

**APPROVING A LIMITED SOLAR FARM LEASE FOR NORTHERN TIER FARM PARTNERSHIP (PIN 09-19-100-088).**

**WHEREAS**, the City of DeKalb (the "City") is a home rule unit of local government and may exercise any power and perform any function pertaining to its government and affairs pursuant to Article VII, Section 6, of the Illinois Constitution of 1970; and

**WHEREAS**, City Staff, Northern Tier Farm Partnership, and DeKalb Taylor Solar, LLC negotiated an amendment to lease agreements to allow Northern Tier Farm Partnership to farm the solar farm site at DeKalb Taylor Municipal Airport for the 2023 farming season in the form attached and incorporated as Exhibit A (the "Amendment"); and

**WHEREAS**, the City's corporate authorities find that approving the Amendment is in the City's best interests for the protection of the public health, safety, and welfare; and

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DEKALB, ILLINOIS:**

**SECTION 1:** The recitals to this resolution are adopted and incorporated as Section One to this resolution.

**SECTION 2:** By a vote of three-fourths of the corporate authorities then holding office, the City's corporate authorities approve the Amendment in the same or substantially similar form as Exhibit A, and the City's corporate authorities further authorize and direct the City Manager to execute the Amendment on the City's behalf and to take all necessary actions to effect the Amendment.

**SECTION 3:** This resolution and each of its terms shall be the effective legislative act of a home rule municipality without regard to whether such resolution should (a) contain terms contrary to the provision of current or subsequent non-preemptive state law, or (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the City's corporate authorities that to the extent that the terms of this resolution should be inconsistent with any non-preemptive state law, that this resolution shall supersede state law in that regard within its jurisdiction.

**SECTION 4:** This resolution shall be in full force and effect from and after its passage and approval as provided by law.

**PASSED BY THE CITY COUNCIL** of the City of DeKalb, Illinois at a Regular meeting thereof held on the 13<sup>th</sup> day of February 2023 and approved by me as Mayor on the same day. Passed by an 8-0 roll call vote. Aye: Morris, Larson, Smith, Perkins, McAdams, Verbic, Faivre, Barnes. Nay: None.



  
**COHEN BARNES, Mayor**

ATTEST:



Ruth A. Scott, Executive Assistant

**AMENDMENT TO DEKALB MUNICIPAL AIRPORT LEASE AGREEMENTS**  
**(PIN: 09-19-100-088)**

This Amendment (the “Amendment”) is made effective on March 1, 2023 (the “Effective Date”), by and between the City of DeKalb, an Illinois municipal corporation (“City”), DeKalb Taylor Solar, LLC, a Delaware limited liability company (“Solar”), and David Giels, Northern Tier Farm Partnership, an Illinois general partnership (“Farmer”), who are collectively referred to as the “Parties”.

**RECITALS**

WHEREAS, the City is the owner of real property legally described in Exhibit A attached hereto and incorporated herein (the “Property”); and

WHEREAS, the Property is approximately 48 acres in size with approximately 38 tillable acres; and

WHEREAS, the Property is subject to a Land Lease and Solar Agreement dated December 13, 2021, by and between City and Solar, which is attached hereto and incorporated herein as Exhibit B (the “Solar Lease”); and

WHEREAS, as of the Effective Date, Solar does not intend to develop and use the Property for solar energy purposes until sometime after the 2023 harvest season; and

WHEREAS, the City and Farmer are parties to a Cash Farm Lease dated December 16, 2022, which is attached hereto and incorporated herein as Exhibit C (the “Farm Lease”); and

WHEREAS, the Property is not currently subject to the Farm Lease; and

WHEREAS, the Parties desire to amend the Solar Lease and the Farm Lease to allow Farmer to lease the Property for farming purposes during the 2023 farming season pursuant to the terms and conditions of this Amendment; and

NOW THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS SET FORTH BELOW, THE PARTIES AGREE as follows:

1. The recitals to this Amendment are true, correct, material, adopted and incorporated herein as Section 1 to this Amendment.

2. The Farm Lease shall be amended to include the Property; provided, however, that: (1) the term for the Property shall expire on December 15, 2023; (2) Farmer shall pay the City the total sum of \$14,522.27 (38 tillable acres @ \$382.165 per acre) as cash rent for the Property on March 15, 2023, in addition to the amount of rent due under the Farm Lease; (3) Farmer's interest in the Property shall be subordinate to Solar's interest in the Property; (4) Farmer shall not cause any lien, secured interest, or encumbrance to the Property; and (5) Farmer shall immediately yield possession of the Property to City within five (5) calendar days upon receipt of City's written notice to remove the Property from the Farm Lease pursuant to Section 8.E of the Farm Lease.

3. The Solar Lease shall be amended to add the following Section 3.3(c):

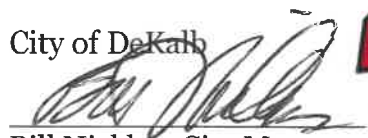
If Project Company begins initial construction before December 15, 2023, Project Company shall give the City seven (7) calendar days prior written notice before beginning initial construction.

4. Except as may otherwise be provided herein by this Amendment, all of terms and provisions of the Solar Lease and Farm Lease shall remain in full force and effect. In the event of any conflict between the terms of this Amendment and the terms of the Solar Lease and the Farm Lease, the terms of this Amendment shall govern.

5. This Amendment sets forth all agreements, understandings and covenants between and among the Parties relative to the matters herein contained. This Amendment shall be deemed to be full integration of the entire Amendment.

IN WITNESS WHEREOF, the Parties have signed this Amendment to be executed by their duly authorized officers and attorneys as of the Effective Date.

City of DeKalb

  
Bill Nicklas, City Manager

DeKalb Taylor Solar, LLC

  
Tim Polz, Authorized Person

Northern Tier Farm Partnership

\_\_\_\_\_  
David Geils, Partner

City of DeKalb

**DeKalb Taylor Solar, LLC**

Northern Tier Farm Partnership

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EXHIBIT A  
DESCRIPTION OF THE PROPERTY

The following described real estate, situated in the County of DeKalb in the State of Illinois, to-wit:

That part of Lot A of Section 19 of the Charles F. Noble Farm Plat recorded in Book "G" of Plats, Page 32, on April 9, 1937, in Township 40 North, Range 5, East of the Third Principal Meridian, DeKalb County, Illinois, described as follows: Beginning at the Southwest corner of said Lot A; thence North 0 degrees 12 minutes 45 seconds East, 1,332.29 feet (1334.1 feet record) (bearings assumed for descriptive purposes) on the West line of said Lot A to the Northwest corner thereof; thence South 89 degrees 51 minutes 26 seconds East, 1336.97 feet on the North line of said Lot A to the West line of a 5 acre Parcel; thence South 0 degrees 08 minutes 34 seconds West, 435.00 feet on said West line to the South line of said 5 acre parcel; thence South 89 degrees 51 minutes 26 seconds East, 535.79 feet on said South line to the West line of Airport Tract 15, also being the West line of relocated Loves Road; thence Southerly, 143.96 feet on said West line on a curve to the right having a radius of 560.00 feet, the chord of said curve bears South 12 degrees 38 minutes 07 seconds West, 143.57 feet; thence South 20 degrees 00 minutes 00 seconds West, 358.32 feet on said West line; thence Southwesterly, 673.29 feet on said West line on a curve to the right having a radius of 560.00 feet, the chord of said curve bears South 54 degrees 26 minutes 37 seconds West, 633.47 feet; thence South 1 degree 06 minutes 46 seconds East, 31.90 feet on said West line of Airport Tract 15 to the South line of the North 1/2 of the North Half of said Section 19; thence South 89 degrees 15 minutes 42 seconds West, 1,208.02 feet on said South line to the point of beginning;

AND BEING the same property conveyed to The City of De Kalb, an Illinois municipal corporation from Charles M. Winter, Sr., as trustee under the provisions of a certain trust agreement dated February 12, 1990, and known as Trust Number 101, as to an undivided one-half interest, and Lova L. Winter, as trustee under the provisions of a certain trust agreement dated February 12, 1990, and known as Trust Number 102, as to an undivided one-half interest by Trustee's Deed dated November 7, 2006 and recorded November 8, 2006 in Instrument No. 2006020867.

Tax Parcel No. 09-19-100-088

EXHIBIT B  
SOLAR LEASE BETWEEN CITY OF DEKALB AND DEKALB TAYLOR SOLAR, LLC  
[See attached.]

**ORDINANCE 2021-052**

**PASSED: DECEMBER 13, 2021**

**APPROVING A DEVELOPMENT AGREEMENT WITH DEKALB TAYLOR  
SOLAR, LLC (PIN: 09-19-100-088).**

**WHEREAS**, the City of DeKalb (the "City") is a home rule unit of local government and may exercise any power and perform any function pertaining to its government and affairs pursuant to Article VII, Section 6, of the Illinois Constitution of 1970; and

**WHEREAS**, the City is the owner of real property legally described in Exhibit A attached hereto and incorporated herein by reference (the "Premises"); and

**WHEREAS**, DeKalb Taylor Solar, LLC (the "Developer"), is a Delaware limited liability company that develops, constructs, maintains, and operates solar energy generating and transmission facilities also known as solar farms; and

**WHEREAS**, City staff and Developer negotiated a Land Lease and Solar Easement Agreement for the Premises in the same or substantially similar form as Exhibit B attached hereto and incorporated herein (the "Agreement") wherein Developer shall lease the Premises from the City for the purpose of developing, maintaining, and operating a commercial solar farm on the Premises pursuant to the terms of the Agreement; and

**WHEREAS**, the City's corporate authorities find that it is in the City's best interests for the promotion of the public health, morals and welfare to approve the Agreement; and

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DEKALB, ILLINOIS:**

**SECTION 1:** The recitals to this Ordinance are true, material, adopted and incorporated herein as Section 1 to this Ordinance.

**SECTION 2:** The City's corporate authorities, by a vote of three-fourths of the members then holding office, approve and ratify the Agreement in the same or substantially similar form as Exhibit B attached hereto and incorporated herein, and further authorize and direct the Mayor to execute, and the Executive Assistant to attest, the Agreement on behalf of the City, and for City staff to take all acts necessary to effectuate the Agreement.

**SECTION 3:** This Ordinance and each of its terms shall be the effective legislative act of a home rule municipality without regard to whether such ordinance should (a) contain terms contrary to the provision of current or subsequent non-preemptive state law, or (b) legislate in a manner or regarding a matter not delegated to municipalities by state law. It is the intent of the City's corporate authorities that to the extent that the terms of this ordinance should be inconsistent with any non-preemptive state law, that this ordinance shall supersede state law in that regard within its jurisdiction.

**SECTION 4:** This Ordinance shall be in full force and effect from and after its passage as provided by law.

**PASSED BY THE CITY COUNCIL** of the City of DeKalb, Illinois, at a Regular meeting thereof held on the 13<sup>th</sup> day of December and approved by me as Mayor on the same day. Passed by a roll call vote as follows:



FIRST READING

Morris: Absent  
Larson: Aye  
Smith: Aye  
Perkins: Aye  
McAdams: Absent  
Verbic: Aye  
Faivre: Aye  
Barnes: Aye  
TOTAL: 6-0-2

SECOND READING

Morris: Absent  
Larson: Aye  
Smith: Aye  
Perkins: Aye  
McAdams: Absent  
Verbic: Aye  
Faivre: Aye  
Barnes: Aye  
TOTAL: 6-0-2



Cohen Barnes  
COHEN BARNES, Mayor

ATTEST:

Ruth A. Scott  
Ruth A. Scott, Executive Assistant

**EXHIBIT A  
(The Premises)**

The Premises shall be legally described as follows:

That part of Lot A of Section 19 of the Charles F. Noble Farm Plat recorded in Book "G" of Plats, Page 32, on April 9, 1937, in Township 40 North, Range 5, East of the Third Principal Meridian, DeKalb County, Illinois, described as follows: Beginning at the Southwest corner of said Lot A; thence North 0 degrees 12 minutes 45 seconds East, 1,332.29 feet (1334.1 feet record) (bearings assumed for descriptive purposes) on the West line of said Lot A to the Northwest corner thereof; thence South 89 degrees 51 minutes 26 seconds East, 1336.97 feet on the North line of said Lot A to the West line of a 5 acre Parcel; thence South 0 degrees 08 minutes 34 seconds West, 435.00 feet on said West line to the South line of said 5 acre parcel; thence South 89 degrees 51 minutes 26 seconds East, 535.79 feet on said South line to the West line of Airport Tract 15, also being the West line of relocated Loves Road; thence Southerly, 143.96 feet on said West line on a curve to the right having a radius of 560.00 feet, the chord of said curve bears South 12 degrees 38 minutes 07 seconds West, 143.57 feet; thence South 20 degrees 00 minutes 00 seconds West, 358.32 feet on said West line; thence Southwesterly, 673.29 feet on said West line on a curve to the right having a radius of 560.00 feet, the chord of said curve bears South 54 degrees 26 minutes 37 seconds West, 633.47 feet; thence South 1 degree 06 minutes 46 seconds East, 31.90 feet on said West line of Airport Tract 15 to the South line of the North 1/2 of the North Half of said Section 19; thence South 89 degrees 15 minutes 42 seconds West, 1,208.02 feet on said South line to the point of beginning;

AND BEING the same property conveyed to The City of De Kalb, an Illinois municipal corporation from Charles M. Winter, Sr., as trustee under the provisions of a certain trust agreement dated February 12, 1990, and known as Trust Number 101, as to an undivided one-half interest, and Lova L. Winter, as trustee under the provisions of a certain trust agreement dated February 12, 1990, and known as Trust Number 102, as to an undivided one-half interest by Trustee's Deed dated November 7, 2006 and recorded November 8, 2006 in Instrument No. 2006020867.

