

**MASTER SOLAR POWER SERVICES AGREEMENT**

between / among

SEC PVAZ Solar One, LLC  
a Delaware limited liability company  
(“Provider”),

and

Town of Prescott Valley,  
a municipal corporation of Arizona (“Customer”),

June 9, 2011  
(the “Effective Date”)

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**SCHEDULES AND EXHIBITS**

- Schedule 1 – Description of Property(ies)
- Schedule 2 – Site Plan(s) and System(s)
- Schedule 3 – kWh Rate
- Schedule 4 – Early Termination Fee Component
- Schedule 5 – Memorandum of Master Solar Power Services Agreement
  
- Exhibit A – Consent of Tenant or Owner/Lessor (as applicable)

## MASTER SOLAR POWER SERVICES AGREEMENT

THIS MASTER SOLAR POWER SERVICES AGREEMENT (this “Agreement”) is made effective as of June 9, 2011 (the “Effective Date”), between/among SEC PVAZ Solar One, LLC a Delaware limited liability company (“Provider”), and Town of Prescott Valley, a municipal corporation of Arizona (“Customer”). Provider and Customer are sometimes referred to individually as a Party and collectively as the Parties.

### BACKGROUND

WHEREAS, Customer owns, directly or indirectly, the Properties (as hereafter defined). Customer desires that Provider install, maintain, own and operate at the Properties solar photovoltaic systems (the “Systems”) for the purpose of providing Solar Services (as hereafter defined) to Customer, and Provider is willing to undertake and to provide the same.

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### ARTICLE I. DEFINITIONS.

1.01 Definitions. In addition to other terms specifically defined elsewhere in this Agreement, where capitalized, the following words and phrases shall be defined as follows:

“AAA” has the meaning set forth in Section 10.02.

“Actual Production” means for any period, the actual net electrical production, in kWh, of the Systems.

“Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such first Person.

“Agreement” means this Master Solar Power Services Agreement, including the Schedules and Exhibits attached hereto.

“Applicable Law” means, with respect to any Person, any constitutional provision, law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, certificate, holding, injunction, registration, license, franchise, permit, authorization, guideline, Governmental Approval, consent or requirement of any Governmental Authority having jurisdiction over such Person or its property, enforceable at law or in equity, including the interpretation and administration thereof by such Governmental Authority.

“Assignment” has the meaning set forth in Section 12.03.

“Business Day” means any day other than Saturday, Sunday or any other day on which banking institutions in New York, New York are required or authorized by Applicable Law to be closed for business.

“Claim Notice” has the meaning set forth in Section 13.03.

“Commercial Operation Date” means the date on which any System is ready for commercial operation after required testing.

“Confidential Information” has the meaning set forth in Section 14.02.

“Customer” has the meaning set forth in the preamble hereof.

“Customer Default” has the meaning set forth in Section 9.02(a).

“Customer Hazardous Materials” has the meaning set forth in Section 5.07(a).

“Dispute” has the meaning set forth in Section 10.01.

“Early Termination Date” has the meaning set forth in Section 7.01.

“Early Termination Fee” shall mean the sum of (i) the amount specified for the applicable year of commercial operation on Schedule 4, (ii) the value, if any, of any tax benefits being recaptured because of the early termination prior to the end of the sixth year of commercial operation, (iii) all costs, if any, (including liquidated damages or penalties) associated with the termination of any other agreements associated with the Systems (such as third party contractor agreements or Environmental Attribute sale agreements) that are not assumed by Customer, and (iv) the costs, if any, of dismantling, packing, removing and transporting the System and restoring the Site to its original condition, ordinary wear and tear excepted.

“Easement” has the meaning set forth in Section 4.01(a).

“Effective Date” has the meaning set forth in the preamble hereof.

“Environmental Attributes” means all products of the Systems other than electricity, including but not limited to carbon trading credits, renewable energy credits or certificates, emissions reduction credits, investment credits, tax credits, emissions allowances, green tags, tradable renewable credits and Green-e® products.

“Environmental Law” means all laws of any Governmental Authority having jurisdiction over any Property addressing pollution or protection of the environment and all amendments to such laws and all regulations implementing any of the foregoing.

“Expiration Date” has the meaning set forth in Section 7.01.

“Fair Market Value” has the meaning set forth in Section 7.05.

“Force Majeure Event” has the meaning set forth in Section 9.03.

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

“Governmental Authority” means any federal, state, regional, county, town, city or municipal government, whether domestic or foreign, or any department, agency, bureau, or other administrative, regulatory or judicial body of any such government including, without limitation, any governmental or quasi-governmental entity or independent system operation or regional transmission operator.

“Hazardous Materials” means any pollutant, contaminant, hazardous substance, hazardous waste, medical waste, special waste, toxic substance, petroleum or petroleum-derived substance, waste or additive, asbestos, polychlorinated biphenyl (PCB), radioactive material, or other compound, element or substance in any form (including products) regulated, restricted or addressed by or under any Applicable Law.

“Indemnified Party” has the meaning set forth in Section 13.03.

“Indemnifying Party” has the meaning set forth in Section 13.03.

“Initial Term” has the meaning set forth in Section 7.01.

“Insolation” means the amount of kWhs per square meter falling on a particular location, as published by the National Renewable Energy Laboratory.

“Interconnection Point” has the meaning set forth in Section 6.03.

“kWh Rate” has the meaning set forth in Section 3.01.

“Lender” means any third-party entity providing financing to Provider with respect to a System.

“Liens” has the meaning set forth in Section 6.04.

“Local Electric Utility” means the local electric distribution system providing interconnection services for a System at a specific Property.

“Meter” has the meaning set forth in Section 5.05.

“Option Price” has the meaning set forth in Section 7.04.

“Party” means Provider or Customer.

“Parties” means both Provider and Customer.

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

“Prior Property Commitments” means commitments made by the Customer prior to entering into this Agreement, which commitments may touch and concern the Property or Properties in relation to financing of facilities currently located thereon, including (but expressly

not limited to) the Loan Agreements between the Customer and the Water Infrastructure Finance Authority of Arizona, dated March 22, 2005 and March 16, 2007, to expand and improve the wastewater treatment plant.

“Property” or “Properties” means the premises described in Schedule 1.

“Provider” has the meaning set forth in the preamble hereof.

“Provider Default” has the meaning set forth in Section 9.01(a).

“Provider Hazardous Materials” has the meaning set forth in Section 5.07(c).

“Quarterly Invoice Date” means the first Business Day of each of January, April, July and October.

“Quarterly Period” means the period between Quarterly Invoice Dates.

“Rebates” shall mean any and all Governmental Authority or utility rebates or other funding offered for the development of photovoltaic systems.

“Renewal Term” has the meaning set forth in Section 7.01.

“Site” has the meaning set forth in Section 4.01(a).

“Site Plan” means, for each System, a plan depicting the locations within and upon each Property of System components, including interconnection arrangements and access points, as revised by final as-built drawing(s) and subsequent revisions depicting any System alterations, and incorporated in Schedule 2 hereto.

“Solar Services” means the supply of on-site net electrical output in kWh (AC) from the Systems to Customer.

“Solar Services Payment” has the meaning set forth in Section 3.01.

“Stated Rate” means a rate per annum equal to the *lesser* of (a) ten percent (10%) or (b) the maximum rate allowed by Applicable Law.

“System” or “Systems” means an integrated assembly of photovoltaic panels, mounting assemblies, inverters, converters, metering, lighting fixtures, transformers, ballasts, disconnects, combiners, switches, wiring devices and wiring and interconnections with the Local Electric Utility, as more specifically described in Schedule 2.

“Term” has the meaning set forth in Section 7.01.

ARTICLE II.  
DELIVERY OF SOLAR SERVICES.

2.01 Purchase Requirement. Customer agrees to purchase one hundred percent (100%) of the Solar Services of the Systems during each relevant Quarterly Period of the Term. The payment for Solar Services is calculated to include all of the defined Solar Services in the kWh Rate. The purchase of Solar Services hereunder does not include Environmental Attributes or any other attributes of ownership of the Systems, title to which shall rest solely with Provider. To avoid any conflicts regarding claims of solar or renewable energy use or production, Customer shall submit to Provider for prior written approval any public announcements, including without limitation, press releases, regarding the matters contemplated hereunder, the Systems or Customer's use of solar or renewable energy, such approval not to be unreasonably withheld.

