



# Huntsville, Alabama

305 Fountain Circle  
Huntsville, AL 35801

## Cover Memo

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**Meeting Type:** City Council Regular Meeting **Meeting Date:** 4/9/2026

**File ID:** TMP-6830

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**Department:** Urban Development

**Subject:**

**Type of Action:** Approval/Action

Resolution authorizing the Mayor to enter into a Solar Ground Lease Agreement by and among the City of Huntsville, Madison County, and EE Gemini Solar, LLC.

Resolution No.

**Finance Information:**

**Account Number:** N/A

**City Cost Amount:** \$

**Total Cost:** \$

**Special Circumstances:**

**Grant Funded:** N/A

**Grant Title - CFDA or granting Agency:** N/A

**Resolution #:** N/A

**Location: (list below)**

**Address:**

**District:** District 1  District 2  District 3  District 4  District 5

**Additional Comments:**

**RESOLUTION NO. 26-\_\_\_\_\_**

**WHEREAS**, pursuant to Ordinance No. 26-250, the City Council of the City of Huntsville, Alabama declared certain property surplus and authorized the Mayor on behalf of the City of Huntsville, to negotiate the lease of that certain property described therein.

**NOW, THEREFORE BE IT RESOLVED** by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby, authorized to enter into that certain Solar Ground Lease Agreement (the "Lease"), by and among the CITY OF HUNTSVILLE, an Alabama municipal corporation (the "City"), and MADISON COUNTY, ALABAMA (the "County") (collectively the City and County are referred to herein as, "Landlord"), and EE GEMINI SOLAR LLC, a Delaware limited liability company ("Tenant"), which said agreement is substantially in words and figures as that certain document attached hereto and identified as "Solar Ground Lease Agreement by and among the City of Huntsville and Madison County, Alabama, as Landlord, and EE Gemini Solar LLC, as Tenant," consisting of thirty-six (36) pages (including exhibits) and the date of April \_\_, 2026, appearing on the first page thereof, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document after being signed by the Mayor, shall be permanently kept on file in the Office of the City Clerk of the City of Huntsville, Alabama.

**BE IT FURTHER RESOLVED** that the Mayor be and he is hereby authorized to execute the Lease, on behalf of the City of Huntsville, with such changes as the Mayor deems desirable and necessary, and the authority to execute any and all such documents relevant, required, and/or relating to effect, close, carry out, or complete the real estate transaction or closing contemplated by the Lease, including but not limited to the execution and recording of that certain Memorandum of Solar Ground Lease as may be required therein.

**BE IT FURTHER RESOLVED** that during their negotiation of the Lease, the City and the County discovered certain title issues relating to the ownership of the property covered by the Lease and the parties have agreed to clear up those title issues, and accordingly the Mayor be and he is hereby authorized to execute on behalf of the City of Huntsville, with any changes as the Mayor shall desirable and necessary, all curative instruments, deeds, affidavits or other title documents, necessary to clear title and to confirm, ratify, and establish the City and the County's joint ownership of the property to be encumbered by the Lease, including but not limited to the execution and recording of that certain Ratification and Confirmation of Corrective Deed by and between the City and the County.

**BE IT FURTHER RESOLVED** that during the negotiation of the Lease and as consideration for the parties cooperation and participation in the same, the City and the County agreed that upon the expiration or earlier termination of the Lease, the City's ownership interest in the property covered by the Lease would automatically terminate and vest solely in the County's name, and accordingly the Mayor be and he is hereby

authorized to execute and record that certain Statutory Warranty Deed by and between the City and the County, along with such changes as the Mayor deemed necessary or desirable to carry out the agreement of the parties.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2026.

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President of the City Council of the City  
of Huntsville, Alabama

**APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2026.

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Mayor of the City of Huntsville, Alabama

**STATE OF ALABAMA**

**COUNTY OF MADISON**

**SOLAR GROUND LEASE AGREEMENT**

This SOLAR GROUND LEASE AGREEMENT (the “**Lease**”) is made and entered into effective as of \_\_\_ day of April, 2026 (the “**Effective Date**”) between and among CITY OF HUNTSVILLE, an Alabama municipal corporation, whose address is 305 Fountain Circle, Huntsville, Alabama 35801 (the “**City**”), and MADISON COUNTY, ALABAMA, whose address is 100 North Side Square, Huntsville, Alabama 35801 (the “**County**”) (collectively, the City and the County shall be referred to as “**Landlord**”), and EE GEMINI SOLAR LLC, a Delaware limited liability company, whose address is 9255 Towne Centre Drive, Suite 800, San Diego, California 92121 (“**Tenant**”). Each of Tenant and Landlord is sometimes referred to as a “**Party**” and collectively as the “**Parties**.”

FOR AND IN CONSIDERATION of the rents to be paid during the term as hereinafter set forth and the covenants to be performed, the Parties agree as follows:

**1. Lease and Access.**

1.1 **Lease.** Landlord hereby leases to Tenant and Tenant hereby leases from Landlord land owned by Landlord and situated in Madison County, in the State of Alabama, described in Exhibit A and as depicted in that boundary survey attached as Exhibit B to this Lease (the “**Leased Premises**”). Landlord represents and warrants that the City and the County own good and marketable fee simple title in and to the Leased Premises as tenants in common. This Lease, and Tenant’s rights hereunder, are subject to any and all easements, rights of way and servitudes of whatever kind (i) that are recorded in the Office of the Judge of Probate of Madison County, Alabama (the “**Official Records**”), or (ii) that are not recorded in the Official Records but either would be shown by an accurate survey of the Leased Premises or are in the nature of published land use regulations, including, without limitation, the following:

(a) all land use (including environmental and wetlands), building and zoning laws, regulations, codes, and ordinances affecting the Leased Premises;

(b) all easements, rights-of-way, water rights, licenses (excluding unrecorded licenses), leases (excluding unrecorded leases), upstream and downstream riparian owners apparent or of record in the Official Records;

(c) all existing public and private roads and streets and all railroad and utility lines, pipelines, service lines and facilities apparent or of record in the Official Records;

(d) all encroachments, overlaps, boundary line disputes, shortages in area, cemeteries and burial grounds and other matters not of record in the Official Records which would be disclosed by an accurate survey or inspection of the Property (defined below); and

(e) prior reservations or conveyances of mineral rights or mineral leases of every kind and character of record in the Official Records.

All such matters being, “**Permitted Encumbrances.**”

## 1.2 Access; Utility Easements.

(a) Landlord will grant to Tenant the non-exclusive right to access the Leased Premises directly from Sixth Street and Wall Triana Hwy for access, ingress and egress to and from the Leased Premises and Sixth Street and Wall Triana Hwy (“Access”). Access will be provided by Landlord at points and locations mutually agreed upon by Landlord and Tenant (“Access Points”), who shall cooperate and work in good faith with one another to identify and establish said Access Points.

(b) Landlord grants to Tenant the non-exclusive right over, across, upon, along and under existing non-exclusive utility easements to construct, install, operate, maintain, repair and replace transmission lines, service lines for station power, telephone, fiber, internet, cable, and water (collectively, “**Utilities**”), to the extent necessary to serve the Project and provided that Landlord reasonably approves the location of any water connections and the Utilities are separately metered at Tenant’s cost and expense. If any trees, shrubs or other vegetation interfere with the Utilities, Tenant, with the prior written consent of Landlord and at Tenant’s sole cost and expense, shall have the right to trim, cutback or remove the same. Tenant, at Tenant’s sole cost and expense, shall be responsible for disposing of any materials and debris related to the removal of any such obstructions and for the restoration and replanting, as applicable, at the expiration or termination of this Lease in accordance with Section 20 below.

(c) Subject to the prior written consent of Tenant, which shall not be unreasonably withheld, conditioned, or delayed, Landlord may use the paved and gravel roads existing or to be constructed at Tenant’s sole cost and expense by Tenant and in accordance with this Lease, inside the Leased Premises to the extent the same are located outside the fences around the Facilities (as defined in Section 2) (the “**Interior Roads**”) for access, ingress and egress to and from the Leased Premises and to public roads and for utilities serving the Leased Premises. Notwithstanding the foregoing, nothing contained herein shall be deemed, in any way, to limit, restrict, or prohibit Landlord’s use of or access to the existing gravel road providing access to the County maintenance shed, located on the Outparcel (as depicted in Exhibit B attached hereto) (the “**Maintenance Shed Road**”), and such Maintenance Shed Road may be used or accessed (outside of the Leased Premises) by Landlord at any time without requiring any consent from and/or notice to Tenant.

(d) Landlord shall enter into one or more easements as may be reasonably necessary for the establishment, installation, operation, and maintenance of interconnection cabinets necessary to provide a point of connection between Tenant’s Facilities and the Huntsville Utilities Substation (“**Interconnection Easement**”). The Interconnection Easement will be provided at a location on the Leased Premises mutually agreed upon by Landlord, Tenant, and Huntsville Utilities. Tenant’s right to use the Access, Utilities, Interconnection Easement, and any existing non-exclusive utility easements shall automatically terminate upon termination or

expiration of this Lease for any reason.

1.3 “**Transmission Facilities**” may include underground and overhead distribution, collection, and transmission lines from the Leased Premises to the point of interconnection with the local utility district or other point of intersection with the transmission grid, control, communications, and radio relay stations and telecommunications equipment necessary for operations (but for no other purpose), interconnection and/or switching facilities, circuit breakers, and transformers; cables, wires, fiber, conduit, footings, foundations, towers, poles, crossarms, guy lines, and anchors, and related or associated improvements, fixtures, facilities, appliances, machinery, equipment, and reasonably necessary access roads.

2. **Purpose of Lease; Permitted Uses.** Tenant shall use the Leased Premises solely and exclusively for the purpose of solar photovoltaic energy conversion, including feasibility studies and collection of relevant data, extracting soil samples, installing, operating, and maintaining, repairing, replacing, and removing solar energy facilities (collectively, the “**Facilities**”) designed to convert solar energy into electrical energy and other ancillary services, and to deliver electrical energy and ancillary services on a commercial scale (collectively, the “**Project**”). The Facilities may include photovoltaic solar energy collection, generation and transmission equipment, inverters, transformers, overhead and underground electrical distribution, collection, and transmission lines or cabling, controls, meters, racking and foundations, structures to house electrical, maintenance and operations equipment, security fencing and gating enclosing the Leased Premises, safety signage and other equipment necessary for the foregoing purpose. The foregoing purposes and uses (collectively, “**Permitted Uses**”) shall include the rights set forth in Section 5 of this Lease. Notwithstanding anything herein to the contrary, however, Tenant shall not use the Leased Premises for installing, operating, maintaining, repairing, replacing and removing transmission substations, electric storage facilities, batteries and other facilities to store electric energy on a utility scale.

3. **Term.**

3.1 **Feasibility Period.** Commencing on the Effective Date and continuing until the first (1<sup>st</sup>) anniversary thereof (the “**Feasibility Period**”), Tenant shall have the right to investigate the feasibility of the Leased Premises for the Facility and Project. Landlord shall retain possession of the Leased Premises during the Feasibility Period, provided, however, Tenant shall have a license to enter the Leased Premises as set forth in Section 3.1.1 and engage in activities related to securing qualification for the federal investment tax credit described in Section 48E of the Internal Revenue Code of 1986, as amended, including establishing the “beginning of construction” date described in IRS Notice 2025-42, 2025-36 I.R.B. 351 (August 15, 2025), which may include the construction of a permanent road on the Leased Premises. Tenant will provide Landlord with prior written notice of the proposed location of such road prior to its construction. At any time prior to the expiration of the Feasibility Period, Tenant shall have the right to elect to terminate this Lease as to all or any portion of the Leased Premises. If Tenant elects to terminate with respect to only a portion of the Leased Premises, Tenant shall provide to Landlord in its written notice of termination, a description of the portion of the Leased Premises that will continue to be subject to this Lease, and all references herein to the Leased Premises shall be deemed to be to that portion of the Leased Premises that continues to be subject to this Lease.