Tax Parcel No. 09-19-100-088

Ordinance 2021-052

**EXHIBIT B**  
**(DeKalb Taylor Solar Lease)**

**LAND LEASE AND SOLAR EASEMENT**

**Between**

**City of DeKalb**

**And**

**DeKalb Taylor Solar, LLC**

**Dated as of**

**December 13, 2021**

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## LAND LEASE AND SOLAR EASEMENT

This Land Lease and Solar Easement ("Lease") is made on \_\_\_\_\_, 202\_\_ (the "Effective Date") between City of DeKalb, an Illinois home rule municipal corporation ("City" or "Owner"), and DeKalb Taylor Solar, LLC, a Delaware limited liability company, and its successors and assigns ("Project Company"). Owner and Project Company agree as follows:

### ARTICLE I. Premises and Owner's Servient Estate

#### Section 1.1 General

(a) **Lease of Premises for Solar Energy Purposes.** Owner leases to Project Company, and Project Company leases from Owner, the real property identified in Exhibit A attached hereto (the "Premises") for the sole purpose of monitoring, testing and evaluating the Premises for solar energy generation (the "Development Period") and of constructing, installing, using, replacing, relocating and removing from time to time, and maintaining and operating, solar energy generating equipment, overhead and/or underground electrical transmission and communications lines, electric transformers, energy storage facilities, telecommunications equipment, power generation facilities and substations to be operated in conjunction with solar energy generating equipment installations, roads, and related improvements, facilities and equipment (collectively, "Solar Facilities"), including, without limitation, a line or lines of towers with wires and cables, and/or underground wires and cables, for the transmission of electrical energy and/or for communication purposes, and all necessary and proper foundations, footings, crossarms and other appliances and fixtures for use in connection with said towers, wires and cables on, along and in the Premises, together with the appropriate rights of way. Project Company will have the right to relocate existing Solar Facilities during the Term. Project Company will have the exclusive right to use and possess the Premises for solar energy purposes. For purposes of this Lease, "solar energy purposes" means converting solar energy into electrical energy, and collecting and transmitting the electrical energy so converted, together with any and all activities related thereto.

The general identification of the Premises described in Exhibit A attached to this Lease on the Effective Date may not be a precise legal description of the Premises. The Owner and Project Company hereby acknowledge and confirm that, notwithstanding any insufficiency in the description attached as Exhibit A, the parties desire to enter this Lease and to be fully and legally bound by this Lease. Therefore, Owner and Project Company agree that (i) they are thoroughly familiar with the proposed location of the area comprising the Premises, and (ii) upon Project Company obtaining a Survey (as defined below), the metes and bounds description of the Premises will be substituted for Exhibit A pursuant to an amendment to this Lease and such metes and bounds description will become the final legal description of the Premises. The parties acknowledge and agree that they are legally bound under this Lease pursuant to the depiction of the Premises attached as Exhibit A and both parties will be obligated to perform hereunder based on such depiction of the Premises. Prior to the construction of any Solar Facilities on the Premises, Project Company, at its expense, will obtain and deliver to Owner a survey of the Premises prepared by an Illinois registered professional land surveyor (the "Survey"). Project Company

may, in its sole discretion, develop only a portion of the Premises with Solar Facilities, and thereby reduce the size of the Premises from that depicted in Exhibit A.

(b) **Access Easement.** Owner hereby grants to Project Company, for the Term (as defined below), an easement (the "**Access Easement**") over, across and on City property adjacent to the Premises, excluding public roads and highways, as shall be legally described in a subsequent written instrument granting said Access Easement (the "**Owner's Servient Estate**"), for ingress to and egress from the Solar Facilities (whether located on the Premises, on adjacent property or elsewhere) by means of any existing roads and lanes, or by such route or routes as Project Company may construct from time to time. The Access Easement will include the right to improve existing roads and lanes, or to build new roads, and will run with and bind the Owner's Servient Estate, and will inure to the benefit of and be binding upon Owner and Project Company, and their respective heirs, personal representatives, transferees, successors and assigns. Subject to Owner's written consent, which shall not be unreasonably withheld, the location and dimensions of such access roads will be made by Project Company in its sole discretion, except that: Project Company agrees to use commercially reasonable efforts to (i) minimize the interruption of Owner's operations on the Owner's Servient Estate by such access roads, and (ii) install such access roads perpendicular to county roads.

(c) **Transmission Easement.** Owner hereby grants Project Company one or more easements for Transmission Facilities (defined below) ("**Transmission Easements**") on, over and across the Owner's Servient Estate and the Premises, on such portions of the Owner's Servient Estate and the Premises as will be notified to Owner by Project Company, subject to Owner's written consent, which shall not be unreasonably withheld. Any such Transmission Easement will contain all of the rights and privileges for Transmission Facilities as are set forth in this Lease. Any Transmission Easement will also include the right of ingress to and egress from the Solar Facilities (whether located on the Premises, on adjacent property or elsewhere) over and along the Owner's Servient Estate by means of roads and lanes thereon if existing, or otherwise by such route or routes as Project Company or Owner may construct from time to time. The term of the Transmission Easements will be the same as the term of this Lease unless terminated by Project Company by written notice to Owner as set forth herein, and will not expire or be terminable by Owner unless this Agreement is terminated. Project Company will have the right to assign or convey all or any portion of any Transmission Easement to any person on an exclusive or nonexclusive basis, subject to Owner's written consent, which shall not be unreasonably withheld. Any Transmission Easement will run with the Owner's Servient Estate and inure to the benefit of and be binding upon Owner and Project Company and their respective transferees, successors, and assigns. Project Company will have the right to assign its rights hereunder relating to the construction, operation, repair and/or maintenance of the electric transmission or distribution systems to a third party that owns, operates and/or maintains electric transmission or distribution systems, subject to Owner's written consent, which shall not be unreasonably withheld. As used in this Lease, the term "**Transmission Facilities**" means electrical transmission and/or distribution and communications lines and related cables, wires, conduit, circuit breakers and transformers, and any and all necessary and proper facilities, fixtures, and additional equipment any way related to or associated with any of the foregoing for the transmission and delivery of electrical energy. Transmission Facilities will be deemed to be Solar Facilities. Project Company will bury all collector lines that are 138kv or less, except such lines that Project Company, in good faith, determines that it is unable to bury for technical reasons.



(d) **Owner's Retained Rights.** Owner will retain the right to use the Owner's Servient Estate not occupied by Access Easement or Transmission Facilities and that are outside of any fenced area erected by Tenant that enclose such Solar Facilities to the extent its use is not inconsistent with the Project Company's rights under this Lease.

(e) **Location of Solar Facilities.** Project Company will make good faith efforts to consult with Owner on its site development plan prior to construction of solar facilities, roads and electric power lines, provided that Project Company will make all such final siting decisions in Project Company's sole discretion; provided, however, that Project Company's final siting decisions shall comply with all applicable provisions of the City's Municipal Code.

(f) **Part of a Larger Project.** Owner acknowledges that Project Company may elect to develop commercial solar energy facilities with which the Premises will share structural and transmission components, ingress and egress, utility access, and other support, all of which are specifically designed to be interrelated and integrated in operation and use for the full life of such facilities. Project Company may designate, from time to time, the solar energy facilities with which the Premises is included in a defined solar energy project (the "Project"). The properties designated by Project Company as included in the Project with the Premises and the Owner's Servient Estate will be referred to as the "Project Properties." Nothing contained in this Lease will be construed as requiring Project Company to construct or operate the Project or continue the operation of the Project or any portion thereof, if it is so constructed.

## **Section 1.2 Solar Easement**

(a) **Open Access to Sun.** Owner hereby grants and conveys to Project Company an exclusive easement on, over and across the Owner's Servient Estate and the Premises for the following: the open and unobstructed access to the sun to any Solar Facilities on any of the Project Properties and to ensure adequate exposure of the Solar Facilities to the sun. In addition, Owner hereby grants and conveys to Project Company an exclusive easement prohibiting any obstruction to the open and unobstructed access to the sun (together with the preceding sentence, the "Solar Easement") throughout the entire Premises to and for the benefit of the area existing horizontally three hundred and sixty degrees (360°) from any point where any Solar Facility is or may be located at any time from time to time (each such point referred to as a "Site") and for a distance from each Site to the boundaries of the Premises, together vertically through all space located above the surface of the Premises, that is, one hundred eighty degrees (180°) or such greater number or numbers of degrees as may be necessary to extend from each point on and along a line drawn along the surface from each point along the exterior boundary of the Premises through each Site to each point and on and along such line to the opposite exterior boundary of the Premises.

(b) **Owner Improvements.** Trees, buildings and other improvements located on the Owner's Servient Estate (but not the Premises) as of the date of this Lease will be allowed to remain, and Project Company may not require their removal. Owner may not place or plant any trees, buildings or improvements (collectively, an "Improvement") on the Owner's Servient Estate after the date of this Lease which may, in Project Company's sole judgment, impede or materially interfere with the open and unobstructed access to the sun to any Site or Facility (located either on the Premises or on the Project Properties), unless Owner has received written approval from Project Company for any such trees, structure or improvement. Subject to the foregoing,

Owner may construct an Improvement on the Owner's Servient Estate if such Improvement meets all of the following requirements:

- (a) Such Improvement poses no interference with any part of the Solar Facilities located on the Premises or elsewhere in the Project; and
- (b) Such Improvement is located at least [five hundred (500)] feet from the location of any Site (whether such Site is located on the Premises or elsewhere in the Project).

(an Improvement that complies with all of the foregoing restrictions will be referred to as a "Permitted Improvement"). Owner may construct such Permitted Improvements without the prior consent of Project Company. However, should Owner construct an Improvement that Project Company reasonably determines does not comply with any of the restrictions of this section, Project Company may provide notice to Owner of the reasons for said determination and request that said Improvement must be removed within thirty (30) days of Owner's receipt of Project Company's notice. Should Owner fail to remove the non-complying Improvement within such thirty (30) day period, Project Company may cause the same to be removed and may off-set the cost of the removal against any lease payments due hereunder to Owner, which shall be the Project Company's sole and exclusive remedy for any such non-complying Improvement.

(c) **No Interference.** Owner will not materially interfere with, and will not allow any other party to materially interfere with, the free, unobstructed and open and unobstructed access to the sun, solar speed or solar direction over and across the Premises.

## **ARTICLE II. Lease Term**

### **Section 2.1 Development Period; Operating Term; Renewal Terms**

(a) **Development Period.** Project Company's rights under this Lease will be in effect throughout the Development Period. The "Development Period" commences on the Effective Date of this Lease and expires on the earlier of the Operation Date or December 31, 2023; provided, however, that the Development Period may be extended by one (1) calendar year upon the mutual written agreement of the Parties, which shall not be unreasonably withheld by the City if Project Company exercises due diligence and commercially reasonable efforts to promptly develop at least one (1) Solar Facility on the Premises following the commencement of this Lease.

(b) **Operating Term.** This Lease will automatically be extended for the Operating Term upon the earlier of: (i) the date when at least one (1) solar generating facility installed on the Premises is a Commercially Operational Solar Facility, as defined in Exhibit B (the "**Operation Date**"); (ii) the date that is one (1) calendar year from when the City first issues a building permit to construct at least one (1) solar generating facility installed on the Premises (the "**Construction Completion Date**") or (iii) the date when Owner receives written notice from Project Company of Project Company's election to extend the Term for the Operating Term ("**Operating Term Notice Date**"); provided, however, that either the Operation Date or the Operating Term Notice Date occurs prior to the expiration of the Development Period. The Operating Term of this Lease ("**Operating Term**") will be for a period of twenty-five (25) years from the earlier of either the Operation Date or the Operating Term Notice Date, as applicable, unless terminated earlier in

accordance with the terms of this Lease. The Development Period ends at the time the Operating Term begins

(c) **Renewal Terms.** Project Company will have the right, at its option, to extend the Operating Term for one (1) additional period of ten (10) years (the "Renewal Terms"). To exercise its option to renew the Term for the Renewal Term, Project Company must deliver a written extension notice to Owner prior to the expiration of the Operating Term. Project Company must timely deliver such written notice to exercise effectively its options to extend the Term for the Renewal Term. The terms of the Lease during the Renewal Term will be the same terms and conditions applicable during the Operating Term, except as specifically provided herein. Project Company will have no right to extend the Term beyond the Renewal Term. If Project Company fails timely to deliver the extension notice, this Lease will terminate at the end of the Operating Term, and Project Company will have no further options or rights to renew or extend the Term.

(d) **Entire Term.** The "Term" of this Lease will be the Development Period together with, if Project Company exercises the applicable options, the Operating Term and the Renewal Term.

## **Section 2.2 Termination of Lease**

The occurrence of any of the following events will terminate this Lease:

- (a) The expiration of the Term of this Lease as set forth in Section 2.1; or
- (b) The written agreement of the parties to terminate this Lease; or
- (c) A Breach (as defined below) of this Lease by either party and the election of the non-breaching party to terminate the Lease pursuant to Article IX; or
- (d) At the option of either Party, in said Party's sole and absolute discretion, thirty calendar (30) days after said Party's execution and delivery of written notice of termination to the other Party; or
- (e) A condemnation of all or a portion of the Premises and the election of the Project Company to terminate the Lease pursuant to Article VIII; or
- (f) Pursuant to applicable law, except that if any such applicable law is amended or terminated after the date hereof, and the effect of such amendment or termination is to extend the permissible development period to or eliminate the requirement that commercial operation or the development of the potential to produce solar energy begin within a specified time period, then this Lease will automatically be amended to incorporate such amendment or termination, as if such amendment or termination was fully incorporated herein.

## **Section 2.3 Survival of Covenants**

Owner acknowledges that the covenants, conditions, rights and restrictions in favor of Project Company pursuant to this Lease including, but not limited to, the Access Easement and Solar Easement, and Project Company's use of and benefit from those covenants, conditions, rights

and restrictions, may constitute a portion of the Project and that the covenants, conditions, rights and restrictions in favor of Project Company pursuant to this Lease will not be deemed nominal, invalid, inoperative or otherwise be disregarded while any portion of the Project remains operational.

### **ARTICLE III. Payments and Taxes**

#### **Section 3.1 Payments**

Project Company will pay Owner according to the Payment Terms set forth in Exhibit B.

#### **Section 3.2 Taxes, Assessments and Utilities**

(a) **Owner Taxes and Assessments.** Owner represents that the Premises is currently exempt from all real property taxes and assessments under PIN 0919100088.