ARTICLE III.  
PRICE AND PAYMENT.

3.01 Consideration. Customer shall pay to Provider a periodic payment (the "Solar Services Payment") for the Solar Services delivered to Customer from each System. For any billing period, the Solar Services Payment shall equal the product of the Actual Production for that period *multiplied* by the relevant kWh Rate as specified in Schedule 3, together with all reimbursements due pursuant to Section 6.03 hereof. Provider shall invoice Customer on a calendar quarter basis. The first invoice shall include any production that occurred prior to the initial invoice date, including any test energy as provided in Section 5.03 below. The last invoice shall include production only through the Expiration Date. Customer shall pay any Solar Services Payment invoice within thirty (30) days of receipt thereof.

3.02 Method of Payment. Customer shall make all payments under this Agreement by electronic funds transfer to the account designated by Provider. All payments that are not paid when due shall bear interest accruing from the date becoming past due until paid in full at a rate equal to the Stated Rate. All payments to be made by the Customer to the Provider under this Agreement shall be made as directed by Provider from time to time.

3.03 Payment Disputes. If a Dispute arises with respect to any invoice, such Dispute shall be resolved pursuant to Article X hereto; *provided that*, during the time a Dispute is pending, the disputing Party shall not be deemed in default under this Agreement and the Parties shall not suspend the performance of their respective obligations hereunder, including payment of undisputed amounts owed hereunder. No Party may withhold, deduct or set-off against amounts or credits owed by such Party to the other Party any undisputed amounts during the time that a Dispute is pending.

3.04 Change in Law. If there is any change in Applicable Law subsequent to the Effective Date that results in a direct and material change in Provider's costs to provide the Solar Services, Provider shall promptly submit to Customer a written notice setting forth (i) the citation of the change in Applicable Law, (ii) the manner in which such change materially increases Provider's costs to provide the Solar Services, and (iii) Provider's proposed adjustment

to the kWh Rates to reflect such material changes in Provider's costs. Customer agrees to an adjustment in the kWh Rates beginning in Customer's next fiscal year such that the new kWh Rates effectively compensate Provider for the cost increase related to the change of Applicable Law. In no event shall such kWh Rate adjustments under this Section 3.04 result in more than a 5% total increase in any kWh Rate set forth herein during the Term.

ARTICLE IV.  
EASEMENT AND ACCESS RIGHTS

4.01 Easement and Related Rights.

(a) Easement. Customer hereby grants to Provider, and Provider hereby accepts from Customer in accordance with the terms hereof an exclusive easement (the "Easement") over those portions of the Properties useful for locating the elements of the System, including interconnection and metering facilities (each, a "Site") for the sole purposes of installing, operating and maintaining the Systems and uses ancillary thereto. The initial Site Plan for each System is attached hereto within Schedule 2, and such initial Site Plan for each System will be replaced with an updated Site Plan that reflects final as-built arrangements, to be provided by Provider after completion of each System. The Easement granted herein (i) includes an easement to receive unobstructed sunlight and (ii) shall survive for a period of one hundred eighty (180) days following the expiration or termination of this Agreement. Without limiting the generality of the foregoing, and subject to the Provider covenants set forth herein, Provider shall have, subject to the limitations contained in this Agreement, the exclusive right to access and utilize each Site, and otherwise shall hold the following exclusive rights and privileges:

(i) The right to develop, erect, construct, install, replace, repair, relocate, remove, maintain, operate, and use, from time to time, the Systems, underground and above-ground electrical transmission and communications lines related to the operation of the Systems, electric transformers, telecommunications equipment, roads, meteorological towers and weather/solar measurement equipment, and related facilities and equipment;

(ii) The right to capture and to convert any or all of the solar resources of each of the Sites;

(iii) The right to investigate the potential of solar energy conversion including, but not limited to, conducting environmental and paleontological studies, soil tests, and studies of solar intensity and other meteorological data and geological studies, and other studies as may be required in connection with permitting the Systems;

(iv) The right to develop, erect, construct, install, replace, repair, relocate, remove, maintain, operate, and use from time to time in connection with the Systems a line or lines of poles or towers, together with such wires and cables as from time to time are suspended therefrom, and/or underground wires and cables, for the transmission of electrical energy and/or for communication purposes, and all necessary and proper anchors, support structures, foundations, footings, crossarms and other appliances and fixtures for use in connection with said towers, wires and cables; and roads associated with the foregoing;

(v) The right of pedestrian and vehicular ingress, egress, and access over and across each of the Sites by means of roads and lanes thereon if existing, or otherwise by such roads, structure, route or routes as Provider may construct or improve from time to time;

(vi) The right of subjacent and lateral support to whatever is necessary for the operation and maintenance of improvements on each of the Sites and other properties used in connection with improvements, including, without limitation, guy wires and supports;

(vii) The right to grade, level, fill, clear and replant ground; and to use on-site sand, gravel, caliche or other materials suitable for road cover solely to construct the Systems and related facilities on each of the Sites, all to the extent permitted by law;

(viii) The right to enter upon each of the Sites and to conduct Phase I and other environmental studies or audits of each of the Site, including the air, soil, and water in and about each of the Sites, at any time; and

(ix) The right to undertake any other activities, whether accomplished by Provider or a third party authorized by Provider, that are reasonably necessary, useful or appropriate to accomplish any of the purposes or uses of the Agreement set forth above.

(b) Access to Sites. Customer hereby grants to Provider, together with its agents, employees and contractors, a non-exclusive easement and right of way (appurtenant to the exclusive Site access rights) to access each Site across or through the Properties and any surrounding or nearby lands or buildings owned or leased by Customer, as may be reasonably required from time to time for (i) Site preparation and System construction, installation, operation, maintenance, repair, replacement and removal of the Systems; and (ii) compliance by Provider of its obligations hereunder. Customer shall provide sufficient space on each Property from time to time (and to the extent available) for the temporary storage, laydown and staging of tools, materials and equipment, the parking of construction crew vehicles and temporary construction trailers and facilities, and rigging.

(c) Use of Rights. Provider shall utilize the rights granted hereunder in a manner that minimizes inconvenience to and interference with Customer and use of the Properties by Customer's guests and invitees, tenants, licensees or other visitors to the extent commercially practical.

(d) Segregation of Sites. Customer understands that this is a master agreement, and that to accommodate financing, separate Systems may be owned by separate, dedicated legal entities. Therefore, at the request of Provider from time to time, the Parties shall segregate and restate the rights granted herein, and the terms hereof, in a separate agreement specific to a particular Property and Site, and with a customary System-specific owner.

4.02 Rent. Apart from the provision of Solar Services, and the sum of One Dollar (\$1.00) declared in hand, no other rent shall be due from Provider hereunder.

4.03 Removal of Systems. Except as otherwise provided in Section 7.03, Section 7.04, and Section 9.02, upon the expiration or earlier termination of this Agreement, Provider shall, at Provider's expense, remove all of its tangible property comprising the Systems from the Properties on mutually convenient dates. Each Site shall be returned to its condition immediately prior to the installation of the Systems, except for System mounting pads or other support structures (which may be left in place) and ordinary wear and tear and without any obligation to replant trees or shrubs.

4.04 Third Party Consents/Recording. At Provider's request from time to time, and expressly subject to Customer's Prior Property Commitments, Customer will deliver, and cause any Property owner, tenant, mortgagee or other Property interest holder to deliver, such acknowledgments, consents, estoppels, fixture filings, non-disturbance agreements and other agreements as Provider or its Lenders may reasonably require to confirm and insure satisfactory title and priority of security in and to the Systems and the rights granted hereunder. Customer will help to facilitate any non-disturbance or similar agreement that Provider may request with respect to the Prior Property Commitments. Customer covenants that it will notify Provider in writing if any third party obtains an additional interest in the Property or the Site including, without limitation, any lenders to Customer or holders of any liens or encumbrances on the Property. Either Party may record a memorandum of this Agreement, substantially in the form attached hereto as Schedule 5, in the registry or title records of the county or counties where the Properties are located or other applicable government office. Provider may file one or more precautionary financing statements or fixture filings in such jurisdictions as it deems appropriate in order to protect its rights in each System or in connection with the grant of security interest in the Systems.

