not permit its employees, invitees, agents or contractors to conduct maintenance to the Premises, or to undertake other activities, that are reasonably likely to damage, impair or otherwise adversely affect the System or its function. Landlord shall be responsible for any damage to the System caused by Landlord or persons within Landlord's reasonable control, including, without limitation, its employees, agents and contractors.

(f) In the event of a casualty event that damages any portion of the Premises, Landlord shall promptly repair or replace such portion of the Premises as is necessary to allow Tenant to enjoy all rights provided to Tenant hereunder. Landlord will promptly notify Tenant of any damage to or defective condition in any part or appurtenance of the Premises (including mechanical, electrical, plumbing, heating, ventilating, air conditioning and other equipment facilities and systems located within or serving the Premises) which could adversely impact the System or the Premises.

(g) Landlord represents and warrants that the execution and delivery by Landlord of, and the performance of its obligations under, this Agreement have been duly authorized by all necessary action, do not and will not require any further consent or approval of any other person, and do not contravene any provision of, or constitute a default under, any indenture, mortgage or other material agreement binding on Landlord, or any valid order of any court, or regulatory agency or other body having authority to which Landlord is subject. This Agreement constitutes a legal and valid obligation of Landlord, enforceable against Landlord, except as may be limited by bankruptcy, reorganization, insolvency, bank moratorium or laws relating to or affecting creditors' rights generally and general principles of equity whether such enforceability is considered in a proceeding in equity or at law, and as may be otherwise provided for in the Agreement.



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(h) Landlord acknowledges and agrees that the free and unobstructed flow of sunlight (“**Insolation**”) is essential to the value to Tenant of the leasehold interest granted hereunder, and is a material inducement to Tenant in entering into this Agreement. Accordingly, and pursuant to Section 1.6, Landlord shall not disturb or interfere with Insolation reaching the Premises. Without limiting the foregoing, Landlord shall not construct or permit to be constructed any structure on the Property that could adversely affect Insolation levels, permit the growth of foliage that could adversely affect Insolation levels, or emit or permit the emission of suspended particulate matter, smoke, fog or steam or other air-borne impediments to Insolation (the Parties acknowledge that the Premises are currently used as a parking lot and car emissions resulting from such usage are not prohibited). If Landlord becomes aware of any potential development or other activity on adjacent or nearby properties that could diminish the Insolation to the Premises, Landlord shall advise Tenant of such information and reasonably cooperate with Tenant in measures to preserve existing levels of Insolation at the Premises. Notwithstanding any other provision of this Agreement, the Parties agree that (i) Tenant would be irreparably harmed by a breach of the provisions of this Section 5.1(h), (ii) an award of monetary damages would be inadequate to remedy such a breach, and (iii) Tenant shall be entitled to seek equitable relief, including specific performance, to compel compliance with the provisions of this Section 5.1(h). In addition, Landlord hereby grants to Tenant the right, to remove, trim, prune, top or otherwise control the growth of any tree, shrub, plant or other vegetation on the Property to the extent it prevents or otherwise obstructs Insolation to the Premises.

(i) Landlord shall maintain the Property in good condition and repair including without limitation, performing the following: plow, sweep, de-ice and otherwise maintain the Property in a reasonable condition sufficient for Tenant’s exercise of the rights granted by this Agreement, at Landlord’s sole cost and expense.

(j) Landlord will cooperate with Tenant, at no cost to Landlord, including the execution of any applications or other documents as may be required, in relation to Tenant’s efforts in obtaining and maintaining any permits or approvals required in connection with the installation, operation and maintenance of the System on the Premises.

### 5.2 Representations and Covenants of Tenant.

(a) Tenant represents and warrants that the execution and delivery by Tenant of, and the performance of its obligations under, this Agreement have been duly authorized by all necessary action, do not and will not require any further consent or approval of any other person, and do not contravene any provision of, or constitute a default under, any indenture, mortgage or other material agreement binding on Tenant, or any valid order of any court, or regulatory agency or other body having authority to which Tenant is subject. This Agreement constitutes a legal and valid obligation of Tenant, enforceable against Tenant, except as may be limited by bankruptcy, reorganization, insolvency, bank moratorium or laws relating to or affecting creditors’ rights generally and general principles of equity whether such enforceability is considered in a proceeding in equity or at law, and as may be otherwise provided for in the Agreement.

(b) Tenant shall take good care of the System and conduct all required maintenance and make all repairs thereto. Except as otherwise expressly provided herein,

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Landlord shall have no duty or liability to Tenant with respect to the maintenance, repair or security of the Premises or the System.

(c) Except as expressly provided in Section 5.1(c), Tenant shall make all arrangements for and pay directly to the entity providing the service, before delinquent, all charges for all utilities and services furnished to or used by it, including without limitation, electricity, water, telephone/internet service, trash collection and connection charges. In the event that Tenant desires to undertake maintenance, repair, upgrade, replacement or security activities with respect to electrical transmission or distribution lines owned by Landlord, Tenant may do so at Tenant's expense subject to the approval of Landlord, which shall not be unreasonably withheld, conditioned or delayed.

(d) Tenant represents that, except for the need to remove, trim, prune, top or otherwise control the growth of certain vegetation on the Property, the existing conditions of the Premises are acceptable and provide for unobstructed flow of Insolation for the purposes stated hereunder. Further, Tenant is aware of surrounding and abutting and adjacent properties and in their opinion said properties do not interfere, as of the Effective Date, with the conditions necessary for the Tenant to construct, own, operate or maintain the System.