(b) **Project Company Taxes and Assessments.** Project Company shall pay all real and personal property taxes and assessments levied against the Premises, Solar Facilities, and leasehold estate created by this Lease when due, including any such taxes based on electricity production.

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

(d) **Project Company Utilities.** Project Company will pay for all water, electric, telecommunications and any other utility services used by the Solar Facilities or Project Company on the Premises and Owner's Parcel.

#### **Section 3.3. Crop Damage**

(a) **During initial construction,** Project Company shall pay Owner crop damage on a per acre basis (prorated for fractional portions), for any portions of the Owner's Servient Estate (but not the Premises) that are taken out of commercial crop production during the construction of the Solar Facilities and any and all crops that are removed or damaged as a direct result of Project Company's construction and operation of Solar Facilities on the Owner's Servient Estate. Portions of the Owner's Servient Estate shall be deemed to have been taken out of commercial crop production only to the extent Project Company's construction of Solar Facilities on the Owner's Servient Estate materially interferes with Owner's ability to farm such portions of the Owner's Servient Estate in which such construction occurs, assuming that Owner was actually farming such portions of the Owner's Servient Estate immediately prior to Project Company's commencing construction of the Solar Facilities on the Owner's Servient Estate. Such crop damage shall be paid one time per growing season in which such construction and crop damage occur.

Crop damage will equal "Amount of damaged acres" multiplied by "Average yield in the County of Property" multiplied by "Price".

"Amount of damaged acres" shall be based on Owner's reasonable estimate as reasonably reviewed and agreed by Project Company's representative.

"Average yield in the County of Property" shall be based on the average yield for the latest 3 years of corn in the County as published by the University of Illinois through Farmdoc ([www.farmdoc.uiuc.edu](http://www.farmdoc.uiuc.edu)), or if unavailable, another publicly available information source of average yields in the County

"Price", regardless of the actual type of crop, shall be based on the Corn futures price for December delivery during the year that crop damages occur, and will be the closing price of that year's December futures quoted on the 15<sup>th</sup> of the month in which damages occur as posted by Chicago Board of Trade, or if unavailable another publicly available information source.

(b) After initial construction is complete, Project Company shall be responsible to pay Owner any losses of income, rent, business opportunities, profits or other losses arising out of the damage by the Project Company of any crops growing on the Owner's Servient Estate as a result of the maintenance or operation of the Solar Facilities.

#### **ARTICLE IV. Project Company's Covenants**

Project Company covenants, represents and warrants to Owner as follows:

##### **Section 4.1 Mechanics Liens**

Project Company will keep the Premises and Owner's Servient Estate free and clear of all liens and claims of liens for labor, materials, services, supplies and equipment performed for or furnished to Project Company or, at the request of Project Company, any Solar Facility on the Premises and Owner's Servient Estate in connection with Project Company's use of the Premises and Owner's Servient Estate. Project Company may contest any such lien, but will post a bond or utilize other available means to remove any lien that is created during the contested proceeding. Project Company agrees to otherwise remove any lien or encumbrance for which it is responsible pursuant to this paragraph within sixty (60) days of notice to Project Company of the creation of any such lien or encumbrance.

##### **Section 4.2 Permits and Laws**

Project Company and its designees will at all times comply with all federal, state and local laws, statutes, ordinances, rules, regulations, judgments and other valid orders of any governmental authority applicable with respect to Project Company's activities pursuant to this Lease and will obtain all permits, licenses and orders required to conduct any and all such activities (collectively, "Legal Requirements"). Project Company will have the right, in its sole discretion, to contest by appropriate legal proceedings brought in the name of Project Company or in the names of both Project Company and Owner where appropriate or required, the validity or applicability to the Premises or Solar Facilities of any Legal Requirement now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity. Owner will cooperate in every reasonable way in such contest, provided Project Company reimburses Owner for its reasonable and actual out-of-pocket expense directly incurred in connection with such cooperation, to the

extent Project Company has approved such expense in advance. Any such contest or proceeding, including any maintained in the name of Owner, will be controlled and directed by Project Company, but Project Company will protect Owner from Project Company's failure to observe or comply during the contest with the contested Legal Requirement. Notwithstanding the foregoing to the contrary, Project Company shall obtain Owner's written consent prior to bringing any such contest in Owner's name.

#### **Section 4.3 Project Company's Improvements**

All Solar Facilities constructed, installed or placed on the Premises and Owner's Servient Estate by Project Company pursuant to this Lease will be and remain the sole property of Project Company and Owner will have no ownership or other interest in any Solar Facilities on the Premises and Owner's Servient Estate. The Solar Facilities are and will remain personal property of the Project Company, notwithstanding any present or future common ownership of the Solar Facilities and the Premises and Owner's Servient Estate. Throughout the Term, Project Company will, at its sole cost and expense, maintain Project Company's Solar Facilities in good condition and repair, ordinary wear and tear excepted. After the construction of the Solar Facilities, Project Company will remove any construction debris and will restore the portions of the Premises and Owner's Servient Estate not occupied by the Solar Facilities to substantially the same condition that such portions of the Premises and Owner's Servient Estate were in prior to the construction of the Solar Facilities. All Solar Facilities constructed, installed or placed on the Premises and Owner's Servient Estate by Project Company pursuant to this Lease may be moved, removed, replaced, repaired or refurbished by Project Company at any time. Project Company will pay Owner the fair market value of caliche, gravel, or water from the Premises and Owner's Servient Estate purchased by Project Company with the consent of Owner.

#### **Section 4.4 Removal of Project Company's Improvements and Decommissioning**

(a) **Project Company Will Remove Solar Facilities.** At the end of the Term, including upon any early termination of the Lease, Project Company will remove all its Solar Facilities, including any foundations, to a depth of two (2) feet below grade, and restore the portions of the Premises and Owner's Servient Estate which had been occupied by the Solar Facilities to the either usable farmland or the same or substantially similar condition that said portions were in prior to the construction of the Solar Facilities, within six (6) months from the date the Term expires or the Lease terminates. Owner grants Project Company an easement for such removal, which easement will survive for six (6) months after the expiration or termination of this Lease.

(b) **Owner's Right to Remove Solar Facilities Upon Failure by Project Company.** If Project Company fails to remove any of the Solar Facilities within the required time period, such Solar Facilities will be considered abandoned by Project Company and Owner may remove these Solar Facilities from the Premises and Owner's Servient Estate and dispose of them in its sole discretion without notice or liability to Project Company. In such event, if Owner removes such Solar Facilities at Owner's expense, Project Company will reimburse Owner for all reasonable costs of removing those Solar Facilities as required by the Lease, less any salvage value received by Owner, within thirty (30) days after receipt of an invoice from Owner.

(c) On or before the commencement of the Operating Term, Project Company shall obtain the City Manager's approval, which shall not be unreasonably withheld, of a decommissioning plan for the Solar Facilities on the Premises (the "Decommissioning Plan"). The Decommissioning Plan shall include, but may not be limited to, the following requirements: (1) the Decommissioning Plan shall be triggered and complied with at any point that the solar panels are not actively generating energy being transmitted to the electrical grid for a period of at least one hundred and eighty (180) consecutive days or upon the termination of this Lease; (2) upon the occurrence of the first requirement, the Project Company shall have six (6) months to comply with the Decommissioning Plan and to fully remove the solar energy generation facilities from the Property; (3) provisions for removal of all structures and foundations, and the restoration of soil and vegetation to usable farmland; (4) an engineer's estimate of probable cost ("EOPC") for the costs associated with decommissioning; (5) provision of sufficient security (i.e., a bond, irrevocable letter of credit, or escrow posting) in the form and content acceptable to the City Manager to secure the costs of decommissioning and site restoration.

#### **Section 4.5 Hazardous Wastes**

Project Company will not use, dispose of or release on the Premises and Owner's Servient Estate or cause or permit to exist or be used, stored, disposed of or released on the Premises as a result of Project Company's operations, any substance which is defined as a "hazardous material", "toxic substance" or "solid waste" in any Legal Requirement except in such quantities as may be required in its normal business operations and only if such use is in full compliance with all Legal Requirements.

#### **Section 4.6 Insurance**

Project Company will obtain and maintain in force the following policies of insurance covering the Solar Facilities and Project Company's activities on the Premises and Owner's Servient Estate at all times during the Term: comprehensive general liability insurance with minimum coverage of at least \$500,000 for property damage, \$1,000,000 for bodily injury or death to any one person, and a minimum combined occurrence and annual coverage of \$2,000,000. Such insurance coverage for the Solar Facilities and Premises and Owner's Servient Estate may be provided as part of a blanket policy that covers other Solar Facilities or properties as well. Such insurance policies shall name Owner as an additional insured endorsement on a primary basis with no right of contribution and waiver of subrogation. Any such policies will provide for thirty (30) days prior written notice to Owner of any cancellation or material change. Project Company will provide Owner with copies of certificates of insurance evidencing this coverage upon request by Owner. Policies will provide coverage for any costs of defense or related fees incurred by Owner. No coverage is provided for liability arising out of Owner's own negligent or intentional act or omission.

#### **Section 4.8 Site Rules**

While on the Premises, Project Company will use commercially reasonable efforts to comply with the site rules attached hereto as Exhibit D.



## **ARTICLE V. Owner Covenants**

Owner covenants, represents and warrants to Project Company as follows:

### **Section 5.1 Title and Authority**

Except to the extent otherwise stated in this Lease, to Owner's knowledge, Owner is the sole owner of the Premises and Owner's Servient Estate in fee simple and each person or entity signing the Lease on behalf of Owner has the full and unrestricted authority to execute and deliver this Lease and to grant the leaseholds, easements and other rights granted to Project Company herein. There are no encumbrances or liens (including farm or other tenancies) against the Premises and Owner's Servient Estate. When signed by Owner, this Lease constitutes a valid and binding agreement enforceable against Owner in accordance with its terms. Except for Project Company's default and as may otherwise be provided by this Lease, Owner expressly waives any and all existing and future statutory, common law and other liens on the Solar Facilities that Owner may have under applicable law. To the extent that any such lien cannot be waived under applicable law, Owner hereby subordinates such lien to all existing and future liens and security interests in favor of Project Company's creditors.

### **Section 5.2 Cooperation to Eliminate Lien Interference**

Owner will cooperate with Project Company to obtain non-disturbance and subordination agreements, or such other necessary agreements, from any person or entity with a lien, encumbrance, mortgage, deed of trust, lease or other exception to Owner's fee title to the Premises and Owner's Servient Estate to the extent necessary to eliminate any actual or potential interference by any such lienholder with any rights granted to Project Company under this Lease (including, but not limited to any Wetlands Reserve Program ("WRP") or Conservation Reserve Program ("CRP")). Owner will also cooperate with Project Company to obtain and maintain any permits or approvals needed for the Solar Facilities. Owner will also provide Project Company with such further assurances and will execute any estoppel certificates, consents to assignments, non-disturbance and subordination agreements, or additional documents that may be reasonably necessary for recording purposes or requested by Project Company or any of its lenders.

### **Section 5.3 Quiet Enjoyment**

As long as Project Company is not in Breach of this Lease, Project Company will have the quiet use and enjoyment of the Premises and Owner's Servient Estate in accordance with the terms of this Lease without any interference of any kind by Owner. Owner and its activities on the Owner's Servient Estate and any grant of rights Owner makes to any other person will be only as permitted under this Lease and will not interfere with any of Project Company's rights or activities pursuant to this Lease, and Owner will not interfere or allow interference with any of Project Company's rights or activities pursuant to this Lease, and Owner will not materially interfere or allow material interference with the solar speed or solar direction over the Premises or otherwise engage in activities or allow any activities which might impede or decrease the output or efficiency of the Solar Facilities.



#### **Section 5.4 Exclusivity**

Project Company will have the sole and exclusive rights to install and operate Solar Facilities on the Premises and Owner's Servient Estate, to use the Premises and Owner's Servient Estate for solar energy purposes and to convert all of the solar resources of the Premises and Owner's Servient Estate. In no event during the Term will Owner construct, build or locate, or allow others to construct, build or locate, any solar energy facility or similar project on the Premises and Owner's Servient Estate.

#### **Section 5.5 Hazardous Materials**

Owner will not use, store, dispose of or release on the Premises and Owner's Servient Estate or cause or permit to exist or be used, stored, disposed of or released on the Premises and Owner's Servient Estate as a result of Owner's operations, any substance which is defined as a "hazardous substance", "hazardous material", or "solid waste" in any Legal Requirement, except in such quantities as may be required in the operations Owner is permitted to conduct on the Premises and Owner's Servient Estate and only if such use is in full compliance with all Legal Requirements. Owner represents and warrants to Project Company that, as of the date hereof, there is no "hazardous substance", "hazardous material", or "solid waste" on, in or under the Premises in violation of any Legal Requirements.

#### **Section 5.6 Mineral Rights and Lateral Support**

(a) "Subsurface Interests" include, but are not limited to oil, gas, coal, cement materials, sodium sulfate, sand and gravel, scoria, road material, building stone, chemical substances, metallic ores, uranium ores, or colloidal or other clays.

(b) Owner owns 100% of the Subsurface Interests in and under the Premises. Project Company will have and exercise the right of subjacent and lateral support for the Solar Facilities on the Premises to whatever extent is necessary for the safe construction, operation and maintenance on the Solar Facilities. Owner expressly covenants that Owner will not excavate so near the sides of or underneath the Solar Facilities as to undermine or otherwise adversely affect their stability. Neither Owner nor its successors or assigns will be entitled to use, or authorize the use of, any portion of the surface of the Owner's Servient Estate located within three hundred (300) feet of any existing or proposed Solar Facility or within one hundred (100) feet of an existing or proposed transmission line (or any other portion of the Premises that would unreasonably interfere with the use by Project Company of the Premises) for the purpose of exploring, drilling, or mining for or producing Subsurface Interests, without the prior written consent of Project Company, which consent will not be unreasonably withheld, delayed or denied. Owner agrees that the new agreement affecting Subsurface Interests will expressly provide that such holder will not conduct any activities within the areas described in this Section 5.6 and will not otherwise interfere with Project Company's rights under the Lease.