## ARTICLE V. CONSTRUCTION AND OPERATION.

5.01 Development. Customer consents to the construction, installation and periodic alteration and replacement of Systems by Provider on the Properties, including without limitation solar panels, mounting substrates or supports, wiring and connections, power inverters, service equipment, metering equipment and utility interconnections. Customer shall provide Provider with available electric and structural plans of the Properties, and otherwise assist and cooperate with Provider on a timely basis to obtain all permits, approvals (including Local Electric Utility approvals and interconnection and metering arrangements) and authorizations required to install, interconnect, operate and maintain the Systems. Local Electric Utility approval and interconnection costs are the responsibility of Provider, except for the meter installed, owned and maintained by Provider pursuant to Section 5.05.

5.02 Installation. Provider shall cause each System to be designed, engineered, installed and constructed substantially in accordance with the terms of this Agreement and Applicable Law. Prior to a System installation, Customer shall have the right to review and approve the Site Plan for such System. Such Customer review and approval shall not be unreasonably withheld, denied, conditioned or delayed. If Customer fails to approve such Site Plan within five (5) Business Days of receipt from Provider, such Site Plan shall be deemed

approved by Customer. Provider will provide at least ten (10) days prior written notice to Customer of the commencement of any Site preparation work.

5.03 Testing. Provider shall conduct such testing of each System as may be required by the Local Electric Utility and Applicable Law. Provider shall notify Customer of the results of any such testing, and the date that each System achieves its Commercial Operation Date. Customer will purchase all test energy under the terms of this Agreement whether such test energy is produced before or after the Commercial Operation Date.

5.04 Operations. Each System shall be owned, operated, maintained and repaired by or for Provider at its sole cost and expense, and in a manner consistent with Applicable Law and good industry practices. Customer shall properly maintain, pay for and provide access to the necessary phone, computer, or other communication lines necessary to permit Provider to record the electrical output of the System for the entire Term. Provider and Customer shall each designate personnel and establish procedures such that each Party may provide timely notice of any emergency conditions that might reasonably be expected to affect the other Party's property. For routine and emergency repairs, the Parties shall contact the persons set forth below:

For Customer:

Town Manager, Larry Tarkowski (or successor)

For Provider:

SEC PVAZ Solar One, LLC, Rob Krugel

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5.05 Metering. Provider shall install, own and maintain a utility-grade kilowatt-hour meter with net metering capabilities ("Meter") on the Property for the measurement of Actual Production provided to Customer from the Systems on a continuous basis. Provider shall test the Meter in compliance with the manufacturer's recommendations. Once per calendar year, Customer shall have the right to audit all such Meter data upon reasonable notice, and any such audit shall be at Customer's sole cost. Customer shall have a right of access to the Meter at reasonable times and with reasonable prior notice for the purpose of verifying readings and calibrations. If testing of the Meter pursuant to the foregoing indicates that the Meter is in error by more than two percent (2%), then Provider shall promptly repair or replace the Meter. Provider shall make a corresponding adjustment to the records of the amount of Actual Production based on such test results for (a) the actual period of time when such error caused inaccurate meter recordings, if such period can be determined to the mutual satisfaction of the Parties, or (b) if the actual period cannot be so determined, then an estimated period equal to one-half (1/2) of the period from the later of (i) the date of the last previous test confirming accurate metering or (ii) the date the Meter was placed into service; *provided, however*, that such estimated period shall in no case exceed one (1) year.

5.06 Outages. Provider shall be entitled to suspend delivery of Actual Production to the Property for the purpose of maintaining and repairing the Systems and such suspension of service shall not constitute a breach of this Agreement; *provided that* Provider shall use commercially reasonable efforts to minimize any interruption in service to Customer.

5.07 Hazardous Materials.

(a) Customer Hazardous Materials. Provider shall not be responsible for any Hazardous Materials encountered at the Site, which were not introduced to the Site by Provider (“Customer Hazardous Materials”). Customer shall indemnify and hold harmless Provider from any costs or expenses (including reasonable attorneys’ fees) incurred by Provider due to the presence of Customer Hazardous Materials on the Site. Upon encountering any materials that Provider suspects may constitute Customer Hazardous Materials, Provider may suspend work in the affected area until such materials are properly remediated by Customer as provided below, and any such suspension shall act to toll day for day any deadline applicable to Provider hereunder and to Provider’s suppliers and contractors under their respective arrangements with Provider.

(b) Customer Remediation. Customer may opt to remediate the Customer Hazardous Materials that violate Applicable Law so that the Systems may be installed on the Site, or determine that it is not economically justifiable or is otherwise impractical to remediate the Customer Hazardous Materials, in which case (a) this Agreement shall terminate effective as of the delivery of such notice without any further liability of the Parties to each other with respect to the Systems except as provided in this Section, and (b) Customer shall reimburse Provider for all expenses reasonably incurred by Provider in the design and installation of the Systems prior to the discovery of the Customer Hazardous Materials and in demobilizing and decommissioning the Systems after the discovery of the Customer Hazardous Materials.

(c) Provider Hazardous Materials. Notwithstanding anything herein to the contrary, Customer is not responsible for any Hazardous Materials introduced to the Site by Provider (“Provider Hazardous Materials”). Provider shall indemnify and hold harmless Customer from any costs or expenses (including reasonable attorneys’ fees) incurred by Customer due to the presence of Provider Hazardous Materials on the Site.

5.08 Customer Electricity. Customer shall make available to Provider at no charge electricity from its local utility service at the Property during the term of this Agreement for the purposes of constructing, installing, repairing, maintaining and removing the Systems, and otherwise to meet parasitic load during System non-generation periods.

ARTICLE VI.  
TITLE TO SYSTEMS.

6.01 Title to Systems. Provider shall retain title to and be the legal and beneficial owner of each System at all times. Absent further written election by Provider, each System shall (i) remain the personal property of Provider and shall not attach to or be deemed a part of, or fixture to, any Property, and (ii) at all times retain the legal status of personal property as defined under Article 9 of the applicable Uniform Commercial Code. Customer warrants and represents that it shall keep the System free from all Liens (other than those created by Provider or its creditors). Provider shall be entitled to, and is hereby authorized to, file one or more precautionary UCC Financing Statements or fixture filings, as applicable, in such jurisdictions as it deems appropriate with respect to the Systems in order to protect its title to and rights in the

Systems. The Parties intend that neither Customer nor any party related to Customer shall acquire the right to operate the System or be deemed to operate the System for purposes of Section 7701(e)(4)(A)(i) of the Code, as amended, and the terms of this Agreement shall be construed consistently with the intention of the Parties. Customer shall provide timely notice of Provider's title and sole ownership of each System to all Persons that have, or may come to have, an interest in or lien upon the real property comprising the Properties. If Provider determines to treat any component of any System as real property, it will so notify Customer in writing along with the reasons therefore, and any required third party consents arising by reason of such characterization. As between the Parties, Provider shall retain the exclusive right to take or sell all System products, including electricity, capacity and all Environmental Attributes.

6.02 Ownership of Rebates; Customer Rebate Assistance. All Rebates available in connection with the Systems are owned by Provider. Customer shall take all reasonable measures to assist Provider in obtaining all Rebates currently available or subsequently made available in connection with the Systems, at Provider's expense. If Customer fails to act in good faith in completing documentation or taking actions reasonably requested by Provider, and such failure results in the loss of a Rebate, Customer shall reimburse Provider for the full amount of such lost Rebate.

6.03 Risk of Loss; Exclusive Control. As between the Parties, Provider will be deemed to be in exclusive control (and responsible for any property damage or injuries to persons caused thereby) of the Actual Production up to but excluding the point where each System is interconnected to Customer's electrical system (the "Interconnection Point") and Customer will be deemed to be in exclusive control (and responsible for any property damage or injuries to persons caused thereby) of the Actual Production at and from the Interconnection Point. Risk of loss related to Actual Production will transfer from Provider to Customer at the Interconnection Point.