(e) Tenant will, at its sole cost and expense, obtain any permits or approvals required in connection with the installation, operation and maintenance of the System on the Premises.

## ARTICLE VI TITLE AND TRANSFER RESTRICTIONS

6.1 Title to System. Subject to the rights provided to Landlord pursuant to this Agreement, the System and all alterations, additions, improvements or installations made thereto by Tenant and all Tenant property used in connection with the installation, operation and maintenance of the System is, and shall remain, the personal property of Tenant ("***Tenant Property***"). In no event shall any Tenant Property be deemed a fixture, nor shall Landlord, nor anyone claiming by, through or under Landlord (including but not limited to any present or future mortgagee of the Property) have any rights in or to the Tenant Property at any time except as otherwise provided herein. Landlord shall have no ownership or other interest in the System or other equipment or personal property of Tenant installed on the Premises, and Tenant may remove all or any portion of the System at any time and from time to time as provided in Section 4.3(b). Without limiting the generality of the foregoing, Landlord hereby waives any statutory or common law lien that it might otherwise have in or to the System or any portion thereof. The System may not be sold, leased, assigned, mortgaged, pledged or otherwise alienated or encumbered by Landlord.

### 6.2 Liens.

(a) Landlord shall not suffer or permit the System or the Premises to become subject to any lien or encumbrance for debt of any kind (including without limitation, any mechanic's, laborer's or materialman's lien) that may be owed by or demanded of Landlord. Landlord will promptly give Tenant written notice of such lien and will promptly take such action

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as is necessary or appropriate to have the lien discharged and removed of record. Landlord shall be solely responsible for any and all costs and expenses incurred in discharging and releasing such lien.

(b) Tenant shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including, without limitation, lender's, mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim on or with respect to the Property (other than the System or any interest therein). Tenant will promptly give Landlord written notice of any such lien and will promptly take such action as is necessary or appropriate to have the lien discharged and removed of record. Tenant shall be solely responsible for any and all costs and expenses incurred in discharging and releasing such lien.

(c) If any mechanic's, laborer's or materialman's lien shall at any time be filed against the Property, the Premises or the System, the Party responsible for the discharge thereof (the "**Discharging Party**") shall, within ten (10) Business Days after receiving notice of the filing thereof, cause such lien to be discharged of record by payment, deposit, bond, insurance, order of court of competent jurisdiction or otherwise. If the Discharging Party shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, the other Party may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding. Any amount so paid by such Party and costs and expenses reasonably incurred by such Party in connection therewith, together with interest in the amount of 2.5% per month from the respective dates of making the payment or incurring the cost and expenses, shall be paid by the Discharging Party within ten (10) Business Days of the Discharging Party's receipt of an invoice therefor.

6.3 Reserved.

## ARTICLE VII QUIET ENJOYMENT

Landlord covenants and agrees that Tenant, provided Tenant remains in compliance with its obligations under this Agreement, shall lawfully and quietly occupy and enjoy the Premises for the Permitted Use and an uninterrupted right of ingress and egress across the Property in accordance with the terms hereof throughout the entire term of this Agreement, free from any claim of any Person of superior title thereto without hindrance to, interference with or molestation of Tenant's use and enjoyment thereof, whether by Landlord or any of its agents, employees or independent contractors or by any Person having or claiming an interest in the Property.

## ARTICLE VIII TAXES

8.1 Landlord Taxes and Assessments. Landlord will pay, when due, all real property taxes and assessments levied against the Premises and all personal property taxes and assessments levied against any property and improvements owned by Landlord and located on the Premises. If Landlord fails to pay any such taxes or assessments when due, Tenant may, at its option, pay those taxes and assessments and any accrued interest and penalties, and either seek reimbursement from Landlord or deduct the amount of its payment from any Rent or other amount otherwise due to Landlord from Tenant.

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8.2 Tenant Taxes and Assessments. The Parties assume that the System is exempt from property taxes. Tenant will pay all property taxes and assessments levied against the System when due, including any such taxes based on electricity production; provided, however, Tenant may offset the cost of any such payments against Operating Period Rent owed to Landlord under this Agreement. Landlord and Tenant agree jointly to use commercially reasonable efforts to cause the Premises not to be reclassified from its present zoning classification or exemption as a result of this Agreement.

8.3 Tax Contest. Either Party may contest the validity or amount of any levied taxes, assessments or other charges for which each is responsible under this Agreement as long as such contest is pursued in good faith and with due diligence and the party contesting the tax, assessment or charge has paid the obligation in question or established adequate reserves to pay the obligation in the event of an adverse determination.

## ARTICLE IX PRIOR USES

9.1 Tenant shall not be liable to Landlord or any third party for any past, present or future contamination or pollution or breach of any Applicable Law pertaining to the Release, use, storage and disposal of Hazardous Materials, if any, located on or that impacts the Property, except to the extent brought to the Property by or on behalf of Tenant. Landlord agrees to assume full responsibility for any liability or cleanup obligations (except for the express cleanup obligations set forth in Section 9.1(c)(ii)), for any contamination or pollution or breach of Applicable Law pertaining to the Release, use, storage and disposal of Hazardous Materials, related to the Property, including the Premises, unless brought to the Property by or on behalf of Tenant. For purposes of this Agreement, “**Hazardous Materials**” means those substances defined, classified, or otherwise characterized as a “hazardous substance,” “toxic substance,” “hazardous material,” “hazardous waste,” “hazardous pollutant” or analogous term, or as oil or a petroleum product or constituent, under Applicable Law; and “**Release**” means any spill, leak, discharge, emission, migration, leaching, disposal, abandonment, pumping, pouring, emptying, injecting, dumping, deposition, dispersion, release, discarding, decomposition or denaturing in, at, to or from the environment, including surface and subsurface soils, strata and pore space, surface water and groundwater, ambient and indoor air, flora, fauna and other natural resources.