If, prior to expiration of the Feasibility Period, Tenant notifies Landlord in writing that it wishes to terminate this Lease in total, or if the Feasibility Period expires without Tenant sending the notice of Tenant's intent to continue the Lease, Tenant shall as promptly as reasonably practicable remove all its equipment from the Property and restore the Property to its original condition as of the Effective Date, consistent with the reclamation requirements described in Section 20 (ordinary wear and tear excepted). During the Feasibility Period, Landlord, at no cost to Landlord, shall cooperate with Tenant, its contractors and representatives and shall execute any documents reasonably required to assist Tenant in obtaining all necessary Permits (as defined in Section 36) or approvals to permit Tenant's intended use of the Leased Premises for the Permitted Uses in compliance with zoning, land use, utility service and building laws, rules, ordinances, and other governing rules and regulations. Landlord shall not take any action that would adversely affect Tenant's ability to obtain or maintain any governmental approval or Permits. If, through no fault or delay of Tenant, Tenant is pursuing diligently but is not able to obtain all necessary Permits from governmental entities or agencies during the Feasibility Period, Tenant shall have the right to extend the Feasibility Period with thirty (30) days' prior written notice to Landlord for one additional six-month period to allow such governmental entities or agencies to issue such Permits.

3.1.1 Landlord hereby grants to Tenant a license during the Feasibility Period for Tenant and its employees, contractors, agents, invitees and permittees to have access to the Leased Premises for the purposes of inspection, survey, design of improvements, temporary installation and operation of solar data monitoring equipment (excluding meteorological towers), reasonable tests, and other actions reasonably related to the investigation by Tenant of the suitability of the Leased Premises for Tenant's business purposes, including but not limited to conducting weather monitoring activities and soil, environmental, archeological, geotechnical, and geologic studies on the Leased Premises. With at least seventy-two hours' prior notice (which notice will include a detailed description of the requested Invasive Testing (as hereinafter defined)) to and coordination with Landlord to allow Landlord or its representatives to be present during such Invasive Testing, Tenant and Tenant's Representatives may conduct intrusive or invasive sampling or chemical analysis of the Leased Premises as part of its due diligence, as indicated by a Phase I environmental site assessment or as reasonably necessary to establish the suitability of the soil for the Facilities and the Project (collectively, "**Invasive Testing**"), subject to the conditions set forth in this Section. If indicated for the Project, such Invasive Testing may include, without limitation, (a) invasive or intrusive geotechnical, environmental or other inspections with respect to the Leased Premises, Property or any portion thereof (including, but not limited to, any physical testing drilling, boring, or cutting), and (b) biological sampling or analysis, whether of air quality, soil, or water samples or otherwise. Landlord acknowledges and agrees that some Invasive Testing will be required in order to construct the Facilities. Any Invasive Testing will be subject to Tenant receiving prior written approval from Landlord, which Landlord shall have sole but reasonable discretion to grant or deny as Landlord deems necessary or appropriate in order to minimize any disruption or interruption to its operations or other adverse effects on its facilities, property or interests. Landlord, in its commercially reasonable discretion, may qualify its approval of Invasive Testing by the type of Invasive Testing that may be conducted; the time window(s), including date(s) and time(s) in which such Invasive Testing shall be conducted; the specific location in which the Invasive Testing may be conducted; and the access routes that shall be used to get to the testing sites. The approval by Landlord must be in writing.

Landlord's failure to provide express approval of any proposed Invasive Testing shall be deemed disapproval thereof. Tenant agrees to return the Leased Premises and Property to substantially the same condition and cleanliness existing before entry and/or occupation for Invasive Testing, including, but not limited to, sealing wells or other similar subsurface investigations. Tenant shall provide split samples of any media taken as a result of any Invasive Testing. Tenant shall keep confidential the information resulting from the Tenant's Invasive Testing and other inspections; provided, however, Tenant may disclose the same as required for Tenant's design and construction of the Facilities and the Project to the extent required by applicable laws.

Tenant shall deliver copies of all third-party reports, laboratory analysis, surveys and studies generated by the inspections to Landlord; provided, however, Tenant may redact proprietary and economic portions of reports or analyses relating to the financial feasibility or technical design of the Project or Facilities. Tenant shall not contact any governmental authority regarding the results of any testing performed on the Leased Premises unless required by applicable laws and only after Tenant has given Landlord not less than seven (7) days' written notice prior to any such contact; provided, however, that if Tenant is required by applicable law to contact any governmental authority regarding such results in less than seven (7) days, then Tenant shall give Landlord such notice as is reasonably practicable before contacting such governmental authority. Notwithstanding anything hereinabove to the contrary, Tenant shall be permitted to contact relevant governmental authorities to obtain Permits in furtherance of Tenant's proposed use of the Leased Premises. Tenant agrees to indemnify, defend and hold harmless Landlord, its subsidiaries, affiliates, officers, directors, agents, and employees from all liability, losses, claims, damages, costs, and expenses caused by or resulting from the exercise of Tenant's or its employees', contractors', agents', invitees', and/or permittees' access to the Property during the Feasibility Period; provided, however, Tenant shall not be required to indemnify Landlord, its subsidiaries, affiliates, officers, directors, agents, and employees for the discovery of any condition previously existing on the Leased Premises, except to the extent Tenant exacerbates the same. The foregoing indemnity provision shall survive the termination or expiration of this Lease.

3.12 Within one hundred twenty (120) days after the Effective Date, Tenant shall provide Landlord with a preliminary site plan (the "**Preliminary Site Plan**"), which shall depict in preliminary form the following: (a) planned locations for all Project-related improvements, the Facilities, the fences and gates, and any ancillary structures or fixtures (collectively, the "**Improvements**"), as well as Interior Roads, buffers and Utilities within the Leased Premises; and (b) the boundaries of any easements or substations outside of the Leased Premises, including the Huntsville Utilities Substation, the Interconnection Easement, Access Point, or any other necessary easements, and (c) any other naturally existing conditions, such as the wooded areas, the Cornelius cemetery, or other areas excluded from Tenant's operation and use of the Leased Premises (collectively, "**Site Plan Contents**"). Landlord shall review the proposed Preliminary Site Plan and either concur in (which concurrence will not be unreasonably withheld or delayed) or request reasonable revisions to the same within thirty (30) days of its receipt. The Parties shall promptly confer regarding any requested revisions and attempt to resolve their differences within an additional thirty (30) days. Notwithstanding the foregoing, however, Tenant and the governmental entities and agencies issuing the Permits for the Project shall have the final determination of the location of the Facilities and other Improvements that are located on the Leased Premises so long as such are otherwise in compliance with this Lease and the

## Permitted Uses.

3.2 **Development Term.** If Tenant provides Landlord with written notice, as provided herein, of Tenant's intent to continue the Lease prior to the end of the Feasibility Period, this Lease shall continue for a term ("**Development Term**") commencing on the expiration of the Feasibility Period and continuing until the earlier to occur of (a) the date when Tenant first sells electrical energy from the Facilities constructed on the Leased Premises to a third-party purchaser or delivers power to the grid, except for energy delivered to the grid for testing purposes (the "**Operations Date**"), or (b) fourteen (14) months after the commencement of the Development Term, subject, however, to Tenant's right to extend this fourteen month period by two (2) additional periods of six (6) months each with prior written notice to Landlord; and provided, further, there shall be an automatic day-for-day extension of the Development Term due to delays in obtaining required agreements, permits or licenses despite Tenant's diligent pursuit of same, delays caused by Force Majeure, delays caused by TVA, and/or delays caused by equipment supply chain issues beyond the reasonable control of Tenant (for each day of a delay described hereinabove, the Development Term shall be automatically extended by one day to address such condition). At the commencement of the Development Term, Tenant shall be put in exclusive possession of the Leased Premises, and Tenant shall provide to Landlord a copy of the final site plan for the Project which includes the Site Plan Contents (the "**Final Site Plan**"). The Parties acknowledge and agree that the Final Site Plan is subject to changes required by governmental entities and agencies in connection with the issuance of final Permits for the Project. Landlord shall review the proposed Final Site Plan and either concur in or request reasonable revisions to the same within ten (10) business days of its receipt. The parties shall work together in good faith to come to agreement on the Final Site Plan and resolve each other's reasonable objections within thirty (30) days after Tenant delivers the same to Landlord. Reaching agreement on a Final Site Plan is a prerequisite for the Tenant to commence work on the Leased Premises. Landlord, its employees, representatives and agents shall maintain the Preliminary Site Plan and Final Site Plan in confidence and will not use or disclose the same for any purpose other than confirming use of the Leased Premises for the Permitted Use unless disclosure is required by applicable law.

3.3 **Operating Term.** The Operating Term shall commence at the end of the Development Term and continue for a period of twenty-five (25) years thereafter (the "**Initial Operating Term**") and, so long as Tenant is not then in default hereunder, shall automatically renew for two (2) additional periods of five (5) year each (each a "**Renewal Term**") unless Tenant provides Landlord written notice of intention not to renew, as provided herein, not less than one hundred eighty (180) days prior to the expiration of the Initial Operating Term or the first Renewal Term. The Initial Operating Term and any Renewal Terms are hereinafter collectively referred to as the "**Operating Term.**" The Operating Term together with the Development Term are hereinafter collectively referred to as the "**Term.**" Failure to timely provide notice of intention not to renew shall be deemed an election by Tenant to extend the Operating Term.

3.4 **Progress Meetings.** From the Effective Date until the commencement of the Operating Term, Landlord and Tenant may, at Landlord's sole option, hold quarterly meetings (more or less often, as mutually determined by the Parties). At least seven (7) days prior to each quarterly meeting, Tenant will deliver a written report to Landlord on progress, including but not limited to updates on the Site Plan, permitting process, buffers, construction planning and

scheduling, Interior Road construction and siting, drainage impacts, and any other matters reasonably believed to materially affect either Party's activities. Throughout the Feasibility Period, Development Term and Operating Term, Tenant will timely respond to reasonable requests from Landlord for information about Tenant's activities under the Lease.

3.5 **As-Built Survey of Leased Premises.** Within 30 days following commencement of the Operating Term, Tenant shall provide Landlord with a final boundary and as-built survey, conforming with the Final Site Plan, that shows and legally describes the boundaries of the completed Project and includes all the Site Plan Contents ("**As-Built Survey**"). The As-Built Survey will be completed by a State of Alabama licensed Professional Land Surveyor, at Tenant's expense. Landlord will then have twenty (20) days to review and approve the As-Built Survey or provide comments for Tenant's consideration. Landlord and Tenant shall work together in good faith to resolve any reasonable objections raised by the Landlord.

#### 4. **Rents and Fees.**

4.1 **Feasibility Period.** No rent will be due during the Feasibility Period.

4.2 **Development Term Rent.** Tenant shall pay Landlord annual Development Term rent ("**Development Term Rent**") on or before the commencement of the Development Term; subsequent Development Term Rent shall be due annually thereafter on or before each anniversary of the commencement of the Development Term. The Development Term Rent shall be One Hundred Dollars (\$100.00) per acre multiplied by 237.96 acres, being Twenty-Three Thousand Seven Hundred Ninety-Six and No/100 Dollars (\$23,796.00) for each year of the Development Term. If the Development Term ends prior to the second anniversary of the commencement of the Development Term, a pro-rata portion of Development Term Rent for periods during the Operating Term shall be credited against Operating Rent (as hereinafter defined). The Development Term Rent shall be paid annually to Landlord, being split equally between the City and the County.

4.3 **Operating Rent.** During the Operating Term, the annual operating rent ("**Operating Rent**") for the Lease shall be One Thousand Dollars (\$1,000.00) per acre multiplied by 237.96 acres, being Two Hundred Thirty-Seven Thousand Nine Hundred Sixty and No/100 Dollars (\$237,960.00). The Operating Rent shall be paid annually to Landlord, being split equally between the City and the County.

4.4 **Reclamation Fee.** Upon the commencement of the Reclamation Period (as defined in Section 20.1), or upon such earlier termination of the Lease, Tenant shall pay Landlord a monthly reclamation fee in an amount equal to the Operating Rent in effect for the immediately preceding Operating Term in equal monthly installments in advance on the first day of each month during the Reclamation Period until such time as all Facilities have been removed and the Leased Premises have been vacated by Tenant ("**Reclamation Fee**").