#### **Section 5.7 Operation of the Solar Facilities**

Owner acknowledges and understands that the Solar Facilities to be located on the Premises and Owner's Servient Estate, or in connection with the Project on adjacent property, may impact

the view on the Owner's Servient Estate or otherwise cause visual effects. Owner covenants and agrees that the Owner will not assert that the Solar Facilities constitute a nuisance.

## **ARTICLE VI. Indemnification**

### **Section 6.1 Indemnification**

Each party (the "Indemnifying Party") agrees to defend, indemnify and hold harmless the other party and the other party's officers, directors, employees, representatives and agents (collectively the "Indemnified Party") against any and all losses, damages, claims, expenses and liabilities for physical damage to property and for bodily injury to any person, including, without limitation, reasonable attorneys' fees, to the extent resulting from or arising out of (i) any operations or activities of the Indemnifying Party on the Premises and Owner's Servient Estate or (ii) any negligent or intentional act or omission on the part of the Indemnifying Party with respect to this Lease or the Premises and Owner's Servient Estate. This indemnification will not apply to losses, damages, claims, expenses and liabilities to the extent caused by any negligent or intentional act or omission on the part of the Indemnified Party. This indemnification will survive the termination of this Lease.

## **ARTICLE VII. Assignment; Encumbrance of Lease**

### **Section 7.1 Right to Encumber**

(a) **Project Company Right to Mortgage Leasehold Interest.** Project Company may not time mortgage all or any part of its interest in the Lease and rights under this Lease and/or enter into a collateral assignment of all or any part of its interest in the Lease or rights under this Lease to any entity ("Lender") without the prior written consent of Owner, which shall not be unreasonably withheld. Any Lender will have no obligations under this Lease until such time as it exercises its rights to acquire Project Company's interests subject to the lien of Lender's mortgage by foreclosure or otherwise assumes the obligations of Project Company directly.

(b) **Amendment Requires Lender Consent.** Owner and Project Company agree that, once all or any part of Project Company's interests in the Lease are mortgaged or assigned to a Lender, they will not modify or terminate this Lease without the prior written consent of the Lender.

(c) **Lender Right to Cure Project Company Default.** Owner agrees that any Lender will have the right to make any payment and to do any other act or thing required to be performed by Project Company under this Lease, and any such payment, act or thing performed by Lender will be effective to prevent a Breach by Project Company and any forfeiture of any of Project Company's rights under this Lease as if done by Project Company itself.

(d) **Notice from Owner to Lender in Case of Project Company Default.** During the time all or any part of Project Company's interests in the Lease are mortgaged or assigned to any Lender, if Project Company defaults under any of its obligations and Owner is required to give Project Company notice of the default, Owner will also be required to give Lender notice of the default. If Owner becomes entitled to terminate this Lease due to an uncured default by Project Company, Owner will not terminate this Lease unless it has first given written notice of the

uncured default and of its intent to terminate this Lease to the Lender and has given the Lender at least thirty (30) days from such notice to cure the default to prevent termination of this Lease. If within such thirty (30) day period the Lender notifies the Owner that it must foreclose on Project Company's interest or otherwise take possession of Project Company's interest under this Lease in order to cure the default, Owner will not terminate this Lease and will permit the Lender a reasonable period of time necessary for the Lender, with the exercise of due diligence, to foreclose or acquire Project Company's interest under this Lease and to perform or cause to be performed all of the covenants and agreements to be performed and observed by Project Company. The time within which Lender must foreclose or acquire Project Company's interest will be extended to the extent Lender is prohibited by an order or injunction issued by a court or the operation of any bankruptcy or insolvency law from commencing or prosecuting the necessary foreclosure or acquisition.

(e) **Recognition of Lender as Successor.** The acquisition of all or any part of Project Company's interests in the Lease by any Lender through foreclosure or other judicial or non-judicial proceedings in the nature of foreclosure, or by any conveyance in lieu of foreclosure, will not require the consent of Owner nor constitute a Breach or default of this Lease by Project Company, and upon the completion of the acquisition or conveyance, Owner will acknowledge and recognize Lender as Project Company's proper successor under this Lease upon Lender's cure of any existing Project Company defaults and assumption of the obligations of Project Company under this Lease prospectively.

(f) **New Lease.** In the event this Lease is rejected by a trustee or a debtor-in possession in any bankruptcy or insolvency proceeding, Owner agrees, upon request by any Lender within sixty (60) days after the rejection or termination, to execute and deliver to Project Company or Lender a new lease for the Premises which (i) will be effective as of the date of the rejection or termination of this Lease, (ii) will be for a term equal to the remainder of the Term before giving effect to such rejection or termination, and (iii) will contain the same terms, covenants, agreements, provisions, conditions and limitations as are contained in this Lease (except for any obligations or requirements which have been fulfilled by Project Company or Lender prior to rejection or termination). Prior to the execution and delivery of any such new lease Project Company, or Lender, will (i) pay Owner any amounts which are due Owner from Project Company, (ii) pay Owner any and all amounts which would have been due under this Lease but for the rejection or termination from the date of the rejection or termination to the date of the new lease and (iii) agree in writing to perform or cause to be performed all of the other covenants and agreements to be performed by Project Company under this Lease to the extent Project Company failed to perform them prior to the execution and delivery of the new lease.

## **Section 7.2 Assignment of Project Company's Interest**

Project Company and any successor or assign of Project Company shall not, without Owner's prior written consent, which shall not be unreasonably withheld, do any of the following, conditionally or unconditionally, with respect this Lease or to all or any portion of the Premises and Owner's Servient Estate: grant co-leases, separate leases, subleases, easements, licenses or similar rights (however denominated) to one or more third parties; or sell, convey, lease, assign, mortgage, encumber or transfer to one or more third parties or to any affiliate of Project Company's this Lease, or any right or interest in this Lease, or any or all right or interest of Project Company

in the Premises and Owner's Servient Estate or in any or all of the Solar Facilities that Project Company or any other party may now or hereafter install on the Premises and Owner's Servient Estate. Owner's consent shall not be unreasonably withheld if (i) any such assignment, transfer or conveyance will not be for a period beyond the Term; (ii) the assignee or transferee will assume and be subject to all of the obligations, covenants and conditions applicable to the Project Company; (iii) the assignment is not the result of any bankruptcy proceeding; and (iv) Project Company will not be relieved from liability for any of its obligations under this Lease by virtue of the assignment or conveyance unless Project Company assigns or conveys all of its interests under the Lease to the assignee or transferee, in which event Project Company will have no continuing liability.

### **Section 7.3 Continuing Nature of Obligations**

(a) **Benefits are "In Gross".** The Solar Easement and all other easements and related rights granted by Owner in this Lease to Project Company are easements "in gross", which means, among other things, that they are interests personal to and for the benefit of Project Company, and its successors and assigns, as owner of the rights created by the Solar Easement and such other easements. The Access Easement, the Solar Easement and other rights granted Project Company by Owner in this Lease are independent of any lands or estates or interest in lands, there is no other real property benefiting from the Solar Easement and, as between the Premises and Owner's Servient Estate and other tracts of property on which Project Company may locate Solar Facilities, no tract is considered dominant or servient as to the other.

(b) **Burdens Run With and Against the Land.** The burdens of the Solar Easement, the Access Easement and all other rights granted to Project Company in this Lease will run with and against the Premises and Owner's Servient Estate and will be a charge and burden on the Premises and Owner's Servient Estate and will be binding upon and against Owner and its successors, assigns, permittees, licensees, lessees, employees and agents. The Lease, the Access Easement and the Solar Easement will inure to the benefit of Project Company and its successors, assigns, permittees, licensees and Project lessees.

## **ARTICLE VIII. Condemnation**

### **Section 8.1 Effect of Condemnation**

If eminent domain proceedings are commenced against all or any portion of the Premises and Owner's Servient Estate, and the taking and proposed use of such property would prevent or adversely affect Project Company's construction, installation or operation of Solar Facilities on the Premises and Owner's Servient Estate, at Project Company's option, the parties will either amend this Lease to reflect any necessary relocation of the Solar Facilities which will preserve the value and benefit of the Lease to Project Company, together with any corresponding payments, or this Lease will terminate in which event neither party will have any further obligations.

### **Section 8.2 Condemnation Proceeds**

All payments made by a condemnor on account of a taking by eminent domain will be the property of the Owner, except that Project Company will be entitled to any award or amount paid for the reasonable costs of removing or relocating any of the Solar Facilities or the loss of any such

Solar Facilities or the use of the Premises pursuant to the Lease. Project Company will have the right to participate in any condemnation proceedings to this extent.

## **ARTICLE IX. Default/Termination**

### **Section 9.1 Events of Default**

Each of the following will constitute a "**Breach**" that will permit the non-defaulting party to terminate this Lease or pursue other remedies available at law or equity.

(i) any failure by Project Company to pay any amounts due under Article III if the failure to pay continues for thirty (30) days after written notice from Owner;

(ii) any other breach of this Lease by either party which continues for thirty (30) days after written notice of default from the non-defaulting party or, if the cure will take longer than thirty (30) days, the length of time necessary to effect cure as long as the defaulting party is making diligent efforts to cure during that time.

### **Section 9.2 Surrender**

Upon the termination or expiration of this Lease, Project Company will peaceably surrender the Premises and Owner's Servient Estate to Owner and remove all Solar Facilities from the Premises and Owner's Servient Estate and restore the Premises and Owner's Servient Estate to usable farmland at Project Company's expense within twelve months from the date the Lease expires or is terminated. For the period between the date of termination or expiration of this Lease and the date on which Project Company completes removal of the Solar Facilities as required under Section 4.4 of this Lease, Project Company will continue to pay Solar Rent (as defined in Exhibit D) for each Commercially Operational Solar Facility installed on the Premises.

### **Section 9.3 Remedies**

In the event of any Default, each Party shall have all rights and remedies set forth in this Lease and available at law or equity, which shall be separate, distinct and cumulative.

### **Section 9.4 Delinquent Payments**

If Project Company fails to pay Owner any sum to be paid by Project Company hereunder within thirty (30) days after such payment is due, interest on the unpaid amount will accrue at a rate of ten percent (10%) per annum or the maximum rate allowed by law, whichever is less, from thirty (30) days after the date such payment was due until the date such payment is made.

## **ARTICLE X. Miscellaneous**

### **Section 10.1 Notice**

Notices, consents or other documents required or permitted by this Lease must be given by personal delivery, reputable overnight courier or certified U.S. mail postage prepaid and will be sent to the respective parties as follows (or at such other address as either party may designate

upon written notice to the other party in the manner provided in this paragraph) and will be deemed delivered upon actual delivery or refusal, if personally delivered, upon the date of actual delivery or refusal shown on the courier's delivery receipt if sent by overnight courier and on the fourth business day after deposit in the U.S. mail if sent by certified mail:

To Owner:

ATTN: City Manager  
City of DeKalb  
164 E. Lincoln Hwy.  
DeKalb, IL 60115

To Project Company:

DeKalb Taylor Solar, LLC  
c/o SunVest Solar, LLC  
30 W. State Street, Suite 1  
Geneva, IL 60134  
Attn: Tim Polz

#### **Section 10.2 Relationship of the Parties; No Third-Party Beneficiaries**

The duties, obligations and liabilities of each of the parties are intended to be several and not joint or collective. This Lease will not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Owner and Project Company or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either party. Owner and Project Company will not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act or be an agent or representative of, or to otherwise bind, the other party. Except for the rights of Lenders set forth above, no provision of this Lease is intended to nor will it in any way inure to the benefit of any third party so as to constitute any such person a third-party beneficiary under this Lease, or of any one or more of the terms of this Lease, or otherwise give rise to any cause of action in any person not a party to this Lease.

#### **Section 10.3 Entire Agreement**

It is mutually understood and agreed that this Lease constitutes the entire agreement between Owner and Project Company and supersedes any and all prior oral or written understandings, representations or statements, and that no understandings, representatives or statements, verbal or written, have been made which modify, amend, qualify or affect the terms of this Lease. This Lease may not be amended except in a writing executed by both parties.

#### **Section 10.4 Governing Law**

This Lease is made in and will be governed by the laws of the State of Illinois, and the venue for any dispute will be the Circuit Court of DeKalb County. The parties agree that any rule

of construction to the effect that ambiguities are to be resolved in favor of either party will not be employed in the interpretation of this Lease. In interpreting this Lease, time is of the essence.

#### **Section 10.5 Cooperation**

Each of the parties, without further consideration, agrees to execute and deliver such additional documents and take such action as may be reasonably necessary to carry out the purposes and intent of this Lease and to fulfill the obligations of the respective parties. If, at any time during the Term, Project Company deems it to be necessary or desirable to meet legal or regulatory requirements, Project Company may request that Owner re-execute a new lease substantially in the form of this Lease with a term equal to the Term remaining as of the date of execution of the new lease, and Owner will execute and enter into the new lease with Project Company or its designee, subject to the approval of the City's corporate authorities. In the event of inaccuracies or insufficiencies in the identification of the Premises or legal description of the Owner's Servient Estate, this Lease will be amended to correct the inaccuracies or insufficiencies, subject to the approval of the City's corporate authorities.

#### **Section 10.6 Waiver**

Neither party will be deemed to have waived any provision of this Lease or any remedy available to it unless such waiver is in writing and signed by the party against whom the waiver would operate, provided that the City's waiver shall be subject to the approval of the City's corporate authorities. Any waiver at any time by either party of its rights with respect to any rights arising in connection with this Lease will not be deemed a waiver with respect to any subsequent or other matter. In the event that Project Company makes any overpayments to Owner hereunder, Project Company will offset the amount of such overpayments to Owner against future payments due to Owner from Project Company hereunder.

#### **Section 10.7 Force Majeure**

Neither Owner nor Project Company will be liable to each other, or be permitted to terminate this Lease, for any failure to perform an obligation of this Lease to the extent such performance is prevented by a Force Majeure, which will mean an event beyond the control of the party affected and which, by exercise of due diligence and foresight, could not reasonably have been avoided.

