

Nevada State Board of Equalization
ASSESSOR Petition for Appeal from



the Decision of the County Board of Equalization

If you have questions about this form or the appeal process, please call: (775) 684-2160.

Email completed form to: stateboard@tax.state.nv.us.

Mail to: State Board of Equalization, 3850 Arrowhead Dr., Carson City, NV, 89706.

PROPERTY OWNERS MUST NOT USE THIS FORM. USE FORM LGS-F038

Please Print or Type:

Part A. ASSESSOR INFORMATION

NAME OF ASSESSOR AND COUNTY TITLE: Briana Johnson, Clark County Assessor					
NAME OF ASSESSOR REPRESENTATIVE Jacob Reyes			TITLE Property Appraiser II		
MAILING ADDRESS (STREET ADDRESS OR P.O. BOX) 500 S Grand Central Pkwy			EMAIL ADDRESS: rudy.reyes@clarkcountynv.gov		
CITY Las Vegas	STATE NV	ZIP CODE 89155	DAYTIME PHONE 702-455-4997	ALTERNATE PHONE	FAX NUMBER

Part B. PROPERTY OWNER AND RESPONDENT INFORMATION

NAME OF PROPERTY OWNER AS IT APPEARS ON THE TAX ROLL: EAGLE SHADOW MOUNTAIN SOLAR / Arevon Energy					
NAME OF RESPONDENT (IF DIFFERENT THAN PROPERTY OWNER LISTED ABOVE): James Bergstrom			TITLE Senior Tax Manager Arevon Energy		
MAILING ADDRESS OF RESPONDENT (STREET ADDRESS OR P.O. BOX) 8800 GAINES CENTER DR SUITE 100			EMAIL ADDRESS: jbergstrom@arevonenergy.com		
CITY SCOTTSDALE	STATE AZ	ZIP CODE 85258-2193	DAYTIME PHONE (480) 653-8450	ALTERNATE PHONE (775) 313-2387	FAX NUMBER

Part C. PROPERTY OWNER ENTITY DESCRIPTION

Check organization type which best describes the Property Owner if an entity and not a natural person.

- ☐ Sole Proprietorship ☐ Trust ☐ Corporation
☒ Limited Liability Company (LLC) ☐ General or Limited Partnership ☐ Government or Governmental Agency
☐ Other, please describe: _____

The organization described above was formed under the laws of the State of Delaware.

The organization described above is a non-profit organization. ☐ Yes ☒ No

Part D. PROPERTY IDENTIFICATION INFORMATION

1. Enter Physical Address of Property:

ADDRESS	STREET/ROAD	CITY (IF APPLICABLE)	COUNTY
	Moapa Solar Road	Moapa	Clark

2. Enter Applicable APN or Account Number from assessment notice or tax bill:

ASSESSOR'S PARCEL NUMBER (APN)	ACCOUNT NUMBER
	229299

3. Does this appeal involve multiple parcels? Yes ☐ No ☒ *List multiple parcels on a separate, letter-sized sheet.*

If yes, enter number of parcels: _____	Multiple parcel list is attached. ☐
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4. Check Property Use Type: ☒

☐ Vacant Land	☐ Mobile Home (Not on foundation)	☐ Mining Property
☐ Residential Property	☐ Commercial Property	☐ Industrial Property
☐ Multi-Family Residential Property	☐ Agricultural Property	☒ Personal Property
☐ Possessory Interest in Real or Personal property		

5. Check Year and Roll Type of Assessment being appealed: ☒

☐ 2026-2027 Secured Roll	☒ 2025-2026 Unsecured Roll	☐ 2025-2026 Supplemental Roll
☐ 2026-2027 Centrally-Assessed Roll	☐ 2025-2026 Net Proceeds Roll	

Other years being appealed: _____

Be prepared to cite the legal authority, if any, that permits the State Board to consider appeals of taxable value from prior years.

For Clerk Use Only:

26-113

Part E. VALUE OF PROPERTY

Property Type	As established by County Board of Equalization		Assessor: <i>What is the value you seek? Write N/A on each line for values which are not being appealed.</i>	
	Taxable Value	Assessed Value	Taxable Value	Assessed value
Land				
Buildings				
Personal Property	\$0	\$0	\$282,630,733	\$98,920,757
Total				

Part F. TYPE OF APPEAL

Check box which best describes the authority of the State Board to take jurisdiction to hear the appeal.

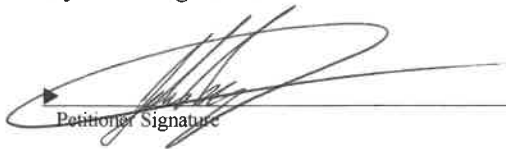
- ☐ NRS 361.360(1); NRS 361.400(2): The value of real or personal property is being appealed; the Petitioner is aggrieved at the action of the County Board or the failure of the County Board to equalize resulting in overvaluation of property or undervaluation or non-assessment of other property.
- ☐ NRS 361A.240(2)(b): The under-or-over valuation of open-space use property is being appealed.
- ☐ NRS 361A.273(1): This is an appeal of a determination that agricultural property has been converted to a higher use and for valuations for deferred tax years; the notice of conversion from the assessor was received after July 1 and before December 16 and the appeal was heard by the County Board.
- ☐ NRS 361.360(1); NAC 361.747(2)(c): The property was denied an exemption that is allowed by law. If so, describe the applicable exemption:
- ☒ Other reason, please describe. CBOE Exempted property not owned by the Tribe

Part G. ATTACH A BRIEF STATEMENT OR LETTER DESCRIBING THE ISSUES AND CONTENTIONS IN THIS APPEAL.**Part H. COUNTY APPEAL INFORMATION**

County in which appeal was heard:	County Case Number:	Date Heard by County:
Clark	031	February 25, 2026

VERIFICATION

I verify (or declare) under penalty of perjury under the laws of the State of Nevada that the foregoing and all information hereon, including any accompanying statements or documents, is true, correct, and complete to the best of my knowledge and belief.


Petitioner Signature

Property Appraiser II
Title

March 4, 2026
Date



STATE OF NEVADA

JOE LOMBARDO
Governor

DEPARTMENT OF TAXATION

GEORGE KELESIS
Chair, Nevada Tax Commission

MAIN OFFICE
3850 Arrowhead Drive
Carson City, Nevada 89706

SHELLIE HUGHES
Executive Director

April 8, 2026

Taxpayer/ Petitioner:

Clark County Assessor
Jacob Reyes, Property Appraiser II
500 S Grand Central Pkwy, 2nd Floor
Las Vegas NV 89155

CONFIRMATION OF APPEAL

Your appeal has been received by the State Board of Equalization (SBE). When referring to this appeal, please use the SBE case number assigned. The case number may be found at the bottom of this confirmation.

The SBE hearings are scheduled from March through October and are held in Carson City and Las Vegas. The parties will be notified, by certified mail, of the date and approximate time of the hearing. If more information about the appeal process is required, please contact SBE staff at the number listed below. At this time, the precise hearing date has not yet been set.

If someone is representing you in this matter, and you have NOT already submitted an original signed authorization, it must be received by this office before any materials, including hearing notices, are sent to your representative. NRS 361.362 requires that the agent be authorized in writing on a form to be provided. This form must be submitted to the SBE before the hearing and have original signatures of the property owner and the agent. An authorization form can be downloaded from our website at: <https://tax.nv.gov/wp-content/uploads/2024/03/LGS-F032-Agent-Authorization-Form-SBE.pdf>

If the appeal involves a matter that is currently in litigation before the courts of Nevada, it is the policy of the SBE to hold the appeal in abeyance pending the resolution of the court litigation unless the parties agree that the court litigation will not be relevant to the appeal before the SBE.

Kari Skalsky, Management Analyst III
Department of Taxation
(775) 684-2160
stateboard@tax.state.nv.us

STATE BOARD OF EQUALIZATION CASE NUMBER: 26-113

Respondent:

Eagle Shadow Mountain Solar
James Bergstrom, Senior Tax Manager Arevon
8800 Gainey Center Dr Ste 100
Scottsdale AZ 85258-2193

County Board Record

**State Board of Equalization Records Request
Preference of Order**

CLARK COUNTY BOARD OF EQUALIZATION

GENERAL INDEX

CBOE Case #: [31](#)
SBOE Case #: [26-113](#)
PPID: [229299](#)
CBOE Hearing Date: [February 25, 2026](#)
Petitioner: [Clark County Assessor](#)
Respondent: [EAGLE SHADOW MOUNTAIN SOLAR](#)
[AREVON ENERGY](#)

1. Clerk's Certification of Copy
2. Petition for Review of Assessed Valuation
3. Evidence of Mailing Notice of Hearing
4. Notice of Decision
5. Petitioner's Exhibits
6. Assessor's Exhibits
7. Audio and Video Evidence (will be transmitted separately)
8. Minutes (see pertinent pages dated [February 25, 2026](#))

CERTIFICATION OF COPY

STATE OF NEVADA)
)§
COUNTY OF CLARK)

I, LYNN MARIE GOYA, the duly qualified and acting Clerk of Clark County, in the State of Nevada, and Ex-Officio Clerk of the Clark County Board of Equalization, do hereby certify that the foregoing is a true, full and correct copy of the original now on file and of record in this office:

CBOE Case #: **31**
Hearing Date: **February 25, 2026**
PPID: **229299**
Petitioner: **Clark County Assessor**



IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of Clark County at my office, Las Vegas, Nevada, May 18, 2026..



Lynn Marie Goya, Clark County Clerk

APPEAL FORM # 26-00031



Clark County Board of Equalization

PETITION FOR REVIEW OF TAXABLE VALUATION

Submit this Petition Form no later than 5 p.m. of the date due. Most types of appeals must be filed no later than January 15th. If the appeal involves valuation of property escaping taxation, or a determination that agricultural property has been converted to a higher use, a different due date may apply.

Please Print or Type:

Part A. PROPERTY OWNER/PETITIONER INFORMATION (Agents Information to be completed in Part H)

NAME OF PROPERTY OWNER AS IT APPEARS ON THE TAX ROLL EAGLE SHADOW MOUNTAIN SOLAR AREVON ENERGY					
NAME OF PETITIONER (IF DIFFERENT FROM PROPERTY OWNER) 325MK 8ME, LLC				TITLE	
MAILING ADDRESS OF PETITIONER (STREET ADDRESS OR P.O. BOX) 8800 N Gainey Center Dr., STE 100				EMAIL ADDRESS indirect-tax@arevonenergy.com	
CITY Scottsdale	STATE AZ	ZIP CODE 85258	DAYTIME PHONE 480-653-8450	ALTERNATE PHONE 775-313-2387	FAX NUMBER

Part B. PROPERTY OWNER ENTITY DESCRIPTION

Check organization type which best describes the Property Owner if an entity and not a natural person. Natural persons may skip Part B.

- ☐ Sole Proprietorship ☐ Trust ☐ Corporation
☒ Limited Liability Company (LLC) ☐ General or Limited Partnership ☐ Government or Governmental Agency
☐ Other, please describe:

The organization described above was formed under the laws of the State of Delaware

The organization described above is a non-profit organization ☐ Yes ☒ No

Part C. RELATIONSHIP OF PETITIONER IN PART C TO PROPERTY OWNER IN PART A

Check box which best describes the relationship of Petitioner to Property Owner: ☐ Additional information may be necessary. Please see Instructions.

- ☐ Self ☐ Trustee of Trust ☐ Employee of Property Owner
☐ Co-owner, Partner, Management Member ☐ Officer of Company
☒ Employee or Officer of Management Company
☐ Employee, Officer, or Owner of Lessee of leasehold, possessory interest, or beneficial interest in real property.
☐ Other, please describe:

Part D. PROPERTY IDENTIFICATION INFORMATION

1. Enter Physical Address of Property:

ADDRESS 0	STREET/ROAD MOAPA SOLAR RD	CITY (IF APPLICABLE) MOAPA	COUNTY
PURCHASE PRICE:		PURCHASE DATE:	

2. Enter Applicable Assessor Parcel Number or Personal Property Account Number from assessment notice or tax bill:

ASSESSOR'S PARCEL NUMBER (APN)	ACCOUNT NUMBER 229299
--------------------------------	--------------------------

3. Does this appeal involve multiple parcels? Yes ☐ No ☒ List multiple parcels on a separate, letter-sized sheet.

If yes, enter number of parcels: Multiple parcel list is attached.

Appeals must be single parcels unless multiple contiguous parcels act as a single unit.

4. Check Property Type: ☒

- | | | |
|---|--|---|
| ☐ Vacant Land | ☐ Mobile Home (Not on foundation) | ☐ Mining Property |
| ☐ Residential Property | ☐ Commercial Property | ☐ Industrial Property |
| ☐ Multi-Family Residential Property | ☐ Agricultural Property | ☒ Personal Property |
| ☐ Possessory Interest in Real or Personal property | | ☐ Exemption |

5. Check Year and Roll Type of Assessment being appealed:

☒ 25-26 Unsecured Roll
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Part E. VALUE OF PROPERTY

Property Owner: What is the value you seek? Write N/A on each line for values which are not being appealed. See NRS 361.025 for the definition of Full Cash Value.

Property Type	Assessor's Taxable Value	Owner's Opinion of Value
Land		
Buildings		
Personal Property		0
Possessory interest in real property		
Exempt Value		
Total	282,630,733	0

APPEAL FORM # 26-00031

Part F. TYPE OF APPEAL

Check box which best describes the authority of the County Board to take jurisdiction to hear the appeal.