6.04 Provider Liens. Provider shall not cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or materialman's lien), charge, security interest, encumbrance or claim of any nature ("Liens") on or with respect to Customer's interests in the Properties or any interest therein other than the rights granted Provider hereunder. Provider also shall pay promptly before a fine or penalty may attach to the Properties any taxes, charges or fees of whatever type of any relevant Governmental Authority, relating to any work performed hereunder by Provider or its agents and subcontractors on the Properties.

6.05 Taxes and Assessments. Provider will pay and be responsible for any sales or use tax imposed with respect to Provider's acquisition and installation of the Systems. Provider shall not be obligated for any taxes payable by or assessed against Customer based on or related to Customer's income or revenues. Customer shall pay and be responsible for any sales, use, excise, transfer and other similar taxes or assessments levied on the sale or deliveries of the Solar Services hereunder (regardless of whether such taxes or assessments are imposed on Provider or Customer), together with any interest, penalties or additions to tax payable with respect to such taxes or assessments. Provider shall not be liable for any real property taxes or assessments associated with the Property, including any increased taxes or assessments on the Property caused by the presence of the Systems.

6.06 Quiet Enjoyment. Customer covenants that Provider shall enjoy quiet and peaceful use, enjoyment and possession of the rights granted hereunder for the Term. Customer agrees that this Agreement and any leaseholds, easements and rights of way granted hereunder run with the Properties and survive any transfer of any portion of the Properties. In furtherance of the foregoing, Customer shall cause any owner, tenant, purchaser, lessee, assignee, mortgagee, pledgee or other Person to whom a lien on any Property has been granted to execute and deliver to Provider an acknowledgment and consent of and to the Provider's rights hereunder in a form reasonably satisfactory to Provider, including, without limitation, an acknowledgment of no interest in the Systems.

6.07 Insolation. Customer acknowledges that access to sunlight is essential to the value of the rights granted hereunder. Accordingly, Customer shall not voluntarily permit any interference with Insolation on and at the Properties. Customer will not construct or permit to be constructed any structure on the Properties that would adversely affect Insolation levels, or permit the growth of foliage that could adversely affect Insolation levels.

6.08 Other Customer Activities. Customer shall not initiate, conduct or permit activities on, in or about the Sites that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting a System. Customer shall implement and maintain reasonable and appropriate security measures on the Properties to prevent Customer's employees, invitees, agents and representatives and other unrelated third parties from having access to the Systems. If Customer determines to undertake activities on the Property that require the temporary displacement of any portion of the Sites, then it shall provide reasonable prior notice (not less than six months) to Provider, and at Customer's expense, Provider shall disassemble, store and re-assemble the affected portions of the Systems at a time and in a manner reasonably calculated to accommodate such work. Storage of any System in accordance with the previous sentence shall be on the Property in a location to be designated by Customer, but in the estimation of Provider reasonably suitable for storage of the component pieces of any System. Customer shall be required to reimburse Provider for the value of any lost solar revenues during such Customer activity. Such lost solar revenues shall be based on Actual Production averaged over the prior twelve (12) months multiplied by the relevant kWh Rate as specified in Schedule 3 or if less than twelve (12) months of historic data is available, Provider shall be entitled to reasonably estimate the amount of revenue that would have been obtained.

## ARTICLE VII. TERM.

7.01 Term. The initial term of this Agreement shall commence on the Effective Date and shall continue to apply for each Property for a period ending on the first December 31 following the twenty fifth (25th) anniversary of the Commercial Operation Date of the System located on such Property (the "Initial Term"), unless terminated earlier pursuant to this Agreement. After the Initial Term, this Agreement shall automatically renew for successive one-year terms (each, a "Renewal Term"), unless a written notice of non-renewal is given by either Party to the other Party at least ninety (90) days prior to the expiration of the Initial Term or the then-applicable Renewal Term. If (a) Customer provides a written notice of non-renewal to Provider or (b) Provider so elects in connection with a Customer Default under Section 9.02(b),

Provider may elect (as evidenced by a written notice delivered to Customer prior to the expiration or termination of the then-current Initial Term or Renewal Term) to extend and renew this Agreement annually for a period equal to a Renewal Term or any remainder of the Initial Term, as applicable, plus up to an additional five (5) years, for the purpose of selling electricity from the Systems at wholesale or to other parties (a "Provider Renewal Term"). During any Provider Renewal Term, Article II and Article III hereof shall have no effect, and the balance of the Agreement shall remain in effect. The Initial Term and all subsequent Renewal Terms (including any Provider Renewal Terms), if any, are referred to collectively as the "Term." The date on which this Agreement terminates by reason of expiration of the Term is hereafter referred to as the "Expiration Date." Any other date on which this Agreement terminates is hereafter referred to as the "Early Termination Date."

7.02 Early Termination by Provider. Provider may terminate this Agreement as to any Property at any time and for any reason (including but not limited to failure to obtain required permits, subsidies, approvals or financing commitments) upon at least one hundred twenty (120) days prior written notice to Customer; *provided that* if a System has not begun to produce electricity, Provider may terminate this Agreement with respect to that System and its related Site and Property, immediately upon provision of written notice thereof to Customer. Provider will not have any liability for such termination, except that no such termination shall act to relieve Provider from any obligation hereunder regarding the removal of such System and the restoration of such Site.

7.03 Early Termination by Customer. Customer shall have the right to unilaterally terminate this Agreement with respect to such System and its related Site and Property only upon (i) Customer's purchase of the System as provided in Section 7.04 below, or (ii) meeting the following conditions:

(a) Customer pays Provider or its designee the Early Termination Fee, including all costs (including liquidated damages and penalties) required to terminate such System's arrangements with the Local Electric Utility, purchasers of Environmental Attributes and other related System contractors, and Customer obtains a full waiver of claims from such entities in form satisfactory to Provider and directed to Provider;

(b) Customer pays all costs to dismantle, decommission and remove such System and restore such Site to its original condition; and

(c) Customer waives all claims against Provider with respect to such System or by reason of this Agreement as it applies to such System.

7.04 Purchase Option Upon Expiration or Early Termination of this Agreement. So long as a Customer Default shall not have occurred and be continuing, Provider grants to Customer an option to purchase the Systems (the "Purchase Option") as of the Expiration Date or any Early Termination Date for a purchase price (the "Option Price") equal to the *greater of* (a) the Fair Market Value of such System, as determined pursuant to Section 7.05, *or* (b) the Early Termination Fee. If Customer elects to exercise the Purchase Option, then, not less than sixty (60) days prior to the Expiration Date or Early Termination Date, as applicable, Customer

shall provide written notice to Provider of Customer's intent to exercise the Purchase Option. Within ten (10) days after its receipt of Customer's notice, Provider shall specify the Fair Market Value. If the Parties agree to the amount as to the Fair Market Value and such Fair Market Value is greater than the Early Termination Fee, Customer shall then have a period of five (5) days after notification to confirm or retract its decision to exercise the Purchase Option. In the event the Parties do not agree as to the Fair Market Value, the Parties shall determine the Fair Market Value in accordance with Section 7.05, and after receipt of such appraisal for Fair Market Value, Customer shall then have a period of five (5) days after such receipt to confirm or retract its decision to exercise the Purchase Option. If Customer confirms its exercise of the Purchase Option, then (i) the Parties shall promptly execute all documents necessary to (A) cause title to such System to pass to Customer, free and clear of any Liens, immediately subsequent to the Expiration Date or the Early Termination Date (as applicable), and (B) assign any warranties for such System to Customer, and (ii) Customer shall pay the Option Price to Provider in immediately available funds. Customer shall also execute such documents reasonably necessary for Customer to accept, assume and perform all then-existing agreements relating to such System or the Solar Services, including but not limited to operations and maintenance agreements, and agreements for the sale of Environmental Attributes. If Customer retracts its exercise of, or does not timely confirm, the Purchase Option, then the Purchase Option shall terminate and be of no further force and effect.

7.05 Determination of Fair Market Value. The Fair Market Value of any System or the Solar Services, as applicable, shall be determined by the mutual agreement of Customer and Provider; *provided, however*, if Customer and Provider cannot mutually agree to a Fair Market Value within ten (10) days of the need to determine Fair Market Value either pursuant to Section 7.04 or a Renewal Term, then the Parties shall select a nationally recognized independent appraiser with experience and expertise in the solar photovoltaic industry. Such appraiser shall act reasonably and in good faith to determine Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties within twenty (20) days of the initial request for appraisal. The valuation made by the appraiser shall be binding upon the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally.