4.5 **Payment/Late Payment Penalty.** All payments due Landlord shall be paid by wire transfer or other method of delivery with immediately available funds to the address or the account designated in writing by Landlord from time to time. Landlord may change the address

for payment by giving written notice to Tenant. All payments shall reference this Lease, including the identifier “EE Gemini Solar Project,” or other identifying designation as requested by Landlord. In addition, if Tenant fails to make any payment to Landlord required of it hereunder when due, interest shall accrue on the overdue amount, from the date overdue until the date paid, at a rate equal to the lesser of twelve percent (12.00%) per annum, or the maximum rate permitted by law.

4.6 **Net Lease.** This Lease is intended to be a net lease with all costs of every type and kind to be borne by Tenant. Accordingly, except as expressly stated herein, all costs of maintenance, insurance, real property taxes (including all transfer taxes), and personal property taxes with respect to the Leased Premises are to be borne by Tenant.

4.7 **Acreage Adjustment.** The parties acknowledge and agree that the acreage of the Leased Premises described herein represents a current, good faith estimate. If the final acreage of the Leased Premises, as may be mutually agreed upon by the parties, differs from the acreage used to calculate the Development Term Rent or the Operating Rent amount under this Lease, then the Development Term Rent and the Operating Rent shall be increased or decreased proportionately based upon the per-acre rental rate, and the parties shall execute an amendment to the Lease confirming the adjusted rental amount.

## 5. **Use of the Leased Premises.**

a. In compliance with the terms and conditions of this Lease, Tenant may construct, lay down, install, replace, relocate, reconstruct, operate, maintain, repair and remove from time to time on the Leased Premises the Facilities including without limitation: (i) solar energy panels, modules and equipment, including necessary support structures and foundations of all types; (ii) overhead and underground electrical distribution, collection, transmission and communications lines or cables, electric combiners, inverters, transformers, and telecommunications equipment; (iii) fences, roads and pads; and (iv) Improvements, roads, buffers, Utilities facilities, and other equipment reasonably necessary. All such Permitted Uses by Tenant of the Leased Premises must comply with the applicable county, state and federal laws and regulations.

b. Tenant shall, at its sole expense, maintain all of the Leased Premises, maintain or cause the utility to maintain any area subject to Access and Utility Easements during the Term of this Lease in a manner that will not create a public or private nuisance under applicable law. All Improvements constructed by Tenant during the Term hereof, including all additions, alterations, and improvements thereto or replacements thereof and all appurtenant fixtures, machinery and equipment installed therein, shall be the property of Tenant. Tenant shall not place signs or other identifying information on, in or around the Leased Premises without the express written consent of Landlord and Landlord’s approval of the content and appearance of same, such approval not to be unreasonably withheld, conditioned or delayed. Tenant shall pay all costs of any damage to the roads on the Leased Premises to the extent caused by Tenant’s use of same, which repairs for such damage shall be made to the roads to restore them to at least as good a condition as prior to Tenant’s use, normal wear and tear excepted.

c. Tenant agrees that it will not commit waste nor permit waste to be done to the

Leased Premises and any area subject to the Access and Utility Easements. At the termination or expiration of this Lease, Tenant shall promptly and peaceably deliver to Landlord the Leased Premises in a good condition, natural wear and tear excepted, and in compliance with the Reclamation requirements contained in Section 20 herein.

- d. The rights granted to Tenant in this Lease include, without limitation, the following:
  - (i) the right over and across the Leased Premises for any visual, view, light, shadow, electromagnetic or other effect of any kind or nature whatsoever resulting, directly or indirectly, from the Facilities, including but not limited to rights to reasonably reflect glare onto Landlord's adjoining land;
  - (ii) the exclusive right to capture, use and convert the unobstructed solar resources over and across the Leased Premises;
  - (iii) the non-exclusive right, subject to the other provisions in this Lease, to trim, cut down and remove trees, brush, and vegetation on the Leased Premises and in the Access and Utility Easements which might obstruct receipt of or access to sunlight throughout the Leased Premises; and
  - (iv) the right of subjacent and lateral support on the Leased Premises to whatever is reasonably necessary for the operation and maintenance of the Facilities, including, without limitation, guy wires and supports.

6. **No Warranties.** Landlord has not made, does not make, and has not authorized anyone else to make any representation as to: (a) the existence or non-existence of access to or from the Leased Premises or any portion thereof; (b) the soil conditions to be found at the Leased Premises, (c) the suitability of Landlord's title to the Leased Premises and/or Property; provided, however, Landlord warrants that it has not granted to any third-party any lease, right to use, or right or option to purchase the Leased Premises that is not recorded in the Official Records, except for that certain written farm lease in favor of Alan Murphy Farms to be terminated immediately by the County, with evidence of such termination in form reasonably required by Tenant or its lender, upon execution of this Lease by both parties; or (d) the merchantability of the Leased Premises or its suitability for Tenant's intended use. Tenant expressly acknowledges that: (x) except as expressly set forth in this Lease, Landlord has not made any representations or warranties whatsoever concerning the Leased Premises or any matters pertaining to the Leased Premises and access to the same; and (y) in entering into this Lease, Tenant is not relying on any such representations or warranties. Tenant has had the opportunity to and has examined and inspected or shall fully examine and inspect the Leased Premises and access to the same and become thoroughly familiar with the title, condition, status, accessibility, and suitability of the Leased Premises during the Feasibility Period. Tenant is leasing the Leased Premises on an "AS IS, WHERE IS" basis.

7. **Intentionally Omitted.**

8. **Authority.**

8.1 Landlord. Each person signing this Lease on behalf of Landlord is authorized to do so. When signed by Landlord, this Lease constitutes a valid and binding agreement enforceable against Landlord in accordance with its terms.

8.2 Tenant. Each person signing this Lease on behalf of Tenant is authorized to do so. When signed by Tenant, this Lease constitutes a valid and binding agreement enforceable against Tenant in accordance with its terms.

9. **Limitation of Rights Granted**. The rights and privileges granted by this Lease are limited to the rights and privileges Landlord possesses and has lawful right to lease, and this Lease shall not be construed as leasing or attempting to lease to Tenant any rights and privileges other or more than those that are vested in Landlord.

10. **Exceptions to and Exclusions from Leased Premises**. Landlord excepts and excludes from the Leased Premises all timber (subject to Tenant's rights herein to trim, cut down and remove trees, brush and vegetation on the Leased Premises, Tenant's obligation to replant trees and seed the Leased Premises with grass as required in Section 20, and provided that the site plan and panel layout delivered to Landlord remains the same), coal, oil, gas, water, wind resources rights, minerals, sand, gravel, and aggregates (subject to Tenant's rights herein to grade the Leased Premises and remove or relocate any stockpiles of sand, gravel and aggregates on the Leased Premises) located in, on, over, or under the Leased Premises for all purposes. The rights and privileges excepted and reserved to Landlord on the Leased Premises shall be exercised in a manner as to not unreasonably interfere with Tenant's operations within the Leased Premises. During the Term of this Lease, Landlord shall not undertake and shall not grant to any third-party the right to undertake any exploration, development or removal of any timber, coal, oil, gas, water, wind resources rights, minerals, sand, gravel, and aggregates located in, on, over, or under the Leased Premises, and Landlord waives any right to access any of the foregoing through use of the surface of the Leased Premises. Prior to undertaking any actions that could reasonably be expected to interfere with Tenant's operations on the Leased Premises, Landlord shall consult with Tenant to try to minimize the impact of any such expected interference.

Notwithstanding anything herein to the contrary, nothing in this Lease shall be deemed to be a covenant or agreement restricting Landlord's activities outside the Leased Premises, including but not limited to, Landlord's use of the Maintenance Shed Road and Outparcel.

Except as may be in writing and of record in the Official Records, Landlord has not granted and to Landlord's current actual knowledge, without the duty of additional investigation, there are no currently existing agreements or understandings with third-parties that would allow any party other than Tenant to exploit the solar rights or develop a solar energy project on the Leased Premises.

11. **Third Party Rights**. This Lease is made subject to the Permitted Encumbrances specified in Section 1.1. Tenant covenants to Landlord that in Tenant's operations under this Lease it will not violate any of the terms, provisions and conditions of any deed or other instrument of title or record constituting Permitted Encumbrances under which Landlord owns the Leased Premises and

is existing as of the Effective Date and will not violate the rights of any third persons not parties to this Lease which are of record as Permitted Encumbrances as of the Effective Date.

## 12. **Default.**

a. Tenant shall be in “**Default**” if it shall at any time fail to meet its monetary or non-monetary obligations under this Lease and such failure shall continue after notice and the opportunity to cure as set forth herein. Tenant shall have the following cure opportunities to remedy the Default: (1) if Tenant fails to timely pay Rent and the failure is not cured within fifteen (15) days after receiving written notice from Landlord of such failure; provided that Landlord shall not have the obligation to deliver to Tenant any notice of a Default after delivering such notice two (2) times in any twelve (12) month period during the Term; (2) if Tenant fails to meet any other monetary obligations under this Lease and the failure is not cured within thirty (30) days after receiving written notice from Landlord of such failure; and/or (3) if Tenant fails to meet any non-monetary obligation under this Lease and the failure is not cured within thirty (30) days of receiving written notice from Landlord of such failure or, if cure is not possible within thirty (30) days, Tenant has not immediately commenced and thereafter diligently pursued remedying the breach in that time; provided however the total cure period for non-monetary defaults will in no case exceed 120 days.

b. A waiver by Landlord of any event of Default under this Lease shall not prevent the right of Landlord to declare default and exercise its remedies under this Lease for any other cause, or for the same cause occurring at any other time. The receipt by Landlord from Tenant of payments after the occurrence of any event of Default, or the continued recognition by Landlord of Tenant as its tenant after the occurrence of any event of Default shall not be deemed a waiver of any of Landlord’s rights or remedies. Receipt and acceptance by Landlord of any amounts tendered by Tenant shall not constitute an agreement by Landlord that the amounts are the proper amounts due or a waiver of Landlord’s claims for greater amounts. All payments by Tenant to Landlord shall apply on the items longest past due, and the receipt of any such payment shall not be a waiver either of the right of distress or the right of forfeiture or any other remedy available to Landlord with respect to items which remain undischarged after crediting the payments.

c. Should a Default occur, then, subject to the rights of any Mortgagee (as defined in Section 37) expressly set forth in this Lease, Landlord shall have and shall be entitled to exercise any and all remedies available to it at law or in equity, including without limitation: (a) bringing suit for the collection of any amounts for which Tenant may be in Default, or for the performance of any other covenant or agreement of Tenant, without terminating this Lease; (b) curing such default for the account of Tenant, any costs incurred by Landlord in curing such default and/or any other amounts owed by Tenant to Landlord becoming additional Rent (subject to the duty to mitigate damages resulting from such Default); (c) subject to the rights of any Mortgagee, terminating this Lease, without waiving Landlord’s rights to damages for Tenant’s failure to perform its obligations hereunder; (d) if Tenant fails to pay Rent as and when due more than two times in any five (5) year period, requiring Tenant to pre-pay Rent for five (5) years; and/or (e) seeking specific performance if monetary damages are inadequate, all of which remedies shall be cumulative. In the event Landlord chooses to exercise its right to specific performance, it may do so without the necessity of posting a bond. In the event Landlord terminates this Lease and repossesses the Leased Premises, Landlord shall be free and acquitted from any claims of Tenant; provided, however, Tenant shall be entitled to remove the Facilities and any personal property

placed upon the Leased Premises in accordance with the provisions of Section 20 herein at the sole risk and expense of Tenant within the Reclamation Period (as defined in Section 20.1). Landlord reserves the right to bring actions or proceedings for the recovery of any deficits remaining unpaid that have accrued through the date of such termination. So long as any Mortgagee shall hold a Mortgage (as defined in Section 37) on the Leased Premises, Facilities and Improvements, Landlord's rights shall be subject to the rights of such Mortgagee, which Mortgagee rights are set forth in Section 37 of this Lease.

d. If Landlord fails to comply with the provisions in Section 37 protecting the rights of a Mortgagee, and such default shall continue for a period of thirty (30) days after written notice to Landlord, or, if the cure will take longer than thirty (30) days, the length of time necessary to effect cure as long as Landlord is making diligent efforts to cure during the thirty (30) day period and thereafter diligently completes the cure (but in no event more than one hundred twenty (120) days after written notice of default), then Tenant shall be entitled to exercise concurrently or successively any one or more of the following rights, in addition to all other remedies provided in this Lease or available at law or in equity: (a) to cure such default for the account of Landlord and offset the actual and reasonable costs incurred by Tenant in curing such default against all amounts next coming due from Tenant to Landlord (subject to Tenant's duty to mitigate its damages resulting from such default) or to bill Landlord for such costs, in which case, Landlord shall pay the same to Tenant within ten (10) days; (b) to seek specific performance of this Lease if monetary damages are inadequate.