- ☒ NRS 361.357: The full cash value of my property is less than the computed taxable value of the property.
- ☐ NRS 361.356: My property is assessed at a higher value than another property that has an identical use and a comparable location to my property.
- ☐ NRS 361.355: My property is overvalued because other property within the county is undervalued or not assessed; and have attached the proof showing the owner, the location, the description and the taxable value of the undervalued property.
- ☐ NRS 361.155: I request a review of the Assessor's decision to deny my claim for exemption from property taxes.
- ☐ NRS 361A.280: The Assessor has determined my agricultural property has been converted to a higher use and that deferred taxes are now due.
- ☐ NRS 361.769: My property has been assessed as property escaping taxation for this year and/or prior years.

Part G. WRITE A STATEMENT DESCRIBING THE FACTS AND/OR REASONS FOR YOUR APPEAL, REQUEST FOR REVIEW OR COMPLAINT. (ATTACH A SEPARATE PAGE IF MORE ROOM IS NEEDED)

Eagle Shadow Mountain Solar is located on tribal land owned by the Moapa Band of Paiutes and exempt from state and local taxation.

CERTIFICATION

I certify (or declare) under penalty of perjury under the laws of the State of Nevada that the foregoing and all information hereon, including any accompanying statements or documents, is true, correct, and complete to the best of my knowledge and belief; and that I am either (1) the person who owns or controls taxable property, or possesses in its entirety taxable property, or the lessee or user of a leasehold interest, possessory interest, beneficial interest or beneficial use, pursuant to NRS 361.334; or (2) I am a person employed by the Property Owner or an affiliate of the Property Owner and I am acting within the scope of my employment. If Part H below is completed, I further certify I have authorized the agent named therein to represent the Property Owner as stated and I have the authority to appoint the authorized agent named in Part H.

	Authorized Signatory
Owner/Petitioner Signature	Title
Eric Huswick	1/15/2026
Print Name of Owner/Petitioner	Date

Part H. AUTHORIZATION OF AGENT

Complete this section only if an agent, including an attorney, has been appointed to represent the Property Owner/Petitioner in proceedings before the County Board. Read instructions for further information.

I hereby authorize the agent whose name and contact information appears below to file a petition to the Clark County Board of Equalization and to contest the value and/or exemption established for the properties named in Part D(2) of this Petition.

I further authorize the agent listed below to receive all notices and decision letters related thereto; and represent the Petitioner in all related hearings and matters including stipulations and withdrawals before the Clark County Board of Equalization. This authorization is limited to the appeal of property valuation for the tax roll and fiscal year named in Part D(5) of this Petition.

Authorized Agent Contact Information:

NAME OF AUTHORIZED AGENT:			TITLE:		
AUTHORIZED AGENT COMPANY, IF APPLICABLE:			EMAIL ADDRESS:		
MAILING ADDRESS OF AUTHORIZED AGENT (STREET ADDRESS OR P.O. BOX)					
CITY	STATE	ZIP CODE	DAYTIME PHONE	ALTERNATE PHONE	FAX NUMBER

I hereby accept appointment as the authorized agent of the Property Owner in proceedings before the County Board.

CERTIFICATION

Agent Signature required only if Petitioner did not sign certification and a separate Agent Authorization will be submitted.

I certify (or declare) under penalty of perjury under the laws of the State of Nevada that the foregoing and all information hereon, including any accompanying statements or documents, is true, correct, and complete to the best of my knowledge and belief; and I am the authorized agent with authority to petition the Clark County Board subject to the requirements of NRS 361.362 and NAC 361.TBD (7012) and the limitations contained in the Agent Authorization Form to be separately submitted

Authorized Agent Signature	Title
Print Name of Signatory	Date
☐ I hereby withdraw appeal to the Board of Equalization	
Signature of Owner or Authorized Agent/Attorney	Date



Date: 05/06/2026

CLARK COUNTY BOARD OF EQUALIZATION NOTICE OF HEARING

This is your notification that your Petition for Review to the Clark County Board of Equalization for review of the assessed value has been placed on the Agenda for the meeting of:

Date: Wednesday, February 25, 2026 Time: 08:00 am Location: Commission Chambers Clark County Government Center 500 S Grand Central Pkwy, 1st Floor Case Number: 00031 Primary APN/ PPID: 229299

We encourage you to arrive at the above hearing at the scheduled start time. Depending on the length of the agenda, your case may be heard anytime between the start time noted and the completion of the agenda.

YOUR HEARING DATE HAS BEEN SET, IT CANNOT BE CHANGED.

If you have signed a stipulation letter, you are not required to attend your scheduled hearing; however, stipulated values are subject to review and change by the Board of Equalization. Signed withdrawals are not subject to further action by the Board.

Assessor's data related to your case will be provided to you at the hearing or you may contact the Assessor's Office to check availability prior to the hearing. Please bring this notice in order to receive the documents.

Petitioners requiring a transcript of the hearing must provide and pay for a court reporter. A copy of such transcript must also be provided to the County Clerk and the Secretary of the State Board of Equalization.

The Assessor's Office is located at 500 S. Grand Central Parkway, 2nd Floor.
If you have any questions, please call 702-455-4997.



200 Lewis Avenue
Box 551604
Las Vegas, NV 89155-1604
(702) 671-0500

Office of the County Clerk

Lynn Marie Goya
County Clerk
Commissioner of Civil Marriages

Carl Bates
Chief Deputy County Clerk

31/02-25-26

EAGLE SHADOW MOUNTAIN SOLAR
AREVON ENERGY
8800 GAINES CENTER DR SUITE 100
SCOTTSDALE AZ 85258-2193

March 05, 2026

Re: Petition No. 31

Assessment Year:	2025 - 2026
PPID:	229299
Multiple PPIDs:	No
Hearing Date:	February 25, 2026

This is to notify you that the Clark County Board of Equalization has made the following determination on the petition you have filed on the above-described property:

Denied the Assessor's recommendation (for no change in the total taxable value of \$282,630,733) based on the information provided and because the property is on Moapa Tribe land it is not subject to taxation.

If you have any questions, please contact the Clark County Assessor's Office, 500 South Grand Central Parkway, Second Floor, Las Vegas, NV 89106 Phone: (702) 455-3882.

Sincerely,

A handwritten signature in black ink that reads "Lynn Marie Goya".

Lynn Marie Goya, Clark County Clerk

Ex-Officio Clerk of:

Board of County Commissioners • Clark County Board of Equalization
Clark County Debt Management Commission • Clark County Water Reclamation District Board of Trustees
Clark County Redevelopment Agency • Clark County Liquor and Gaming Board • Mt. Charleston Fire Protection District
University Medical Center of Southern Nevada Board of Trustees • Moapa Valley Fire Protection District Board of Fire Commissioners



CLARK COUNTY BOARD OF EQUALIZATION

Case # 31

Petitioner Information



8800 North Gainey Center Drive, Suite 100, Scottsdale, AZ 85258

Via Email

February 17, 2026

Mr. Jacob Reyes
Appraiser II,
Clark County Assessor's Office
500 S. Grand Central Pkwy, 2nd Floor
Las Vegas, NV 89155

Re: Petition for Review for Eagle Shadow Mountain Solar – Case No. 00031

Dear Mr. Reyes:

This letter is submitted in support of the Petition for Review to the Clark County Board of Equalization submitted by 325MK 8ME, LLC ("**Petitioner**") in Case No. 031. This letter explains why the Eagle Shadow Mountain Solar Project (the "**Solar Facility**" or "**Facility**"), owned and operated by Petitioner but located entirely on land belonging to the Moapa Band of Paiute Indians (the "**Tribe**" or "**Moapa Band**"), is exempt from Nevada property tax.

I. EXECUTIVE SUMMARY

The Facility is located entirely on the Moapa River Indian Reservation (the "**Reservation**"), which consists of approximately 72,000 acres of arid land which are held in trust for the Tribe by the United States. Under the United States Constitution and federal statutes and regulations, lands owned by the United States and held in trust for an Indian tribe are exempt from state and local taxation.¹ Pursuant to Ninth Circuit precedent, and federal statutes and regulations, that exemption extends to permanent improvements upon such tribal lands, regardless of whether owned by an Indian tribe.² The Facility is a permanent improvement and, thus, it is not subject to property taxes imposed by Clark County (the "**County**"). Furthermore, regardless of the permanence of the Facility, federal law limits the authority of a state or county to impose taxes within tribal land; under that federal law, the County lacks authority to impose its property taxes on the Facility.

II. FACTUAL BACKGROUND

¹ See United States Constitution, Article VI(2); *see also* 25 U.S.C. § 5108; 25 C.F.R. § 162.017.

² *Confederated Tribes of Chehalis Reservation v. Thurston County Board of Equalization*, 724 F.3d 1153, 1157–158 (9th Cir. 2013).



8800 North Gainey Center Drive, Suite 100, Scottsdale, AZ 85258

A. The Moapa Reservation, the Tribal Lease to Petitioner, and Confirmation the Facility Would Be Immune from State Property Tax.

The Moapa Reservation was created by Executive Order in 1873 and originally consisted of over 2,000,000 acres.³ While Congress reduced the size of the Reservation to 1,000 acres in 1875, Congress ultimately restored approximately 71,000 acres in 1980.⁴ The entirety of the Reservation—now about 72,000 acres—is owned by the United States and held in trust for the benefit of the Tribe.

Petitioner and the Tribe negotiated a long-term solar energy ground lease agreement (“**Tribal Lease**”), ultimately executed on May 1, 2020, by which Petitioner leased from the Tribe 2,300 acres within the Reservation to construct and operate a solar energy facility and ancillary improvements.⁵ Under the Tribal Lease, the Tribe has agreed to furnish certain services, including supply of groundwater to the Facility, and to cooperate in various ways with the construction and operation of the Facility. As required by federal law, the Tribal Lease was reviewed and approved by the U.S. Department of the Interior in accordance with federal statutes and the Department’s extensive regulations for leasing of tribal lands.⁶ The Tribal Lease is for a 50-year term.

Concurrent with the Tribal Lease, the Tribe and Petitioner entered into a “Tribal Agreement” under which the Tribe agreed to collect certain “payments in lieu of taxes,” or “PILOT” payments, from Petitioner.⁷

In the early stages of the Facility’s development, the State of Nevada directly informed Petitioner that the Facility is immune from property tax, that “property taxes would be paid to the [T]ribe and not the state,” and that Nevada “**does not have jurisdiction over the property taxes paid on [tribal] land.**”⁸ The Tribe and Petitioner relied on the State’s position when they decided to invest substantial resources in time, effort and capital to develop the Facility on the Reservation.

³ Executive Order, Establishment of Moapa River Reservation, March 12, 1873.

⁴ Report to Accompany S. 1135, Expansion of Moapa Reservation, Nevada, September 17, 1980.

⁵ A copy of the Tribal Lease is attached hereto as **Exhibit A**.

⁶ Record of Decision, Final Environmental Impact Statement of the Eagle Shadow Mountain Solar Projects, U.S. Dept. of the Interior, Bur. of Indian Affairs, Western Region, dated February 2020. A copy of the Record of Decision is attached to this letter as **Exhibit B**.

⁷ A copy of the Tribal Agreement is attached hereto as **Exhibit C**.

⁸ A copy of this communication is attached to this letter as **Exhibit E** (emphasis added). The State’s email was consistent with Nevada Department of Taxation’s Guidance Letter 14-001—discussed further, *infra*—which provides: “Based on the rulings of the Federal courts and Federal regulation, real property such as buildings and improvements located on lands held in trust by the United States Government for an Indian tribe is not taxable property, even when owned by a person or entity other than the tribe.”



8800 North Gainey Center Drive, Suite 100, Scottsdale, AZ 85258

B. The Facility.

The Facility is located on the Moapa Reservation, approximately 30 miles northeast of Las Vegas, west of I-15 and east of U.S. Highway 93. Access to the Facility is available only via roads maintained by the Tribe.

The Facility is a 300 MW photovoltaic solar energy facility. The Facility was constructed pursuant to Structural Design Plans, which took over eight months to develop due to the unique geographic and geological characteristics of the Reservation.⁹ Work on the Facility started in August 2020, with the bulk of significant grading and sitework completed by March 2021. The solar array construction commenced in December 2020 and concluded April 2023, while construction of the high voltage components of the project was completed in May 2021.

The Facility consists of an electrical substation, module-tracker structures, solar panels, inverters, transmission infrastructure, and water supply systems, among other improvements, all of which are permanently affixed to the land on which they are situated, and all operate together as a unit.¹⁰ Each module consists of 72 solar panels. The modules are physically connected to 200-foot long “trackers” that parallel the ground and are secured in the ground by “earth trusses” or “driven piles.” The modules’ solar panels collect the sun’s energy, and that energy is transmitted through a series of steps, including an inverter, to the electrical substation. At the substation, solar energy is conveyed to a transformer for subsequent transmission. The substation is built with thick cement foundations and steel framing. It is impossible to remove (or move) the Facility without destroying it.

The Facility is owned by Petitioner,¹¹ and it became commercially operable in May 2023. Petitioner has contracted to sell 100% of the Facility’s electricity output to Nevada Energy (“**NV Energy**”), under a 25-year power purchase agreement awarded in 2018.

C. The County’s 2025-26 Tax Bill

On 10/29/2025, the County issued a bill for tax year 2025-26 in which it classified the Facility as personal property and assessed tax against the Facility in the amount of \$2,474,700.58. Petitioner timely paid the assessed amount and submitted an appeal to the County Board of Equalization (the “**Board**”). The Board assigned Case No. 00031 to Petitioner’s case, and notified Petitioner that a hearing was set for February 25, 2026.