## ARTICLE VIII. REPRESENTATIONS AND WARRANTIES.

Each Party represents and warrants to the other as of the Effective Date:

8.01 Organization; Existence; Good Standing. Such Party is duly organized, validly existing and in good standing in the jurisdiction of its organization. Such Party has the full right and authority to enter into, execute, deliver and perform its obligations under this Agreement, and such Party has taken all requisite corporate, body politic or other action to approve the execution, delivery and performance of this Agreement.

8.02 Binding Obligation. This Agreement constitutes its legal, valid and binding obligation enforceable against such Party in accordance with its terms, except as may be limited

by applicable bankruptcy, insolvency, reorganization, moratorium, and other similar laws relating to creditors' rights generally.

8.03 No Litigation. There is no litigation, action, proceeding or investigation pending or, to such Party's knowledge, threatened before any court or other Governmental Authority by, against, affecting or involving any of its business or assets that would affect its ability to carry out the transactions contemplated herein.

8.04 Execution and Performance. Such Party's execution and performance of this Agreement and the transactions contemplated hereby do not constitute a breach of any term or provision of, or a default under, (i) any contract or agreement to which it or any of its Affiliates is a party or by which it or any of its Affiliates or its or their property is bound, (ii) its organizational laws or documents, or (iii) any Applicable Laws. To the knowledge of each Party, there are no commitments to third parties that may impair or otherwise adversely affect the performance of such Party under this Agreement, or the construction, installation or function of a System on any Property.

## ARTICLE IX. DEFAULT AND FORCE MAJEURE

### 9.01 Provider Defaults.

(a) Provider Default Defined. If Provider breaches any material term of this Agreement and (i) if such breach can be cured within thirty (30) days after Customer's notice of such breach and Provider fails to so cure, or (ii) Provider fails to commence and diligently pursue and complete said cure within a reasonable period of time if a cure period longer than 30 days is needed, then a "Provider Default" shall have occurred.

(b) Customer's Remedies. If a Provider Default described in Section 9.01(a) has occurred and is continuing, Customer may terminate this Agreement immediately upon the expiration of the respective grace periods set forth in such provisions, and otherwise exercise any other remedy it may have at law or equity or under this Agreement.

(c) Actions to Prevent Injury. If any Provider Default creates an imminent risk of damage or injury to any Person or any Person's property, then, in addition to any other right or remedy that Customer may have, Customer may (but shall not be obligated to) take such action as Customer deems appropriate to prevent such damage or injury.

### 9.02 Customer Defaults.

(a) Customer Default Defined. The following events shall be defaults with respect to Customer (each, a "Customer Default"):

i. Customer fails to pay Provider any undisputed amount due Provider under this Agreement within five (5) Business Days from receipt of notice from Provider of such past due amount;

ii. Customer breaches any material term of this Agreement if (A) such breach can be cured within thirty (30) days after Provider's notice of such breach and Customer fails to so cure, or (B) Customer fails to commence and diligently pursue and complete said cure within a reasonable period of time if a cure period longer than 30 days is needed; or

iii. (A) Customer admits in writing its inability to pay its debts generally as they become due; (B) Customer files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any state, district or territory thereof; (C) Customer makes an assignment for the benefit of creditors; (D) Customer consents to the appointment of a receiver of the whole or any substantial part of its assets; (E) Customer has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof; (F) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of Customer's assets, and such order, judgment or decree is not vacated or set aside or stayed within ninety (90) days from the date of entry thereof; or (G) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of Customer's assets and such custody or control is not terminated or stayed within ninety (90) days from the date of assumption of such custody or control.

(b) Provider's Remedies. If a Customer Default described in Section 9.02(a) has occurred and is continuing, then in addition to (and not in lieu of) any other remedy it may have in law or equity, Provider may (i) elect to keep the Systems in place pursuant to a Provider Renewal Term as provided in Section 7.01 above; or (ii) remove any of the Systems from any of the Properties at Customer's expense and terminate this Agreement immediately upon the expiration of the respective grace periods set forth in such provisions.

(c) Actions to Prevent Injury. If any Customer Default creates an imminent risk of damage or injury to any Person or any Person's property, then in any such case, in addition to any other right or remedy that Provider may have, Provider may (but shall not be obligated to) take such action as Provider deems appropriate to prevent such damage or injury.

9.03 Force Majeure. A "Force Majeure Event" means any act or event that prevents the affected Party from performing its obligations in accordance with this Agreement, if such act or event is beyond the reasonable control, and not the result of the fault or negligence, of the affected Party and such Party had been unable to overcome such act or event with the exercise of due diligence. Notwithstanding any other term hereof, no payment obligation of Customer under this Agreement may be excused or delayed as the result of a Force Majeure Event. A Party claiming a Force Majeure Event shall not be considered in breach of this Agreement or liable for any delay or failure to comply with the Agreement, if and to the extent that such delay or failure is attributable to the occurrence of such Force Majeure Event; *provided that* the Party claiming relief shall immediately notify the other Party in writing of the existence of the Force Majeure Event, exercise all reasonable efforts necessary to minimize delay caused by such Force Majeure Event, and resume performance of its obligations hereunder as soon as practicable thereafter.

9.04 LIMITATION ON LIABILITY. NOTWITHSTANDING ANY OTHER TERM HEREOF, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT.

ARTICLE X.  
DISPUTE RESOLUTION.

10.01 Resolution by Parties. The Parties shall negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to the Agreement or the breach, interpretation, termination or validity thereof (a “Dispute”) within thirty (30) days after the date that a Party gives written notice of such Dispute to the other Party. If the Parties are unable to reach agreement within such thirty (30) day period (or such longer period as the Parties may agree) then either Party may refer the matter to arbitration in accordance with Section 10.02; *provided, however,* that if the Dispute involves the amount of an invoice and after ten (10) days of mutual discussion either Party believes in good faith that further discussion shall fail to resolve the Dispute to its satisfaction, such Party may immediately refer the matter to arbitration in accordance with Section 10.02.

10.02 Binding Arbitration. Any Dispute that is not settled to the mutual satisfaction of the Parties pursuant to Section 10.01 shall be settled by binding arbitration between the Parties conducted in Phoenix, Arizona and in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the “AAA”) in effect on the date that a Party gives notice of its demand for arbitration under this Section 10.02. The submitting Party shall submit such Dispute to arbitration by providing a written demand for arbitration to the other Party, and the Parties shall select a single neutral arbitrator with significant contract resolution experience and experience in the contemporary solar photovoltaic power industry and an understanding of photovoltaic systems. If the Parties cannot agree on a single neutral arbitrator within fifteen (15) Business Days after the written demand for arbitration is provided, then the arbitrator shall be selected by the AAA. The decisions of the arbitrator shall be final and binding upon the Parties in all respects. Provider and Customer shall each bear the cost of preparing and presenting its own case. The cost of the arbitration, including the fees and expenses of the arbitrator, shall be shared equally by Provider and Customer. The arbitrator shall be instructed to establish procedures such that a decision can be rendered within sixty (60) calendar days of the appointment of the arbitrator. All limitations of damages herein shall be binding upon the arbitrator.

10.03 Exceptions to Arbitration Obligation. The obligation to arbitrate shall not be binding upon any Party with respect to (i) requests for preliminary injunctions, temporary restraining orders, specific performance or other procedures in a court of competent jurisdiction to obtain interim relief when deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual Dispute, or (ii) actions to collect payments not subject to a bona fide Dispute.

ARTICLE XI.  
INSURANCE, CASUALTY AND CONDEMNATION.

11.01 Provider's Insurance. Provider shall maintain the following insurance coverages in full force and effect from the date that any preparatory installation activities begin at any Property throughout the Term: (a) Workers' Compensation Insurance as may be from time to time required under Applicable Laws, and (b) Commercial General Liability Insurance with limits of not less than \$2,000,000 general aggregate, \$1,000,000 per occurrence. Additionally, Provider shall carry commercially adequate property loss insurance on each System. Provider's liability insurance policies shall be written on an occurrence basis and shall include Customer as an additional insured as its interest may appear.