#### **Section 10.8 Confidentiality**

To the extent allowed by applicable law including, but not limited to, the Illinois Freedom of Information Act, 5 ILCS 140/1, et seq. (the "FOIA"), Owner will maintain in the strictest confidence, for the benefit of Project Company and any assignee or transferee of Project Company, all information pertaining to Project Company's site or product design, methods of operation, methods of construction, power production or availability of the Solar Facilities, unless such information either (i) is in the public domain; or (ii) was already known to Owner at the time of disclosure and which Owner is free to use or disclose without breach of any obligation to any person or entity. The provisions of this Section 10.8 will survive the termination or expiration of this Lease.

#### **Section 10.9 Tax Credits**

If under Legal Requirements the holder of a leasehold interest in the nature of that held by Project Company under this Lease becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal governmental authority, then, at Project Company's option, and subject to the approval of the City's corporate authorities, Owner and Project Company will amend this Lease or replace it with a different instrument so as to convert Project Company's interest in the Premises to a substantially similar interest that makes Project Company eligible for such tax credit, benefit or incentive.

#### **Section 10.10 Severability**

Each provision hereof will be valid and will be enforceable to the extent not prohibited by law. If any provision hereof or the application thereof to any person or circumstance will to any extent be invalid or unenforceable, the remaining provisions hereof, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, will not be affected thereby.

#### **Section 10.11 Counterparts**

This Lease may be executed in two or more counterparts and by different parties on separate counterparts, all of which will be considered one and the same agreement and each of which will be deemed an original.

#### **Section 10.12 Memorandum of Lease**


Owner and Project Company will execute in recordable form and Project Company will then record a memorandum of this Lease in the form attached hereto as Exhibit C. Owner hereby consents to the recordation of the interest of an assignee in the Premises.

**Signature Page to Follow**

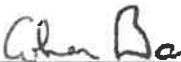


**IN WITNESS WHEREOF**, the undersigned have caused this instrument to be executed  
as of the 21<sup>st</sup> day of December, 2021.

**PROJECT COMPANY**  
**DeKalb Taylor Solar, LLC**

By:   
Name: Tim Polz  
Title: Manager

**OWNER**  
**City of DeKalb**

By:   
Name: Cohen Barnes  
Title: Mayor



## **EXHIBIT A**

### **IDENTIFICATION OF PREMISES**

#### **Property located in DeKalb County, Illinois**

The following described real estate, situated in the County of DeKalb in the State of Illinois, to-wit:

That part of Lot A of Section 19 of the Charles F. Noble Farm Plat recorded in Book "G" of Plats, Page 32, on April 9, 1937, in Township 40 North, Range 5, East of the Third Principal Meridian, DeKalb County, Illinois, described as follows: Beginning at the Southwest corner of said Lot A; thence North 0 degrees 12 minutes 45 seconds East, 1,332.29 feet (1334.1 feet record) (bearings assumed for descriptive purposes) on the West line of said Lot A to the Northwest corner thereof; thence South 89 degrees 51 minutes 26 seconds East, 1336.97 feet on the North line of said Lot A to the West line of a 5 acre Parcel; thence South 0 degrees 08 minutes 34 seconds West, 435.00 feet on said West line to the South line of said 5 acre parcel; thence South 89 degrees 51 minutes 26 seconds East, 535.79 feet on said South line to the West line of Airport Tract 15, also being the West line of relocated Loves Road; thence Southerly, 143.96 feet on said West line on a curve to the right having a radius of 560.00 feet, the chord of said curve bears South 12 degrees 38 minutes 07 seconds West, 143.57 feet; thence South 20 degrees 00 minutes 00 seconds West, 358.32 feet on said West line; thence Southwesterly, 673.29 feet on said West line on a curve to the right having a radius of 560.00 feet, the chord of said curve bears South 54 degrees 26 minutes 37 seconds West, 633.47 feet; thence South 1 degree 06 minutes 46 seconds East, 31.90 feet on said West line of Airport Tract 15 to the South line of the North 1/2 of the North Half of said Section 19; thence South 89 degrees 15 minutes 42 seconds West, 1,208.02 feet on said South line to the point of beginning;

AND BEING the same property conveyed to The City of De Kalb, an Illinois municipal corporation from Charles M. Winter, Sr., as trustee under the provisions of a certain trust agreement dated February 12, 1990, and known as Trust Number 101, as to an undivided one-half interest, and Lova L. Winter, as trustee under the provisions of a certain trust agreement dated February 12, 1990, and known as Trust Number 102, as to an undivided one-half interest by Trustee's Deed dated November 7, 2006 and recorded November 8, 2006 in Instrument No. 2006020867.

Tax Parcel No. 09-19-100-088

## EXHIBIT B

### PAYMENT TERMS

Payment	Description of Payment	Timing of Payment
<b>Development Period Rent</b>	Project Company shall pay to Owner a sum of \$3,000.00("Deposit") and an annual payment of \$3,000.00 during each calendar year of the Development Period ("Annual Payment"). Deposit is to be held by Lessor as consideration for the Development Period. Deposit and Annual Payment are non-refundable. Should the Development Period not be satisfied and this Lease is terminated, then Lessor shall retain the Deposit and Annual Payment; provided, however, that Project Company shall not be obligated to pay the Annual Payment for a respective calendar year if the Lease is terminated before the commencement of said calendar year.	Project Company shall pay to Owner the Deposit within thirty (30) days of execution of this Agreement. Project Company shall pay to Owner the Annual Payment on or before February 15 <sup>th</sup> of each calendar year for the respective Annual Payment.
<b>Operating Term Rent</b>	During the period of the Operating Term and Renewal Term and until the expiration or earlier termination of this Agreement and the 6-month decommissioning period for the physical removal of the Solar Facilities from the Leased Premises and restoration of the soil to usable farmland, Project Company shall pay to Owner, on an annual basis, rent in the amount of One Thousand Eight Hundred (\$1,800.00) Dollars per acre of the Leased Premises ("Rent"). Beginning on the February 15 <sup>th</sup> of the calendar year after the first full calendar year of the Operating Term, and each year thereafter during the Operating Term and Renewal Term, Rent shall escalate annually by two (2%) percent.	The Rent shall be due on or before February 15 <sup>th</sup> of each calendar year of the Operating Term and Renewal Term. Any Rent payments for less than a full calendar year shall be prorated based on the actual number of days of the Operating Term or Renewal Term, as applicable, in such calendar year.
<b>Construction Payment</b>	Project Company shall pay to Owner a one-time payment equal to \$300.00 acre of land used ("Construction Payment") following the Construction Commencement Date. The term "Construction Commencement Date" shall	Project Company shall pay to Owner the Construction Payment within 15 calendar days after the Construction Commencement Date.

	mean the date that Project Company begins construction of the Solar Facilities on the Leased Premises. For purposes of determining the Construction Commencement Date, site preparation work, including tree clearing and preliminary staking and grading shall not be considered commencement of construction; provided, however, that the decision of the City's Chief Building Official that the construction of the Solar Facilities has commenced shall be the final and binding determination of the Construction Commencement Date.	
<b>Transmission Line Easement Payment</b>	Project Company shall pay to Owner a one-time payment equal to \$15.00 per rod (the "Transmission Line Easement Payment").	Project Company shall pay to Owner the Construction Payment within 15 calendar days after the first use of the Transmission Line Easement.
<b>Access Road Easement Payment</b>	Project Company shall pay to Owner a one-time payment equal to \$15.00 per rod (the "Access Road Easement Payment").	Project Company shall pay to Owner the Construction Payment within 15 calendar days after the first use of the Access Road Easement Payment.

**From:** Bill French <[bfrench@sunvest.com](mailto:bfrench@sunvest.com)>  
**Sent:** Tuesday, December 21, 2021 9:46 AM  
**To:** Nicklas, Bill <[bill.nicklas@CITYOFDEKALB.com](mailto:bill.nicklas@CITYOFDEKALB.com)>  
**Cc:** Olson, Dan <[Dan.Olson@CITYOFDEKALB.com](mailto:Dan.Olson@CITYOFDEKALB.com)>  
**Subject:** SunVest DeKalb Taylor Solar

[NOTICE: This message originated outside of the City Of DeKalb mail system -- **DO NOT CLICK** on links or open attachments unless you are sure the content is safe.]

Good Morning Bill,

Please find attached the DeKalb Taylor Solar Lease, Memorandum of Lease and W-9. We kindly ask that you have the Mayor sign where indicated and return to us for counter signatures. We also ask that you fill out and return the W-9 for accounting purposes. **Please note that Exhibit C in the Lease does not need to be signed.**

Thank you again for all of your cooperation and support. We look forward to working with you and the City on this exciting project.

Regards,

**Bill French | Regional Director of Project Development**



330 W. State Street, Suite 1 | Geneva, IL 60134  
O: 262-547-1200 | M: 847-414-0134  
[www.SunVest.com](http://www.SunVest.com) | [bfrench@SunVest.com](mailto:bfrench@SunVest.com)

Disclaimer: This is a transmission from the City of DeKalb that is confidential and proprietary. If you are not the intended recipient, copying or distributing the contents of this message is expressly prohibited. If you have received this message in error, please destroy it and notify the City immediately. This email is the property of the City of DeKalb and the City reserves the right to retrieve and read any message created, sent or received, including the right to monitor messages of City employees or representatives at any time, without notice. Freedom of Information Act Requests should be submitted on the City's website at <http://www.cityofdekalb.com/>.

## EXHIBIT C

### MEMORANDUM OF LEASE

#### MEMORANDUM OF LAND LEASE AND SOLAR EASEMENT

THIS MEMORANDUM OF LAND LEASE AND SOLAR EASEMENT ("Memorandum of Lease") is entered into this \_\_\_\_ day of \_\_\_\_\_, 202\_\_ by and between City of DeKalb, an Illinois municipal corporation (hereinafter "**Owner**"), and DeKalb Taylor Solar, LLC, a Delaware limited liability company, and its successors and assigns (hereinafter "**Project Company**").

#### RECITALS:

A. Owner and Project Company have entered into a certain Land Lease and Solar Easement dated December 13, 2021 (the "**Lease Agreement**"), whereby Owner has agreed to lease to Project Company certain real property, together with access easement rights and a Solar Easement across said premises, in the County of DeKalb, State of Illinois, and being more particularly described in Schedule A attached hereto and made a part hereof (the "**Premises**").

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

IN CONSIDERATION of the sum of One and 00/100 Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Owner and Project Company have entered into the Lease Agreement dated \_\_\_\_\_, 202\_\_ (the "**Effective Date**"), to lease and demise the Premises for solar energy purposes and to grant access and Solar Easements. Pursuant to the Lease Agreement, Project Company has the exclusive right to use the Premises for solar energy purposes, together with certain related solar, access and other easement rights and other rights related to the Premises, all as more fully described in the Lease Agreement. Solar energy purposes means converting solar energy into electrical energy and collecting and transmitting the electrical energy so converted, together with any and all activities related thereto.

2. The initial term of the Lease Agreement commences on the Effective Date and expires on the earlier of the Operation Date or December 31, 2023; provided, however, that the initial term may be extended by one (1) calendar year upon the mutual written agreement of the Parties, which shall not be unreasonably withheld by the City if Project Company exercises due diligence and commercially reasonable efforts to promptly develop at least one (1) Solar Facility on the Premises following the commencement of this Lease (the "**Development Period**"). The Lease Agreement will automatically be extended for an Operating Term, as defined below, upon the earlier of: (i) the date when at least one (1) solar generating facility installed on the Premises is a Commercially Operational Solar Facility, as defined in Exhibit C (the "**Operation Date**"); (ii) the date that is one (1) calendar year from when the City first issues a building permit to construct at least one (1) solar generating facility installed on the Premises (the "**Construction Completion Date**") or (iii) the date when Owner receives written notice from Project Company of Project

Company's election to extend the Term for the Operating Term ("**Operating Term Notice Date**"). The Operating Term of the Lease Agreement ("**Operating Term**") is twenty-five (25) years from the earlier of either of the Operation Date or the Operating Term Notice Date unless sooner terminated in accordance with the terms of the Lease Agreement. In addition, Project Company has a right to extend the Operating Term for one (1) additional period of ten (10) years upon written notice to Owner ("**Renewal Term**").

3. Owner will have no ownership and other interest in any solar facilities installed on the Premises by Project Company and Project Company may remove any or all solar facilities at any time.

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

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

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

**Signature Page to Follow**

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the \_\_\_\_ day of December, 2021.

**OWNER**

\_\_\_\_\_  
\_\_\_\_\_

STATE OF ILLINOIS                    )  
  ) ss.  
COUNTY OF DEKALB                )

The foregoing instrument was acknowledged before this \_\_\_\_ day of \_\_\_\_\_, 202\_\_, by the mayor of the City of DeKalb, on behalf of the City of DeKalb.

\_\_\_\_\_  
Notary Public



**DeKalb Taylor Solar, LLC,  
a Delaware limited liability company**

**Its:** \_\_\_\_\_

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

**Notary Public**

## **Schedule A**

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

#### **Legal Description of the Premises**

The following described real estate, situated in the County of DeKalb in the State of Illinois, to-wit:

That part of Lot A of Section 19 of the Charles F. Noble Farm Plat recorded in Book "G" of Plats, Page 32, on April 9, 1937, in Township 40 North, Range 5, East of the Third Principal Meridian, DeKalb County, Illinois, described as follows: Beginning at the Southwest corner of said Lot A; thence North 0 degrees 12 minutes 45 seconds East, 1,332.29 feet (1334.1 feet record) (bearings assumed for descriptive purposes) on the West line of said Lot A to the Northwest corner thereof; thence South 89 degrees 51 minutes 26 seconds East, 1336.97 feet on the North line of said Lot A to the West line of a 5 acre Parcel; thence South 0 degrees 08 minutes 34 seconds West, 435.00 feet on said West line to the South line of said 5 acre parcel; thence South 89 degrees 51 minutes 26 seconds East, 535.79 feet on said South line to the West line of Airport Tract 15, also being the West line of relocated Loves Road; thence Southerly, 143.96 feet on said West line on a curve to the right having a radius of 560.00 feet, the chord of said curve bears South 12 degrees 38 minutes 07 seconds West, 143.57 feet; thence South 20 degrees 00 minutes 00 seconds West, 358.32 feet on said West line; thence Southwesterly, 673.29 feet on said West line on a curve to the right having a radius of 560.00 feet, the chord of said curve bears South 54 degrees 26 minutes 37 seconds West, 633.47 feet; thence South 1 degree 06 minutes 46 seconds East, 31.90 feet on said West line of Airport Tract 15 to the South line of the North 1/2 of the North Half of said Section 19; thence South 89 degrees 15 minutes 42 seconds West, 1,208.02 feet on said South line to the point of beginning;

AND BEING the same property conveyed to The City of De Kalb, an Illinois municipal corporation from Charles M. Winter, Sr., as trustee under the provisions of a certain trust agreement dated February 12, 1990, and known as Trust Number 101, as to an undivided one-half interest, and Lova L. Winter, as trustee under the provisions of a certain trust agreement dated February 12, 1990, and known as Trust Number 102, as to an undivided one-half interest by Trustee's Deed dated November 7, 2006 and recorded November 8, 2006 in Instrument No. 2006020867.