⁹ Affidavit of Justin Johnson, attached hereto as **Exhibit D**, at par. 62 (“**Affidavit**”).

¹⁰ For more detail on how the Facility is permanently attached to the Reservation land, see detailed discussion, *infra*, section III.B.ii.

¹¹ Tribal Lease at 7.04.



8800 North Gainey Center Drive, Suite 100, Scottsdale, AZ 85258

III. ANALYSIS

A. Federal Law Preempts Taxation of Real Property and Improvements in Indian Country.

Under longstanding Supreme Court precedent, rooted in fundamental notions of tribal sovereignty and the Supremacy Clause of the U.S. Constitution, states have no power to impose taxes on tribes or their lands absent express authorization by Congress.¹² This fundamental principle applies to tribal lands themselves and to all permanent improvements constructed on those lands, irrespective of who owns the improvements, because permanent improvements are “essentially part of the lands” themselves.¹³ *Rickert* and *Mescalero* are part of an unbroken chain of Supreme Court cases holding that state and local governments may not regulate and tax Indian lands (including permanent improvements) unless expressly authorized by Congress.¹⁴ Said another way, state taxation of tribal lands is preempted, *per se*, because states do not have, and have never had, the authority to impose taxes on the United States or the Indian tribes “for whose benefit the United States holds reservation lands in trust.”¹⁵ These principles alone are sufficient to dispose of state attempts to tax tribal lands and permanent improvements thereon.

Separate and apart from the *per se* preemption doctrine for tribal lands and improvements thereon, the U.S. Supreme Court has developed a balancing test for situations where state taxation in Indian country may be impliedly preempted by federal law.¹⁶ This is known as the *Bracker* balancing test, and it applies not just to taxation of real property but to taxation or regulation of any kind imposed by a state within tribal lands. This balancing test “is not dependent on mechanical or absolute conceptions of state or tribal sovereignty, but has called for a particularized inquiry into the nature of the state, federal, and tribal interests at stake, an inquiry designed to determine whether, in the specific context, the exercise of state authority would violate federal law.”¹⁷

¹² *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 158 (1973) (“*Mescalero*”).

¹³ *United States v. Rickert*, 188 U.S. 432, 442 (1903) (“*Rickert*”); *Confederated Tribes of the Chehalis Reservation v. Thurston County Bd. of Equalization*, 724 F.3d 1153 (9th Cir. 2013) (“*Chehalis*”).

¹⁴ See, e.g., *Cass County v. Leech Band of Chippewa Indians*, 524 U.S. 103, 110 (1998) (“State and local governments may not tax Indian reservation land ‘absent cession of jurisdiction or other federal statutes permitting it.’” (quoting *County of Yakima v. Confederated Tribes and Bands of Yakima Nation*, 502 U.S. 251, 258 (1992))); *McClanahan v. Arizona State Tax Comm’n*, 411 U.S. 164, 170-71 (1973) (“State laws generally are not applicable to tribal Indians on an Indian reservation except where Congress has expressly provided that State laws shall apply.”).

¹⁵ *Cotton Petroleum Corporation v. New Mexico*, 430 U.S. 163, 175 (1989). See also *McCulloch v. Maryland*, 4 Wheat. 316 (1819), *Montana v. Blackfeet Tribe of Indians*, 471 U.S. 759 (1985).

¹⁶ *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 145 (1980) (“*Bracker*”).

¹⁷ *Bracker*, 448 U.S. at 145.



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B. The County's Taxation of the Facility is Per Se Pre-Empted by Controlling Federal Law.

i. Permanent Improvements to Indian Land Are Exempt from State and Local Tax.

Congress has always intended, and federal courts have always understood, that “as a general rule Indian country falls under the primary civil, criminal, and regulatory jurisdiction of the federal government and the resident Tribe rather than the states.”¹⁸ Consistent with this understanding, in 1934, Congress, seeking to establish a mechanism for tribes (with the help of the federal government) to regain control over lands of which they had previously been divested, enacted the Indian Reorganization Act of 1934. The Act, though amended over time, remains on the books today. In its present form, Section 5 of the Act (originally codified at 25 U.S.C § 465; now 25 U.S.C. § 5108) provides:

“The Secretary of the Interior is authorized, in his discretion, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or surface rights to lands, within or without existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians. . . .

Title to any lands or rights acquired pursuant to this Act or the Act of July 28, 1955 (69 Stat. 392), as amended (25 U.S.C. 608 et seq.) shall be taken in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired, **and such lands or rights shall be exempt from State and local taxation.**”¹⁹

In interpreting § 5108, the Supreme Court has explained that “State and local governments may not tax Indian reservation land absent cession of jurisdiction or other federal statutes permitting it. [The Supreme Court has] consistently declined to find that Congress has authorized such taxation unless it has made its intention to do so unmistakably clear.”²⁰ With respect to real property taxes, the prohibition against state taxation has long been understood to apply both to tribal land itself, and to any permanent improvements built upon or affixed to such land.²¹

¹⁸ *Yankton Sioux v. Podhrasky*, 606 F.3d 994, 1006 (8th Cir. 2010).

¹⁹ 25 U.S.C. § 5108 (emphasis added). Note that many cases mentioned in this letter refer both to “Section 5” and to “§ 465” when discussing this statute. These are all the same statute, and this letter refers to it as § 5108, in accordance with its current location in the U.S. Code.

²⁰ *Cass County v. Leech Band of Chippewa Indians*, 524 U.S. 103, 110 (1998), citing *Mescalero*, 411 U.S. at 148 and *County of Yakima v. Confederated Tribes and Bands of Yakima Nation*, 502 U.S. 251 (1992) (internal citations and quotation marks omitted).

²¹ *Mescalero*, 411 U.S. at 158; see also *Rickert*, 188 U.S. at 442 (“Every reason that can be urged to show that the land was not subject to local taxation applies to the assessment and taxation of the permanent improvements.”)



8800 North Gainey Center Drive, Suite 100, Scottsdale, AZ 85258

In *Chehalis*—which is binding precedent in the Ninth Circuit, whose jurisdiction includes Nevada and the Reservation—the court held the prohibition against state or county taxation does not depend on the ownership of the permanent improvements. *Chehalis* concerned a waterpark resort built upon land held in trust for the tribe by the U.S. The resort was owned by a joint venture (a separate LLC) between the tribe itself and a non-tribal hospitality developer, Great Wolf Resorts. The tribe owned 51% of the venture, and the developer owned 49%. Thurston County sought to impose property tax on the resort, arguing that—although the land underlying the resort was exempt from state tax under § 5108—the resort itself was subject to tax because it was owned by a non-tribal third party. The Ninth Circuit rejected that argument, holding the county’s position was foreclosed by the Supreme Court’s holding in *Mescalero*, and reaffirmed that permanent improvements built on land owned in trust by the U.S. for an Indian tribe are not subject to state taxation.²² Specifically, the Ninth Circuit held that the Supreme Court’s decision in *Mescalero* “sets forth the simple rule that [§ 5108] preempts state and local taxes on permanent improvements built on non-reservation land owned by the United States and held in trust for an Indian tribe. **This is true without regard to the ownership of the improvements.**”²³

Chehalis is underpinned by the U.S. Supreme Court’s decision in *Mescalero*, where the Supreme Court invalidated a state use tax on permanent improvements located on tribal land, reasoning that this form of tax was equivalent to a tax on land, and therefore barred.²⁴ The Supreme Court’s conclusion was based on the improvements being “permanently attached to the realty” and that “use of permanent improvements upon land is so intimately connected with use of the land itself that an explicit provision relieving the latter of state tax burdens must be construed to encompass an exemption for the former.”²⁵ The Supreme Court concluded that because “these permanent improvements on the Tribe’s tax-exempt land would certainly be immune from the State’s ad valorem property tax,” they must also be exempt from the state’s use tax.²⁶

The State of Nevada has recognized that the *Chehalis* doctrine applies to facilities within Nevada, including in Clark County. Nevada Department of Taxation’s Guidance Letter 14-001, issued in the immediate aftermath of *Chehalis*, states: “Based on the rulings of the Federal courts and Federal regulation, real property such as buildings and improvements located on lands held in trust by the United States Government for an Indian tribe **is not taxable property, even when owned by a person or entity other**

²² *Chehalis*, 724 F.3d at 1159.

²³ *Id.* (emphasis added).

²⁴ *Mescalero*, 411 U.S. at 158.

²⁵ *Id.*

²⁶ *Id.*



8800 North Gainey Center Drive, Suite 100, Scottsdale, AZ 85258

than the tribe.²⁷ In applying the principles from Guidance Letter 14-001, the Nevada Department of Taxation and assessors must “determine whether the real property is non-taxable,” and to do so “it must be established that the property is located on lands owned by the United States held in trust for an Indian tribe. Title records must be checked to confirm said ownership of the land. In addition, the Taxpayer must provide a copy of the lease showing that the subject property is on property owned by the United States and held in trust for the Indian tribe.”²⁸

ii. The Facility is a Permanent Improvement to Real Property.

The Facility, including module-tracker structures and substation, is permanently affixed to the Reservation land.²⁹

1. *Module-Tracker Structures.*

Every module at the Facility is physically connected to a tracker. There are 10,618 module-tracker structures at the Facility and each one is physically affixed to the ground by “earth trusses” or “driven piles.”³⁰

Earth trusses are manufactured solar tracker foundations that include five parts and are assembled in an “A” frame configuration. These parts consist of two earth screws that anchor the truss into the ground. Earth screws are about 5 to 7 feet long, each weighing approximately 60 pounds, and with an outside diameter of three inches. The earth screws have continuous flights (or threads) and are hot-dipped galvanized. The earth screws are installed into the ground using a proprietary rig that simultaneously drills a hole and advances the earth screws into bedrock at appropriate depth and angle to secure the structure. Two supporting pipe legs and an earth truss cap are permanently affixed to the earth screw in the field with a custom hydraulic crimper. The earth truss is stabilized and immovable as the screws are embedded nearly 4 feet into the bedrock. The tracker is then bolted to the completed A-Frame earth truss using industrial grade bolts. At the Facility, 83,304 earth trusses were used to permanently connect module-tracker structures to the ground.

Once the earth screws have been secured into bedrock, it is impossible to “unscrew” or remove them without substantially damaging them as well as the structures attached.

²⁷ Emphasis added. Nevada Department of Taxation’s Guidance Letter 14-001 is attached to this letter as **Exhibit F**.

²⁸ See **Ex. F [V]** at 2. [CONFIRM THIS IS CORRECT EXHIBIT.]

²⁹ The Facility’s Structural Design Plans detail how the project is physically connected to the land. The Structural Design Plans are attached hereto as **Exhibit G**.

³⁰ Photos of the Facility, trackers, module-tracker structures, earth trusses and driven piles are attached hereto as **Exhibit H**. 60% of the Facility module-tracker structures are permanently connected to the ground via earth trusses while 40% use driven pile connections.



8800 North Gainey Center Drive, Suite 100, Scottsdale, AZ 85258

Similar to the removal of a building or a bridge, removal must be performed pursuant to permit-specific decommissioning specifications.

Driven piles are between 8.5 feet and 15.5 feet long and weigh up to 186 pounds. As with earth trusses, to install driven piles a slightly undersized pilot hole is cut deep into the bedrock using a down-hole drill. Then, a mechanical pile driver is used to hammer the driven pile into the pilot hole until it reaches a stable layer of bedrock. This typically requires hammering the driven piles anywhere from 6 to 8 feet into the ground. At that point, the bedrock securely locks the driven pile into a vertically-fixed position, leaving about three to five feet of exposed driven pile above ground. The exposed portion of the driven pile is then bolted to the tracker using the same large-format bolts discussed above. At the Facility, 38,061 driven piles were used to permanently connect module-tracker structures to the ground.

2. Substation.

The Facility substation³¹ is connected to the Reservation land through cement foundations. The substation infrastructure includes two power transformers, each weighing in excess of 50,000 pounds; a control enclosure structure which houses all of the monitoring and controls devices; various high voltage and medium voltage breakers (among other electrical protection devices) and/or switching; a capacitor bank; a backup generator; and a series of steel structures which support the overhead medium- and high-voltage cables. All of these structures and equipment are affixed to individual foundations by anchor bolts. The anchor bolts were either set into the concrete before hardening or drilled and epoxied into already-hardened concrete.

Removal of the substation would destroy the substation itself. After removing ancillary equipment connected to the cement foundations, the steel structures bolted to the cement foundations would still remain. There is no way to remove the cement foundations from the ground without industrial excavation processes that substantially damage these foundations and the land.

iii. Federal Leasing Regulations and Nevada Guidance Confirm that Solar Energy Facilities Are Permanent Improvements.

Because the Facility is located on leased lands held in trust for the Tribe by the United States, an extensive set of federal regulations apply to the Tribal Lease. These regulations include 25 C.F.R. § 162.017(a), which states:

“Subject only to applicable Federal law, **permanent improvements** on the leased land, **without regard to ownership of those improvements**, are

³¹ Photos of the Facility's substation are attached hereto as Exhibit I.



8800 North Gainey Center Drive, Suite 100, Scottsdale, AZ 85258

not subject to any fee, tax, assessment, levy, or other charge imposed by any State or political subdivision of a State. Improvements may be subject to taxation by the Indian tribe with jurisdiction.” (Emphasis added.)

The regulations go on to say that while leases approved thereunder are subject to both federal and tribal laws, they are not subject to state law except where a tribe or Congress has made state law applicable, which is not the case here.³²

The federal leasing regulations provide that “permanent improvements” mean “buildings, other structures, and associated infrastructure attached to the leased premises.”³³ The Facility consists of solar panels, inverters, transmission infrastructure, water supply systems, and an electrical substation, among other improvements. As explained above, the principal components of the Facility, the module-tracker structures and the substation, are physically affixed to the land in a permanent fashion.