(a) *Landlord Representation.* Landlord represents to the best of its knowledge and without undertaking independent investigation that as of the Effective Date, no Hazardous Materials exist or have been Released on, in or under the Property in violation of Applicable Law.

(b) *Landlord Limited Termination Right.* If a Phase I or Phase II environmental site assessment commissioned by Tenant during the Development Period (copies of which shall be provided to Landlord) reveals a “Recognized Environmental Condition” on the Property that would require removal or remediation under Applicable Law, or that will otherwise impair or prevent installation and testing of the System, Tenant shall promptly notify Landlord. Landlord shall have the right, in its sole discretion, to terminate this Lease within thirty (30) days of receiving such notice; provided that if Landlord does not timely exercise the foregoing termination right, it shall expire.

(c) *Tenant Responsibilities.* Tenant agrees and shall cause its contractors to agree, as follows:

## Execution Version

i. To take reasonable measures to reduce or mitigate noise, dust, the spread of debris and installation materials; and

ii. To (1) use and dispose of any Hazardous Materials brought to the Property by Tenant or its contractors and (2) remove and dispose of contaminated soil discovered during installation of the System, each in accordance with all Applicable Laws. Tenant may offset the cost of removing and disposing of contaminated soil (“**Remediation Costs**”), by adjusting the Operating Period Rent owed to Landlord under this Agreement as set forth in **Exhibit I**. The Remediation Costs shall not include the cost of removing uncontaminated soil unless such removal is reasonably necessary in connection with removing contaminated soil (and would not otherwise be necessary to develop or construct the System).

9.2 Except as expressly set forth in Section 9.1, Tenant shall have no responsibility or liability in respect of Hazardous Materials existing at or Released at, to or from the Property.

## ARTICLE X EVENTS OF DEFAULT; INSURANCE; INDEMNIFICATION

10.1 Events of Default. The following shall each constitute an “**Event of Default**” by a Party.

(a) The Party fails to perform or comply with any material covenant or agreement set forth in this Agreement (other than those specified in clauses (b), (c) and (d) of this Section 10.1) and such failure continues for a period of thirty (30) days after receipt of written notice thereof from the other Party; *provided, however*, if the defaulting Party proceeds with due diligence during such thirty (30) day period to cure such breach and is unable by reason of the nature of the work involved using commercially reasonable efforts to cure the same within the said thirty (30) days, the defaulting Party’s time to do so shall be extended by the time reasonably necessary to cure the same; *provided further*, that if such breach cannot, due to its nature and despite diligent efforts, be cured within ninety (90) days, the non-defaulting Party may terminate this Agreement under this Article X.

(b) Fraud or intentional misrepresentation by the Party with respect to any of the representations, covenants or agreements of this Agreement.

(c) The Party: (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor’s rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within forty-five (45) Business Days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under

## Execution Version

any bankruptcy or insolvency law or other similar law affecting creditors' rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (viii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

(d) The Party assigns this Agreement in whole or in part in violation of Article XII.

10.2 Force Majeure. If by reason of Force Majeure, either Party is unable to carry out, either in whole or in part, any of its obligations contained herein, such Party shall not be deemed to be in default during the continuation of such inability, *provided that*: (a) the non-performing Party promptly gives the other Party hereto written notice describing the particulars of the occurrence and the anticipated period of delay; (b) the suspension of performance be of no greater scope and of no longer duration than is required by the Force Majeure event; (c) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (e) 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. Notwithstanding anything to the contrary in this Agreement, in the event a Force Majeure event continues for a period of two hundred and seventy (270) consecutive days or more, either Party may terminate this Agreement. Upon termination of this Agreement by either Party pursuant to this Section 10.2, neither Party shall have any obligation or financial liability to the other Party as a result of such termination. "**Force Majeure**" means any event or circumstances beyond the reasonable control of and without the fault or negligence of the Party claiming Force Majeure and shall include, without limitation, an act of god; war (declared or undeclared); sabotage; riot; insurrection; civil unrest or disturbance; military or guerilla action; terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out; explosion; fire; earthquake; abnormal weather condition or actions of the elements; hurricane; flood; lightning; wind; drought; the binding order of any Governmental Authority (provided that such order has been resisted in good faith by all reasonable legal means); the failure to act on the part of any Governmental Authority (provided that such action has been timely requested and diligently pursued); and unavailability of electricity from the utility grid, equipment, supplies or products (but not to the extent that any such availability of any of the foregoing results from the failure of the Party claiming Force Majeure to have exercised reasonable diligence).

10.3 Termination for Default. Upon the occurrence of an Event of Default, the non-defaulting Party may (unless such Event of Default was fully cured by the defaulting Party before receipt of written notice of default hereunder) give written notice to the defaulting Party specifying such Event of Default and such notice may state that this Agreement and the Term shall expire and terminate on a date specified in such notice, which shall be at least five (5) business days after the giving of such notice, and upon any termination date specified in such notice, this Agreement shall terminate as though such date were the date originally set forth herein for the termination hereof without penalty or liability to the terminating Party.