**13. Inspections.** Tenant shall permit Landlord and its Related Persons to enter upon the Leased Premises, upon at least seventy two (72) hours' prior written notice to Tenant, during Tenant's normal hours of operation, or at other reasonable times, with the prior written consent of the Tenant, which shall not be unreasonably withheld, conditioned, or delayed, except in the event of an emergency in which event, essential emergency personnel may enter the Leased Premises with no notice to Tenant. Tenant shall have the right to have a representative accompany Landlord and its Related Persons during any entry upon the Leased Premises. In the case of emergency, Landlord shall notify Tenant as soon as practicable of any entry upon the Leased Premises. Landlord's and/or its Related Persons' entry upon the Leased Premises for inspection or any other purpose shall be at Landlord's sole risk and Landlord shall be liable for any injury to persons (including Landlord and Related Persons) and any damage to the Leased Premises or Tenant's property caused by Landlord or its Related Persons in connection with any entry upon the Leased Premises, including for inspection, except to the extent caused by the gross negligence or willful misconduct of Tenant.

**14. Taxes.** The Parties understand that no ad valorem taxes are currently being assessed on the Leased Premises, and it is currently classified as exempt. Beginning on the Effective Date and continuing thereafter throughout the Lease, Tenant shall pay before becoming delinquent, all ad valorem taxes and general and special assessments levied against the Leased Premises, and all personal property taxes levied against Tenant's Facilities, Improvements, and other personal property located upon or about the Leased Premises. Tenant shall separately assess with the Madison County Tax Assessor, the Leased Premises, the Facilities and Improvements, and all of Tenant's personal property used in the operation of the Solar Facilities and located on or within the Leased Premises, and Tenant will pay all real and personal property bills, including without

limitation any bills for taxes relating to a change in tax classifications based on Tenant's use of the Leased Premises, as and when the same are due. If Tenant fails to pay any taxes or assessments for which it responsible hereunder and such failure could result in the imposition of a tax lien on the Leased Premises, Landlord shall have the right to pay such amounts on Tenant's behalf, and any amounts so paid by Landlord shall be added to the next Rent payment payable by Tenant under this Lease.

**15. Compliance with Laws.** Tenant shall comply strictly with all applicable federal, state, and local laws, rules, and regulations relating to its use of and operations on the Leased Premises now in effect, or hereafter to be enacted and effective during the Term of this Lease.

**16. Hazardous Materials.** Tenant hereby agrees to defend, protect, hold harmless, and indemnify Landlord from all costs, losses, liabilities, obligations and claims, of any nature whatsoever, known and unknown, that may arise from and after the Effective Date based in whole or in part upon (a) Tenant's failure to comply with any applicable environmental laws, rules, or regulations in its use of or operations from the Leased Premises; or (b) the presence, release or disposal of any hazardous substance, solid waste, or other environmental contamination on the Leased Premises arising from the acts or omissions of Tenant, its agents, employees or contractors. Tenant shall not be obligated to indemnify Landlord under this Section to the extent of Landlord's failure to comply with any applicable environmental laws, rules, or regulations, or the presence, release or disposal of any hazardous substance, solid waste, or other environmental contamination on the Leased Premises arising from the acts or omissions of Landlord, its agents, employees or contractors. As used in this Section, the term "applicable environmental laws, rules, or regulations" shall mean all state, federal, or local laws, statutes, ordinances, rules, regulations, or orders pertaining to health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("**CERCLA**") and the Resource Conservation and Recovery Act of 1976 ("**RCRA**"), as each may be amended from time to time. As used herein, the terms "hazardous substance" and "release" have the meanings specified in CERCLA, and terms "solid waste" and "disposal" (or "disposed") have the meanings specified in RCRA. Moreover, to the extent that Alabama law establishes a meaning for "hazardous substance," "release," "solid waste," or "disposal" that is broader than that specified in either CERCLA or RCRA, the broader meaning shall apply. In addition, the provisions of this Section shall survive the expiration or termination of this Lease for any reason.

**17. Fire Control.** Tenant shall comply with all laws and regulations pertaining to fire protection and suppression and take every reasonable precaution to prevent fires from igniting on the Leased Premises or spreading onto other lands. Tenant will obtain and maintain in full force and effect casualty and hazard insurance to protect itself against losses resulting from fire or other casualty.

**18. Indemnification.**

a Tenant specifically agrees to protect, defend, indemnify, and hold Landlord and such Landlord's Related Persons (as defined below) harmless from and against any and all losses, costs, expenses, attorneys' fees, damages, liabilities, suits, actions, recoveries and judgments of

every nature or description, whether arising directly or indirectly out of breach of any term of this Lease, the violation of any statute, ordinance or regulation, including but not limited to applicable environmental laws, U.S. Department of Energy or local state or county regulations, or out of the use and occupancy of the Leased Premises and any and all operations or other work or services contemplated or undertaken thereon by Tenant, except to the extent caused by the gross negligence or willful misconduct of Landlord or its Related Persons. In executing this Lease, Tenant expressly agrees to the above indemnity provisions and Tenant intends to specifically bind itself to indemnify Landlord in every instance set forth above. As used herein the term “**Related Persons**” shall mean any affiliates, employees, officers, directors, agents, representatives, successors and/or assigns of a Party.

b. It is hereby understood and irrevocably agreed by the Parties that it is the intent of this Lease, that in the event and to the extent a claim is made by an employee of Tenant against Landlord or its Related Persons hereunder, that Tenant, its successors and assigns will indemnify Landlord or its Related Persons to the same extent as if the claim were made by a non-employee of Tenant, notwithstanding any statute or judicial decision otherwise disallowing such indemnification. It is the intent of this Lease that, as a part of the consideration of Tenant under this Lease, and regardless of any defense Tenant might have, Tenant, its successors and assigns, shall indemnify Landlord and its Related Persons against all claims of any nature whatsoever, except to the extent caused by the gross negligence or willful misconduct of Landlord or its Related Persons.

c. Tenant agrees at Tenant’s sole cost and expense to defend with attorneys approved by Landlord, which approval Landlord will not unreasonably withhold, delay or condition, against any and all actions, suits or other proceedings that may be brought or instituted by a third-party against Landlord on any claim or demand qualifying for indemnity under subsection (a) above and shall pay or satisfy any judgment or decree which may be rendered against Landlord in any such action, suit, or legal proceeding or which may result therefrom. Landlord reserves the right, at its option and at its cost, to participate in the defense of such suits against it with attorneys of its choosing.

d. To the extent that any of the obligations imposed by this Section shall not be enforceable under applicable law it is the intent of the Parties that the provisions of this Section shall be construed to impose only such obligations on Tenant as shall be enforceable under applicable law. The indemnity provisions contained in this Section shall survive the expiration or termination of this Lease for any reason.

## **19. Insurance.**

a. Required Coverage. Tenant agrees to provide the following insurance coverages at its own expense that will cover all of Tenant’s activities on the Leased Premises and Property, whether conducted by Tenant or Tenant’s employees, agents, representatives, consultants, contractors, invitees, licensees, or affiliates pursuant to this Lease:

(i) General Liability. Commercial General Liability covering claims for bodily injury, death and property damage, including Comprehensive Form, Premises and

Operations, Independent Contractors, Personal Injury, Contractual, Broad Form Property Damage, Cross Liability and Hostile Fire liability coverages, with a combined single limit of \$1,000,000 for bodily injury, death and property damage each or per occurrence and \$2,000,000 general aggregate. Additionally, the policy shall not exclude X, C or U (Explosion, Collapse or Underground) or Subsidence. As used in this Lease “Subsidence” is defined as sinking or settling of land caused by heavy rains or man-made caverns. Subsidence does not include earth movement caused by an earthquake.

(ii) Umbrella Liability. Excess Liability insurance providing limits of not less than \$5,000,000 each occurrence and annual aggregate over General Liability, Automobile Liability, and Employers Liability.

(iii) Environmental Liability. Pollution Legal Liability providing On-Site Clean-up protection and Third-Party Off-Site Cleanup of Pollution Conditions, as well as protection for Bodily Injury and Property Damage resulting from operations granted under this Lease. Limit of Liability shall be not less than \$1,000,000.

(iv) Automobile Liability. Comprehensive Automobile Liability covering owned, non-owned, hired, and other vehicles, with a combined single limit of \$1,000,000 for bodily injury, death and property damage per occurrence and \$1,000,000 general aggregate.

(v) Fire and Extended Coverage Insurance. From the Effective Date until the expiration or termination of this Lease, Tenant shall keep all improvements, installations, machinery, and equipment placed by it and all other personal property placed by it on the Leased Premises continuously insured against loss or damage by theft, fire, or lightning (with extended coverage if available) in an amount equal to the fair market value thereof, subject to reasonable and customary deductibles.

(vi) Workers’ Compensation. Tenant covenants and agrees that all employees of Tenant or any other persons performing work on the Leased Premises pursuant to this Lease will be fully covered by or insured always by Workers’ Compensation. Tenant and its contractors, agents, representatives, and consultants shall comply with all applicable Workers’ Compensation laws, rules and regulations of the State of Alabama and shall make all necessary contributions or other payments.

(vii) Employer’s Liability. Employer’s Liability insurance in an amount of not less than \$500,000 each accident.

b. Policy Requirements. All liability insurance policies shall be written on an “occurrence” policy form and by insurance companies acceptable to Landlord with a Best’s Key Rating Guide of A or better, with a financial rating of at least VIII. If Tenant fails at any time to maintain the insurance coverage as required above, Tenant shall cease operations immediately and shall not resume operations pursuant to this Lease until after the failure has been corrected. Except for Workers’ Compensation Insurance, Landlord, and its subsidiaries and/or affiliates shall be named as an Additional Insured on all such required policies. Tenant shall be responsible

for payment of any and all deductibles from insured claims under its policies. The coverage afforded under any insurance policy obtained by Tenant pursuant to this Section shall be primary and non-contributory coverage regardless of whether or not Landlord has similar coverage. Tenant shall not perform any operations on the Leased Premises unless and until evidence of such insurance, including renewals thereof, has been delivered to and approved by Landlord. Tenant shall not self-insure any of the insurance coverages required by this Lease without the prior written consent of Landlord. The minimum limits of coverage required by this Lease may be satisfied by a combination of primary and excess or umbrella insurance policies. The maintenance of this insurance shall not in any way operate to limit the liability or indemnification responsibilities of Tenant to Landlord under this Lease. All policies shall name Landlord as an additional insured party.

c. Certificate of Insurance Evidencing Coverage. Tenant shall provide Landlord a certificate of insurance evidencing the above coverage before conducting any operations on the Leased Premises. The certificate shall provide for thirty (30) days' written notice by the insurance company to the designated representative of Landlord before the cancellation, material change or non-renewal of the policy. The certificates shall also specify that there are no endorsements with oil and gas production or exploration limitations under Tenant's Commercial General Liability Insurance Policy.

d. Contractors/Subcontractors. If Tenant retains the services of any general contractor or subcontractors, Tenant shall cause each general contractor and subcontractor to maintain insurance coverages of the same type as are required of Tenant under Subsections 19(a)(i) (General Liability), (iv) (Automobile Liability), (vi) (Workers Compensation), (vii) (Employers Liability) and 19(b) (Policy Requirements) of this Lease. Any general contractor retained by Tenant will maintain such insurance in the same amount and limits as are applicable to Tenant. The amounts and limits of liability for subcontractors will be at least \$1,000,000 for bodily injury, death and property damage per occurrence and in the aggregate; provided, however, Tenant shall remain liable for the acts of such subcontractors performing services at the Leased Premises. Prior to the commencement of the general contractor's or subcontractor's services, Tenant shall obtain certificates of insurance to confirm their insurance complies with this Subsection 19(d).

e. If Tenant fails to obtain insurance conforming to the requirements of this Lease, and such failure continues for ten (10) business days after Landlord's written notice of the same, Landlord may obtain the insurance required herein and charge the full cost thereof to Tenant as additional Rent. Coverages may be reviewed by Landlord and revised in Landlord's reasonable discretion from time to time, as dictated by economic or legal considerations, or to conform to the applicable prevailing insurance requirements, and Landlord reserves the right to make reasonable changes to the amounts and types of insurance limits and policies required under this Lease.