The federal leasing regulations also include specific language contemplating that a non-Indian lessee under a solar energy lease would own any permanent improvements installed during the lease term, and affirming that any “facilities and associated infrastructure” installed by the lessee for the generation and delivery of electricity shall be “**considered permanent improvements**,” and thereby excluded from state and local taxation under § 162.017.³⁴

Furthermore, the Nevada Department of Taxation has determined (on 43 separate occasions since 2011, and as recently as April of 2025) that all components of a solar project are real property when operated as a unit.³⁵ The State of Nevada’s position, through the Nevada Department of Taxation, is unequivocal and consistent—solar energy facilities are real property, not personal property.³⁶

iv. State Law is “Irrelevant” in Determining the Permanence of Improvements for Purposes of Federal Preemption.

³² 25 CFR § 162.014.

³³ 25 CFR § 162.003.

³⁴ 25 CFR § 162.543-544 (emphasis added).

³⁵ The 43 RETA Fiscal Impact Notes referred to herein are attached hereto as **Exhibit J**.

³⁶ For example, a comparable solar energy facility called Battle Mountain Solar (“BMS”), located in Humboldt County, Nevada, appealed the Humboldt County Assessor’s property tax valuation to the County Board of Equalization. One of the issues in the case was whether the BMS project should be classified as real or personal property. The County Board of Equalization agreed with the Humboldt County Assessor’s position that it should be classified as real property. In August of 2022, the State Board of Equalization issued an Order in which it acknowledged the County Board of Equalization was correct to classify it as real property. The BMS-Humboldt County Petition for Judicial Review and attached Nevada State Board of Equalization Order are attached hereto as Exhibit N; see Ex. N at 8.



8800 North Gainey Center Drive, Suite 100, Scottsdale, AZ 85258

Analyzing whether any particular improvements should be considered “permanent” for purposes of *per se* preemption is a question of federal law and does not depend on any Nevada state law. The Ninth Circuit Court of Appeals, whose jurisdiction includes Nevada (and the Reservation), addressed this in *Chehalis*. In that case, Thurston County raised the argument that because the subject waterpark would be classified as personal property under Washington state law, it did not fall within the federal tax exemption that applies to tribal lands and permanent improvements thereto. The Ninth Circuit explicitly rejected the county’s position, holding that “permanent improvements on land owned by the United States and held in trust for Indians may not be taxed as a matter of federal law. . . . Therefore, **it is irrelevant whether permanent improvements constitute personal property under Washington law.**”³⁷

C. Regardless of the Permanence of the Improvements, the County’s Tax is Pre-Empted Under the U.S. Supreme Court’s Bracker Test.

As explained above, *Chehalis* and other binding federal law preempt the County from imposing its property tax on the Facility, *per se*. Because the Facility consists of permanent improvements to tribal trust land, this is a bright-line rule. Furthermore, even if the Facility were deemed to be personal property rather than a permanent improvement, County taxation would still be preempted as a matter of federal law under the *Bracker* test.

Bracker established a balancing test to determine whether it is lawful to tax non-tribal parties engaging in business on tribal land.³⁸ Under *Bracker*, the interests of the applicable tribe and the federal government must be carefully evaluated before being weighed against the interest of the state or county in imposing its tax or regulation.³⁹ In this case, the interests of the Moapa Band and the federal government, and the burden the state tax would impose on each of them and their sovereign powers, are significant, and outweigh the County’s “generalized interest in raising revenue.”⁴⁰

i. Federal Interests.

Where, as here, the federal government has established extensive regulations applicable to the activity being taxed, courts find that imposition of state taxes threatens the ability of the federal government to enforce those regulations and fulfill its obligations toward

³⁷ *Chehalis*, 724 F.3d at 1157-58, citing *Mescalero*, 411 U.S. 145 (emphasis added).

³⁸ *Bracker*, 448 U.S. at 144, 145.

³⁹ *Hoopa Valley Tribe v. Nevins* (“*Hoopa Valley*”), 881 F.2d 657, 661 (9th Cir. 1989).

⁴⁰ *Bracker*, 448 U.S. at 150.



8800 North Gainey Center Drive, Suite 100, Scottsdale, AZ 85258

tribes.⁴¹ As explained above, federal law supports the leasing of tribal land “to allow Indian landowners to use their land profitably for economic development, ultimately contributing to tribal well-being and self-government.”⁴² Further, an “[a]ssessment of State and local taxes would obstruct Federal policies supporting tribal economic development, self-determination, and strong tribal governments.”⁴³

Besides the general regulations that apply to leasing of Indian lands, there are specific regulations that govern the terms on which tribes may enter into leases for solar energy projects, such as the Tribal Lease for the Facility here.⁴⁴ These regulations are extensive, and include provisions (among many others) to ensure the term, compensation, subleasing, mortgaging, and insurance requirements contained in any solar energy lease are fair to the tribe.⁴⁵ And, as stated above, the regulations confirm that any “facilities and associated infrastructure” installed by a non-Indian solar energy lessee of tribal land shall be “considered permanent improvements” and thereby subject to exclusion from state and local taxation.⁴⁶ Imposition of the County’s tax on the Facility would directly undercut these federal objectives.

ii. Moapa Band’s Interests.

The Tribe’s interests here are similarly strong. In *New Mexico v. Mescalero Apache Tribe*⁴⁷ (“**New Mexico**”), the U.S. Supreme Court explained that “when a tribe undertakes an enterprise under the authority of federal law, an assertion of State authority must be viewed against any interference with the successful accomplishment of the federal purpose.”⁴⁸ Tribal interests are undermined by the imposition of state taxes, even where the tax is directly imposed upon non-Indians doing business with the tribe. In *Bracker* itself, a state tax was levied against the business operations of a non-Indian logging company operating on tribal land, and the Supreme Court nonetheless held that the White Mountain Apache Tribe would face a meaningful economic and regulatory burden if the State of Arizona were allowed to impose its tax on the non-Indian logging company. That’s

⁴¹ *Bracker*, 488 U.S. at 149 (“The imposition of the taxes at issue would undermine that policy in a context in which the Federal Government has undertaken to regulate the most minute details of timber production and expressed a firm desire that the Tribe should retain the benefits derived from the harvesting and sale of reservation timber.”); *Ramah*, 458 U.S. at 841-42 (“The direction and supervision provided by the Federal Government for the construction of Indian schools leave no room for the additional burden sought to be imposed by the State through its taxation of the gross receipts paid to Lembke by the Board.”).

⁴² See 77 Fed. Reg. 72440-01 (Dec. 5, 2012), 2012 WL 6019492.

⁴³ See *id.*

⁴⁴ 25 CFR § 162.538 et seq.

⁴⁵ *Id.*

⁴⁶ 25 CFR § 162.543-544.

⁴⁷ 462 U.S. 324 (1983).

⁴⁸ *New Mexico*, 462 U.S. at 336.



8800 North Gainey Center Drive, Suite 100, Scottsdale, AZ 85258

because (among other things) dual taxation puts tribes at a disadvantage in attempting to attract investment from outside businesses, chilling tribal economic development and constraining tribes' sovereign ability to use their own taxing power as a policy tool. "The very possibility of an additional State or local tax has a chilling effect on potential lessees as well as the tribe that as a result might refrain from exercising its own sovereign right to impose a tribal tax to support its infrastructure needs."⁴⁹

In addition, the Moapa Band collects PILOT payments from Petitioner on the Facility pursuant to Section 4 of the Tribal Agreement. That section sets forth two important principles. First, it provides that PILOT payments "shall not exceed \$100 per acre of the aggregate Premises actually leased by Project Company during the year immediately preceding the Pilot Date, which \$100 per acre figure shall increase by three percent (3%) annually."⁵⁰ Second, it provides a cap on PILOT payments by stating that "in no event shall any single annual Pilot Payment due and payable by Project Company hereunder be in an amount greater than eighty percent (80%) of the **real property taxes** that would be imposed by federal, state or local authorities **if the Project were located on land outside the Reservation** in the State of Nevada lying within Clark County Tax District No. 100 (Unincorporated County)."⁵¹ Here, the Facility is located on approximately 2,300 acres of leased real property. Accordingly, the maximum PILOT payment is approximately \$230,000 in year one, with annual 3% increases.

However, Clark County takes the position that almost no part of the Facility is real property and the County characterizes its tax as a personal property assessment. If the County's position is upheld, then the "real property taxes that would be imposed" by Clark County if the Facility was not located on tribal lands would be virtually zero. Accordingly, if Clark County prevails on its position, the cap on the Tribe's PILOT tax under the Tribal Agreement would also be virtually zero, and the Tribe would lose nearly all value of the PILOT fees over the lifetime of the Lease. Over the 50-year Lease term, using 3% increases to the annual PILOT payments, the total revenue generated for the Moapa Band through PILOT payments is nearly \$26,000,000. **The Moapa Band would lose almost all of that value if Clark County's position is upheld.**

It is critical for the County Board to understand what's at stake for the Tribe. Despite the fact that solar improvements on Reservation land have been consistently classified (until now) as real property improvements—and exempt from state taxation—Clark County has changed course, seeking to reclassify these improvements to generate tax revenue. If the County's position is upheld, it would deny the Tribe millions of dollars in PILOT payments

⁴⁹ 77 F.R. 72448.

⁵⁰ Tribal Agreement at Section 4.

⁵¹ *Id.* (emphasis added).



8800 North Gainey Center Drive, Suite 100, Scottsdale, AZ 85258

on which the Tribe relies to provide much-needed public services on the Reservation and for tribal members.

This threatened loss of Tribal revenue would harm tribal economic development, self-determination and tribal government—all of which are express priorities of federal law, as well as federal and tribal interests that weigh heavily in the *Bracker* balancing test.⁵²

iii. County's Interest.

In contrast to the weighty interests of the Tribal and federal government in keeping the Facility free from state taxation, the County's interest in taxing the Facility is weak. Under *Bracker*, the state's "generalized interest in raising revenue" is insufficient to justify the burden that the state's taxation would impose on the tribe's interest in self-government or on the federal regulatory scheme.⁵³ *Bracker* balancing requires that a state's revenue collection on tribal land be related to governmental services that the state provides to the taxpayers in question—i.e., that the state hold "duties or responsibilities" with respect to the matter or property being regulated before imposing its own taxes.⁵⁴ The Ninth Circuit has further clarified, numerous times, that in cases where significant federal and tribal interests exist, a state may impose its taxes **"only if its taxes are 'narrowly tailored' to funding the services it provides in connection with the activities taking place on tribal land."**⁵⁵ Here, the County provides minimal services to the Facility and to the Moapa Reservation generally.⁵⁶ On the contrary, the Tribe itself maintains Reservation roads, including around the Facility; the County's maintenance deteriorates as its road gets closer to the Reservation, and visibly and abruptly stops at the border of the Reservation, as shown in photographs attached as **Exhibit K** to this letter.⁵⁷

Because the County's interest in imposing tax on the Facility is a generalized interest in raising revenue, and because its attempts to do so would have significant negative effects

⁵² *Bracker*, 488 U.S. at 149.

⁵³ *Bracker*, 488 U.S. at 150.

⁵⁴ *Ramah Navajo Sch. Bd. v. Bureau of Rev.* ("Ramah"), 458 U.S. 832, 843-845 (1982).

⁵⁵ *Gila River Indian Cmty. v. Waddell*, 967 F.2d 1404, 1412 (9th Cir. 1992) (emphasis added); see also *Hoopa Valley*, 881 F.2d at 661 ("To be valid, the California tax must bear some relationship to the activity being taxed."); *Crow Tribe of Indians v. State of Mont.*, 819 F.2d 895, 901 (9th Cir. 1987) aff'd sub nom. *Montana v. Crow Tribe of Indians*, 484 U.S. 997, 108 S. Ct. 685, 98 L. Ed. 2d 638 (1988) ("Even if Montana's interests are sufficiently legitimate, there is substantial evidence that the coal taxes are not narrowly tailored to support them.").

⁵⁶ Affidavit at par. [].

⁵⁷ To the extent the County Assessor might argue that maintaining county roads allows access to the Facility and therefore justifies the County's tax on the Facility, the Supreme Court has found that argument unpersuasive. See *Ramah*, 458 U.S. at 843-44 ("The only arguably specific interest advanced by the State is that it provides services to [taxpayer] for its activities off the reservation," which is not a legitimate justification).



8800 North Gainey Center Drive, Suite 100, Scottsdale, AZ 85258

on recognized Tribal and federal interests, the tax is preempted under the *Bracker* balancing test.

D. Conclusion

Because it is permanently attached to the Moapa Reservation, the Facility is exempt from the County's tax under the Indian Reorganization Act, controlling Ninth Circuit precedent, and federal regulations. The exemption does not depend on the classification of the facility as personal or real property under Nevada state law, nor on whether the Facility is owned by the Tribe itself or a non-tribal party. Indeed, the State of Nevada explicitly confirmed that—based on controlling federal law—the Facility is exempt from Nevada's property tax. The Tribe and Petitioner relied on the State's position when they committed resources to develop the Facility on the Reservation, and when they agreed that Petitioner would make PILOT payments to the Tribe in lieu of state property taxes.

Moreover, even if the Facility were deemed personal property, any state tax would be barred under the U.S. Supreme Court's *Bracker* balancing test. *Bracker* and its progeny limit a state or county's authority to impose a tax where, as here, the County provides negligible services to the on-reservation Facility. As discussed above, the Tribal and federal interests in development of the Facility and being free from County taxation outweigh the County's generalized interest in raising revenue.