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10.4 Remedies. Subject to the limitations set forth in this Agreement, Landlord and Tenant each reserve and shall have all rights and remedies available to it at law or in equity with respect to the performance or non-performance of the other Party hereto under this Agreement. Each Party agrees that it has a duty, under law, to mitigate damages that it may incur as a result of the other Party's non-performance under this Agreement.

10.5 Insurance. Each Party will procure and maintain insurance as its own cost and expense, and all in accordance with the coverage requirements set forth in Exhibit E attached hereto. Each Party shall provide certificates of insurance to the other during the Term certifying that such coverages shall remain in effect for the duration of this Agreement.

### 10.6 Indemnification.

(a) Landlord agrees, and Tenant agrees to the extent permitted by law, (as appropriate, the "***Indemnifying Party***") to indemnify, defend and hold harmless the other Party and its affiliates, directors, officers, employees and agents (and in the case of Tenant, its Lender, as defined below) (collectively, the "***Indemnified Party***") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) for personal injury or death to Persons and damage to the property of any Indemnified Party or third party to the extent arising out of, resulting from, or caused by the breach of this Agreement by, or the negligent or willful misconduct of, the Indemnifying Party, its affiliates, its directors, officers, employees, or agents.

(b) Nothing in this Section 10.6 shall enlarge or relieve Landlord or Tenant of any liability to the other for any breach of this Agreement. This indemnification obligation shall apply notwithstanding the negligence or willful misconduct of the Indemnified Party, but the Indemnifying Party's liability to pay damages to the Indemnified Party shall be reduced in proportion to the percentage by which the Indemnified Party's negligence or willful misconduct contributed to the claim giving rise to, or increased the level of, the damages. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

### 10.7 Defense of Actions.

(a) Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in Section 10.6 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs.

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(b) If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, provided that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.

(c) Except as otherwise provided in this 0, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under Section 10.6, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

## **ARTICLE XI LIMITATION OF LIABILITY**

**EXCEPT FOR INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 10.6, OR A BREACH OF THIS AGREEMENT DUE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF EITHER PARTY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY CHARACTER, RESULTING FROM A BREACH OF THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR EQUITY.**

## **ARTICLE XII ASSIGNMENT**

### **12.1 General.**

(a) This Agreement and all of the provisions hereof will be binding upon and inure to the benefit of the Parties and their respective successor and assigns. Neither Party shall assign or in any manner transfer this Agreement, any rights or obligations included herein, or any part thereof without the prior written consent of the other Party, which consent may not be unreasonably conditioned, withheld or delayed, except that the following Tenant assignments are permitted under this Agreement without the need to obtain the prior written consent of Landlord in connection therewith: (i) any assignment or transfer of this Agreement (or any rights or obligations hereunder) by Tenant to an affiliate of Tenant or to a Person that purchases or will own (directly or indirectly) after such assignment the System; (ii) to a person that will upon such assignment own the System and all rights and assets required to operate the System in accordance with the Agreement; and (ii) any direct or collateral assignment by Tenant of this Agreement to any entity (including each of the Financing Parties described in **Exhibit H**, the "**Lender**") as security for or in connection with a financing or other financial arrangement related to the Premises or the System.

(b) Any assignment of Tenant's interests in accordance with this Section 12.1 shall relieve Tenant of any further liabilities or obligations under this Agreement accruing after the date of such assignment; *provided* that any such assignee has assumed and agreed to carry out any and all covenants and obligations of Tenant hereunder after the date of such assignment.



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### 12.2 Lender Accommodations.

(a) Limited Grant to Lender. Tenant, without the approval of Landlord, may grant an interest in its rights and obligations under this Agreement to any Lender (the “***Leasehold Estate***”). Promptly after granting such interest, Tenant shall notify Landlord in writing of the name, address, and telephone and facsimile numbers of any Lender to which Tenant’s interest under this Agreement has been assigned, though, notwithstanding anything to the contrary in this Section or this Agreement, Landlord shall have no obligation to provide to any such Lender any notices issued or required to be issued to Tenant pursuant to this Agreement unless and until such notice has been provided to Landlord.

(b) Rights of Lender. If Tenant encumbers its interest under this Agreement as permitted by Section 12.2(a), the provisions set forth in **Exhibit H** shall apply.

(i)

## ARTICLE XIII MISCELLANEOUS PROVISIONS

13.1 Governing Law; Forum. This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the state of New York without regard to principles of conflicts of law. Actions brought hereunder shall be brought in the state of New York.

13.2 Severability. If any article, section, phrase or portion of this Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such article, section, phrase, or portion so adjudged will be deemed separate, severable and independent and the remainder of this Agreement will be and remain in full force and effect and will not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purpose of this Agreement and the benefits to the Parties are not substantially impaired.

13.3 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.

13.4 Entire Agreement, Amendments and Waivers. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes the terms of any previous agreements or understandings, oral or written. This Agreement may not be amended, changed, modified, or altered unless such amendment, change, modification, or alteration is in writing and signed by both of the Parties to this Agreement or their successor in interest. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns. Either Party’s waiver of any breach or failure to enforce any of the terms of this Agreement shall not affect or waive that Party’s right to enforce any other term of this Agreement.

13.5 Further Assurances. Either Party shall execute and deliver such further instruments as may be reasonably requested by the other Party in order to carry out the terms of this Agreement.

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13.6 Notices. All notices and other formal communications which either Party may give to the other under or in connection with this Agreement shall be in writing (except where expressly provided for otherwise), shall be effective upon delivery, and shall be sent by any of the following methods: hand delivery; reputable overnight courier; certified mail, return receipt requested; or facsimile transmission.