11.02 Customer's Insurance. Customer shall maintain the following insurance coverages in full force and effect from the date that any preparatory installation activities begin at any Property throughout the Term: (a) Workers' Compensation Insurance as may be from time to time required under Applicable Laws, and (b) Commercial General Liability Insurance with limits of not less than \$2,000,000 general aggregate, \$1,000,000 per occurrence. Additionally, Customer shall carry commercially adequate property loss insurance for the Sites. Customer's liability insurance policies shall be written on an occurrence basis and shall include Provider as an additional insured as its interest may appear.

11.03 Generally. Upon each Party's request annually, each Party shall deliver to the other Party certificates of insurance evidencing such respective coverage referenced above, which shall specify that the other Party shall be given at least thirty (30) days' prior written notice by the applicable insurer in the event of any material modification, cancellation or termination of coverage. Such insurance shall be on an occurrence basis and shall be primary coverage without right of contribution from any insurance of the other Party and shall permit waivers of subrogation against the other Party. All insurance maintained hereunder shall be maintained with companies either rated no less than A- as to Policy Holder's Rating in the current edition of Best's Insurance Guide (or with an association of companies each of the members of which are so rated) or having a parent company's debt to policyholder surplus ratio of 1:1. Provider's insurer may be an Affiliate of Provider, and Customer may meet its insurance obligation herein through participation in a statutory risk retention pool of other municipalities.

11.04 Casualty. If at any time during the Term any part of the Property is so severely damaged by fire or other casualty that substantial alteration, reconstruction or restoration is required on the Property but the System is capable of producing Actual Production, then Customer shall elect one of the following options:

(a) So long as Customer maintains some business operations at the Property, Customer may take and pay for all of the Actual Production that (1) each System is capable of producing and (2) Customer is able to use (or for which Customer receives credit from the Local Electric Utility under its net metering program). In such case, this Agreement shall remain in full force and effect, without change, for the remainder of the Term. If Customer is unable to take (or receive credit for) one hundred percent (100%) of the Actual Production that each System is capable of producing, Provider shall be permitted to sell any Actual Production that

Customer is not able to use (or receive credit for) to one or more third parties for the remainder of the Term, plus, at Provider's option, up to an additional five (5) years.

(b) If Customer ceases business operations at the Property, Customer shall be deemed to have terminated this Agreement pursuant to Section 7.03 hereof, and within ninety (90) days of such casualty Customer shall make the payments and meet the conditions set forth in Section 7.03. If Customer breaches its obligation to comply with Section 7.03, then in addition to any other available remedy, Provider shall have the right to (i) keep the Systems on the Sites, (ii) access, operate and maintain the Systems, and (iii) enter into arrangements to sell the Actual Production output of the Systems (including but not limited to Actual Production and Environmental Attributes) to one or more third parties for the remainder of the Term, plus, at Provider's option, up to an additional five (5) years (collectively, the "Extended Term"). If Customer evicts Provider from the Sites or otherwise requires removal of the Systems from the Sites prior to the expiration of the Extended Term, Customer shall (i) owe Provider the Early Termination Fee and (ii) reimburse Provider for any breakage fees or other costs incurred by Provider resulting from termination of any third party arrangements for the sale of Actual Production.

If at any time during the Term the Systems are so severely damaged by fire or other casualty that substantial alteration, reconstruction or restoration is required, then Provider shall have the right, but not the obligation, to alter, reconstruct or restore the Systems and if Provider elects to do so then Customer shall elect one of the options provided in Section 11.04(a), (b) and (c). If Provider elects to not alter, reconstruct or restore the System, Provider shall have the right, upon thirty (30) days prior written notice to Customer, to terminate this Agreement and remove the Systems from the Site in accordance with the provisions of Section 4.03.

11.05 Condemnation. If at any time during the Term, any part of the Property or Systems is taken for any public or quasi-public use under Applicable Law, ordinance or regulation by a Governmental Authority by condemnation or right of eminent domain, then each Party shall be entitled to separately pursue an award for its respective property interest appropriated as well as any damages suffered thereby, and each Party hereby waives any right to any award that may be prosecuted by the other Party.

## ARTICLE XII. ASSIGNMENT.

12.01 Generally. This Agreement and the rights and obligations under this Agreement shall be binding upon and shall inure to the benefit of Provider and Customer and their respective successors and permitted assigns. Any purported assignment in violation of this Article XII shall be null and void *ab initio*.

12.02 Assignment by Customer. Customer shall not assign its interests in this Agreement, nor any part thereof, without Provider's prior written consent, which consent shall not be unreasonably withheld; *provided that* (i) Customer may make an Assignment through merger, consolidation or sale of all or substantially all of Customer's stock or assets, and (ii) Customer shall assign its rights and obligations hereunder to any successor owner of any

Property made subject hereto and shall require any such successor owner to provide Provider with a written confirmation of such assignment and assumption; *provided, further, that* without Provider's prior written consent, which consent shall not be unreasonably withheld or delayed, no such assignment in (i) or (ii) shall release Customer from its obligations hereunder.

12.03 Assignment by Provider. Except as expressly provided herein, Provider shall not sell, transfer or assign this Agreement or any right, interest or obligation therein (collectively, an "Assignment"), without the prior written consent of Customer; *provided, however, that*, without the prior consent of (but with notice to) Customer, Provider may (i) make an Assignment to an Affiliate of Provider; (ii) make an Assignment through merger, consolidation or sale of all or substantially all of Provider's stock, interests or assets; (iii) collaterally assign or pledge its interests hereunder and/or in the Systems or any monies due under this Agreement, with any such assignee/pledgee having all rights typical of a secured lender; (iv) make an Assignment to a capital provider as part of a sale/leaseback financing, *so long as* Provider or an Affiliate thereof acts as lessee under such financial lease and the financial lessor agrees in writing to be bound by this Agreement along with Provider; and (v) make an Assignment to a project-specific owner of a System to be located on such Property, *so long as* Provider or an Affiliate thereof remain as operator of such System. Otherwise, Provider may make an Assignment of Provider's rights and obligations hereunder only upon Customer's prior consent; *provided that* Customer shall not unreasonably withhold its consent to an Assignment of Provider's rights and obligations hereunder if Customer has been provided with reasonable proof that the proposed assignee: (x) has comparable experience in operating and maintaining photovoltaic solar systems comparable to the Systems; and (y) has the financial capability to maintain the Systems and perform hereunder. A direct assignee of Provider's obligations hereunder shall assume in writing, in form and content reasonably satisfactory to Customer, the due performance of all Provider's obligations under this Agreement. Customer will provide such confirmations, releases and novations as are reasonably requested by Provider in connection with any such assignment.

12.04 Financing Accommodations. Customer acknowledges that Provider will be financing the acquisition and installation of the Systems with funding from one or more Lenders or third-party capital providers. Such financings may include the sale or sale/leaseback of one or more of the Systems to tax-advantaged entities. In order to facilitate System financings (and, expressly subject to the Prior Property Commitments), Customer will provide such Lenders and capital providers with commercially reasonable direct agreements, consents, subordinations, waivers, confirmations and estoppels as may be reasonably requested from time to time, including the ability of such entities to enforce Provider's rights hereunder, cure any Provider Default, receive concurrent notices to Provider and exercise normal and customary rights of secured parties.

### ARTICLE XIII. INDEMNIFICATION.

13.01 Indemnification by Provider. Subject to Section 11.01, Provider shall fully indemnify, save harmless and defend Customer for, from and against any and all costs, claims, and expenses incurred by Customer in connection with or arising from any claim by a third party

for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by (a) the gross negligence or willful misconduct of Provider or its agents or employees or others under Provider's control or (b) a Provider Default; *provided, however*, that Provider's obligations pursuant to this Section 13.01 shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of Customer; *provided further, however*, that nothing in this Section is intended to modify the limitation of Provider's liability set forth in Section 9.04.

13.02 Indemnification by Customer. Subject to Section 11.02, Customer shall fully indemnify, save harmless and defend Provider for, from and against any and all costs, claims, and expenses incurred by Provider in connection with or arising from any claim by a third party for physical damage to or physical destruction of property, or death of or bodily injury to any Person, but only to the extent caused by (a) the gross negligence or willful misconduct of Customer or its agents or employees or others under Customer's control or (b) a Customer Default; *provided, however*, that Customer's obligations pursuant to this Section 13.02 shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of Provider; *provided further, however*, that nothing in this Section is intended to modify the limitation of Customer's liability set forth in Section 9.04.