Petitioner therefore respectfully requests that the tax year 2025-26 assessment on the Facility be reversed by the County Board and the property tax previously paid by Petitioner be refunded.

Sincerely,

Eric Huswick
Authorized Signatory

SOLAR ENERGY GROUND LEASE AGREEMENT

BETWEEN

THE MOAPA BAND OF PAIUTE INDIANS,

AS LANDLORD

AND

**325MK 8ME LLC,
a Delaware limited liability company,**

AS TENANT

DATED MAY 1, 2020

TABLE OF CONTENTS

	<u>Page</u>
SECTION 1	DEFINITIONS 1
SECTION 2	PREMISES; RESERVATIONS 12
SECTION 3	USE OF PREMISES..... 13
SECTION 4	LEASE TERM; EXTENSIONS 15
SECTION 5	RENT 16
SECTION 6	SECURITY DEPOSIT 18
SECTION 7	CONDUCT OF TENANT OPERATIONS; OWNERSHIP OF IMPROVEMENTS AND PERSONALTY 19
SECTION 8	CONSTRUCTION OF SOLAR POWER FACILITIES 21
SECTION 9	RIGHTS OF WAY FOR ROADS AND TRANSMISSION FACILITIES 27
SECTION 10	WATER RIGHTS..... 30
SECTION 11	TENANT’S MAINTENANCE AND REPAIR OBLIGATIONS 35
SECTION 12	DECOMMISSIONING; SURRENDER..... 36
SECTION 13	TAXES; ADDITIONAL PAYMENTS 41
SECTION 14	UTILITIES 42
SECTION 15	REPRESENTATIONS, WARRANTIES AND COVENANTS..... 42
SECTION 16	INSURANCE..... 44
SECTION 17	CASUALTY LOSS 48
SECTION 18	CONDEMNATION 48
SECTION 19	DEFAULT BY TENANT; LANDLORD’S REMEDIES 50
SECTION 20	DEFAULT BY LANDLORD; TENANT’S REMEDIES 53
SECTION 21	INDEMNIFICATION 54
SECTION 22	SUBORDINATION, NON-DISTURBANCE AND ATTORNMEN T 55
SECTION 23	ASSIGNMENT AND SUBLETTING; LEASEHOLD MORTGAGE 56
SECTION 24	CONFIDENTIALITY 64
SECTION 25	ESTOPPEL CERTIFICATES..... 65
SECTION 26	QUIET ENJOYMENT 65
SECTION 27	SPECIAL PROVISIONS 66

TABLE OF CONTENTS **(Continued)**

	<u>Page</u>
SECTION 28 NOTICES.....	70
SECTION 29 MISCELLANEOUS	71

EXHIBITS AND SCHEDULES

Exhibit A-1	Depiction of Premises
Exhibit A-2	Legal Description of Premises
Exhibit A-3	Depiction of Restricted Areas
Exhibit B	Form of Letter of Credit
Exhibit C	Certificate of Commencement
Exhibit D	TERO Compliance Plan
Exhibit E	Insurance Requirements
Exhibit F	Form of Memorandum of Lease
Exhibit F - Annex A	Legal Description of Premises
Exhibit G	Form of Memorandum of Termination of Lease
Exhibit H	Form of Right of Way Agreement
Exhibit H-1	Overview, Description and Depiction of the Premises and the Rights of Way
Exhibit H-2	Description and Depiction of the Water Facilities Right of Way Area
Exhibit H-3	Description and Depiction of the Transmission Right of Way Area
Exhibit H-4	Description and Depiction of the Communications Right of Way Area
Exhibit H-5	Description and Depiction of the Access Road Right of Way Area
Exhibit I	Form of Performance Bond
Exhibit J	Form of Tribal Agreement
Exhibit K	Form of Construction Consulting Agreement
Exhibit L	Form of Profit Sharing Side Agreement
Schedule 5.01	Rent
Schedule 15.01(G)	Tribal Resolutions
Schedule 15.02(D)	Project Approvals
Schedule 29.22	Applicable Tribal Laws in Effect as of Effective Date

SOLAR ENERGY GROUND LEASE AGREEMENT

THIS SOLAR ENERGY GROUND LEASE AGREEMENT (including all exhibits and schedules in the forms attached hereto, this “Lease”) is made and entered as of May 1, 2020 (“Execution Date”), by and between THE MOAPA BAND OF PAIUTE INDIANS, a federally recognized Indian Tribe, as landlord (“Landlord”), and 325MK 8ME LLC, a Delaware limited liability company, as tenant (“Tenant”). Landlord and Tenant may be referred to herein collectively as “Parties” and individually as a “Party.” Capitalized terms used herein and not otherwise defined have the meanings ascribed to them in Section 1.01.

SECTION 1 **DEFINITIONS**

1.01 Definitions. Unless otherwise expressly provided herein, the following capitalized terms used in this Lease shall have the following meanings:

“1980 Act” means the Act of December 2, 1980, Pub. L. 96-491, 94 Stat. 2563.

“Affiliate” means, with respect to a specified Person, any other Person who or which is (a) directly or indirectly Controlling, Controlled by or under common Control with the specified Person, or (b) any member, stockholder, director, officer, manager, or comparable principal of, or any relative or spouse of, the specified Person.

“Annual Rent” means the aggregate amount of all Monthly Rent due during a Lease Year.

“Approvals” means all licenses, permits, approvals, orders, consents, authorizations, registrations, filings, notifications, qualifications, findings of suitability, waivers, exemptions and entitlements by, of or from any Governmental Authority.

“Approved Transferee” means: (a) the Offtaker under any power purchase agreement to which the Tenant is a party, or the Offtaker pursuant to an agreement that gives such Offtaker an option or right to purchase Tenant’s interests in the Project provided that such Offtaker has a Net Worth greater than \$100 million, (b) an electric utility licensed to distribute electric power at wholesale or retail by any agency of the United States or any of its states or territories, (c) an independent power producer with a Net Worth greater than \$100 million (or a direct or indirect subsidiary of such an entity), (d) an entity controlled by an investment fund that has assets and committed contributions greater than \$250 million, provided that such entity has at least five years of experience in the operation of power generation facilities (or shall have retained a reputable third party with such experience to operate and maintain the Project), (e) any Person with at least five (5) years’ experience in the construction, management and/or operation of, or manufacture of equipment for use in, Solar Power Facilities, provided that such Person has a Net Worth greater than \$100 million (or a direct or indirect subsidiary of such an entity), (f) Nevada Power Company, a Nevada corporation (d/b/a NV Energy) and Sierra Pacific Power Company, a Nevada corporation (d/b/a NV Energy), or (g) an Affiliate of Tenant so long as the requirements of Section 8.07 and 12.05(A) will continue to be satisfied following any such assignment to an Affiliate.

“Bankruptcy Code” means Title 11 of the United States Code as now and hereafter in effect, or any successor statute thereto.

“Best Management Practices” means those commercially reasonable design, construction, operation and maintenance methods and procedures which are at least as stringent and protective as those commonly accepted and employed in the United States in the design, development, operation and termination of facilities of an age, size, nature and intended duration similar to the Project, and which are effective in preventing, minimizing or mitigating damage to health, safety and the environment, and such additional methods or procedures as may be necessary to meet any more stringent or protective requirements, standards or limitations as are required by the Controlling Documents or applicable Laws. Best Management Practices is not intended to be limited to the optimum practice, method or act, to the exclusion of all others.

“BIA” means the Bureau of Indian Affairs, a bureau of the United States Department of the Interior or, if specifically identified pursuant to applicable Laws, the Secretary of the Interior or his authorized representative.

“BLM” means the Bureau of Land Management, a bureau of the United States Department of the Interior.

“BLM Corridor” means the BLM-administered right of way corridor on the Reservation reserved to the United States under the 1980 Act.

“Business Day” means any day other than a Saturday, Sunday, or legal holiday on which banks are authorized by federal law to close.

“Cessation of Operations Date” means the date on which Tenant permanently ceases Tenant Operations, whether at the end of the Operations Term or the earlier termination of this Lease.

“Code” means the Internal Revenue Code of 1986, as amended, and the regulations issued thereunder.

“Commence Construction of the Tenant Work” means the commencement of construction of the Solar Power of Facilities by Tenant following Tenant’s obtaining all necessary Project Approvals, including approved Project Plans. Construction is deemed to have Commenced when significant construction work is being performed at the Premises, or significant construction-oriented materials and equipment are assembled at the Premises.

“Compliance Plan” means that certain compliance plan, attached hereto as Exhibit D, adopted as part of this Lease (and as such compliance plan may be amended from time to time by Landlord and Tenant in accordance with its terms), delineating the rights and obligations of the relevant Landlord Parties and Tenant Parties during the Term under the terms of the TERO Ordinance, as envisioned under BIA regulations at 25 CFR 162.015.

“Commercial Transactions Ordinance” means the Commercial Transactions Ordinance of the Tribe enacted by the Moapa Tribal Business Council on June 5, 2013 via Resolution No. M-13-6-33 and approved by the BIA on June 11, 2013.

“Conceptual Plan” means the general development site plan, general design conceptual drawings and maps, and narrative descriptions for the Project, each set forth with specificity (as

determined by Landlord) and in the final form approved by Landlord.

“Construction Commencement Date” means the date following Tenant’s obtaining all necessary Project Approvals, including approved Project Plans, when significant construction work begins at the Premises, or significant construction-oriented materials and equipment are assembled at the Premises.

“Construction Plans” means the plans, specifications and drawings for the construction of the Project, each set forth with specificity (as determined by Landlord) and in the final form approved by Landlord.

“Construction Term” means the Initial Construction Term, together with any Extended Construction Term.

“Consulting Agreement” means that certain Construction Consulting Agreement, in substantially the form attached hereto as Exhibit K, entered into on or about the date hereof, by and between Landlord and Tenant.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or operations of a Person, whether through the ability to exercise voting power, by contract or otherwise; “Controlled” and “Controlling” have meanings correlative thereto. For the avoidance of doubt, the inclusion of restrictive covenants in the financing documents of any Financing Party shall not be deemed to constitute Control.

“Definitive Agreements” means this Lease, the Right of Way Documents, the Tribal Agreement, the Profit Sharing Agreement, the Consulting Agreement and any other agreements between the Parties relating to the Premises, the Project and/or the Tenant Operations, and any other written terms, conditions, plans or other measures required as a condition of any Approval by any Governmental Authority of any of the foregoing, each in the final form approved by Landlord and/or any applicable Governmental Authorities, to the extent such approval is required under this Lease or otherwise.

“Effective Date” means the date that this Lease is approved by the Secretary, without need of amendment, ratification or other action of any of the Parties.

“Endangered Species Plans” means those plans, including the Desert Tortoise Management and Conservation Plan for the Moapa River Indian Reservation dated April 2, 2014, each set forth with specificity (as determined by Landlord) and in the final form approved by Landlord and any other applicable Governmental Authorities, relating to the relocation or management of any endangered or threatened species regulated under applicable Laws, including the Mojave desert tortoise and the Moapa dace.

“Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, in existence and available as of the Effective Date together with those adopted, approved, enacted or issued by any Governmental Authority during the Term (as defined below), attributable to the generation from the Project, and its displacement of conventional energy generation. Environmental Attributes include, but are not limited to (1) Renewable Energy Credits; (2) any avoided emissions of pollutants to the air, soil or water such

as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; and (3) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by Law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere, irrespective of whether such Environmental Attributes accrue for the benefit of Tenant, any Affiliate, or any investor of Tenant to any Affiliate. Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits, and (iii) Environmental Incentives.

“Environmental Impact Statement” means such documentation, including an environmental impact statement or environmental assessment, as required by the applicable Governmental Authorities under applicable Environmental Laws, outlining the environmental impact of the Project as to the entire Premises, or any other lands affected by the Rights of Way, including any adverse environmental effects which cannot be avoided, alternatives to the Project, any irreversible and irretrievable commitment of resources, and mitigation measures to reduce the environmental impact of the Project.

“Environmental Incentives” means any of the following, whether current and adopted or approved, enacted or issued by any Governmental Authority during the Term: (i) investment tax credits attributable to the Project, any Solar Power Facilities or energy output, (ii) production tax credits attributable to the Project, any Solar Power Facilities or energy output, (iii) accelerated depreciation attributable to the Project, any Solar Power Facilities or energy output, (iv) direct third-party rebates or subsidies for generation of energy by a renewable energy source, (v) local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits and (vi) other financial incentives in the form of credits, tax write-offs, reductions, or allowances under applicable Law attributable to the Project, any Solar Power Facilities or energy output, irrespective of whether such Environmental Incentives accrue for the benefit of Tenant, any Affiliate or any investor of Tenant or its Affiliate.

“Environmental Laws” means all Laws, licenses and permits relating to pollution or protection of health, safety or the environment, including the National Environmental Policy Act, 42 U.S.C. §§ 4332(2)(C), *et seq.* (“NEPA”) and other statutes incorporated in NEPA reviews, including the National Historic Preservation Act (16 U.S.C. §§ 470-470w-6), Endangered Species Act (16 U.S.C. §§ 1631-1643), Federal Water Pollution Control Act (33 U.S.C. §1251 *et seq.*), Resource Conservation and Recovery Act (42 U.S.C. §6901 *et seq.*), Safe Drinking Water Act (42 U.S.C. §§ 3000(f) *et seq.*), Toxic Substances Control Act (15 U.S.C. §§ 2601 *et seq.*), Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §§ 9601 *et seq.*) and state and local statutes and Tribal Law covering similar matters.