## **20. Surrender of Property; Removal of Facilities and Improvements; Bond.**

20.1 Upon expiration or any termination of this Lease, Tenant shall peaceably and quietly leave, surrender, and return possession of the Leased Premises to Landlord; provided

Tenant shall have a continuing license to enter the Leased Premises and Property for twelve (12) months after the expiration or termination of the Lease to remove its Facilities and conduct Reclamation (as hereinafter defined) (“**Reclamation Period**”). Tenant agrees and hereby covenants to (a) execute and record a termination of any Memorandum of this Lease and a quitclaim deed to Landlord of all of Tenant’s right, title, and interest in and to the Leased Premises (excluding the Facilities); and (b) within twelve (12) months after the date of termination dismantle and remove all Facilities, Improvements and other property owned or installed by Tenant or its affiliates on the Leased Premises and return the Leased Premises to Landlord in substantially the same state and condition as on the Effective Date, reasonable wear and tear and damage by casualty excepted. Notwithstanding the foregoing, however, Landlord may direct that Tenant leave in place any roads, Utilities and other Improvements (but excluding the Facilities), in which case the same shall become the property of Landlord. Reclamation shall include replanting any trees that have been removed and reasonably necessary steps to prevent soil erosion, including seeding disturbed areas of the Leased Premises with grasses. The foregoing being collectively referred to as “**Reclamation**”. Tenant shall comply with any Reclamation or land restoration requirements of applicable governmental authorities, submit any Reclamation or restoration plan required by such authorities, and post such security as required by such authorities and or its Permits. Notwithstanding anything to the contrary: (x) Tenant shall remove all Improvements, including without limitation any pads, foundations, lines, and cables, unless Landlord requests otherwise in writing; and (y) roads and any operations and maintenance buildings on the Leased Premises shall be left in place except for any roads or operations and maintenance buildings that Landlord requests in writing be removed or that Tenant is required to remove as part of any approved Reclamation and restoration plan with any applicable governmental authority. Such notice for road removal shall be provided by Landlord in writing not later than sixty (60) days after Landlord receives written notice from Tenant of expiration or termination. Nothing contained in this Section shall be construed as precluding Tenant from taking any of the foregoing actions at any time during this Lease. If Tenant fails to remove any Improvements or other property owned or installed by Tenant or its affiliates on the Leased Premises from the Leased Premises prior to the end of the Reclamation Period, Landlord may do so, in which case any remaining Facilities or Improvements shall become the property of Landlord and Landlord may dispose of same in any manner Landlord sees fit, including for scrap or otherwise. Landlord shall be entitled to retain any and all proceeds from such disposal. Tenant shall reimburse Landlord for all costs of removal incurred by Landlord within thirty (30) days after receipt of an invoice from Landlord.

20.2 Prior to the commencement of the Operating Term, Tenant shall develop a Reclamation plan for the Leased Premises that complies with the provisions of this Section and that specifies the amount required to implement the plan as determined by a qualified engineer registered in the State of Alabama (“**Reclamation Plan**”). A plan required by a governmental agency having jurisdiction, as and to the extent required by such agency, as the same may be amended from time to time, will satisfy and replace the requirement for a Reclamation Plan in this Section if it meets the following minimum requirements: (a) Tenant shall, on or before the earlier of the date that is twelve (12) months after the expiration or termination of this Lease, or the date that is twelve (12) months after receiving approval from the authority having jurisdiction, restore the Leased Premises to substantially the same state and condition as on the Effective Date, reasonable wear and tear and damage by casualty excepted, and subject to the

replanting/reseeding requirements set forth above; and (b) on or before the fifteenth anniversary of the commencement of the Operating Term, Tenant shall obtain and at all times maintain in effect a Reclamation bond or other security instrument (the “**Bond**”) in an amount equal to one hundred twenty-five percent (125%) of the amount sufficient to carry out the Reclamation Plan for the Leased Premises as required by this Section. Tenant shall provide written confirmation that the Bond is in place. Upon the twentieth and twenty-fifth anniversaries of the commencement of the Operating Term, Tenant shall cause the cost of removal of the Improvements and restoring the Leased Premises as required herein to be reassessed by a qualified, independent, and registered engineer and the amount of the Bond shall be adjusted accordingly (a “**Reassessment**”).

20.3 The Bond plus any additional bond or other security required by this Section shall (a) remain in place through the date by which Tenant has satisfied all of Tenant’s requirements under this Section as determined by Landlord in its sole discretion, (b) be accessible in the event that Tenant defaults under its obligations under this Section, and (c) be provided in a form reasonably acceptable to Landlord, including letter of credit, bond, guarantee from a creditworthy entity or other like manner, for the removal of the Facilities and Improvements from the Leased Premises. For clarity, to the extent a bond or similar security instrument meeting the requirements of this Section is required to be provided to a governmental agency having jurisdiction pursuant to a required decommissioning plan, and Landlord is named as a beneficiary under said security, then compliance by Tenant to that requirement shall satisfy the Bond and additional bond or security requirements in this Section; provided, however, that the requirement for Reassessment shall remain unaffected.

20.4 If applicable state or local law requires a stricter or higher standard for a Reclamation Plan or a Bond, Tenant shall comply with such stricter or higher standard.

21. **Injury to Tenant’s Property.** Landlord shall not be held responsible for any personal property or Improvements on the Leased Premises or elsewhere, which may be lost, damaged, destroyed, or stolen before, after or during the Term of this Lease, except to the extent caused by the gross negligence or willful misconduct of Landlord. All personal property and Improvements of any kind located on or within the Leased Premises shall be at the Tenant’s sole risk. Tenant agrees neither to hold nor attempt to hold Landlord liable for any loss or damage to personal property or Improvements, proximate or remote, occurring through or caused by any repairs, alternations, or accident to the Leased Premises by reason of the negligence or misconduct of Tenant and its agents and employees except to the extent caused by the active or gross negligence or willful misconduct of Landlord. Landlord shall not be liable for any personal property or Improvements damages occasioned by fire, theft, gas, smoke, rain, natural events, civil unrest, trespass, and any acts of God. Tenant shall not make any claim or demand upon or bring any action against Landlord for any loss, cost, damages or other expenses to personal property or Improvements caused by any failure or defect, structural or nonstructural, of the Leased Premises or any part thereof; provided the foregoing shall not apply to the active or gross negligence or willful misconduct of Landlord.

22. **Relationship of Parties.** This Lease shall not constitute a joint venture, partnership or other business relationship between Landlord and Tenant, except the relationship of landlord and

tenant. All employees, agents or servants of Tenant employed in or about the Leased Premises shall be the agents, servants, or employees of Tenant, and not of Landlord. The provisions of this Lease are binding upon and shall inure to the benefit of Landlord and Tenant and their respective successors and assigns.

### **23. Assignment.**

23.1 **By Tenant.** Tenant shall not, without the express, written consent of Landlord, which shall not be unreasonably withheld, conditioned, or delayed (a) grant, sell, lease, convey or assign all or a portion of Tenant's interest in the Lease or the Improvements or grant subleases, licenses or similar rights to all or a portion of Tenant's interest in the Leased Premises, or (b) sell or assign more than fifty percent (50%) of the direct membership or other direct ownership interests in Tenant (collectively "**Assignment**") to an unrelated third-party ("**Assignee**"). Notwithstanding the foregoing, for any request by Tenant to assign its rights and obligations under this Lease to an Assignee whose net worth and financial strength or that of its parent entity is sufficient to meet all of Tenant's obligations under this Lease, in Landlord's reasonable discretion, and who have experience operating or owning, directly or indirectly, utility scale solar power generation projects, Landlord's consent shall not be unreasonably withheld, conditioned, or delayed. Further, notwithstanding the foregoing, Tenant may assign, collaterally assign, or convey all or a portion of Tenant's interest in the Lease, the Improvements, the Leased Premises or the membership or other ownership interests in Tenant to an Affiliate (as hereinafter defined) and/or to any mortgagee, person, or entity providing financing to Tenant for or in connection with the Project, Improvements and Facilities, including without limitation transfers of equity interests in Tenant or its direct or indirect owners to investors, tax equity partners, or other financing participants, without Landlord's consent but with written notice to Landlord. All Assignees and persons and entities providing financing, will be subject to all of the obligations, covenants, and conditions applicable to the Tenant under this Lease, but such lenders will also be entitled to the protections set forth in Section 37. Upon Tenant's permitted assignment of its entire interest under this Lease as to all or any portion of the Leased Premises, or as may otherwise be provided in the applicable grant, sale, lease, conveyance or assignment document, Landlord shall recognize the Assignee as Tenant's proper successor, and the Assignee shall have all of the assigned rights, benefits and obligations of Tenant under and pursuant to this Lease. As used herein, "**Affiliate**" shall mean any person or legal entity (A) who, directly or indirectly (including through one or more intermediaries), holds an equity interest in a Party (a "**Parent Company**"), or (ii) in which that Party or a Parent Company, directly or indirectly (including through one or more intermediaries) holds an equity interest. The term Affiliate also includes any person or entity which directly or indirectly controls, or is under common control with, or is controlled by, the Party. As used in this definition, "**control**" (including, "controlled by" and "under common control with") means possession, directly or indirectly, of power to direct or cause the direction of management or policies through ownership of securities or other ownership interests; any person or entity which owns directly or indirectly fifty-one percent (51%) or more of the securities having ordinary voting power for the election of directors or other governing body of an entity will be deemed to control such entity.

Notwithstanding anything to the contrary contained herein, Tenant shall not assign, sublease, transfer, or otherwise convey any interest in this Lease, directly or indirectly, to any person or entity that: (I) is located in, organized under the laws of, or ordinarily resident in any

country or region that is subject to comprehensive U.S. economic sanctions or trade restrictions administered by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC); (II) is identified on any U.S. government list of prohibited or restricted parties, including but not limited to the Specially Designated Nationals (SDN) List; or (III) is otherwise subject to restrictions under applicable federal laws or regulations relating to national security, trade compliance, or anti-terrorism. Any attempted assignment or transfer in violation of this provision shall be void and of no force or effect. Tenant shall, upon request, provide Landlord with reasonable documentation confirming compliance with this provision. This provision shall be interpreted and enforced in accordance with applicable law and shall not be applied in a manner that violates anti-discrimination statutes.

23.2 **By Landlord.** Landlord shall not sell, convey, or transfer in whole or in part the Leased Premises covered by this Lease, without the prior written consent of Tenant, which shall not be unreasonably withheld, conditioned, or delayed. Upon such prior written consent by Tenant, Landlord shall assign this Lease to its successor in title to such Leased Premises and the Lease shall continue in full force and effect. Landlord will provide Tenant with a fully executed copy of any such assignment. Until Tenant receives such fully executed assignment and acceptance by Landlord's successor in title to such Leased Premises, however, Tenant shall not be in Default under this Lease if it continues to make all payments to the original Landlord before Tenant receives such final notice of sale, assignment, or transfer. Notwithstanding anything to the contrary contained herein, Landlord may assign all, or a portion of this Lease, to the City, the County, or Huntsville Utilities ("**Permitted Assignee**") without the consent of Tenant. In such event, Landlord shall provide written notice to Tenant of any such assignment by Landlord to a Permitted Assignee.