The communications shall be sent to the following addresses:

If to Tenant:

SCS Van Wyck 012823 Croton On Hudson, LLC  
c/o Sol Customer Solutions, LLC  
1101 Connecticut Ave, NW - Second Floor  
Washington, DC 20036  
Attention: General Counsel  
Phone: (202) 349-2085  
Email: general.counsel@solsystems.com

If to Landlord:

Village Clerk  
Village of Croton on Hudson  
1 Van Wyck Street  
Croton on Hudson, NY 10520

Any Party may change its address and contact person for the purposes of this Section 13.6 by giving notice thereof in the manner required herein.

13.7 Estoppel. Either Party hereto, without charge, at any time and/or from time to time, within five (5) Business Days after receipt of a written request by the other Party hereto, shall deliver a written instrument, duly executed, certifying to such requesting Party, or any other person, firm or corporation specified by such requesting party:

(a) That this Agreement is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;

(b) Whether or not to the knowledge of any such Party there are then existing any offsets or defenses in favor of such Party against enforcement of any of the terms, covenants and conditions of this Agreement and, if so, specifying the same and also whether or not to the knowledge of such Party the other Party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same;

(c) Such other factual information as may be reasonably requested by a Party hereto.

In the event that Landlord is requested to provide any certifications aside from the ones specifically set forth in Sections 13.7(a) – (c) above, Tenant shall pay, in advance, the reasonable, documented,

## **Execution Version**

third-party attorney's fees to be incurred by Landlord to fulfill said request. Any written instrument given hereunder may be relied upon by the recipient of such instrument in good faith, except to the extent the recipient has actual knowledge of facts contained in the certificate to the contrary.

13.8 Memorandum of Lease. Tenant and Landlord shall execute in recordable form and Tenant shall then record a memorandum of this Agreement in the form attached hereto as **Exhibit F**. Landlord hereby consents to the recordation of the interest of an assignee in the Premises.

13.9 Dispute Resolution. Any dispute arising from or relating to this Agreement shall be arbitrated in the state of New York. The arbitration shall be administered by the American Arbitration Association, and judgment on any award may be entered in any court of competent jurisdiction. If the Parties agree, a mediator may be consulted prior to arbitration. The prevailing party in any dispute arising out of this Agreement shall be entitled to reasonable attorneys' fees and costs.

[Signature page to follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement under seal as of the Effective Date.

LANDLORD:

TENANT:

By: Janine King  
Name: Janine King  
Title: Village Manager

DocuSigned by:  
By: James Machulak  
Name: James Machulak  
Title: Authorized Signatory

**EXHIBIT A**

DESCRIPTION OF THE PROPERTY

**Address:**

A portion of 4 Veterans Plaza  
Croton-on-Hudson, NY 10520

**Legal Description:**

Tenant to fill in post-lease execution when a full legal description is available through ALTA survey and title report.

## **EXHIBIT B**

### DESCRIPTION OF PREMISES

#### **Description of the Premises:**

Tenant to provide a legal description of the Premises after lease agreement execution, after conducting an ALTA survey, consistent with the RFP and subject to Landlord's approval.

#### **Description of the Temporary Construction Easement:**

Tenant to provide a description of the temporary construction easement after Agreement execution, after conducting an ALTA survey, subject to Landlord's approval.



**EXHIBIT D**

**PROVIDED UTILITIES**

Landlord shall provide access to the following utilities:

None.



## **EXHIBIT E**

### **INSURANCE OBLIGATIONS**

#### **Insurance**

1) Tenant's Insurance. At all times relevant to this Agreement, Tenant shall maintain (or shall cause its contractors to maintain), with a company or companies licensed or qualified to do business in the State where the Premises are located and rated A / VIII or above by A.M. Best, the following insurance coverage:

(i) Commercial General Liability Policy, with limits of no less than \$1,000,000 Each Occurrence/\$2,000,000 Aggregate limits for Bodily Injury and Property Damage, and shall include coverage for:

A. Premises & Operations;

B. Products/Completed Operations;

C. Personal & Advertising Injury;

D. Contractual Liability; and

E. XCU.

F. Landlord and their assigns, officers, employees, representatives and agents should be provided with "Additional Insured" status on the policy using ISO Additional Insured Endorsement CG 20 10 11/85 or an endorsement providing equivalent or broader coverage and shall apply on a primary and non-contributory basis, including any self-insured retentions. The Certificate of Insurance should show this applies to the General Liability coverage on the certificate, and Additional Insured Endorsement shall be attached.

G. To the extent permitted by New York law, the Contractor/Provider waives all rights of subrogation or similar rights against Landlord and its assigns, officers, employees, representatives and agents.

H. General Aggregate shall apply separately to each project (must be on an occurrence form).

I. Cross Liability (Separation of Insureds) coverage (Commercial General Liability and Business Automobile Liability policies only).

J. General Liability policy must NOT contain any coverage exclusions or restrictions related to the scope of work being performed as well as injuries to employees, subcontractors, or employees of subcontractors (i.e. labor law).

(ii) Worker's Compensation and Employers Liability Policy, covering operations in New York State. Employers Liability Policy \$1,000,000 each accident, \$1,000,000 disease for each employee, and \$1,000,000 disease policy limit.

Evidence must be provided on a C-105.2. Waiver of Subrogation to be included.