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

13.04 Defense of Action. If requested by an Indemnified Party, the Indemnifying Party shall assume on behalf of the Indemnified Party, and conduct with due diligence and in good faith, the defense of such Indemnified Party with counsel reasonably satisfactory to the Indemnified Party; *provided, however*, that if the Indemnifying Party is a defendant in any such action and the Indemnified Party believes that there may be legal defenses available to it that are inconsistent with those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to participate in its defense of such action at the Indemnifying Party's expense. If any claim, action, proceeding or investigation arises as to which the indemnity provided for in this Section applies, and the Indemnifying Party fails to assume the defense of such claim, action, proceeding or investigation after having been requested to do so by the Indemnified Party, then the Indemnified Party may, at the Indemnifying Party's expense, contest or, with the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld, settle such claim, action, proceeding or investigation. All costs and expenses incurred by the Indemnified Party in connection with any such contest or settlement shall be paid upon demand by the Indemnifying Party.

13.05 Survival of Provisions. The provisions of this Article 13 shall survive the expiration or termination of this Agreement.

ARTICLE XIV.  
MISCELLANEOUS.

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

14.02 Confidentiality. If either Party or its representatives provides to the other Party or its representatives confidential information, including business plans, strategies, financial information, proprietary, patented, licensed, copyrighted or trademarked information, and/or technical information regarding the design, operation and maintenance of the Systems or of a Party's business ("Confidential Information"), the receiving Party shall protect the Confidential Information from disclosure to third parties with the same degree of care accorded its own confidential and proprietary information, but in any event not less than a commercially reasonable degree of care, and refrain from using such Confidential Information except in the negotiation and performance of this Agreement. Confidential Information also includes the terms of this Agreement. Notwithstanding any other provision herein, neither Party shall be required to hold confidential any information that: (i) becomes publicly available other than through the receiving Party; (ii) is required to be disclosed by a Governmental Authority, under Applicable Law or pursuant to a validly issued subpoena, but a receiving Party subject to any such requirement shall promptly notify the disclosing Party of such requirement; (iii) is independently developed by the receiving Party; or (iv) becomes available to the receiving Party without restriction from a third party under no obligation of confidentiality.

14.03 Integration; Attachments. This Agreement, together with the Schedules and any Exhibits attached hereto, constitutes the entire agreement and understanding between Provider and Customer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof.

14.04 Industry Standards. Except as otherwise set forth herein, for the purpose of this Agreement accepted standards of performance within the solar photovoltaic power generation industry in the relevant market shall be the measure of whether a Party's performance is reasonable and timely. Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed.

14.05 Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Provider and Customer.

14.06 Waiver. No waiver of any provision of this Agreement shall be effective unless set forth in writing signed by the Party granting such waiver, and any such waiver shall be effective only to the extent it is set forth in such writing. The failure of Provider or Customer to enforce any of the provisions of this Agreement, or the waiver thereof, shall not be construed as a general waiver or relinquishment on its part of any such provision in any other instance, or of

any other provision in any instance. No single or partial exercise of any right under this Agreement shall preclude any other or further exercise thereof or the exercise of any other right; and no waiver of any breach of or default under any provision of this Agreement shall constitute or be construed as a waiver of any subsequent breach of or default under that or any other provision of this Agreement.

14.07 Cumulative Remedies. Except as set forth herein, any right or remedy of Provider or Customer shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.

14.08 Survival. The obligations hereunder that, by their sense and context, are intended to survive termination of this Agreement shall survive the expiration or termination of this Agreement to the extent necessary to give them full effect.

14.09 Governing Law; Jurisdiction; Forum. This Agreement shall be governed by and construed in accordance with the domestic laws of the State of Arizona without reference to any choice of law principles. Any legal action or proceeding with respect to or arising out of this Agreement shall be brought in or removed to the courts of the State of Arizona and of the United States of America in and for the State of Arizona. By execution and delivery of this Agreement, Provider and Customer accept, generally and unconditionally, the jurisdiction of the aforesaid courts. Provider and Customer hereby waive any right to stay or dismiss any action or proceeding under or in connection with this Agreement brought before the foregoing courts on the basis of *forum non-conveniens*.

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

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

14.12 Headings. The headings in this Agreement are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Agreement.

14.13 Relation of the Parties. The relationship between Provider and Customer shall not be that of partners, agents or joint venturers for one another, and nothing contained in this

Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including federal income tax purposes. Provider and Customer, in performing any of their obligations hereunder, shall be independent contractors or independent parties and shall discharge their contractual obligations at their own risk.

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

14.15 No Third-Party Beneficiaries. This Agreement is solely for the benefit of the Parties and their respective permitted successors and permitted assigns, and this Agreement shall not otherwise be deemed to confer upon or give to any other third party any remedy, claim, liability, reimbursement, cause of action or other right.

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

14.17 No Public Utility. Nothing contained in this Agreement shall be construed as an intent by Provider to dedicate its property to public use or subject itself to regulation as a public service corporation, a public utility, an electric utility, an investor owned utility, a municipal utility, generation company or a merchant power plant otherwise known as an exempt wholesale generator. If Provider is deemed, or reasonably believes it will be deemed, a public service corporation, then the Parties will mutually cooperate and negotiate in good faith an adjustment to the terms of the Agreement in order to avoid Provider being designated as a public service corporation, while putting each Party in the same economic position, or as close thereto as possible. Customer shall cooperate with Provider if Provider chooses to seek written confirmation from the Arizona Corporation Commission that it is not a public service corporation. This Section 14.17 shall not be construed to require either Party to enter into any new agreement that puts it in a materially worse position relative to this Agreement.

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

14.19 Notices. Unless otherwise provided in this Agreement, all notices and communications concerning this Agreement shall be in writing and addressed to the other Party as follows:

If to Provider:

SEC PVAZ Solar One, LLC  
50 Main Street, Suite 812  
White Plains, New York, 10606  
Phone: 914 -618-4694  
Fax: 914-239-5317  
Contact: Rob Krugel

With a copy, if applicable to Lender:

NA

If to Customer:

Town Manager, Town of Prescott Valley  
7501 E. Civic Circle  
Prescott Valley, AZ 86314  
Ph. 928-759-3100  
Fax 928-759-3125  
e-mail ltarkowski@pvaz.net

or at such other address as may be designated in writing to the other Party. Unless otherwise provided herein, any notice provided for in this Agreement shall be hand-delivered, or sent by (a) registered or certified U.S. Mail, postage prepaid, (b) commercial overnight delivery service, or (c) facsimile or email attachment, and shall be deemed delivered to the addressee or its office when received at the address for notice specified above when hand-delivered, or upon confirmation of sending when sent by facsimile or email (if sent during normal business hours or the next Business Day if sent at any other time), on the Business Day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five (5) Business Days after deposit in the mail when sent by U.S. Mail. Customer shall deliver to any Lender, concurrently with delivery thereof to Provider, a copy of each notice of default given by Customer under this Agreement, inclusive of a reasonable description of Provider Default, and no such notice shall be effective absent delivery to the Lender. Customer shall not mutually agree with Provider to terminate this Agreement without the written consent of the Lender.

14.20 Legal Arizona Workers Act Compliance. By entering into this Agreement, Provider warrants compliance with Arizona Revised Statutes (A.R.S.) §41-4401, A.R.S. §23-214, the Federal Immigration and Nationality Act (FINA), and all other federal immigration laws and regulations. Customer may request verification of compliance from any contractor or subcontractor performing work under this Agreement, and reserves the right to confirm Provider's compliance with the aforementioned laws as provided in A.R.S. §41-4401. Provider

acknowledges that a breach of this Section 14.20 shall be considered a material breach of this Agreement under Section 9.01(a). All costs necessary to verify compliance are the responsibility of Provider.

14.21 Conflict-of-Interest. This Agreement may be canceled pursuant to the provisions of A.R.S. §38-511 in the event of a conflict-of-interest as described therein.

*[Signature pages follow.]*

IN WITNESS WHEREOF intending to be legally bound hereby, the Parties have executed this Master Solar Power Services Agreement as of the Effective Date.