Tax Parcel No. 09-19-100-088

## **EXHIBIT D**

### **SITE RULES**

Project Company will use commercially reasonable efforts to follow and to cause its personnel to follow the following rules while on the Premises. Owner may bar further access to the Premises by any individual who commits repeated, material violations of these rules after such individual has received at least one written warning of a particular material violation from Owner describing, and including reasonable evidence documenting, such material violation. In addition, any individual violating rules (d)(i), (iv), or (vi) at least one time after receipt of a written warning with documented evidence of such violation, will be immediately expelled from the Premises and will be banned from the Premises thereafter. The rules are as follows:

a. When not in active use by Project Company, all access gates, as well as all interior gates, will remain closed at all times.

b. Smoking is prohibited except in designated construction areas and in vehicles. Project Company will employ reasonable precautions to prevent fires and will be responsible for all damage caused by Project Company.

c. Project Company will keep the Premises clean and free of debris created by Project Company, its contractors, or others brought on to the Premises by Project Company. Project Company will not use the Premises for storage of items that are not related to, used or to be used in connection with, or for the benefit of all or a portion of the Project.

d. At no time will any of employees of Project Company bring any of the following onto the Premises:

i. weapons of any type, including but not limited to, guns, bows and arrows, or sling shots;

ii. animal calling devices;

iii. fishing equipment or nets;

iv. dogs, cats or any other animals;

v. alcoholic beverages;

vi. illegal drugs or related paraphernalia.

e. Project Company, its employees, contractors, agents and any individual allowed onto the Premises by Project Company will use reasonable efforts to confine their activities on the Premises to the designated access routes and to the areas upon which operations are then being conducted.

f. No wood, plants, animals (dead or alive), antlers, artifacts or any other item that was not originally brought onto the Premises by Project Company personnel will be removed from

the Premises by such personnel, except that Project Company can burn, remove and clear wood, plants and brush on the Premises.

g. A speed limit of 25 miles per hour (15 miles per hour at night) will be strictly observed while using roads on the Premises.

h. This Agreement does not cover or include any right or privilege of hunting or fishing on the Premises, all such rights being expressly reserved to Owner.

**Prepared by:**

Timothy Polz  
330 W. State Street, Suite 1  
Geneva, IL 60134

Recorded 1-7-2022  
as Document #  
202200235

**When Recorded Mail to:**

SunVest New Energy, LLC  
c/o Timothy Polz  
330 W. State Street, Suite 1  
Geneva, IL 60134

---

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**MEMORANDUM OF LAND LEASE AND SOLAR EASEMENT**

THIS MEMORANDUM OF LAND LEASE AND SOLAR EASEMENT ("Memorandum of Lease") is entered into this 21<sup>st</sup> day of December, 2021 by and between City of DeKalb, an Illinois home rule municipal corporation, (hereinafter "**Owner**"), and DeKalb Taylor, LLC, a Delaware limited liability company, and its successors and assigns (hereinafter "**Project Company**").

**RECITALS:**

A. Owner and Project Company have entered into a certain Land Lease and Solar

Easement dated December 21, 2021, (the "**Lease Agreement**"), whereby Owner has agreed to lease to Project Company certain real property, together with access easement rights and a Solar Easement across said premises, in the County of DeKalb, State of Illinois, and being more particularly described in Schedule A attached hereto and made a part hereof (the "**Owner's Parcel**").

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

IN CONSIDERATION of the sum of One and 00/100 Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Owner and Project Company have entered into the Lease Agreement dated December 21, 2021, (the "**Effective Date**"), to lease and demise the Owner's Parcel for solar energy purposes and to grant access and Solar Easements. Pursuant to the Lease Agreement, Project Company has the exclusive right to use the Owner's Parcel for solar energy purposes, together with certain related solar, access and other easement rights and other rights related to the Owner's Parcel, all as more fully described in the Lease Agreement. Solar energy purposes means converting solar

energy into electrical energy and collecting and transmitting the electrical energy so converted, together with any and all activities related thereto.

2. The initial term of the Lease Agreement commences on the Effective Date and expires on the earlier of the Operation Date or December 31, 2023; provided, however, that the initial term may be extended by one (1) calendar year upon the mutual written agreement of the Parties, which shall not be unreasonably withheld by the City if Project Company exercises due diligence and commercially reasonable efforts to promptly develop at least one (1) Solar Facility on the Premises following the commencement of this Lease (the "**Development Period**"). The Lease Agreement will automatically be extended for an Operating Term, as defined below, upon the earlier of: (i) the date when at least one (1) solar generating facility installed on the Premises is a Commercially Operational Solar Facility, as defined in Exhibit C (the "**Operation Date**"); (ii) the date that is one (1) calendar year from when the City first issues a building permit to construct at least one (1) solar generating facility installed on the Premises (the "Construction Completion Date") or (iii) the date when Owner receives written notice from Project Company of Project Company's election to extend the Term for the Operating Term ("**Operating Term Notice Date**"). The Operating Term of the Lease Agreement ("**Operating Term**") is twenty-five (25) years from the earlier of either of the Operation Date or the Operating Term Notice Date unless sooner terminated in accordance with the terms of the Lease Agreement. In addition, Project Company has a right to extend the Operating Term for one (1) additional period of ten (10) years upon written notice to Owner ("**Renewal Term**").

3. Owner will have no ownership and other interest in any solar facilities installed on the Owner's Parcel by Project Company and Project Company may remove any or all solar facilities at any time.

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

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

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

**Signature Page to Follow**

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the 21<sup>st</sup> day of December 2021.

**OWNER**

**City of DeKalb,**  
an Illinois home rule municipal corporation

By: Cohen Barnes  
Cohen Barnes

**Its: Mayor**

STATE OF ILLINOIS                    )  
  ) ss.  
COUNTY OF DEKALB                )

The foregoing instrument was acknowledged before this 21<sup>st</sup> day of December 2021, by Cohen Barnes, the Mayor of the City of DeKalb, LLC, an Illinois home rule municipal corporation, on behalf of the home rule corporation.

Ruth A. Scott  
Ruth A. Scott, Notary Public



**PROJECT COMPANY**

DeKalb Taylor Solar, LLC,  
a Delaware limited liability company

By:   
Timothy Polz

Its: Manager

STATE OF ILLINOIS                    )  
  ) ss.  
COUNTY OF KANE                    )

The foregoing instrument was acknowledged before this 21<sup>st</sup> day of December, 2021 by Timothy Polz, the Manager of DeKalb Taylor Solar, LLC, a Delaware limited liability company, on behalf of the limited liability company.

Notary Public





2022000235

DOUGLAS J. JOHNSON  
RECORDER - DEKALB COUNTY, IL

RECORDED: 1/7/2022 11:19 AM  
REC FEE: 56.00 RHSPS FEE: 9.00

**Prepared by:**  
Timothy Polz  
330 W. State Street, Suite 1  
Geneva, IL 60134

**When Recorded Mail to:**  
SunVest New Energy, LLC  
c/o Timothy Polz  
330 W. State Street, Suite 1  
Geneva, IL 60134

PAGES: 5

SPACE ABOVE THIS LINE FOR RECORDER'S USE

### MEMORANDUM OF LAND LEASE AND SOLAR EASEMENT

THIS MEMORANDUM OF LAND LEASE AND SOLAR EASEMENT ("Memorandum of Lease") is entered into this 21<sup>st</sup> day of December, 2021 by and between City of DeKalb, an Illinois home rule municipal corporation, (hereinafter "Owner"), and DeKalb Taylor, LLC, a Delaware limited liability company, and its successors and assigns (hereinafter "Project Company").

#### RECITALS:

A. Owner and Project Company have entered into a certain Land Lease and Solar

Easement dated December 21, 2021, (the "Lease Agreement"), whereby Owner has agreed to lease to Project Company certain real property, together with access easement rights and a Solar Easement across said premises, in the County of DeKalb, State of Illinois, and being more particularly described in Schedule A attached hereto and made a part hereof (the "Owner's Parcel").

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

IN CONSIDERATION of the sum of One and 00/100 Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Owner and Project Company have entered into the Lease Agreement dated December 21, 2021, (the "Effective Date"), to lease and demise the Owner's Parcel for solar energy purposes and to grant access and Solar Easements. Pursuant to the Lease Agreement, Project Company has the exclusive right to use the Owner's Parcel for solar energy purposes, together with certain related solar, access and other easement rights and other rights related to the Owner's Parcel, all as more fully described in the Lease Agreement. Solar energy purposes means converting solar

energy into electrical energy and collecting and transmitting the electrical energy so converted, together with any and all activities related thereto.

2. The initial term of the Lease Agreement commences on the Effective Date and expires on the earlier of the Operation Date or December 31, 2023; provided, however, that the initial term may be extended by one (1) calendar year upon the mutual written agreement of the Parties, which shall not be unreasonably withheld by the City if Project Company exercises due diligence and commercially reasonable efforts to promptly develop at least one (1) Solar Facility on the Premises following the commencement of this Lease (the "Development Period"). The Lease Agreement will automatically be extended for an Operating Term, as defined below, upon the earlier of: (i) the date when at least one (1) solar generating facility installed on the Premises is a Commercially Operational Solar Facility, as defined in Exhibit C (the "Operation Date"); (ii) the date that is one (1) calendar year from when the City first issues a building permit to construct at least one (1) solar generating facility installed on the Premises (the "Construction Completion Date") or (iii) the date when Owner receives written notice from Project Company of Project Company's election to extend the Term for the Operating Term ("Operating Term Notice Date"). The Operating Term of the Lease Agreement ("Operating Term") is twenty-five (25) years from the earlier of either of the Operation Date or the Operating Term Notice Date unless sooner terminated in accordance with the terms of the Lease Agreement. In addition, Project Company has a right to extend the Operating Term for one (1) additional period of ten (10) years upon written notice to Owner ("Renewal Term").

3. Owner will have no ownership and other interest in any solar facilities installed on the Owner's Parcel by Project Company and Project Company may remove any or all solar facilities at any time.

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

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

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

**Signature Page to Follow**

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the 21<sup>st</sup> day of December 2021.

**OWNER**

**City of DeKalb,**  
an Illinois home rule municipal corporation

By: Cohen Barnes  
Cohen Barnes

**Its: Mayor**

STATE OF ILLINOIS                    )  
  ) ss.  
COUNTY OF DEKALB                )

The foregoing instrument was acknowledged before this 21<sup>st</sup> day of December 2021, by Cohen Barnes, the Mayor of the City of DeKalb, LLC, an Illinois home rule municipal corporation, on behalf of the home rule corporation.

Ruth A. Scott  
Ruth A. Scott, Notary Public



**PROJECT COMPANY**

DeKalb Taylor Solar, LLC,  
a Delaware limited liability company

By:   
Timothy Polz

Its: Manager

STATE OF ILLINOIS           )  
  ) ss.  
COUNTY OF KANE           )

The foregoing instrument was acknowledged before this 21 day of December,  
202 1 by Timothy Polz, the Manager of DeKalb Taylor Solar, LLC, a Delaware limited liability  
company, on behalf of the limited liability company.

Notary Public



**Schedule A**

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

**Legal Description of Owner's Parcel**

The following described real estate, situated in the County of DeKalb in the State of Illinois, to-wit:

That part of Lot A of Section 19 of the Charles F. Noble Farm Plat recorded in Book "G" of Plats, Page 32, on April 9, 1937, in Township 40 North, Range 5, East of the Third Principal Meridian, DeKalb County, Illinois, described as follows: Beginning at the Southwest corner of said Lot A; thence North 0 degrees 12 minutes 45 seconds East, 1,332.29 feet (1334.1 feet record) (bearings assumed for descriptive purposes) on the West line of said Lot A to the Northwest corner thereof; thence South 89 degrees 51 minutes 26 seconds East, 1336.97 feet on the North line of said Lot A to the West line of a 5 acre Parcel; thence South 0 degrees 08 minutes 34 seconds West, 435.00 feet on said West line to the South line of said 5 acre parcel; thence South 89 degrees 51 minutes 26 seconds East, 595.79 feet on said South line to the West line of Airport Tract 15, also being the West line of relocated Loves Road; thence Southerly, 143.96 feet on said West line on a curve to the right having a radius of 560.00 feet, the chord of said curve bears South 12 degrees 38 minutes 07 seconds West, 143.57 feet; thence South 20 degrees 00 minutes 00 seconds West, 358.32 feet on said West line; thence Southwesterly, 673.29 feet on said West line on a curve to the right having a radius of 560.00 feet, the chord of said curve bears South 54 degrees 26 minutes 37 seconds West, 633.47 feet; thence South 1 degree 06 minutes 46 seconds East, 31.90 feet on said West line of Airport Tract 15 to the South line of the North 1/2 of the North Half of said Section 19; thence South 89 degrees 15 minutes 42 seconds West, 1,208.02 feet on said South line to the point of beginning;

AND BEING the same property conveyed to The City of De Kalb, an Illinois municipal corporation from Charles M. Winter, Sr., as trustee under the provisions of a certain trust agreement dated February 12, 1990, and known as Trust Number 101, as to an undivided one-half interest, and Lova L. Winter, as trustee under the provisions of a certain trust agreement dated February 12, 1990, and known as Trust Number 102, as to an undivided one-half interest by Trustee's Deed dated November 7, 2006 and recorded November 8, 2006 in Instrument No. 2006020867.