(iii) Where required by NY law, Lessee shall provide NYS Disability Benefits Insurance and evidence of such coverage through DB 120.1

(iv) In relation to Tenant's subcontractors only, Commercial Automobile Policy, with limits no less than \$1,000,000 Bodily Injury and Property Damage liability including coverage for owned (if any), non-owned, and hired private passenger and commercial vehicles.

Landlord and their assigns, officers, employees, representatives and agents should be provided with "Additional Insured" status on the policy.

The Certificate of Insurance should show this applies to the Automobile Liability coverage on the certificate, and Additional Insured Endorsement shall be attached.

To the extent permitted by New York law, the Contractor/Provider waives all rights of subrogation or similar rights against Landlord, and its assigns, officers, employees, representatives and agents. Coverage shall apply on a primary and non-contributory basis, including any self-insured retentions

(v) Umbrella/Excess Liability, with limits of no less than \$5,000,000 Each Occurrence/\$5,000,000 Aggregate, including coverage for General Liability, Automobile, and Workers Compensation and Professional Liability (if applicable). Waiver of Subrogation to be included in favor of Landlord.

Coverage for the additional insured shall apply on a non-contributory basis, including any self-insured retentions.

(vi) Property Insurance, the Contractor shall cover materials being installed onsite, in transit, and/or at any other location.

(vii) Professional Liability (if applicable), with limits no less than \$1,000,000 per claim / \$1,000,000 Aggregate. If a retroactive date is used, it must pre-date the inception of the contract. Landlord is to be included as an additional insured on a primary, non-contributory basis and a waiver of subrogation needs to be included in favor of Landlord. Coverage may be provided by Tenant's contractor.

(viii) Environmental Clean-Up, if applicable. Coverage for the removal of pollution events, including coverage for third-party liability claims for bodily injury, property damage and clean-up costs. \$1,000,000 per occurrence / \$2,000,000 aggregate including Products and Completed Operations. If a retroactive date is used, it must pre-date the inception of the contract. Landlord is to be included as an additional insured on a primary, non-contributory basis and a

waiver of subrogation needs to be included in favor of Landlord. Sudden & Accidental Pollution coverage included in Tenant's General Liability policy satisfies this requirement.

(ix) The Contractor/Provider shall furnish to Landlord Certificates of Insurance as evidence of coverage prior to commencement of work and providing Landlord with Additional Insured status by endorsement. The Provider acknowledges that failure to obtain such insurance on behalf of Landlord constitutes a material breach of contract and subjects it to liability for damages, indemnification and all other legal remedies available to Landlord. The failure of Landlord to object to the contents of the certificate or absence of same shall not be deemed a waiver of any and all rights held by Landlord.

2) Landlord's Insurance. At all times relevant to this Agreement, Landlord shall maintain, with a company or companies licensed or qualified to do business in the State where the Premises are located and rated A / VIII or above by A.M. Best, the following insurance coverage:

- (a) Commercial general liability insurance, occurrence form, including, but not limited to, contractual coverage for all of the provisions of this Agreement, with limits of not less than \$2,000,000 per occurrence and in the aggregate, \$2,000,000 products and completed operations aggregate; and \$1,000,000 personal injury and advertising injury per offense.
- (b) Property coverage will be maintained providing replacement cost value for property that is in Landlord's care, custody and control, as may be applicable. This coverage shall include appropriate riders for specialty equipment as necessary.

**Deductibles.** In addition, Landlord must provide Tenant with a bona fide list of all deductibles, retentions, or any other cost sharing agreements affecting this coverage. These deductibles, retentions, or other forms of cost sharing shall not exceed \$10,000.

**Certificates.** Landlord shall cause certified copies of all required insurance policies to be endorsed by the insurance providers for the above coverages. Evidence of the above insurance policies shall be provided on a continuous basis and on a standard ACORD form 25-S, providing not less than thirty (30) days' notice of cancellation or material alteration. The insurance certificate(s) shall reflect the following changes to standard language: in the cancellation clause delete "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives". All policies listed in this Exhibit E shall grant Tenant, its successors, subsidiaries, directors, officers, agents and employees a waiver of subrogation. The commercial general liability policy in this Exhibit E shall name Tenant, its successors, subsidiaries, directors, officers, agents and employees as an additional insured. The property coverage policy in this Exhibit E shall name Tenant, its successors, subsidiaries, directors, officers, agents and employees as a loss payee.

**EXHIBIT F**  
**MEMORANDUM OF LAND LEASE AND SOLAR EASEMENT<sup>1</sup>**

THIS MEMORANDUM OF SOLAR FACILITIES LEASE (“**Memorandum of Lease**”) is entered into this 3rd day of March, 2021 by and between Village of Croton-on-Hudson, NY (hereinafter “**Landlord**”), and SCS Van Wyck 012823 Croton On Hudson, LLC, a Delaware limited liability company, and its successors and assigns (hereinafter “**Tenant**”).

**RECITALS:**

A. Landlord and Tenant have entered into that certain Solar Facilities Option to Lease and Lease Agreement (the “**Lease Agreement**”), dated March 3, 2021 (the “**Effective Date**”) whereby Landlord has agreed to lease to Tenant certain real property, together with certain easement rights across said premises, in the County of Westchester, State of New York, and being more particularly described in Schedule A attached hereto and made a part hereof (the “**Premises**”).

B. The parties wish to give notice of the existence of such Lease Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Landlord and Tenant have entered into the Lease Agreement to lease and demise the Premises for solar energy purposes and to grant certain access and solar easements. Pursuant to the Lease Agreement, Tenant has the right to use the Premises for solar energy purposes, together with certain related solar, access and other easement rights and other rights related to the Premises, all as more fully described in the Lease Agreement. Solar energy purposes means converting solar energy into electrical energy and collecting and transmitting the electrical energy so converted, together with any and all activities related thereto.