“Environmental Plan” means the plan describing environmental protection measures for the Project and related information, other than such measures and information set forth in the Endangered Species Plan.

“Existing Infrastructure Improvements” means all Infrastructure owned by the Landlord affixed to or located on the Premises as of the Effective Date (including all portions of natural gas

pipelines, electric power infrastructure, water supply infrastructure, utility lines, telephone lines, roads, transportation systems, fire systems, sanitation, sewer and storm drain systems, parks and recreation, parking and other facilities and services, together with all necessary and appropriate appurtenances thereto).

“Financing Party” means any and all institutional or commercial lenders (including, without limitation, any Leasehold Mortgagee) or non-controlling equity investors that will provide, are providing or have provided construction, interim or long-term financing or refinancing, or non-speculative interest rate hedging to Tenant or its Affiliates for the development, construction or operation of the Project and/or otherwise secured by the Project or any interest therein, whether by means of a loan, sale-leaseback transaction, “tax equity” or similar financing, or interest rate swap agreement or similar non-speculative hedging arrangement.

“Governmental Authority” means any governmental or quasi-governmental authority of any nature, including any federal, state, local, county, municipal, tribal or other government, and any division, authority, department, agency, court, arbitrator, tribunal, commission, board, official, organization, body or other instrumentality thereof, including, as applicable, the Moapa Band of Paiutes or any agency, council or political subdivision thereof, the BIA, the BLM and any other office or bureau of the United States Department of the Interior.

“Hazardous Substance” means any pollutant, chemical, substance, contaminant, waste, any toxic, infectious, carcinogenic, reactive, corrosive, ignitable or flammable chemical, or chemical compound, and any hazardous substance, material or waste, whether solid, liquid or gas, that is subject to regulation, control or remediation under applicable Environmental Laws, including any asbestos or asbestos-containing material, urea formaldehyde foam insulation, polychlorinated biphenyls, crude oil or any fraction thereof, and all forms of natural gas, petroleum products or by-products or derivatives.

“Improvements” means, collectively, all buildings, structures, improvements, betterments, enhancements, installations and facilities, and all alterations, modifications, additions, restorations and replacements thereof or thereto, including all roadways, parking lots and parking areas, landscaping, grading and all utilities, services, facilities and installations, which are constructed, erected, installed or otherwise placed on, over or under the Premises, the Right of Way Areas or any portion thereof during the Term.

“Indian Reorganization Act” means the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378).

“Infrastructure” means those customary physical systems and improvements for purposes of site access and utilities commonly referred to as infrastructure, including roads, transportation, natural gas, telephone, electric and other utilities, fire, water, sanitation, sewer and storm drain systems, parks and recreation, parking and other facilities and services, and together with all necessary and appropriate appurtenances thereto. Infrastructure does not include any equipment or facilities placed into service by or on behalf of Tenant that is used to generate, manage, control, maintain or deliver electricity to any of the various points of interconnection in the vicinity of the Lease Premises.

“Landlord Parties” means, collectively, Landlord and its Affiliates, or any of their

respective officers, managers, agents, servants, contractors, licensees, customer business invitees and employees (other than Tenant Parties).

“Laws” means and includes any and all of the following, as the same may be in effect from time to time and applicable to the transactions contemplated by this Lease: (a) federal, state and municipal statutes, laws, ordinances, codes, orders and regulations, including Environmental Laws; (b) regulations, permits, resolutions, or ordinances of any Governmental Authority; (c) covenants, conditions, and restrictions contained in any deed or other form of conveyance or in any other instrument of any nature that is now or hereafter placed of record that relate in any way or are applicable to the Premises or the use, ownership or occupancy thereof; (d) Tribal Laws (subject to the limitations described in Section 29.22); and (e) decisions and rulings by, of or from any Governmental Authority interpreting or otherwise relating to any of the foregoing.

“Liabilities” means any direct or indirect liabilities, indebtedness, obligations, commitments, costs, expenses, fees, disbursements, fines, penalties, sanctions, judgments, interest, claims, actions, deficiencies, guarantees or endorsements of or by any Person of any type, whether accrued, past, present or future, absolute or contingent, matured or unmatured, liquidated or unliquidated, or known or unknown.

“Lien” means any mortgage, pledge, lien, hypothecation, security interest, conditional or installment sale agreement, charge, assessment or any other encumbrances or analogous instrument or device.

“Mortgagee” means any holder of a Mortgage.

“Net Worth” means the amount by which the fair market value of a Person’s aggregate assets exceeds such Person’s aggregate liabilities.

“NRS” means the Nevada Revised Statutes.

“Offtaker” means any Person that enters into a power purchase agreement with Tenant for energy generated by the Solar Power Facilities.

“Operations Commencement Date” means the date, following Substantial Completion, on which Tenant commences Tenant Operations.

“Operations Commencement Deadline” means the third (3rd) anniversary of the Construction Commencement Date or, if Tenant timely exercises the Construction Extension Option set forth in Section 4.02(B), the fourth (4th) anniversary of the Construction Commencement Date.

“Operations Plan” means the plan, in the final form approved by Landlord, describing with specificity (as determined by Landlord) how the Tenant Operations will be conducted.

“Operations Term” means the Initial Operations Term together with any Extended Operations Term.

“Option Agreement” means that certain Lease Option Agreement entered into between Landlord, as Optionor, and Tenant, as Optionee, as of May 3, 2018.

“Person” means an individual, corporation, limited liability company, partnership, limited partnership, limited liability partnership, association, trust, unincorporated organization, Indian tribe or nation and any other entity.

“Premises” means that certain real property depicted on Exhibit A-1 attached hereto and described on Exhibit A-2 attached hereto, which is located on a portion of the Reservation consisting of approximately two thousand three hundred (2,300) acres of vacant land located in Clark County, Nevada, all subject to the provisions of Section 2.01 below.

“Proceeding” means any suit, claim, action, proceeding, litigation, audit or investigation.

“Profit Sharing Agreement” means that certain Profit Sharing Side Agreement, in substantially the form attached hereto as Exhibit M, entered into on or about the date hereof, by and between Landlord and Tenant.

“Project” means the Solar Power Facilities project to be constructed on the Premises and any adjacent real property (whether owned by Landlord or one or more third parties) pursuant to easements or other similar rights, including Third Party Rights.

“Project Approvals” means all Approvals required to be made, given or obtained by any of the Parties or any third party with, by or from any Governmental Authority (or otherwise) under applicable Laws in connection with the lease (pursuant to and in accordance with this Lease) of the Premises and the development, construction, improvement, management, maintenance and operation of the Solar Power Facilities and other Tenant Improvements and the conduct of the Tenant Operations, including the issuance of a Record of Decision, a Finding of No Significant Impact pursuant to NEPA, if applicable, the approval of the Lease by the BIA, air and other environmental permits, land-use permits and Approvals, zoning approvals and variances, site plan and architectural approvals, curb cut, sewer and other construction-related permits, building permits, certificates of occupancy and any other discretionary Approvals with, by or from any Governmental Authority (or otherwise) required in connection with any of the foregoing.

“Project Plans” means, collectively, the Conceptual Plan, the Right of Way Plan, the Construction Plans, the Operations Plan, Endangered Species Plan, Environmental Plan, Water Supply Plan and Water Supply Construction Plan, each in the final form approved by Landlord and any other applicable Governmental Authorities.

“Renewable Energy Credits” means certificates, green tags, or other transferable indicia indicating generation of a particular quantity of energy from a renewable energy source by a renewable energy facility attributed to all of the energy output of the Project during the Term created under a renewable energy, emission reduction, or other reporting program adopted by a Governmental Authority, or for which a registry and a market exists (which, as of the Effective Date are certificates issued by Green-e in accordance with the Green-e Renewable Electric Certification Program, National Standard Version 1.3 administered by the Center of Resource Solutions); excluding, however, all Environmental Incentives.

“Reservation” means the Moapa River Indian Reservation, held in trust by the United States, for Landlord.

“Right of Way Areas” means the areas of the Reservation subject to the Rights of Way.

“Right of Way Document” means any right of way, grant, easement, license or like legal instrument meeting the requirements of Section 9 and all other applicable requirements of this Lease, including each Right of Way Agreement.

“Right of Way Plan” means the plan, in the final form approved by Landlord and any other applicable Governmental Authorities, describing with specificity (as determined by Landlord) the Rights of Way which Tenant considers reasonably necessary for use in the Project and the Tenant Operations.

“Rights of Way” means all easements, licenses and other similar property rights on certain portions of the Reservation, including all on-Reservation public roads, as expressly set forth in the Right of Way Plan.

“Secretary” means the Secretary of the United States Department of the Interior or his designee.

“Solar Power Facilities” means any and all equipment, fixtures, and instruments used in the generation of solar-powered electrical energy and for the conversion of solar energy into electrical energy, together with the facilities necessary to collect, condition, store and transmit electrical energy generated on the Premises, including one or more solar gathering devices, solar panels, solar collectors, pyranometer measuring devices, inverters, structural support frames and mounting hardware, tracking systems, above-ground and/or underground electrical transmission and communication lines and related equipment, footings, towers, poles, crossarms, guy lines, anchors and wires, collection and transmission grids, power conditioning equipment, substations, interconnections and/or switching facilities and transformers, battery and/or other energy storage facilities, telecommunications equipment, laydown areas, radio relays, roads and gates, signs and fences, meteorological towers, control buildings, maintenance yards and other related facilities, machinery, equipment and improvements. Notwithstanding anything herein to the contrary, under no circumstances shall the term “Solar Power Facilities” include, and Tenant shall not in any event be permitted to use the Premises for, any solar facility whereby a field of heliostats or mirrors concentrates solar energy onto a solar power tower and uses the resulting heat to create electricity, without the prior written consent of Landlord in each instance, which consent may be withheld or conditioned in Landlord’s sole discretion. For the avoidance of doubt, any solar-powered, electrical energy-generating facility primarily utilizing photovoltaic technology, including photovoltaic technology that utilizes heliostats, mirrors, lenses or similar equipment to concentrate solar energy, shall not be considered to constitute a type of facility described in the immediately preceding sentence.

“Substantial Completion” means the date on which the Premises are occupied to commence Tenant Operations and a majority of the generating capacity of the Solar Power Facilities is placed into commercial operation.

“Taxes” means any and all taxes, charges, fees, levies, tariffs, duties, liabilities, impositions or other assessments of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any tax authority or other Governmental Authorities, including income, gross receipts, profits, excise, real or personal

property, environmental, sales, use, value-added, ad valorem, withholding, social security, retirement, employment, unemployment, workers' compensation, occupation, service, license, net worth, capital stock, payroll, franchise, gains, stamp and transfer taxes, and shall include any Liability for the taxes of any other Person under applicable Laws, or as a transferee or successor, by contract, or otherwise.

"Tenant Improvements" means the Tenant Work, together with any Tenant Alterations.

"Tenant Operations" means Tenant's use of the Premises for the operation of the Solar Power Facilities and uses incidental thereto as contemplated by the Project Plans.

"TERO Ordinance" means the Moapa Tribal Employment Rights Ordinance approved on July 24, 1984, as amended.

"Third Party Rights" means any and all leasehold interests, rights of way, easements, licenses and other similar rights to use property located outside of the Reservation (or within the Reservation if such rights require the approval of a third Person) which may be necessary for the construction and/or operation of the Project and/or the conduct of the Tenant Operations.

"Tribal Agreement" means that certain Tribal Agreement entered into by and between the Tribe and Tenant concurrently with this Lease and attached hereto as Exhibit J.

"Tribal Laws" means the Moapa Constitution and By-laws and any other laws, statutes, rules, codes, regulations, resolutions, procedures or ordinances of the Moapa Band of Paiutes or any agency or political subdivision thereof. All Tribal Laws applicable to this Lease and in effect as of the Effective Date are listed on Schedule 29.22 hereto.

1.02 Terms and Usage Generally. Where the context so requires or such interpretation is appropriate, any word used herein denoting gender shall include all genders, natural or artificial, and the singular and plural shall be interchangeable. All references herein to sections, exhibits and schedules shall be deemed to be references to sections of, and exhibits and schedules to, this Lease unless the context shall otherwise require. All exhibits and schedules attached hereto shall be deemed incorporated herein as if set forth in full herein. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The words "hereof," "herein" and "hereunder" and words of similar import when used in this Lease shall refer to this Lease as a whole and not to any particular provision of this Lease. References to a Person are also to his, her or its successors and permitted assigns. Unless otherwise expressly provided herein, the words "knowledge," "known," "knows" and words of similar import with respect to any Person shall refer to the actual or effective knowledge of such Person, provided that the scope of the effective knowledge of Landlord or any of the Landlord Parties shall be determined with consideration of the limitations on access to the Premises set forth in this Lease. Unless otherwise expressly provided herein, any agreement, instrument or statute defined or referred to herein or in any agreement or instrument defined or referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes, and references to all attachments thereto and instruments incorporated therein. The captions of the various provisions of this Lease are for convenience only and in no way define, limit or describe the scope or intent of this Lease or the provisions which

they precede or in any other manner affect this Lease. All references to “day” or “days” herein, (other than Business Day(s)) are to calendar days.