Tax Parcel No. 09-19-100-088

## **Schedule A**

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

#### **Legal Description of Owner's Parcel**

The following described real estate, situated in the County of DeKalb in the State of Illinois, to-wit:

That part of Lot A of Section 19 of the Charles F. Noble Farm Plat recorded in Book "G" of Plats, Page 32, on April 9, 1937, in Township 40 North, Range 5, East of the Third Principal Meridian, DeKalb County, Illinois, described as follows: Beginning at the Southwest corner of said Lot A; thence North 0 degrees 12 minutes 45 seconds East, 1,332.29 feet (1334.1 feet record) (bearings assumed for descriptive purposes) on the West line of said Lot A to the Northwest corner thereof; thence South 89 degrees 51 minutes 26 seconds East, 1336.97 feet on the North line of said Lot A to the West line of a 5 acre Parcel; thence South 0 degrees 08 minutes 34 seconds West, 435.00 feet on said West line to the South line of said 5 acre parcel; thence South 89 degrees 51 minutes 26 seconds East, 535.79 feet on said South line to the West line of Airport Tract 15, also being the West line of relocated Loves Road; thence Southerly, 143.96 feet on said West line on a curve to the right having a radius of 560.00 feet, the chord of said curve bears South 12 degrees 38 minutes 07 seconds West, 143.57 feet; thence South 20 degrees 00 minutes 00 seconds West, 358.32 feet on said West line; thence Southwesterly, 673.29 feet on said West line on a curve to the right having a radius of 560.00 feet, the chord of said curve bears South 54 degrees 26 minutes 37 seconds West, 633.47 feet; thence South 1 degree 06 minutes 46 seconds East, 31.90 feet on said West line of Airport Tract 15 to the South line of the North 1/2 of the North Half of said Section 19; thence South 89 degrees 15 minutes 42 seconds West, 1,208.02 feet on said South line to the point of beginning;

AND BEING the same property conveyed to The City of De Kalb, an Illinois municipal corporation from Charles M. Winter, Sr., as trustee under the provisions of a certain trust agreement dated February 12, 1990, and known as Trust Number 101, as to an undivided one-half interest, and Lova L. Winter, as trustee under the provisions of a certain trust agreement dated February 12, 1990, and known as Trust Number 102, as to an undivided one-half interest by Trustee's Deed dated November 7, 2006 and recorded November 8, 2006 in Instrument No. 2006020867.

Tax Parcel No. 09-19-100-088

# Request for Taxpayer Identification Number and Certification

► Go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9) for instructions and the latest information.

Give Form to the  
requester. Do not  
send to the IRS.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.

**CITY OF DEKALB**

2 Business name/disregarded entity name, if different from above

3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.

☐ Individual/sole proprietor or single-member LLC ☐ C Corporation ☐ S Corporation ☐ Partnership ☐ Trust/estate

☐ Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ►

Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.

☒ Other (see instructions) ►

**MUNICIPALITY - GOVERNMENT**

5 Address (number, street, and apt. or suite no.) See instructions.

**164 E LINCOLN HIGHWAY**

6 City, state, and ZIP code

**DEKALB IL 60115**

7 List account number(s) here (optional)

4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3)

Exempt payee code (if any) **2**

Exemption from FATCA reporting code (if any) **B**

(Applies to accounts maintained outside the U.S.)

Requester's name and address (optional)

Print or type.  
See Specific Instructions on page 3.

## Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number

- -

or

Employer identification number

3 6 - 6 0 0 5 8 4 3

## Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

**Certification instructions.** You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign  
Here

Signature of  
U.S. person ►

Date ► **12-21-2021**

## General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

**Future developments.** For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/FormW9](http://www.irs.gov/FormW9).

## Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

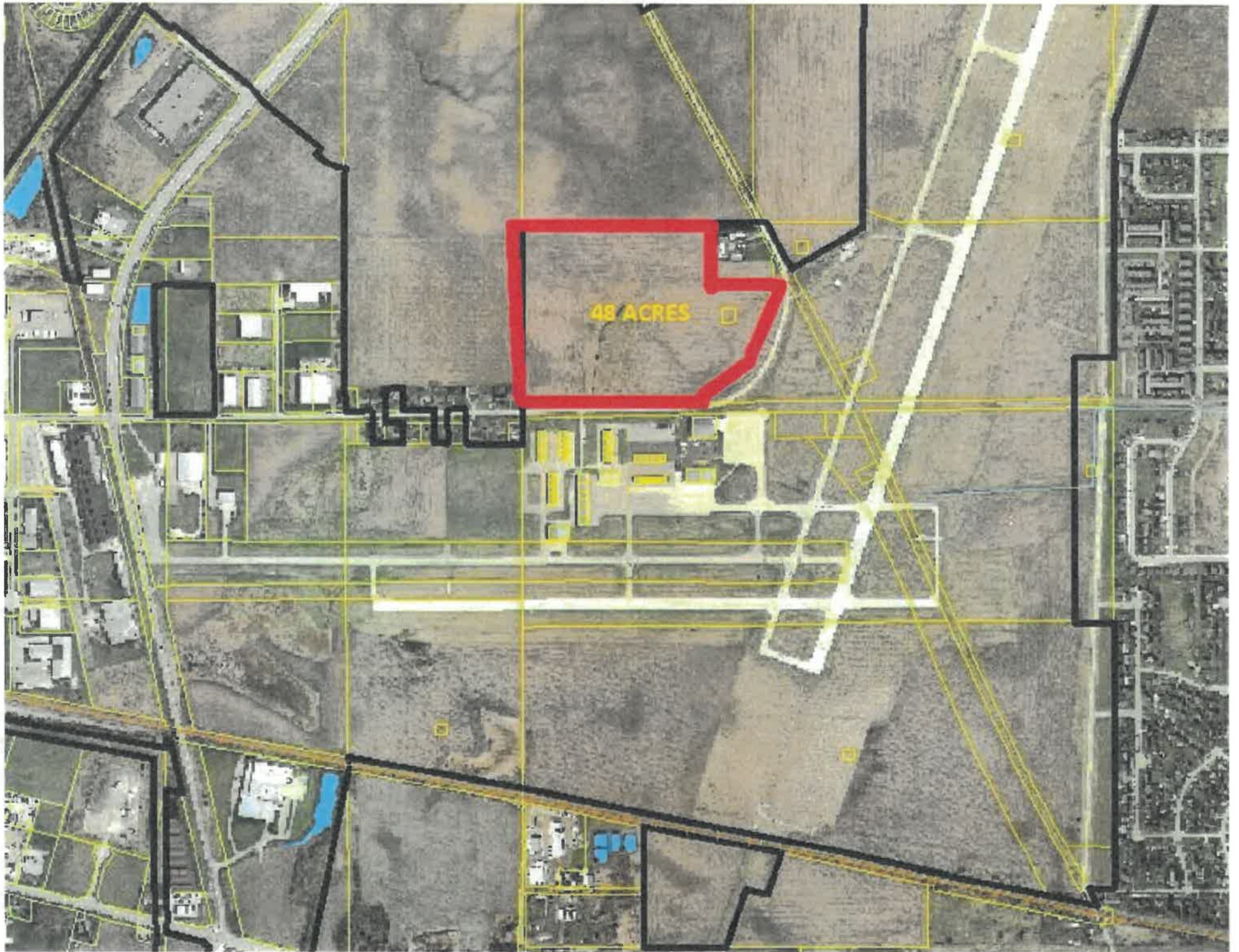
- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See *What is backup withholding*, later.







# Dekalb Taylor Municipal Airport 5 MW Solar PV Site Layout



Developing • Renewable • Relationships

SunVest Solar LLC

PAYEE: City of DeKalb, IL

CHECK NO: 4539

CHECK DATE: 1/3/2022

DATE	INVOICE NO.	MEMO	INVOICE AMOUNT	DISCOUNT	NET AMOUNT
12/27/2021	12-27-21 Dekalb	Dev Term Payment - Dekalb Taylor Solar	3,000.00		3,000.00

RECEIVED  
JAN - 6 2022  
BY: \_\_\_\_\_

MEMO: Dev Term Payment - Dekalb Taylor Solar

PAGE 1 OF 1

3,000.00

SunVest Solar LLC  
N27 W24025 Paul Ct, Suite 100  
Pewaukee, WI 53072  
(262) 547-1200

WARNING - THIS CHECK IS PROTECTED BY SPECIAL SECURITY FEATURES

Midland States Bank  
1201 Network Centre Drive  
Effingham, IL 62401

4539

70-4547812

DATE: 1/3/2022

PAY TO THE ORDER OF City of DeKalb, IL

\*\*\*\$3,000.00\*\*

Three Thousand and 00/100 DOLLARS

ATTN: RUTH SCOTT  
CITY OF DEKALB, IL  
164 E. LINCOLN HIGHWAY  
DEKALB, IL 60115  
UNITED STATES

Authorized Signature

SECURITY FEATURES INCLUDE MICROPRINTING - VOID PANTOGRAPH - ENDORSEMENT BACKER - BROWNSTAIN CHEMICAL REACTANT

EXHIBIT C  
FARM LEASE BETWEEN CITY OF DEKALB AND DAVID GIELS, NORTHERN TIER  
FARM PARTNERSHIP

[See attached.]

**DEKALB TAYLOR MUNICIPAL AIRPORT  
AIRPORT ADJACENT FARMING BID**

**CASH FARM LEASE**

This lease is entered into the 16<sup>th</sup> day of December 2022 between City of DeKalb, an Illinois Municipal Corporation, Landlord, and David Geils, Northern Tier Farm Partnership, Tenant.

The Landlord, in consideration of the agreements set forth in this lease to be kept and performed by the Tenant, rents and leases to the Tenant, to occupy and to use for agricultural purposes only, the following real estate located in the County of DeKalb and State of Illinois, described as follows (hereinafter referred to as the "Property"):

The portions of cropland of Permanent Tax Index Nos. 08-24-279-003, 08-24-426-002, 09-08-300-012, 09-17-100-015, 09-17-100-002, 09-17-100-007, 09-18-200-005, 09-18-400-003, 09-19-226-005, 09-19-226-006, 09-19-276-003, 09-19-276-004, 09-19-376-009, 09-19-401-003, 09-19-477-002, and 09-19-478-003 consisting of approximately 314 tillable acres.

The term of this lease shall be from the 1<sup>st</sup> day of March 2023 to the 28<sup>th</sup> day of February 2026 or earlier if final harvesting has occurred.

The terms of this lease shall be binding on the heirs, executors, administrators, and assigns of both Landlord and Tenant in like manner as upon the original parties, except by mutual agreement otherwise.

**SECTION 1. AMOUNT OF RENT AND TIME OF PAYMENT.**

The Tenant agrees to pay the Landlord as annual cash rent for the above-described Property the sum of \$119,999.81 which shall be paid on the 15<sup>th</sup> day of March.

This represents approximately 314 acres @ \$382.165 per acre.

**SECTION 2. LANDLORD'S INVESTMENT AND EXPENSE.**

The Landlord agrees to allow Tenant the quiet enjoyment of the Property so long as Tenant complies with all of Tenant's obligations of this Lease.

**SECTION 3: TENANT'S INVESTMENT AND EXPENSES.**

The Tenant agrees to furnish the Property and to pay the items of expenses described below:

- A. All machinery, equipment, fuel and labor necessary to operate the Property.
- B. All *ad valorem* property taxes or assessments of any nature on the Property.

C. All operating expenses or the portion of expenses not furnished or paid by the Landlord as provided in this lease.

D. **Insurance.** Tenant covenants and agrees prior to any use or occupancy of the Property and at Tenant's sole cost and expense to maintain in full force and effect at all times during the term of this lease, workmen's compensation insurance with statutory limits of coverage and general liability insurance naming Landlord as an additional insured with waiver of subrogation and with limits not less than One Million (\$1,000,000) for personal injury, including bodily injury and death, property damage, and with coverage for pollution, crop spraying, overspray and drift. Tenant shall provide Landlord with a copy of the declaration pages of all such insurance policies. Such insurance policies shall be issued by an insurance company approved by Landlord and in a form acceptable to Landlord and shall be subject to modification or cancellation only upon written notice delivered by certified mail to Landlord not less than thirty (30) days in advance of any such proposed modification or cancellation.

#### **SECTION 4. TENANT'S DUTIES IN OPERATING PROPERTY.**

In addition to the agreements covered by the foregoing provisions of this lease, the Tenant further agrees that he will perform and carry out the stipulations represented in the following clauses:

- A. To faithfully cultivate the Property in a timely, thorough and businesslike manner.
- B. Not assign this lease to any person or persons or sublet any part of the Property without the written consent of the Landlord.
- C. To take proper care of all trees, vines and shrubs, and to prevent injury to the same.
- D. Not to cut live trees except by permission of the Landlord.
- E. Not to allow noxious weeds to go to seed on said Property, but to destroy the same and to cut and maintain the sprouts, brush, weeds and grass up to the roads adjoining the land as often as needed each year.
- F. Not to burn cornstalks, straw, or other crop residues grown upon the Property except by permission of the Landlord, but to leave or spread all such material upon the land, and in no case to remove from the Property any such material without the consent of the Landlord.
- G. To investigate and repair any broken tile and keep outlets open. Tenant shall not operate tillage equipment through grass waterways, or other low places that will permit open ditches eroding across fields.
- H. To prevent all unnecessary waste, or loss, or damage to the Property of the Landlord.
- I. The Tenant agrees to plow in any post-harvest crop residue on or before November 15<sup>th</sup> of each year of this lease. Tenant also agrees to follow such crop rotation, tillage practices, fertilizer programs, conservation measures and arrangements as are instructed by Landlord.

- J. To keep the Property neat and orderly.
- K. The buildings, fences and other improvements on the Property are to be kept in as good repair and condition as they are at the beginning of the lease, or in as good repair and condition as they may be put in by the Landlord during the term of the lease, ordinary wear and depreciation excepted.
- L. To preserve established watercourses or ditches, and refrain from any operation that will injure them.
- M. To haul and spread all manure on appropriate fields at times and in quantities consistent with environmental protection requirements.
- N. Follow the farming practices that are generally recommended for and that are best adapted to this type of Property and for this locality unless other practices are agreed upon.