2. The initial term of the Lease Agreement commences on the Effective Date and expires on the earlier of: (i) the date specified by Tenant in the Option Notice, (ii) the date Tenant provides notice of lease cancellation, or (iii) the date that is twelve (12) months after the Effective Date; provided, that Tenant shall have the right to extend the time period set forth in clause (iii) by up to six (6) additional months so long as Tenant is diligently proceeding in good faith with its due diligence activities (the “**Development Period**”). The Lease Agreement will automatically be extended for an Operating Term, as defined below, upon the date when the solar facility installed on the Premises receives permission to operate from the LDC, as defined therein (“**Operation Date**”). The Operating Term of the Lease Agreement (“**Operating Term**”) is twenty-five (25) years from the Operation Date unless sooner terminated in accordance with the terms of the Lease Agreement. In addition, to the Parties may mutually agree to extend the Operating Term for up to four (4)] additional periods of five (5) years.

3. Landlord will have no ownership and other interest in any solar facility installed on

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<sup>1</sup> NTD: Ensure that document conforms to state specific requirements for recordation.

the Premises by Tenant and Tenant may remove such solar facility at any time.

4. The Lease Agreement and the easement and rights granted Tenant therein will burden the Premises and will run with the land. The Lease Agreement will inure to the benefit of and be binding upon Landlord and Tenant and, to the extent provided in any assignment or other transfer under the Lease Agreement, any assignee or Tenant, and their respective heirs, transferees, successors and assigns, and all persons claiming under them.

5. This Memorandum of Lease has been executed and delivered by the parties for the purpose of recording and giving notice of the lease and easement rights in accordance with the terms, covenants and conditions of the Lease Agreement.

6. The terms and conditions of the Lease Agreement are incorporated by reference into this Memorandum of Lease as if set forth fully herein at length. In the event of any conflict between the terms and provisions of the Lease Agreement and this Memorandum of Lease, the Lease Agreement will control.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the 3rd day of March, 2021.

**LANDLORD**

Village of Croton-on-Hudson

By: Janine King

Name: Janine King

Title: Village Manager

STATE OF New York )  
 ) ss.  
COUNTY OF Westchester )

The foregoing instrument was acknowledged before this 3 day of MARCH, 2021, by [property owner].

Pauline Disanto  
Notary Public

PAULINE DISANTO  
Notary Public, State of New York  
No. 01DI6117766  
Qualified in Westchester County  
Commission Expires November 1, 2024

**TENANT**

**SCS Van Wyck 012823 Croton On Hudson, LLC,  
a Delaware limited liability company**

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

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

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

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before this \_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, the \_\_\_\_\_ of [project company], a [state] limited liability company, on behalf of the limited liability company.

**Notary Public**

**Schedule A**

**TO MEMORANDUM OF LAND LEASE AND SOLAR EASEMENT**

**Legal Description of Premises**

Tenant to provide a legal description of the Premises after Agreement execution, after conducting an ALTA survey.



**EXHIBIT G**

**PERMITTED ENCUMBRANCES**

None

## **EXHIBIT H**

### **LENDER'S RIGHTS**

In the event that any mortgage, deed of trust or other security interest in this Agreement or the System is entered into by Tenant or any permitted assignee, including a sale-leaseback (i.e., a transaction in which Tenant sells its interest in this Agreement and/or the System and then leases those interests back from the purchaser) (a "***Leasehold Mortgage***"), then any person who is the mortgagee or beneficiary of a Leasehold Mortgage, including the purchaser in a sale-leaseback transaction (a "***Leasehold Mortgagee***") shall, for so long as its Leasehold Mortgage is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth in this **Exhibit H** (inclusive of Section 1.1 through Section 1.6). Tenant or any Leasehold Mortgagee shall send written notice to Landlord of the name and address of any such Leasehold Mortgagee, as well as any change of the name or address of any Leasehold Mortgagee.

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

1.2 **Notice of Default; Opportunity to Cure.** As a precondition to exercising any rights or remedies as a result of any alleged default by Tenant, Landlord shall give written notice of the default to each Leasehold Mortgagee or other person who provides debt or equity financing for the development, construction, ownership, operation or maintenance of the System (including, without limitation, any back-leverage financing provided to any direct or indirect owner of equity interests in Tenant or any tax equity investment in the System) (collectively, the "***Financing Parties***") concurrently with delivery of such notice to Tenant, specifying in detail the alleged event of default and the required remedy; provided that Tenant shall notify Landlord in writing of the name and address of such Financing Party. In the event Landlord gives such a written notice of default, the following provisions shall apply:

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

(b) The Financing Party shall have the same period after receipt of notice of default to remedy the default, or cause the same to be remedied, as is given to Tenant after Tenant's receipt of notice of default, plus, in each instance, the following additional time periods: (i) sixty (60) days, for a total of ninety (90) days after receipt of the notice of default in the event of any monetary default; and (ii) sixty (60) days, for a total of ninety (90) days after receipt of the notice of default in the event of any non-monetary default, provided that such ninety (90) day period shall be extended for the time reasonably required to complete such cure, including the time required for the Financing Party to perfect its right to cure such non-monetary default by obtaining possession of the Premises (including possession by a receiver) or by instituting foreclosure proceedings, provided the Financing Party acts with reasonable and continuous diligence. The Financing Party shall have the absolute right to substitute itself for Tenant and perform the duties of Tenant hereunder for purposes of curing such defaults. Landlord expressly consents to such substitution, agrees to accept such performance, and authorizes the Financing Party (or its employees, agents, representatives or

contractors) to enter upon the Premises to complete such performance with all the rights, privileges and obligations of the original Tenant hereunder. Landlord shall not, and shall have no right to, terminate this Agreement prior to expiration of the cure periods available to a Financing Party as set forth above.