24. **Entire Agreement.** This document incorporates the entire agreement of the Parties and supersedes and replaces any prior written or oral agreement of the Parties. No prior representation, stipulation, agreement, or understanding will be valid or enforceable unless incorporated herein.

25. **Survival.** All representations, indemnities and warranties set forth in this Lease, and provisions explicitly or implicitly indicated as surviving, shall survive the expiration or termination of this Lease and be fully enforceable thereafter.

26. **Severability.** If any provision of this Lease or the application thereof to any person or circumstances shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

27. **Attorneys' Fees.** Should any legal action or proceeding be commenced by either Party to enforce all or any provision of this Lease, the prevailing Party shall be entitled to seek recovery of reasonable attorneys' fees and costs incurred in connection with such action.

28. **Notices.** All notices or other communications required or permitted by this Lease, including payments to Landlord, shall be in writing and sent by certified or registered mail, return receipt requested, or by nationally recognized delivery service (such as UPS or FedEx), to the parties at the addresses set forth below, or at such other addresses

as shall be designated by the Parties in writing. Notices shall be deemed given upon delivery or tender of delivery to the intended recipient. Notice shall be delivered by name and address to the Parties as follows:

- To the City: City of Huntsville  
305 Fountain Circle  
Huntsville, Alabama 35801  
Attn: Trey Riley, City Attorney
  
- With copy to: Lanier Ford Shaver & Payne, P.C.  
2101 W. Clinton Ave., Ste. 102  
Huntsville, Alabama 35805  
Attn: Katie Beasley
  
- To the County: Madison County Commission  
100 West Side Square  
Huntsville, Alabama 35801  
Attn: Chairman
  
- With Copy to: Madison County  
100 West Side Square  
Huntsville, Alabama 35801  
Attn: Jeff Rich, County Attorney
  
- To Eurus: EE Gemini Solar LLC  
9255 Towne Centre Drive, Ste. 800  
San Diego, California 92121  
Attn: Carmine Farnan
  
- With Copy to: Eurus Energy America Corporation  
9255 Towne Centre Drive, Ste. 800  
San Diego, California 92121  
Attn: Brad White, General Counsel
  
- With Copy to: Butler Snow LLP  
200 Westside Square, Ste. 100  
Huntsville, Alabama 35801  
Attn: Leslie Sharpe

**29.  Holding Over.** No notice shall be required for the expiration of this Lease to be effective on the expiration date herein specified. Additionally, anything herein contained or implied to the contrary notwithstanding, a holding over by Tenant beyond the expiration or an earlier termination by Landlord under the terms of this Lease shall give rise to a tenancy from month-to-month at a rental rate equal to 150% of the annual Operating Rent immediately prior to the expiration or termination of this Lease, paid in equal monthly installments, in advance by Tenant; provided,

however, in the event of a termination or expiration, Tenant's possession shall not be deemed a month-to-month tenancy until the Reclamation Period has expired. Further, in the event Tenant continues to occupy the Leased Premises on a month-to-month holdover tenancy, it is understood that all of the provisions of this Lease shall continue to be in effect, and that either Party may, upon thirty (30) days prior written notice, terminate such month-to-month tenancy.

**30. Tenant's Covenant Against Liens.** Tenant shall keep the Leased Premises free and clear of any liens or encumbrances other than a Mortgage granted to a Mortgagee. Should a lien other than a Mortgage attach to the Leased Premises as a result of any action or non-action of Tenant, Tenant shall promptly clear such lien at Tenant's sole cost and expense. Tenant shall not encumber or enter into a Mortgage regarding Landlord's fee interest in the Leased Premises at any time. Any such action by Tenant is a Default under this Lease and, subject to the rights of any Mortgagee, grounds for termination after the expiration of any applicable notice and cure periods.

**31. Waiver.** Failure on the part of either Party to complain of any action or non-action on the part of the other Party, no matter how long the same may continue, shall never be deemed to be a waiver by either Party of its rights hereunder. No waiver at any time of any of the provisions hereof by either Party shall be construed as a waiver of any of the other provisions hereof.

**32. Amendments to Lease.** Any amendments to this Lease must be in writing and executed by both Landlord and Tenant.

**33. Governing Law.** This Lease shall be interpreted and construed under the laws of the State of Alabama without regard to its conflict of law provisions.

**34. Interpretation.** Each Party to this Lease and its counsel have reviewed and revised this Lease. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Lease or of any amendments or exhibits to this Lease.

**35. Time of Essence.** Time is of the essence for the satisfying the obligations of Landlord and Tenant under this Lease.

**36. Requirements of Governmental Agencies.** Tenant shall obtain from all governmental agencies having jurisdiction and keep in force all necessary Permits for its use of the Leased Premises and operations thereon and furnish and keep in force all bonds required to be given by applicable law. Tenant shall comply in every respect with all federal, state, and local laws, rules, and regulations governing its use of the Leased Premises and operations thereon. Landlord shall reasonably assist and cooperate with Tenant, at no expense to Landlord, in complying with or obtaining any land use permits and approvals, building permits, environmental impact reviews, interconnection approvals, or any other permits and approvals required for the construction, installation, monitoring, replacement, relocation, maintenance, operation or removal of the Improvements, buffers and roads (collectively, "**Permits**"); provided, however, Landlord shall not be required to be an applicant or permittee on any such governmental permits or approvals unless required under applicable law. If required by applicable law, Landlord will upon request,

execute, and, if appropriate, cause to be acknowledged and recorded, any map, application, document, or instrument that is reasonably requested by Tenant, in connection therewith. Without limiting the generality of the foregoing, Landlord agrees (a) if requested by Tenant to support such application by filing a letter with the appropriate governmental authority in a form reasonably satisfactory to both Parties, and (b) not to oppose any such valid, accurate application or approval at any administrative, judicial, or legislative level. During the Feasibility Period and the Term of the Lease, Tenant shall promptly notify Landlord if Tenant encounters any threatened or endangered wildlife prior to communicating the same to any governmental agencies or third-parties.

**37. Mortgagee Protection.** Tenant shall have the right, without first obtaining Landlord's consent but with written notice to Landlord, to encumber, hypothecate, mortgage or pledge (including by mortgage, deed of trust or personal property security instrument) all or any portion of Tenant's right, title, or interest under this Lease to any Mortgagee (defined below) as security for the repayment of any indebtedness and/or the performance of any Mortgage (defined below). In the event that any mortgage, deed of trust or other security interest in this Lease or in any Facilities and Improvements is entered into by Tenant or any Assignee (collectively, a "**Mortgage**"), then any person who is the mortgagee of a Mortgage (a "**Mortgagee**") shall, for so long as its Mortgage is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth in this Section 37. Tenant or any Mortgagee shall send written notice to Landlord of the name and address of any such Mortgagee, as well as any change of the name or address of any Mortgagee.

37.1 Mortgagee's Right to Possession, Right to Acquire and Right to Assign. Mortgagee shall have the absolute right: (a) to assign its security interest; (b) to enforce its lien and acquire title to the leasehold estate by any lawful means; (c) to take possession of and operate the Facilities, Improvements 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; provided, however, that in the event that Mortgagee wishes to exercise its rights under Section 37.1(b), (c) or (d) of this Lease, the Mortgagee, receiver, or third-party, as applicable, shall assume all obligations of Tenant under this Lease and shall fulfill the insurance obligations under Section 19 of this Lease prior to the exercise of rights under Section 37.1(b), (c) or (d) becoming effective. Landlord's consent shall not be required for the acquisition of the encumbered leasehold estate by a third-party who acquires the same by foreclosure or assignment in lieu of foreclosure.

37.2 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 Mortgagee known to Landlord contemporaneously with delivery of such notice to Tenant, specifying in detail the alleged Default and the required remedy. 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 Rent, taxes, or other monetary obligation of Tenant under this Lease. Any other Default is a "**non-monetary default**."

(b) The Mortgagee shall have the same period as is given to Tenant after delivery of notice of Default to remedy the Default, or cause the same to be remedied, plus, in each instance, the following additional time periods: (i) thirty (30) additional days in the event of any monetary default; and (ii) sixty (60) additional days in the event of any non-monetary default; provided that such period shall be extended for a non-monetary Default by the time reasonably required to complete such cure, provided the Mortgagee acts with reasonable and continuous diligence. The Mortgagee shall have the absolute right to substitute itself for the 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, subject to resolution of any safety or environmental concerns required by this Lease that Landlord raises, authorizes the Mortgagee (or its employees, agents, representatives or contractors) to enter upon the Leased Premises to complete such performance with all the rights, privileges and obligations of the original Tenant hereunder; provided, that Mortgagee fulfills the insurance obligations under Section 19 of this Lease prior to substituting itself for Tenant or performing any duties of Tenant hereunder. Landlord shall not terminate the Lease prior to expiration of the cure periods available to a Mortgagee as set forth above.

(c) During any period of possession of the Leased Premises by a Mortgagee (or a receiver requested by such Mortgagee) and during the pendency of any foreclosure proceedings instituted by a Mortgagee, the Mortgagee shall pay or cause to be paid the Rent and 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 the Mortgagee or its assignee or designee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, the Lease shall continue in full force and effect and the Mortgagee or party acquiring title to Tenant's leasehold estate shall commence the cure of all Defaults which are susceptible to cure by the Mortgagee (i.e., those that are not solely related to the status of Tenant, for example Tenant's insolvency or bankruptcy, which status the Mortgagee cannot cure) and thereafter diligently process such cure to completion, whereupon Landlord's right to terminate this Lease based upon such Defaults shall be deemed waived.

(d) Any Mortgagee or other party who acquires Tenant's leasehold interest pursuant to foreclosure or assignment in lieu of foreclosure shall be liable to perform the obligations imposed on Tenant by this Lease so long as such Mortgagee or other party has ownership of the leasehold estate or possession of the Leased Premises.

(e) Neither the bankruptcy nor the insolvency of Tenant shall be grounds for terminating this Lease as long as all obligations of Tenant under the terms of this Lease are performed by the Mortgagee in accordance with the terms of this Lease.

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

37.3 New Lease to Mortgagee. If this Lease terminates because the leasehold estate is foreclosed, or if the Lease is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors' rights, Landlord shall, upon written request from any Mortgagee within sixty (60) days after such event, enter into a new lease (the "**New Lease**") for the Leased Premises, on the following terms and conditions:

(a) The terms of the New Lease shall commence on the date of termination, foreclosure, rejection, or disaffirmance and shall continue for the remainder of the Term, subject to the same terms and conditions set forth in this Lease, as if this Lease had not been terminated.

(b) The New Lease shall be executed within sixty(60) days after receipt by Landlord of written notice of the Mortgagee's election to enter into a New Lease, provided said Mortgagee: (i) pays to Landlord all Rent and other monetary charges payable by Tenant under the terms of the Lease up to the date of execution of the New Lease, as if the Lease had not been terminated, foreclosed, rejected or disaffirmed; (ii) performs all non-monetary obligations of Tenant under the terms of the Lease, to the extent performance is then due and susceptible of being cured and performed by the Mortgagee; and (iii) agrees in writing to perform, or cause to be performed within a reasonable period of time acceptable to Landlord, all non-monetary obligations which have not been performed by Tenant and which should have been performed under this Lease up to the date of commencement of the New Lease, except those obligations which constitute non-monetary Defaults not susceptible to cure, as described in (ii) above. Any New Lease granted to the Mortgagee shall enjoy the same priority as this Lease over any lien, encumbrances or other interest created by Landlord.

(c) At the option of the Mortgagee, the New Lease may be executed by a designee of the Mortgagee without the Mortgagee assuming the burdens and obligations of Tenant thereunder; provided, however, that such designee's net worth and financial strength or that of its parent entity must be sufficient to meet all of Tenant's obligations under this Lease, in Landlord's reasonable discretion, and any such designee who will be operating the Facilities, must have experience operating or owning, directly or indirectly, utility scale solar power generation projects (each designee meeting said qualifications, is a "**Qualified Designee**").