#### **SECTION 5. MANAGEMENT AND BUSINESS PROCEDURES.**

The Landlord and Tenant agree that they will observe the following provisions:

- A. Except when mutually decided otherwise, the land use and cropping system shall be approximately as follows: All tillable cropland as hereby rented to Tenant.
- B. The fertilizer and limestone program shall be nitrogen, phosphorus and potash applied annually to produce corn or soybeans and maintain the fertility of the soil, for which the Tenant shall provide records and receipts of all applications, to the Landlord or his Agent, if requested. Soil testing and ag lime costs are all Tenant's expense.

#### **SECTION 6. DEFAULT, COMPENSATION FOR DAMAGE, METHOD OF SETTLEMENT, RIGHT OF ENTRY.**

- A. Tenant is not to erect or permit to be erected upon said Property, any structure, building, fence or sign of any kind whatsoever, except by the written consent of the Landlord, nor to purchase any materials or incur any expenses for the account of the Landlord without its approval and will not make a claim for labor at any time unless Landlord has given written permission at a previous date.
- B. Nothing in this lease shall confer upon the Tenant any right to minerals underlying said land or any part thereof, but the same are hereby expressly reserved by the Landlord together with the full right and liberty to them, to enter upon the Property and to bore, search and excavate for same, to work and remove the same, and to deposit excavated rubbish, and with full liberty to pass over said Property with vehicles and lay down and work any such railroad track or tracks, tanks, pipe lines, powers and structures as may be necessary or convenient for the above purpose. Said Landlord, however, agrees to deduct from the annual rent, pro-rata, for the land so taken by him or his assigns for said uses when the rental of such land is cash, and to reimburse the said Tenant for any actual damage he may suffer for crops destroyed where such

land is on grain rent and to release Tenant from obligation to continue farming this Property when development of resources interferes materially with Tenant's ability to make a satisfactory return.

- C. Landlord shall in no way be liable in damages for failure of water supply or for any damage by the elements or otherwise, to any of the improvements, nor for any loss or damage while improvements are under construction or repair, nor for any failure to repair or alter or replace any buildings or improvement.
- D. Tenant takes possession of the Property subject to the hazards of operating a farm and assumes all risk of accidents to himself, his family, employees, agents, representatives, contractors or assigns in pursuance of his farming operations, or in performing repairs to the buildings, fences and other improvements, or accidents and injuries arising out of the use of farm equipment and machines.
- E. **Indemnity.** Tenant shall indemnify, defend and hold harmless Landlord and its employees, agents, representatives, contractors and assigns from any and all claims, liens, penalties, demands, actions, proceedings, liabilities or losses of any nature whatsoever (including attorneys' fees and expenses and court costs) arising out of or relating to the acts or omissions of Tenant, or its employees, agents, representatives, contractors or assigns, in exercising any of Tenant's rights hereunder or from use or occupancy of the Property in any manner whatsoever by the Tenant, or its employees, agents, representatives, contractors or assigns, except to the extent solely due and proximately caused by Landlord's gross negligence or willful and wanton acts.
- F. **Liability for Damage to Property or Persons.** Landlord shall not be liable to Tenant for any injury or death to any person or persons, or for any damage to Tenant's business or to the property, machines, fixtures, and equipment of Tenant, or any person claiming through or under Tenant, arising out of any accident or occurrence in, upon or near the Property unless such injury, death or damage is solely due to and proximately caused by Landlord's gross negligence or willful and wanton acts. All property of Tenant shall be kept or stored at the Property at the risk of Tenant, and Tenant shall defend and hold Landlord harmless from claims arising out of damage to same, including subrogation claims by Tenant's insurance carrier, unless such damage shall be solely due and proximately caused by the willful act or gross neglect of Landlord. Landlord shall not be responsible for injury or damage to any persons or property of Tenant or of others caused by or resulting from bursting, breakage or leakage of pipes, from steam, snow or ice, from running, backing up, seepage or overflow of water or sewage in or near the Property or resulting from acts of God or the elements or from any defect or negligence in the occupancy, construction, operation or use of the Property including any building improvements, structural elements, mechanical systems and other machinery and equipment.

Landlord shall not be liable for any injury or damage to persons or property or to any building, structure or improvements on the Property resulting from fire, explosion, falling plaster, steam, gas, electricity, water, rain or snow or leaks from any building, structure or improvements on the Property or from the pipes, appliances or plumbing works or from the roof, street or

subsurface or from any other place or by dampness or by any other cause of whatever nature; Landlord shall not be liable for any such injury or damage caused by other tenants or by occupants of the Property or property adjacent thereto or by the public, or by operations in the construction of any private, public, or quasi-public work. Landlord shall not be liable for any latent defect in construction or renovations to the Property or to any building, structure or improvements located on the Property.

- G. **Right of Entry.** The Landlord or his Agent shall be entitled to free access to the Property at all times and may make any repairs and improvements thereon. If this lease is terminated, the Landlord or his Agent shall be entitled to fall till, fertilize or otherwise prepare the ground and plant in proper season for the following year's crops.
- H. If the Tenant shall, from any cause, fail to comply with any of Tenant's obligations herein, the Landlord may at any time when such failure occurs after giving five days' written notice of its intention to do so: (1) terminate this lease; or (2) terminate Tenant's right to possession under this lease and take possession of said Property and buildings thereon which the Tenant agrees to surrender without said possession terminating this lease and Tenant's obligation to pay rent hereunder, and employ other persons to tend said crop and perform all the agreements of the Tenant as herein contained as fully as the same are contemplated in this agreement and after deducting all monies advanced, or monies or crops due for the rent and the expense of attending such crop as aforesaid, to pay the residue, if any, to the Tenant. If the Tenant shall fail to pay the cash rent, or shall fail to keep any of the agreements of this lease, all costs and attorney's fees of the Landlord in enforcing collection or performance, shall be added to and become a part of the obligations payable by the Tenant hereunder.
- I. **Yielding Possession.** The Tenant agrees that at the expiration of the term of this lease, he will yield up possession of the Property to the Landlord without further demand or notice, in as good order and condition as when same were entered upon by the Tenant, loss by fire or tornado, and ordinary wear excepted. The Tenant shall pay to the Landlord a reasonable compensation for any damage to the Property above the aforementioned exceptions.
- J. The Tenant shall be responsible for all employer obligations on hired labor with respect to safety requirements, social security and workers compensation contributions, and the Landlord shall have no responsibilities therefore.

## **SECTION 7. ENVIRONMENTAL CONCERNS.**

- A. The Tenant is to use prudence and care in transporting, storing, handling and applying all fertilizers, pesticides, herbicides, and other chemicals and similar substances, and to read and follow instructions on the labels for the use of such materials in order to avoid injury or damages to persons or property or both on the Property and adjoining areas.
- B. Any chemicals for weed or insect control or other use, when used, should be applied at levels not to exceed the manufacturer's recommendation for the soil types involved. The Tenant agrees to provide the Landlord annually, a written report indicating the product name, amount,



date of application and location of application of all pesticides and fertilizers used on the Property.

- C. No chemicals will be stored on the Property. When chemicals or petroleum products are on the Property, they will be only those planned to be used on the Property, and they will be in closed, tight containers above ground and clearly marked. No chemicals or chemical containers will be disposed of on the Property.
- D. Both Landlord and Tenant affirm the goals of minimizing soil erosion losses and preserving the productivity of the land in ways that are consonant with their needs and desires for acceptable current returns to their individual inputs on the Property.
- E. **Environmental Indemnity.**

(a) Tenant hereby agrees to defend, protect, indemnify and hold harmless Landlord, Landlord's affiliates, directors, officers, agents and employees, and Landlord's participants, successors and assigns (hereinafter, collectively the "Indemnified Parties"), from and against, and shall reimburse the Indemnified Parties for, any and all actual out-of-pocket costs (including, without limitation, attorneys' fees, consultants' fees, laboratory costs, expenses and court costs), expense or loss arising from any claim, liability, demands, damage, injunctive relief, claims of lien, liens, settlements, legal and administrative proceedings, injury to person, property or natural resources, fine, penalty, action, cause of action and obligations and liabilities of any kind or nature whatsoever (collectively, "Costs and Liabilities"), incurred by or asserted against any Indemnified Party and arising directly or indirectly, in whole or in part, out of the release, discharge, deposit or presence, or alleged or suspected release, discharge, deposit or presence of any Hazardous Materials at, on, within, under, about or from the Property, or in or adjacent to any part of the Property, or in the soil, groundwater or soil vapor on or under the Property, or elsewhere in connection with the transportation of Hazardous Materials to or from the Property in violation of any Hazardous Materials Laws, whether or not known to Tenant or Indemnified Parties, whether foreseeable or unforeseeable, regardless of the source of such release, discharge, deposit or presence, regardless of when such release, discharge, deposit or presence occurred or is discovered. Without limiting the generality of the foregoing indemnity, such Costs and Liabilities shall include, without limitation, all actual out-of-pocket costs incurred by Indemnified Parties in connection with (i) determining whether the Property is in compliance or the amount of money required to remediate any environmental contamination, and causing the Property to be or become in compliance, with all applicable Hazardous Materials Laws, (ii) any investigation, clean up, removal or remediation of any kind and disposal of any Hazardous Materials present in the soil, groundwater, or at, on, under or within the Property, released from the Property, or which migrate, flow, or percolate onto, under or within any facility or property with respect to which Tenant or Landlord otherwise would have any liability or are otherwise present due to the act of a third party, to the extent required by applicable Hazardous Materials Laws in effect at the time of such investigation, clean up, removal, remediation or disposal, and (iii) repair of any damage to the Property or any other property caused by any investigation, clean up, removal, remediation or disposal.

(b) Upon demand by any Indemnified Party, Tenant shall defend any investigation, action or proceeding in connection with any claim or liability, or alleged claim or liability, that would, if determined adversely to such Indemnified Party, be covered by the foregoing indemnification provisions, such defense to be at Tenant's sole cost and expense and by counsel chosen by such Indemnified Party, which counsel may, without limiting the rights of an Indemnified Party pursuant to the next succeeding sentence of this Section 5(b), also represent Tenant in such investigation, action or proceeding.

(c) As used herein, the term "Hazardous Materials" means and includes any flammable, explosive, or radioactive materials or hazardous, toxic or dangerous wastes, substances or related materials or any other chemicals, materials or substances, exposure to which is prohibited, limited or regulated by any federal, state, county, regional or local authority or which, even if not so regulated, may or could pose a hazard to the health and safety of the occupants of the Property or of property adjacent to the Property, including, but not limited to, asbestos, PCBs, petroleum products and byproducts, substances defined or listed as "hazardous substances" or "toxic substances" or similarly identified in, pursuant to, or for purposes of, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (42 U.S.C. Section 9601, *et seq.*), the Hazardous Materials Transportation Act (49 U.S.C. Section 1801, *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. Section 6901, *et seq.*), and any so-called "Superfund" or "Superlien" law, or any other federal, state or local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, or any substances or mixture regulated under the Toxic Substance Control Act of 1976, as now or hereafter amended (15 U.S.C. Section 2601, *et seq.*); and any "toxic pollutant" under the Clean Water Act, as now or hereafter amended (33 U.S.C. Section 1251, *et seq.*); and any hazardous air pollutant under the Clean Air Act, as now or hereafter amended (42 U.S.C. Section 7901, *et seq.*). The term "Hazardous Materials Laws" means any federal, state or local law, code, statute, ordinance, rule, regulation, rule of common law or guideline relating to Hazardous Materials now or hereafter enacted or promulgated (collectively, and including, without limitation, any such laws which require notice of the use, presence, storage, generation, disposal or release of any Hazardous Materials to be provided to any party).

(d) This Environmental Indemnity provision shall survive the termination of this Lease.

## **SECTION 8. ADDITIONAL AGREEMENTS.**

- A. Tenant shall attend a mandatory safety and security meeting provided by Landlord prior to operating on the Property.
- B. Dumping fill, spreading septic, sewage material, sludge or sludge lime, waste treatment, or non-agricultural material is prohibited.
- C. No hunting rights or privileges are granted for the Property and Tenant shall not allow any hunting to take place thereon.
- D. Tenant will timely certify the acreages planted of each crop at the Farm Service office.

- E. Landlord may, from time to time, remove some portion of the Property from Tenant's use under this lease, without penalty to Landlord except for the payment of crop damage as detailed below. In the event of the Landlord selling, changing the land use, altering the Property or otherwise removing a portion of the Property from the use of Tenant, the Tenant will be given notice to remove the growing crop, if possible. Additional land may be excluded from this lease by Landlord before planting a new crop. Any annual rent collected to date then to be refunded to Tenant.
- F. The failure of Landlord on one or more occasions to enforce any one of the provisions of this Lease Agreement or to exercise any right, remedy or privilege hereunder shall not be construed as a waiver of any subsequent breach or default of a similar nature or as a waiver of any such provision, right, remedy or privilege.
- G. This Lease Agreement and its interpretation and application shall be governed by the internal laws of the State of Illinois without giving effect to conflicts of laws principles. Venue for any action concerning the enforcement of this Lease Agreement shall be proper only in the Sixteenth Judicial Circuit Court, DeKalb County, Illinois.

IN WITNESS WHEREOF, we affix our signatures this, the day and year first written above.

City of DeKalb, an Illinois Municipal Corporation

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

Bill Nicklas

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

City Manager

Tenant

\_\_\_\_\_  
David Geils, Northern Tier Farm Partnership

#### PERSONAL GUARANTY

Tenant's performance of all of the foregoing obligations of the Lease are hereby unconditionally guaranteed by the person whose signature appears below. Said Guarantor waives presentment, dishonor and understands that Landlord has no obligation to pursue Tenant to enforce any provisions of this Lease prior to enforcing same against Guarantor. Tenant and Guarantor acknowledge that Landlord would not enter into this Lease without Guarantor executing and guaranteeing Tenant's obligations herein.

Guarantor

Signature: \_\_\_\_\_

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

DAVID GEILS