1.03 Other Defined Terms. The following terms have the meanings defined in the Section indicated:

<u>Defined Term:</u>	<u>Section Reference:</u>
“Active Term”	Section 5.04
“Additional Insureds”	Section 16.04
“Additional Rent”	Section 5.03
“afy”	Section 10.03
“Appraiser”	Section 12.03(A)
“Base Water Fee”	Section 10.09
“Beneficiary”	Section 23.06
“Casualty”	Section 17
“Certifying Party”	Section 25
“cfs”	Section 10.03
“Closing”	Section 12.03(B)
“Compliance Requirements”	Section 3.02
“Confidential Information”	Section 24
“Construction Contract”	Section 8.03
“Construction Deferral”	Section 4.02(A)(1)
“Construction Extension Option”	Section 4.02(B)
“Construction Option Notice”	Section 4.02(B)
“Contractor”	Section 8.01
“Controlling Documents”	Section 7.01
“Decommission Letter of Credit”	Section 12.05(A)
“Decommissioning”	Section 12.02
“Decommissioning Cash Security”	Section 12.05(A)
“Decommissioning Guaranty”	Section 12.05(A)
“Decommissioning Plans”	Section 12.02
“Decommissioning Security”	Section 12.05(A)
“Decommissioning Security Amount”	Section 12.05(A)
“Decommissioning Security Deadline”	Section 12.05(A)
“Decommissioning Security Expiration Date”	Section 12.05(A)
“Default Notice”	Section 23.05(B)(8)
“Default Notice Period”	Section 23.05(B)(8)
“Default Rate”	Section 5.05
“Disclosing Party”	Section 24
“Entire Agreement”	Section 29.05
“Event of Default”	Section 19.01
“Execution Date”	Introductory Paragraph
“Extended Construction Term”	Section 4.02(B)
“Extended Operations Term”	Section 4.03(B)
“Final Decommissioning Plans”	Section 12.02
“Force Majeure”	Section 29.14
“Increased Financial Obligation”	Section 29.25

Defined Term:

“Incremental Capacity”	
“Index”	
“Initial Construction Term”	
“Initial Operations Term”	
“Landlord”	
“Landlord Event of Default”	
“Landlord Indemnity Claim”	
“Landlord Indemnified Parties”	
“Landlord Projects”	
“Landlord Representative”	
“Landlord’s Election Notice”	
“Lease”	
“Lease Year”	
“Leasehold Estate”	
“Leasehold Mortgage”	
“Leasehold Mortgagee”	
“Limited Waiver”	
“Losses”	
“LVVWD”	
“Memorandum of Lease”	
“Memorandum of Termination”	
“MOA”	
“Monthly Rent”	
“Mortgages”	
“New Lease”	
“New Tribal Law”	
“Notice Date”	
“O&M Costs”	
“Official Records”	
“Option Notice”	
“Post-Operations Term”	
“Premises Adjustment”	
“Producer Price Index” or “PPI”	
“Purchase Price”	
“Receiving Party”	
“Remaining Property”	
“Rent”	
“Requesting Party”	
“Revised Plan”	
“Right of Way Agreement”	
“Roads”	
“SNWA”	
“Security Deposit”	
“Supplemental Applications”	
“Supplemental Approvals”	
“Subject Property”	

Section Reference:

Section 10.14
Section 12.05(A)
Section 4.02(A)
Section 4.03(A)
Introductory Paragraph
Section 20.01
Section 21.01
Section 11.02
Section 10.06(A)
Section 29.21
Section 12.01
Introductory Paragraph
Section 4.01
Section 8.05(A)
Section 23.05(A)
Section 23.05(A)
Section 29.19
Section 21.01
Section 10.02(A)
Section 29.01
Section 29.01
Section 10.04(A)
Section 5.01
Section 22.01
Section 23.05(B)(12)
Section 29.22
Section 12.01
Section 10.09
Section 29.01
Section 4.03(B)
Section 4.04
Section 2.01
Section 16.09(A)
Section 12.03(A)
Section 24
Section 12.02
Section 5.01
Section 25
Section 8.02(A)
Section 9.01
Section 9.02
Section 10.02(A)
Section 6.01
Section 7.03
Section 7.03
Section 12.01

<u>Defined Term:</u>	<u>Section Reference:</u>
“Survey”	Section 9.03
“Taking” or “Taken”	Section 18.01
“Tenant”	Introductory Paragraph
“Tenant Alterations”	Section 8.06
“Tenant Infrastructure Improvements”	Section 7.04(A)
“Tenant Parties”	Section 11.02
“Tenant Work”	Section 8.01
“Tenant’s Permitted Hazardous Substances”	Section 3.03(A)
“Tenant’s Personality”	Section 7.04(B)
“Tenant’s Property”	Section 7.04(B)
“Term”	Section 4.01
“Transfer”	Section 23.01
“Transmission Facilities”	Section 9.02
“Unpaid Amount”	Section 5.05
“Utility Providers”	Section 9.02
“Water Supply”	Section 10.04(D)
“Water Supply Construction Plan”	Section 10.12
“Water Supply Fee”	Section 10.09
“Water Supply Infrastructure”	Section 10.11
“Water Supply Plan”	Section 10.17
“Water Supply Provisions”	Section 10.01

SECTION 2

PREMISES; RESERVATIONS

2.01 Premises. For the Rent and other consideration provided for herein, and upon the terms and conditions hereinafter set forth, Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the Premises. At any time prior to Substantial Completion, and again at Substantial Completion, Tenant shall be authorized to permanently release to Landlord portions of the Premises, contiguous to unleased portions of Landlord’s Reservation, whereupon such released lands shall no longer be subject to Tenant’s rights under this Lease, and the Premises shall be adjusted based on the acreage Tenant is able to develop for the Project (the “Premises Adjustment”). All references in this Lease to the Premises after the date of any such release of acreage shall refer to the Premises after the Premises Adjustment. Notwithstanding any provision of this Lease to the contrary, all Rent shall be adjusted on a pro rata basis to reflect the Premises Adjustment. For the avoidance of doubt, the Rent set forth herein is based on the Premises being two thousand three hundred (2,300) acres, but upon the Premises Adjustment, the Rent will be adjusted proportionately based on the revised acreage of the Premises.

2.02 Landlord’s Reservation of Rights. In addition to any other rights reserved to Landlord herein, Landlord reserves the following rights exercisable upon forty-eight (48) hours’ notice to Tenant (except that such notice shall not be required in exigent circumstances involving imminent and substantial law enforcement needs of the Landlord or imminent endangerment of public safety) and without liability to Tenant for damage or injury to Persons, property or business and without being deemed an eviction or disturbance of Tenant’s use or possession of the Premises or giving rise to any claim for offset or abatement of Rent, provided that (i) Landlord shall inform

Tenant of the purpose for and nature of the exercise of the reserved right and (ii) Landlord's exercise of such rights shall be reasonable, compatible, and shall not adversely interfere with Tenant Operations, Tenant Work, and Tenant's ability to perform under this Lease and any other Agreement between the Parties:

(A) the right to use, maintain, repair and replace Infrastructure (other than any owned by Tenant) which support the Reservation (other than the Premises) or portions thereof, whether now or in the future;

(B) the right to grant any Person or Persons any easement, right or other privilege under, across, on or pertaining to the Premises or other portion or portions of the Reservation for such purposes as Landlord may, in its sole discretion, elect, provided that any grantee of such easement, right or other privilege shall be required to follow all applicable Laws, as well as safety, environmental or other access procedures reasonably set forth by Tenant;

(C) such rights as may be incidental to the foregoing, including the right to access the Premises in connection with the foregoing provided that any grantee of such rights shall be required to follow all applicable Laws, as well as safety, environmental or other access procedures reasonably set forth by Tenant;

(D) where authorized in the Right of Way Plan or any Right of Way Document(s) and applicable Laws, for any Rights of Way that are intended for the non-exclusive use of Tenant, the right to use and allow others to acquire any necessary Governmental Authority approval to use those Rights of Way and lands covered thereby; and

(E) the rights retained by Landlord pursuant to Section 26 hereof.

In the absence of an emergency involving law enforcement or public safety matters within Landlord's jurisdiction, Landlord and its designated representatives will be accompanied by a representative of Tenant while on the Premises. Notwithstanding the above provisions and those of Section 26 or any other section of this Lease, Landlord shall be required to obtain Tenant's prior written consent to exercise any of the above rights with respect to the specific restricted areas shown on Exhibit A-3 ("Restricted Areas"). The exercise of the above reserved rights by Landlord must be done in a way to avoid unreasonable interference with the Tenant Work, Tenant Operations and Tenant's ability to perform under this Lease and any other Agreement between the Parties, and must follow all applicable Laws, as well as reasonable safety, environmental and/or other access procedures identified by Tenant.

SECTION 3 **USE OF PREMISES**

3.01 Solar Power Facilities. Tenant shall have the right to use the Premises for Tenant Operations, performance of the Tenant Work, and all ancillary and incidental activities related thereto or to the ownership or maintenance of the Solar Power Facilities. Tenant shall not use or authorize to be used the Premises, or any portion thereof, for any purpose beyond the use contemplated in this Lease and other agreements between the Parties whatsoever without Landlord's prior written approval, which approval may be withheld in Landlord's sole and absolute discretion.

3.02 Compliance. Without limiting the foregoing, Tenant shall not cause or authorize the Premises to be used in any way (collectively, the “Compliance Requirements”) (a) which then constitutes, or would result in, a violation of any applicable Laws, occupancy certificates or other Project Approvals in connection with the Premises, including matters pertaining to (i) industrial hygiene, (ii) environmental conditions on, in, under or about the Premises, including soil and groundwater conditions, and (iii) the use, generation, manufacture, production, installation, maintenance, removal, transportation, storage, spill or release of any Hazardous Substance, now in effect or which may hereafter come into effect; (b) which materially interferes with the rights of Landlord, other tenants or authorized users of adjacent property; (c) which constitutes a nuisance, waste or illegal act; or (d) which then constitutes, or would result in, a violation of any covenants, easements and restrictions, or other similar matters, of record relating to the Premises and in effect as of the Execution Date. The mere use of the Premises as permitted under this Lease shall not be deemed under this Section 3.02 to materially interfere with the rights of Landlord, other tenants or authorized users of adjacent property, or to constitute a nuisance, waste or illegal act. Tenant shall, within five (5) days after receipt of Landlord’s written request to address any bona fide issue regarding Compliance Requirements (or, if the requested documents and information are not readily available, within ten (10) days after receipt of Landlord’s written request), provide Landlord with copies of all documents and information, including Project Approvals, registrations, manifests, applications, reports and certificates, evidencing Tenant’s compliance with any Compliance Requirements specified by Landlord, and shall promptly upon receipt, notify Landlord in writing, with copies of any documents involved, of any actual, or to Tenant’s knowledge, threatened, claim, notice, citation, warning, complaint or report pertaining to or involving failure by Tenant or the Premises to comply with any Compliance Requirements.

3.03 Hazardous Substances.

(A) Prohibitions. Other than those substances customarily used in the Tenant Operations (such substances, collectively, the “Tenant’s Permitted Hazardous Substances”), Tenant shall not transport, use, store, maintain, generate, manufacture, handle, dispose, release or discharge any Hazardous Substance upon or about the Premises, nor permit Tenant Parties to engage in such activities upon or about the Premises; provided that the foregoing provisions shall not prohibit the transportation to and from, and use, storage, maintenance, generation, manufacturing, handling, disposal, release or discharge upon or about the Premises of the Tenant’s Permitted Hazardous Substances; and provided further that (i) such substances shall be used and maintained only in such quantities as are reasonably necessary for such permitted use of the Premises, in accordance with Environmental Laws and the manufacturer’s instructions therefor; (ii) such substances shall not be disposed of, released or discharged on the Premises other than in compliance with all Environmental Laws and as Landlord shall reasonably require; (iii) if any Environmental Laws require that any such substances be disposed of separately from ordinary trash, Tenant shall make arrangements, at Tenant’s sole cost and expense, for such disposal directly with a qualified and licensed disposal company at a lawful disposal site or arrange for other lawful disposal and shall ensure that disposal occurs frequently enough to prevent unnecessary storage of such substances on or about the Premises; and (iv) any such remaining substances shall be completely, properly and lawfully removed from the Premises upon expiration or earlier termination of this Lease.

(B) Regulatory Action. Tenant shall promptly notify Landlord of (i) any enforcement, clean-up or other regulatory action taken or, to Tenant's knowledge, threatened to be taken by any Governmental Authority against Tenant or any of the Tenant Parties with respect to the presence of any Hazardous Substance on the Premises or the migration thereof from or to other property, including the Reservation; (ii) any demands or claims made or, to Tenant's knowledge, threatened by any Person against Tenant or the Premises relating to any loss or injury resulting from any Hazardous Substance; (iii) any unlawful release, discharge, disposal or transportation of any Hazardous Substance by Tenant or any of the Tenant Parties on or from the Premises; and (iv) any matters where Tenant is required by Environmental Laws to give a notice to any Governmental Authority respecting any Hazardous Substance on the Premises. Landlord shall have the right, but not the obligation, to join and participate, as a party, in any Proceedings affecting the Premises initiated in connection with any Environmental Laws. At such times as Landlord may reasonably request, Tenant shall provide Landlord with a written list identifying any Hazardous Substance then used, stored, or maintained upon the Premises, the use and approximate quantity of each such material, a copy of any material safety data sheet issued by the manufacturer thereof, written information concerning the removal, transportation and disposal of the same, and such other information as Landlord may reasonably require or as may be required by Environmental Laws.