SEC PVAZ Solar One, LLC  
a Delaware limited liability company

As managing member,

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

Town of Prescott Valley,  
a municipal corporation of Arizona

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

Schedule 1  
DESCRIPTION OF PROPERTIES

The Properties are located in Prescott Valley at the Waste Water Treatment Plant and Tank Farm.

Prescott Valley Waste Water Treatment Plant

1000 E. Treatment Plant Drive, Prescott Valley, AZ 86314

Assessor's Parcel Number: 402-14-035M

Township 14 North – Range 1 East – Sections 16 & 17



Prescott Valley Tank Farm

3820 N. Prescott East Highway, Prescott Valley, AZ 86314

Assessor's Parcel Number 103-07-621

Township 14 North – Range 1 West – Section 15



[Attach legal description of each Property from property deeds or photos of the buildings sufficient to identify each Property]

Schedule 2  
SITE PLANS AND SYSTEMS

**Site Plan:**

[Attach preliminary drawings of Engineer's approved Site Plans for grid-connected, ground mount solar electric PV systems. As-built drawings to be provided upon completion and Commercial Operation Dates, and amended to this Schedule, in accordance with Section 4.01.]

**System:**

Solar System Size: \_\_\_\_\_ 1486 \_\_\_\_\_ kW(dc)  
Estimated Year 1 Production: \_\_\_\_\_ TBD \_\_\_\_\_ kW(dc)  
Estimated Annual Degradation: \_\_\_\_\_ TBD \_\_\_\_\_ %  
Estimated Commercial Operation Date: TBD; depending upon interconnection application, incentives and permitting

Module: \_\_\_\_\_ [insert number to be installed] of \_\_\_\_\_ watt \_\_\_\_\_ [mfr name and model number] solar module or equivalent  
Inverter: \_\_\_\_\_ [insert number to be installed] of \_\_\_\_\_ [mfr name and model number]  
Structure: \_\_\_\_\_  
Warranty: \_\_\_\_\_ year power warranty including minimum annual production amount.

System Includes: System components include: Solar panels, support system, inverter system, wire kits, and data monitoring system. Design including: 1 site visit, system drawings, engineering review and stamps (not including building structural review, if required). System commissioning. Support for interconnection application and permitting. Exclusions: Utility interconnection permit

[EXPAND AS NECESSARY TO DESCRIBE MULTIPLE SYSTEMS]

Schedule 3  
kWh RATE

The kWh Rate with respect to the System contemplated in the Agreement shall be in accordance with the following schedule:

Year	PPA Rate (\$/kWh)
<b>1</b>	0.0850
<b>2</b>	0.0876
<b>3</b>	0.0902
<b>4</b>	0.0929
<b>5</b>	0.0957
<b>6</b>	0.0985
<b>7</b>	0.1015
<b>8</b>	0.1045
<b>9</b>	0.1077
<b>10</b>	0.1109
<b>11</b>	0.1142
<b>12</b>	0.1177
<b>13</b>	0.1212
<b>14</b>	0.1248
<b>15</b>	0.1286
<b>16</b>	0.1324
<b>17</b>	0.1364
<b>18</b>	0.1405
<b>19</b>	0.1447
<b>20</b>	0.1490
<b>21</b>	0.1535
<b>22</b>	0.1581
<b>23</b>	0.1629
<b>24</b>	0.1678
<b>25</b>	0.1728

Schedule 4  
EARLY TERMINATION FEE COMPONENT

The Early Termination Fee with respect to a System under the Agreement shall include a lump sum payment calculated in accordance with the following schedule.

Year	Early Termination Fee	
	\$/Wdc	Total \$ Fee
1	3.40	\$ 5,052,400
2	3.34	\$ 4,964,389
3	3.31	\$ 4,914,706
4	3.27	\$ 4,857,253
5	3.25	\$ 4,829,500
6	3.17	\$ 4,715,728
7	3.12	\$ 4,629,809
8	3.05	\$ 4,532,412
9	2.98	\$ 4,422,387
10	2.85	\$ 4,235,100
11	2.80	\$ 4,159,319
12	2.69	\$ 4,003,410
13	2.58	\$ 3,829,120
14	2.45	\$ 3,634,671
15	2.25	\$ 3,343,500
16	2.14	\$ 3,177,340
17	1.96	\$ 2,910,026
18	1.76	\$ 2,613,654
19	1.54	\$ 2,285,470
20	1.25	\$ 1,857,500
21	1.11	\$ 1,648,444
22	0.99	\$ 1,470,380
23	0.85	\$ 1,268,854
24	0.70	\$ 1,041,606
25	0.50	\$ 743,000

Schedule 5

Form of Memorandum of Master Solar Power Services Agreement

**MEMORANDUM OF SOLAR POWER SERVICES AGREEMENT**

**[Revise to comply with local recording laws.]**

THIS MEMORANDUM OF SOLAR POWER SERVICES AGREEMENT (the Memorandum”), dated this \_\_\_\_ day of \_\_\_\_\_, 2011, by and between \_\_\_\_\_, a \_\_\_\_\_ (the “Customer”), with an address of \_\_\_\_\_, and \_\_\_\_\_, a \_\_\_\_\_ (hereinafter referred to as “Provider”), with an address of \_\_\_\_\_.

***RECITALS***

1. Customer is the fee simple owner of a certain tract of land more particularly described in EXHIBIT A, which is attached hereto and hereby incorporated herein (the “Property”), located in the \_\_\_\_\_ of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_; and
2. Customer has entered into that certain Solar Power Services Agreement dated \_\_\_\_\_, \_\_\_\_ (the “Agreement”), with Provider, relating to the Property, which Agreement is for a term of \_\_\_\_\_ (\_\_\_) years commencing on \_\_\_\_\_ and ending \_\_\_\_\_, which Agreement includes the right of Provider to install, operate and maintain on the Property an electric grid-connected photovoltaic solar power plant with a total generating capacity rated at approximately [\_\_\_] kW owned by Provider (the “System”); and
3. The Agreement includes a grant of certain easements and other rights on and over portions of the Property including but not limited to an exclusive easement for the installation, operation and maintenance of the System on and over that portion of the Property described on EXHIBIT B attached hereto and hereby incorporated herein as well as an easement to receive unobstructed sunlight; and
4. Customer and Provider desire to execute this Memorandum to give public record notice of the Agreement, Provider’s easement and other rights in and to the Property and Provider’s ownership of the System and appurtenances thereto.

***NOTICE***

This Memorandum is hereby executed for the purpose of recording in the office of the [Register of Deeds] [County Recorder] for \_\_\_\_\_ County, \_\_\_\_\_, in order to give public record notice of:

- (a) The Agreement and the terms and provisions set forth therein;

(b) The existence of all easements and other rights granted to Provider in the Agreement relating to the Property;

(c) Provider's ownership of and exclusive title to the System and appurtenances thereto; and

The prohibition on Customer or any person other than Provider granting or creating a lien or encumbrance on the System or any appurtenances thereto.

The provisions of this Memorandum do not in any way change or affect the terms, covenants and conditions of the Agreement, all of which terms, covenants and conditions shall remain in full force and effect.

[Signature page follows.]

IN WITNESS WHEREOF, this Memorandum has been executed and delivered as of the day, month and year first above written.

CUSTOMER:

\_\_\_\_\_

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

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

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

PROVIDER

\_\_\_\_\_

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

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

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

STATE OF )

) SS.

COUNTY OF )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the above-named \_\_\_\_\_, to me known to be the \_\_\_\_\_ of \_\_\_\_\_, who executed the foregoing document on behalf of such \_\_\_\_\_ and acknowledged the same.

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

Notary Public, State of \_\_\_\_\_

My Commission: \_\_\_\_\_

[NOTARIAL SEAL]

STATE OF )  
 ) SS.  
COUNTY OF )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, the above-named \_\_\_\_\_, to me known to be the \_\_\_\_\_ of \_\_\_\_\_, who executed the foregoing document on behalf of such \_\_\_\_\_ and acknowledged the same.

Name: \_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
My Commission: \_\_\_\_\_

[NOTARIAL SEAL]

This instrument was drafted by and after recording should be returned to \_\_\_\_\_  
of \_\_\_\_\_.