(d) If more than one Mortgagee makes a written request for a New Lease pursuant hereto, the New Lease shall be delivered to the Mortgagee requesting such New Lease whose Mortgage is prior in lien.

(e) The provisions of this Section 37 shall survive the termination, rejection or disaffirmance of the Lease and shall continue in full force and effect thereafter to the same extent as if this Section were a separate and independent contract made by Landlord, Tenant and such Mortgagee, and, from the date of such termination, rejection or disaffirmance of the Lease to the date of execution and delivery of such New Lease, such Mortgagee may use and enjoy said Leased Premises without hindrance by Landlord or any person claiming by, through or under Landlord, provided that all of the conditions for a

New Lease as set forth herein are met. Tenant or Mortgagee shall reimburse Landlord for its reasonable attorneys' fees incurred in connection with the preparation of the New Lease.

37.4 Mortgagee's Consent to Amendment, Termination or Surrender. Notwithstanding any provision of this Lease to the contrary, the Parties agree that so long as there exists an unpaid Mortgage of which Tenant has given Landlord notice, Landlord shall not accept a surrender of the Leased Premises or any part thereof or a cancellation, termination, or release of this Lease from Tenant prior to expiration of the Term without the prior written consent of the Mortgagee. Further, notwithstanding any provision of this Lease to the contrary, the Parties agree that so long as there exists an unpaid Mortgage of which Tenant has given Landlord notice, Landlord and Tenant will not modify or amend this Lease if such amendment would decrease the size of the Premises, reduce the length of the Term, or increase Tenant's financial obligations without the prior written consent of Mortgagee. This provision is for the express benefit of and shall be enforceable by such Mortgagee.

37.5 Estoppel Certificates, Etc. Landlord shall within ten (10) business days after written request therefor (but not more than one (1) time per any twelve (12) month period during the Term), execute and deliver such estoppel certificates (certifying as to such matters as Tenant, any Assignee or Mortgagee may reasonably request, including without limitation that no Default then exists under this Lease, if such be the case) and non-disturbance agreements as Tenant, any Assignee or Mortgagee may reasonably request from time to time.

37.6 Survival. The provisions of this Section 37 shall survive the termination of this Lease prior to the expiration of the Term and shall remain in full force and effect during the remainder of the Term.

**38. Force Majeure.** If performance of the Lease or of any obligation hereunder, except for payment obligations, is prevented or substantially restricted or interfered with by reason of an event of Force Majeure (defined below), the affected Party, upon giving notice to the other Party, shall be excused from such performance, but only to the extent of and only for the duration of such prevention, restriction, or interference; provided, however, that an event of Force Majeure shall not excuse the affected party from performing if that party fails to provide notice to the other party within ten (10) days of the first occurrence of such Force Majeure event, and provided further that an event of Force Majeure shall not extend the Term of this Lease. The affected Party shall use commercially reasonable efforts to avoid or remove such causes of nonperformance and shall continue performance hereunder whenever such causes are removed. "**Force Majeure**" means flood, drought, earthquake, fire, tornado, lightning, severe windstorm, unforeseeable weather events, or other extreme natural occurrences and catastrophes; acts of God, casualty, or accident; war; strikes and labor disputes other than those involving the employees of the Party claiming the Force Majeure; any law, order, proclamation, regulation, ordinance, action, demand or requirement of any government agency or utility; or any other act or condition beyond the reasonable control of a Party hereto.

**39. Confidentiality.** Both Parties shall use commercially reasonable efforts to maintain in confidence all information pertaining to the financial terms of or payments under this Lease. Notwithstanding the foregoing, the Parties may disclose such information to the Parties'

respective lenders, attorneys, accountants and other financial advisors solely for use in connection with their representation of the Party regarding this Lease; any prospective purchaser of the Property underlying the Leased Premises; or pursuant to lawful process, subpoena or court order requiring such disclosure; provided, that the disclosing Party in making such disclosure advises the Party receiving the information of the confidentiality of the information. It is specifically understood and agreed by Tenant that nothing in this Section or in this Lease shall in any manner restrict or limit Landlord's ability to purchase, construct, operate, lease, or sell or lease property for the operation of solar power facilities on other properties. However, notwithstanding anything to the contrary herein, Tenant understands, acknowledges, and agrees that both the City Council of the City of Huntsville, Alabama, and the Madison County Commission must approve this agreement at meetings open to the general public, and once placed on a City Council or County Commission meeting agenda, the contents of this Lease become public.

**40. Sale by Landlord.** Landlord reserves the right to sell the Leased Premises or the Property subject to the Lease at any time with at least 24 hours' prior written notice to Tenant and further reserves the right to enter upon the Leased Premises at reasonable times for the purpose of showing the Leased Premises to prospective purchasers; provided, all such entries on the Leased Premises must comply with the requirements of Section 13, Inspection, herein.

**41. Tax and Renewable Energy Credits.** All benefits and incentives that result from Tenant's development and use of the Leased Premises for energy generation purposes shall accrue to the benefit of Tenant, and all other benefits and incentives shall accrue to Tenant. Such benefits and incentives, include, without limitation, any portfolio energy credits, production tax credits, investment tax credits, rebates in lieu of portfolio energy credits, any reductions or credits in taxes and/or assessments, rebates, financing, federal, state and local grants, reductions or abatements in property or sales taxes, reductions in fees, participation in federal, state or local special programs or tax districts, and special programs of public utilities.

**42. Condemnation.** If all or part of the Leased Premises is proposed to be taken as a result of any action or proceeding in eminent domain or is proposed to be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain (collectively, a "**Taking**"), Landlord shall provide Tenant and each Mortgagee with reasonable advance notice of any impending proceeding or meeting related to such Taking. The Lease shall terminate as to any portion of the Leased Premises so condemned or taken (except in the case of a temporary Taking after the duration of which Tenant desires to continue the Lease). Subject to any applicable law or regulation, if any, any award, or other compensation ("**Award**") payable as a consequence of such Taking shall be paid as follows:

- (a) Landlord shall first be entitled to receive out of the Award for (i) Landlord's fee interest in the Leased Premises, the value of Landlord's fee interest in the Leased Premises, valued as if no Improvements were on the Leased Premises; and (ii) the leasehold interest in the Leased Premises, the value of Landlord's leasehold interest;
- (b) Any Mortgagee shall next be entitled to receive out of the Award for the leasehold estate, Improvements and Facilities, any amounts required to be paid to Mortgagee as set forth in the applicable Mortgage of the leasehold estate, Improvements and Facilities and

specifically allocated to the leasehold estate, Improvements or the Facilities. For further clarification, if the Award does not expressly include a specific allocation for the value of the leasehold estate then Landlord shall determine such allocation in its sole discretion, after deducting the amounts to which Landlord is entitled under Section 42(a) of this Lease;

(c) Tenant shall next be entitled to receive out of the Award for the Leased Premises, Improvements and Facilities, after deducting the amounts due to Landlord and Mortgagee under Sections 42(a) and (b) of this Lease, the value of the Improvements installed on the Leased Premises if separately valued in the Award, the reasonable costs of removing or relocating any of the Facilities and the loss of any such Facilities or the leasehold interest of Tenant or the use of the Leased Premises pursuant to this Lease; and

(d) Landlord shall be entitled to any remainder of the Award.

**43. Publicity.** Neither Party shall disclose this Lease, its contents, or the negotiations of the same to any third-party or member of the public, without the prior written consent of the other Party. Should either Party desire to issue a press release to the public or a sub-set of the public regarding this Lease, its contents, or the relationship between the Parties, the disclosing Party shall first provide the non-disclosing Party with a copy of the press release and ten (10) business days to review and provide commentary. No press release may be issued without the prior approval of the non-disclosing Party. Notwithstanding the foregoing, however, the Parties acknowledge and agree that the recording of a Memorandum of this Lease in the Official Records shall not be a violation of this Section.

**44. OFAC.** Tenant (which for this purpose includes Tenant's partners, members, managers, principal stockholders and any other constituent entities and affiliates) represents and warrants that it is not (i) the target of any sanctions program that is established by Executive Order of the President or published by the Office of Foreign Assets Control, U.S. Department of the Treasury ("OFAC"); (ii) designated by the President or OFAC pursuant to the Trading with the Enemy Act, 50 U.S.C. app. § 5; the International Emergency Economic Powers Act, 50 U.S.C. §§ 1701-06; the Patriot Act, Public Law 107-56; Executive Order No. 13224 entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism" (September 24, 2001); or any executive order of the President issued pursuant to such statutes; or (iii) a person or entity with whom U.S. persons or entities are restricted from doing business under regulations of OFAC (including those named on OFAC's Specially Designated and Blocked Persons List) or under any statute, executive order (including Executive Order 13224) or other governmental action. Tenant further represents and warrants that it is currently in compliance with and shall at all times during the Term of this Lease remain in compliance with the regulations of OFAC and any statute, executive order, or other governmental action relating thereto. Further, Tenant represents and warrants that Tenant's activities do not violate the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders promulgated thereunder. Tenant further covenants and agrees to promptly deliver to Landlord such reasonable documentation that Landlord may request in order to confirm the accuracy of the representations and warranties made in this Section.

45. **Memorandum of Lease.** Upon Tenant's request, Landlord and Tenant agree to execute a memorandum of this Lease in form and substance acceptable to Landlord and required for recording in the Official Records. Tenant shall pay all taxes and fees due upon recordation of such memorandum. On the expiration or termination of this Lease, Landlord and Tenant shall execute a termination of this Lease in form and substance required for recording in the Official Records.

46. **Multiple Counterparts: Electronic Signatures.** This Lease may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute the same instrument. The Parties agree that this document may be executed, and the signatures transmitted to the other Party by email or similar electronic transmission. Upon transmission and receipt by another Party, such signature shall be effective as an original. Notwithstanding the preceding sentence, the Parties agree that they will transmit original signature pages to the other Party and counsel promptly after execution, if requested.

47. **Contingencies.** This Lease shall be contingent upon its approval by the City Council of the City of Huntsville, Alabama and the Madison County Commission.

IN WITNESS WHEREOF, the Parties hereto have executed this instrument, as of the date and year written below.

[SIGNATURES ON FOLLOWING PAGES]

LANDLORD:

**CITY OF HUNTSVILLE**, an Alabama municipal corporation

By: \_\_\_\_\_  
Tommy Battle, Mayor

ATTEST:

By: \_\_\_\_\_  
Shaundrika Edwards, City Clerk

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

*[Landlord's Signature Page to the Solar Ground Lease Agreement]*

LANDLORD:

**MADISON COUNTY, ALABAMA**

By: \_\_\_\_\_  
Rex Vaughn, Chairman

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

*[Landlord's Signature Page to the Solar Ground Lease Agreement]*

TENANT:

**EE GEMINI SOLAR LLC**, a Delaware limited liability company

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

WITNESS:

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

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

*[Tenant's Signature Page to the Solar Ground Lease Agreement]*

**Exhibit A**  
**(Legal Description of Leased Premises)**

**TRACT A – MADISON COUNTY PARCEL: 25-05-21-3-000-027.000**

That certain tract of land lying and being in Section 21, Township 5 South, Range 2 West of the Huntsville Meridian.