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

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

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

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

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

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

(b) The new lease agreement shall be executed within thirty (30) days after receipt by Landlord of written notice of the Financing Party's election to enter into a new lease agreement, provided said Financing Party: (i) pays to Landlord all fees and payments and other monetary charges payable by Tenant under the terms of this Agreement up to the date of execution of the new lease

agreement, as if this Agreement had not been terminated, foreclosed, rejected or disaffirmed; and (ii) performs all other obligations of Tenant under the terms of this Agreement, to the extent performance is then due and susceptible of being cured and performed by the Financing Party; and (iii) agrees in writing to perform, or cause to be performed, all non-monetary obligations which have not been performed by Tenant that are reasonably susceptible of being performed by the Financing Party and would have accrued under this Agreement up to the date of commencement of the new lease agreement. Any new lease agreement granted to the Financing Party shall enjoy the same priority as this Agreement over any lien, encumbrances or other interest created by Landlord.

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

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

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

1.4 **Financing Parties' Consent to Amendment, Termination or Surrender.** Notwithstanding any provision of this Agreement to the contrary, the parties agree that this Agreement shall not be modified or amended and Landlord shall not accept a surrender of the Premises or any part thereof or a cancellation or release of this Agreement from Tenant prior to expiration of the Term without the prior written consent of all Financing Parties. This provision is for the express benefit of and shall be enforceable by such Financing Parties.

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

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

## EXHIBIT I

### OPERATING PERIOD RENT ADJUSTMENT

The Parties acknowledge and agree that the anticipated Operating Period Rent as set forth in Section 3.1(c) of the Agreement (1) has been determined and agreed based on the assumptions set forth and described in this Exhibit I (each, an “*Assumption*”), and (2) such anticipated Operating Period Rent shall be subject to adjustment upon occurrence of each of the events, as set forth and described in this Exhibit I (each, a “*Change in Assumption*”).

If any Change in Assumption occurs, then Tenant shall provide written notice to Landlord describing the occurrence of the Change in Assumption, together with such documentation or other evidence as is reasonably necessary to confirm such Change in Assumption, and Tenant’s calculation of the adjusted Operating Period Rent, each in accordance with this Exhibit I. Such adjustment to the Operating Period Rent shall be effective upon receipt of such notice by Landlord from Tenant absent a good faith dispute by Landlord delivered to Tenant in writing within thirty (30) days of its receipt of such notice of Change in Assumption. In the event of any good faith dispute of such adjustment to the Operating Period Rent, the Parties shall, within thirty (30) days following receipt by Tenant of Landlord’s notice of dispute of such Change in Assumption, meet and attempt in good faith to negotiate resolution of such dispute in accordance with the terms of this Agreement, including without limitation this Exhibit I. If the Parties are unable to agree upon such adjustment to the Operating Period Rent within such thirty (30) day period, the Parties shall resolve such dispute in accordance with Section 13.9 of this Agreement.

#### I. NY-Sun Megawatt Block Credits and NY-Sun Megawatt-Hour Block Credits

**Assumption: The System will qualify for the NY-Sun MW Block program at a rate of \$0.40/Wdc, the NY-Sun MW Block Parking Canopy Adder at a rate of \$0.25/Wdc, and the MWH Block program at a rate of \$175/kWh. Based on a system size of 4,753 kWdc and an energy storage system size of 15,000 kWh, the total assumed incentive amount is \$5,714,450.**

**Change in Assumption:** In the event there is an upward or downward change in the NY-Sun incentives received for all or any part of the System from the assumption set forth above, the Operating Period Rent will be increased or decreased to account for such change by an annual amount of \$1,200 for every \$10,000 of NY-Sun incentive received above or below the assumed incentive amount set forth above.

#### II. Interconnection

**Assumption: System interconnection cost will equal \$475,300 (\$0.10/Wdc).**

**Change in Assumption:** In the event there is a material increase or decrease in the cost to interconnect the System from the assumption set forth above, the Parties agree that the Operating Period Rent shall be adjusted upward to account for a decrease in interconnection costs or downward to account for an increase in interconnection costs, in each case, by an annual amount of \$8,500 for each \$47,530 increase or decrease in interconnection cost.

III. Contaminated Soil Removal.

**Assumption: \$0 liability in respect of the removal of contaminated soil contemplated under Section 9.1(b)(ii).**

Change in Assumption: In the event that Tenant discovers contaminated soil and is required to remove such soil pursuant to Section 9.1(b)(ii), Tenant shall provide Landlord with evidence of the difference in cost between removing contaminated soil and the cost of removing uncontaminated soil, and Tenant shall receive a credit against Operating Rent for such additional cost, which credit shall be applied on a monthly basis commencing on the first month that Operating Rent is due until it is exhausted. Tenant shall obtain three (3) quotes for such removal. Tenant shall select the party, and shall notify Landlord of its decision, based on a reasonable determination of various factors, which may include, without limitation, price, reputation, experience and insurance coverage.

[end of Exhibit I]