Said tract being a portion of the property conveyed to Madison County, Alabama, and the City of Huntsville Alabama in Deed Book 760, Page 20 as recorded in the Office of the Judge of Probate for Madison County, Alabama, and being more particularly described as follows:

Commencing at the southwest corner of Section 21, Township 5 South, Range 2 West of the Huntsville Meridian; thence South 88 Degrees 35 Minutes 44 Seconds East a distance of 44.24 to a #5 rebar with a cap Stamped "Garver LLC CA-445-LS (typical) set, said point marking the east right-of-way of Wall Triana Highway and the Point of Beginning of the herein described tract having established grid coordinates of (N) 1486451.35, (E) 378818.77 of the Alabama State Plane Coordinate System Zone East of the North American Datum of 1983 (NAD83);

Thence along said right-of-way North 2 Degrees 02 Minutes 16 Seconds East a distance of 1731.54 feet to a #5 rebar set; thence leaving said right-of-way South 88 Degrees 32 Minutes 29 Seconds East a distance of 200.00 feet to a #5 rebar set; thence North 2 Degrees 02 Minutes 16 Seconds East a distance of 200.00 feet to a #5 rebar set marking the south right-of-way of Sixth Street; thence along the south right-of-way of said Sixth Street South 88 Degrees 32 Minutes 29 Seconds East a distance of 50.55 feet to a #5 rebar set at the point of curvature of a curve to the right, having a radius of 555.74 feet, the chord of which is South 68 Degrees 54 Minutes 20 Seconds East for a distance of 346.96 feet; thence along the arc of said curve 352.85 feet to a #5 rebar set at the point of tangency of said curve; thence South 46 Degrees 37 Minutes 13 Seconds East a distance of 298.34 feet to a #5 rebar set at the point of curvature of a curve to the left, having a radius of 1367.06 feet, the chord of which is South 53 Degrees 44 Minutes 28 Seconds East for a distance of 348.15 feet; thence along the arc of said curve 349.09 feet to a #5 rebar set at the point of tangency of said curve; thence South 63 Degrees 13 Minutes 21 Seconds East a distance of 1133.27 feet to a #5 rebar set; thence South 61 Degrees 33 Minutes 50 Seconds East a distance of 567.88 feet to a #5 rebar set marking the west boundary of a tract of land conveyed to the Town of Triana in Deed Book 590, Page 718 as recorded in the Office of the Judge of Probate for Madison County, Alabama; thence leaving said right-of-way and along the west boundary of said Triana tract South 1 Degree 40 Minutes 23 Seconds West a distance of 672.08 feet to a #5 rebar found marking the south boundary of said Section 21; thence leaving said west boundary and along the south boundary of said Section 21 North 88 Degrees 35 Minutes 44 Seconds West a distance of 2632.70 feet to the POINT OF BEGINNING.

The above-described tract contains 80.32 acres (3498566.492 sq. ft.) more or less and is subject to any existing easements and rights-of-way whether or not recorded in the public records.

**TRACT A1 – MADISON COUNTY PARCEL: 25-05-21-3-000-027.000**

That certain tract of land lying and being in Section 21, Township 5 South, Range 2 West of the Huntsville Meridian.

Said tract being a portion of the property conveyed to Madison County, Alabama, and the City of Huntsville Alabama in Deed Book 760, Page 20 as recorded in the Office of the Judge of Probate for Madison County, Alabama, and being more particularly described as follows:

Commencing at the southwest corner of Section 21, Township 5 South, Range 2 West of the Huntsville Meridian; thence along the west boundary of said Section 21 North 2 Degrees 07 Minutes 53 Seconds East a distance of 2008.15 feet; thence leaving said Section line South 88 Degrees 35 Minutes 23 Seconds East a distance of 1986.85 feet to a #5 rebar with a cap Stamped "Garver LLC CA-445-LS (typical) set, said point marking the Point of Beginning of the herein described tract having established grid coordinates of (N) 1488412.38, (E) 380835.54 of the Alabama State Plane Coordinate System Zone East of the North American Datum of 1983 (NAD83);

Thence South 88 Degrees 42 Minutes 56 Seconds East a distance of 250.87 feet to a #4 rebar found marking the south boundary of a tract of land conveyed to Kimberly Doughty in Deed Book 2023, Page 13936 as recorded in the Office of the Judge of Probate for Madison County, Alabama; thence along the south boundary of said Doughty tract South 88 Degrees 44 Minutes 41

Seconds East a distance of 209.23 feet to a #4 rebar found marking the south boundary of a tract of land conveyed to the Estate of Carolyn Barlett in Deed Book 2015, Page 312300 as recorded in the Office of the Judge of Probate for Madison County, Alabama; thence along the south boundary of said Barlett tract South 88 Degrees 44 Minutes 41 Seconds East a distance of 178.66 feet to a #5 rebar set marking the west right-of-way of Lakeside Drive; thence leaving said south boundary and along said right-of-way South 14 Degrees 47 Minutes 41 Seconds West a distance of 37.42 feet to a #5 rebar set marking the point of curvature of a curve to the left, having a radius of 478.46 feet, the chord of which is South 11 Degrees 25 Minutes 03 Seconds West for a distance of 77.68 feet; thence along the arc of said curve 77.76 feet to the point of tangency of said curve; thence South 4 Degrees 23 Minutes 29 Seconds West a distance of 52.73 feet to a #5 rebar set; thence South 2 Degrees 12 Minutes 03 Seconds West a distance of 1047.53 feet to a #5 rebar set marking the north right-of-way of Sixth Street; thence leaving said west right-of-way and along the north right-of-way of Sixth Street North 61 Degrees 30 Minutes 37 Seconds West a distance of 451.53 feet to a #5 rebar set; thence North 63 Degrees 13 Minutes 10 Seconds West a distance of 222.63 feet to a #5 rebar set marking the east boundary of a tract of land conveyed to Alonzo and Carol Toney (no deed reference found); thence leaving said right-of-way and along the east boundary of said Alonzo tract North 1 Degree 38 Minutes 56 Seconds East a distance of 910.46 feet to the POINT OF BEGINNING.

The above-described tract contains 14.89 acres (648568.550 sq. ft.) more or less.

#### **TRACT A2 – MADISON COUNTY PARCEL: 25-05-21-3-000-027.000**

That certain tract of land lying and being in Section 21, Township 5 South, Range 2 West of the Huntsville Meridian.

Said tract being a portion of the property conveyed to Madison County, Alabama, and the City of Huntsville Alabama in Deed Book 760, Page 20 as recorded in the Office of the Judge of Probate for Madison County, Alabama, and being more particularly described as follows:

Commencing at the southwest corner of Section 21, Township 5 South, Range 2 West of the Huntsville Meridian; thence along the west boundary of said Section 21 North 2 Degrees 07 Minutes 53 Seconds East a distance of 2008.15 feet; thence South 88 Degrees 35 Minutes 23 Seconds East a distance of 341.47 feet to a #5 rebar with a cap Stamped "Garver LLC CA-445-LS (typical) set marking the north right-of-way of Sixth Street, said point marking the Point of Beginning of the herein described tract having established grid coordinates of (N) 1488450.79, (E) 379190.60 of the Alabama State Plane Coordinate System Zone East of the North American Datum of 1983 (NAD83);

Thence leaving said right-of-way and along the south boundary of a tract of land conveyed to the Murphy Family Limited Partnership in Deed Book 979, Page 351 as recorded in the Office of the Judge of Probate for Madison County, Alabama; South 88 Degrees 35 Minutes 23 Seconds East a distance of 1233.38 feet to a iron rod found with a square head marking the southeast corner of said Murphy tract; thence leaving said south boundary South 88 Degrees 35 Minutes 23 Seconds East a distance of 166.07 feet to a #5 rebar set marking the northwest corner of a tract of land conveyed to Alonzo and Carol Toney (no deed reference found); thence along the west boundary of said Alonzo tract South 1 Degree 39 Minutes 56 Seconds West a distance of 793.98 feet to a #5 rebar set marking the north right-of-way of Sixth Street; thence leaving said west boundary and along said right-of-way North 63 Degrees 13 Minutes 26 Seconds West a distance of 638.43 feet to a #5 rebar set marking the point of curvature of a curve to the right, having a radius of 1287.06 feet, the chord of which is North 53 Degrees 42 Minutes 08 Seconds West for a distance of 326.28 feet; thence along the arc of said curve 327.16 feet to a #5 rebar set marking the point of tangency of said curve; thence North 46 Degrees 39 Minutes 52 Seconds West a distance of 304.27 feet to a #5 rebar set marking the point of curvature of a curve to the left, having a radius of 635.74 feet, the chord of which is North 66 Degrees 42 Minutes 16 Seconds West for a distance of 350.25 feet; thence along the arc of said curve 354.84 feet to the POINT OF BEGINNING.

The above-described tract contains 12.97 acres (565146.927 sq. ft.) more or less.

#### **TRACT B – MADISON COUNTY PARCEL: 25-08-28-0-000-001.000**

That certain tract of land lying and being in Section 28, Township 5 South, Range 2 West of the Huntsville Meridian.

Said tract being a portion of the property conveyed to Madison County, Alabama, and the City of Huntsville Alabama in Deed Book 760, Page 20 as recorded in the Office of the Judge of Probate for Madison County, Alabama, and being more particularly described as follows:

Beginning at a ½ inch diameter pipe found marking the northeast corner of Section 28, Township 5 South, Range 2 West of the

Huntsville Meridian having established grid coordinates of (N) 1486328.23, (E) 384070.88 of the Alabama State Plane Coordinate System Zone East of the North American Datum of 1983 (NAD83); thence South 1 Degree 33 Minutes 37 Seconds West a distance of 525.37 feet to a ½ inch diameter pipe found marking the north boundary of a tract of land conveyed to Alan Wade Murphy, Sr., as Trustee of the Harold Wade Murphy Family Trust in Deed Book 2010, Page 469180 as recorded in the Office of the Judge of Probate for Madison County, Alabama; thence along the north boundary of said Murphy tract South 70 Degrees 48 Minutes 55 Seconds West a distance of 1055.83 feet to a #5 rebar with a cap Stamped "Garver LLC CA-445-LS (typical) set; thence North 87 Degrees 33 Minutes 56 Seconds West a distance of 1190.04 feet to a #5 rebar set; thence South 1 Degree 37 Minutes 09 Seconds West a distance of 198.00 feet to a #5 rebar set; thence North 88 Degrees 20 Minutes 37 Seconds West a distance of 1448.20 feet to a #5 rebar set; thence South 1 Degree 37 Minutes 09 Seconds West a distance of 570.90 feet to a #5 rebar set; thence North 88 Degrees 27 Minutes 46 Seconds West a distance of 1645.43 feet to a #5 rebar set marking the east right-of-way of Wall Triana Highway; thence leaving said north boundary and along said right-of-way North 2 Degrees 11 Minutes 58 Seconds East a distance of 1121.01 feet to a #5 rebar set; thence leaving said right-of-way South 66 Degrees 42 Minutes 08 Seconds East a distance of 391.00 feet to a #5 rebar set; thence South 16 Degrees 32 Minutes 58 Seconds East a distance of 384.92 feet to a #5 rebar set; thence North 84 Degrees 41 Minutes 57 Seconds East a distance of 562.15 feet to a #5 rebar set; thence North 0 Degrees 35 Minutes 36 Seconds East a distance of 434.00 feet to a #5 rebar set; thence South 82 Degrees 41 Minutes 42 Seconds West a distance of 454.02 feet to a #5 rebar set; thence North 80 Degrees 11 Minutes 18 Seconds West a distance of 400.44 feet to a #5 rebar set; thence North 40 Degrees 53 Minutes 44 Seconds West a distance of 276.62 feet to a #5 rebar set marking the east right-of-way of Wall Triana Highway; thence along said right-of-way North 2 Degrees 11 Minutes 58 Seconds East a distance of 325.46 feet to a #5 rebar set marking the north boundary of said Section 28; thence leaving said right-of-way and along said section line South 88 Degrees 35 Minutes 44 Seconds East a distance of 2632.70 feet to a #5 rebar found; thence South 88 Degrees 35 Minutes 37 Seconds East a distance of 1266.11 feet to a #5 rebar with an illegible cap found; thence South 88 Degrees 50 Minutes 56 Seconds East a distance of 486.20 feet to a #5 rebar found with a cap Stamped "Smith Eng CA#00122LS"; thence South 89 Degrees 00 Minutes 23 Seconds East a distance of 144.15 feet to a ½ inch diameter pipe found; thence South 88 Degrees 47 Minutes 36 Seconds East a distance of 724.42 feet to the POINT OF BEGINNING.

The above-described tract contains 129.78 acres (5653096.792 sq. ft.) more or less and is subject to any existing easements and rights-of-way whether or not recorded in the public records.