(C) Discharge. If any quantity of any Hazardous Substance is released, discharged or disposed of by Tenant or any of the Tenant Parties, on or about the Premises, and Environmental Laws require the clean-up and removal of the Hazardous Substance, Tenant shall immediately, properly and in compliance with Environmental Laws clean up and remove, or cause to be cleaned up and removed, the Hazardous Substance from the Premises and any other affected property and clean or replace, or cause to be cleaned up or replaced, any affected personal property, whether or not owned by Tenant, at Tenant's sole cost and expense. Such clean up and removal work shall be subject to Landlord's prior written approval (except in emergencies), which approval shall not be unreasonably withheld and shall include any testing, investigation, and the preparation and implementation of any remedial action plan required by any Governmental Authority. If Tenant shall fail to comply or to commence compliance with the provisions of this Section 3.03(C) within five (5) days after written notice by Landlord, or such shorter time as may be required by Environmental Laws, Landlord may, but shall not be obligated to, arrange for such compliance directly at Tenant's sole cost and expense, without limiting Landlord's other remedies under this Lease or Environmental Laws.

SECTION 4

LEASE TERM; EXTENSIONS

4.01 Lease Term; Lease Year. Subject to the provisions of this Section 4, the maximum length of the term of this Lease shall be fifty (50) years (the "Term"). The Term shall begin on the Effective Date and shall include the Initial Construction Term, any Extended Construction Term, the Operations Term, any Extended Operations Term and any Post-Operations Term. The term "Lease Year", as used herein, shall mean a 12-month period during the Term with the first such Lease Year commencing on the Effective Date and each subsequent Lease Year commencing on an anniversary of the Effective Date. Notwithstanding anything to the contrary set forth herein,

in the event the Effective Date occurs on any date other than the first (1st) day of any calendar month, the first (1st) Lease Year shall instead commence on the Effective Date and end on the last day of the twelfth (12th) full calendar month occurring thereafter, with each subsequent Lease Year commencing on the day following the end of the 1st Lease Year or the anniversary of the day following the last day of the first (1st) Lease Year, as applicable, as determined above and ending twelve (12) full months thereafter (*e.g.*, if the Effective Date is November 14, 2019, then Lease Year 1 will commence on November 14, 2019, and end on November 30, 2020, and all subsequent Lease Years shall commence on December 1 and end on November 30).

4.02 Construction Term.

(A) Initial Construction Term. The initial construction term (the “Initial Construction Term”) shall commence on the Effective Date and, unless sooner terminated as provided herein, the Initial Construction Term shall continue until the earlier of: (i) the Operations Commencement Date, or (ii) the day immediately preceding the Operations Commencement Deadline.

(1) On or before the second anniversary of the Effective Date, Tenant shall, subject to the receipt of all Approvals, Commence Construction of the Tenant Work in accordance with Section 8; provided, however, that Tenant may on such second anniversary provide written notice to Landlord of Tenant’s deferral to Commence Construction of the Tenant Work for one (1) year to the third anniversary of the Effective Date and pay Landlord the sum of Three Hundred Thousand Dollars (\$300,000) in immediately available funds (“Construction Deferral”). Tenant may thereafter annually, at its option, obtain, on an annual basis, up to two additional 1-year Construction Deferrals by providing written notice to Landlord of Tenant’s deferral to Commence Construction, and paying an additional Three Hundred Thousand Dollars (\$300,000) per year, escalated at three percent (3%) per year over the amount paid for the prior year’s Construction Deferral. In any event, if Tenant fails to Commence Construction of the Tenant Work by the fifth (5th) anniversary of the Effective Date, Landlord may terminate this Lease.

(2) In no event shall Tenant Commence Construction of the Tenant Work until all Project Approvals required by Governmental Authorities under applicable Laws to commence construction have been obtained. If after Tenant Commences Construction the need for a Supplemental Approval arises or becomes known to Tenant, Tenant shall provide Landlord with written notice of each such Supplemental Approval required. Tenant shall suspend construction of the Tenant Work to the extent so required by applicable Laws to pursue or obtain such Supplemental Approval. If any such Supplemental Approval has not been obtained despite Tenant’s diligent and good-faith efforts (including use of Best Management Practices), and if the failure to obtain such Supplemental Approval is outside Tenant’s control, then a failure by Tenant to Commence Construction or continue construction of the Tenant Work due to such failure shall be deemed to be commercially reasonable and Section 4.02(A)(3) shall apply.

(3) In the event Tenant is unable to fulfill any obligation contained in this Section 4.02 or elsewhere in Section 4 due to an act of nature, act of God, event

of Force Majeure, or for reasons outside the control of Tenant, such failure shall not in itself trigger Landlord's right to terminate the Lease. If Tenant has complied with the requirements of this Section, then not earlier than the first anniversary of the Effective Date, Tenant may terminate this Lease if, after using commercially reasonable and diligent efforts Tenant is unable to obtain any necessary Approvals or Supplemental Approvals needed to operate the Solar Power Facilities in a commercially viable manner. Notwithstanding the foregoing, if any Improvements have been constructed by or on behalf of Tenant, and Landlord makes the election set forth in Section 12.01(a) or Section 12.01(b), then Tenant shall be required to fulfill the decommissioning obligations of Section 12.

(B) Extended Construction Term. If (i) no Event of Default exists as of the date of delivery of Tenant's Construction Option Notice (as defined below) and as of the expiration date of the Initial Construction Term; (ii) the Initial Construction Term has not previously been terminated pursuant to the provisions hereof; and (iii) Tenant is diligently pursuing the construction of the Tenant Work, Tenant shall have one (1) option (the "Construction Extension Option") to extend the term for a period (the "Extended Construction Term"), which, unless sooner terminated as provided herein, shall continue until the earlier of: (i) the Operations Commencement Date, and (ii) the day immediately preceding the Operations Commencement Deadline (as extended). In order to exercise the Construction Extension Option, Tenant shall (1) provide written notice to Landlord of its election to exercise the Construction Extension Option (the "Construction Option Notice") no less than sixty (60) days prior to the expiration of the Initial Construction Term; and (2) concurrently with the delivery to Landlord of the Construction Option Notice, pay Landlord the sum of Three Hundred Thousand Dollars (\$300,000) in immediately available funds (in addition to the Annual Rent). All terms and conditions of this Lease shall remain in full force and effect during any Extended Construction Term.

4.03 Operations Term.

(A) Initial Operations Term. Upon the expiration of the Construction Term, provided that no Event of Default then exists under this Lease and the Construction Term has not been terminated by either Party pursuant to the provisions hereof, the term shall automatically be extended for a period (the "Initial Operations Term") expiring on the day that is the thirtieth anniversary of the last day of the Construction Term, unless extended or sooner terminated as provided herein. Within ten (10) days following the Operations Commencement Date, Landlord and Tenant shall execute a Certificate of Commencement, in the form attached hereto as Exhibit C, setting forth the Operations Commencement Date, the expiration date of the Initial Operations Term, the deadline for Tenant to provide the Option Notice (as defined below) to exercise the Extended Operations Term (as defined below) and any other information as agreed to by the Parties. Tenant shall provide Landlord with a copy of any notice of Substantial Completion or other notification of final size or capacity of the Solar Power Facilities. All terms and conditions of this Lease shall remain in full force and effect during the Initial Operations Term.

(B) Extended Operations Term. If (i) no Event of Default exists as of the day of delivery of the Option Notice (as defined below) and as of the expiration date of the Initial Operations Term and (ii) the Initial Operations Term has not previously been terminated

pursuant to the provisions hereof, Tenant shall have one (1) option, which may be exercised in Tenant's sole discretion, to extend the Term for a period of ten (10) years beyond the end of the Initial Operations Term (such ten-year period, the "Extended Operations Term"), by providing written notice to Landlord of its election to make such extension by a date that is not earlier than three hundred sixty five (365) days and not later than one hundred eighty (180) days prior to the expiration date of the Initial Operations Term (the "Option Notice"). Tenant shall have the right, in its sole discretion, to exercise the option for the Extended Operations Term upon timely delivery of the Option Notice. In the event that Tenant does not deliver an Option Notice, the Operations Term shall expire at the expiration of the Initial Operations Term. If Tenant delivers an Option Notice, then Landlord shall be required to provide the BIA with confirmation of the renewal of the Term per 25 CFR § 162.541(a)(2).

4.04 Post-Operations Term. In the event that Landlord does not elect to acquire all the Tenant's Property pursuant to Section 12.01, the "Post-Operations Term" shall commence on the earlier to occur of (a) the expiration or earlier termination of the Term or (b) the Cessation of Operations Date, and shall terminate immediately upon the completion of the Decommissioning required by Tenant pursuant to Section 12.02, but in no event shall such period extend longer than eighteen (18) months following the commencement of the Post-Operations Term. All terms and conditions of this Lease shall remain in full force and effect during any Post-Operations Term, except that if no power is generated and sold during such Post-Operations Term, then no Monthly Rent shall be due or payable by Tenant to Landlord during such Post-Operations Term. Notwithstanding anything herein to the contrary, to the extent this Lease provides either Party with the right to terminate this Lease, including Landlord's right to terminate under Section 19.02(A), any such termination shall not release Tenant from its obligations under this Section 4.04 or Section 12.02.

4.05 Holdover. Should Tenant withhold from Landlord possession of the Premises after the expiration of the eighteen (18) month period following the commencement of the Post Operations Term, whether by lapse of time or otherwise, such withholding shall constitute only a month-to-month tenancy upon the same terms and conditions set forth in this Lease, except that Tenant shall pay Monthly Rent during such holding over at one hundred fifty percent (150%) of the rental last payable by Tenant when Monthly Rent was due pursuant to the provisions hereof computed on a monthly basis for each month or partial month that Tenant remains in possession. As such, the Parties will obtain BIA's waiver of any applicable regulations that conflict with the agreed upon approach contained herein, pursuant to 25 CFR §§ 162.540 and 162.596.

SECTION 5

RENT

5.01 Rent. In consideration of the covenants set forth herein, Tenant covenants and agrees to pay to Landlord, in advance and in accordance with the provisions of Section 5.05, as rent for each such month during the Term, the amounts set forth in Schedule 5.01 (the "Monthly Rent" and, together with Additional Rent (if any), the "Rent"). Such amounts are negotiated to the satisfaction of Landlord, based on Landlord's evaluation. Landlord expressly recognizes the valuation of Rent is in Landlord's and its members' best interests and, waives any right to further valuation of the same pursuant to 25 CFR §§ 162.549 and 162.555, and the Landlord's written authorization of same is attached hereto as Schedule 15.01(G). The payment of Rent shall be subject to the Premises Adjustment set forth in Section 2.01. The Landlord concludes that there

is no need for conducting periodic reviews of the adequacy of compensation and no additional adjustment(s) required, and the absence of such review and adjustment is within the Landlord members' best interests, as stated in the written authorization in Schedule 15.01(G).

5.02 Compliance Plan. Tenant shall pay to Landlord, as Additional Rent (as defined below), the payments required under the Compliance Plan, at such time and in such amount as provided in the Compliance Plan.

5.03 Additional Rent. All charges payable to Landlord by Tenant hereunder other than Monthly Rent (if any) shall be referred to as "Additional Rent." Unless this Lease provides otherwise, all Additional Rent due in respect of any month shall be paid with the Monthly Rent due in respect of such month, under the same terms and conditions as the Monthly Rent. For the avoidance of doubt, any fee paid pursuant to a Right of Way Document shall be considered Additional Rent.

5.04 Payment of Rent. Tenant's Rent obligations shall begin as of the Effective Date. Except as otherwise set forth herein, Rent is due and payable in advance on the first day of each and every calendar month during the Construction Term and the Operations Term (together, the "Active Term") at the office of Landlord listed in Section 28, or at such other place as Landlord may in writing designate to Tenant. If the Effective Date is a day other than the first day of a calendar month, then Rent and Additional Rent for such partial month shall be prorated based on the number of days in such calendar month. The first payment of Rent and any Additional Rent, including prorated Rent and Additional Rent, shall be due within thirty (30) days of the Effective Date. Rent shall be payable by cashier's check or wire transfer of immediately available funds and be payable to Landlord or such other party Landlord may in writing designate to Tenant. Tenant shall pay Landlord Rent on the terms provided herein, without offset (except as otherwise set forth in this Lease), deduction or prior demand.

5.05 Interest on Late Payments. If Tenant fails to pay any portion of any amounts due and payable to Landlord under this Lease or any of the other Definitive Agreements on or before the date on which such payment is due ("Unpaid Amount"), Tenant shall pay Landlord the Unpaid Amount plus interest on the Unpaid Amount at a rate equal to eight and one-half percent (8.5%) per annum, compounded monthly ("Default Rate"). Such interest shall commence to run on the day following the date on which the Unpaid Amount was due and continue on a daily basis until the Unpaid Amount (including all accrued interest thereon) is paid in full. All payments made by Tenant under this Lease shall be applied first in payment of penalties and interest due under this Section 5.06, then in payment of any existing Unpaid Amounts due hereunder. This Section 5.05 shall not be interpreted as authorizing the late payment of any payment due hereunder.

5.06 Net Lease. It is the intent of the Parties that the Rent provided to Landlord shall be absolutely net to Landlord and that Landlord will not be required to pay any costs or expenses or provide any services in connection with the Premises except to the extent, if any, such costs or expenses arise from Landlord's exercise of its rights as set forth in Section 2.02 above and/or that are Landlord's obligations pursuant to the express terms of this Lease, and Tenant will bear all such costs and expenses relating to the Premises as provided in this Lease. Accordingly, Tenant covenants and agrees to pay, as provided in this Lease, in addition to Rent, all costs and expenses relating to the Premises which accrue during or are allocable to the Term and do not arise from Landlord's exercise of its rights as set forth in Section 2.02 above and/or that are Landlord's

obligations pursuant to the express terms of this Lease, including: (a) subject to the terms of the Tribal Agreement, real and personal property taxes; (b) insurance premiums; (c) utility charges; (d) costs and expenses of maintaining and repairing the Improvements; and (e) costs incurred which are payable with respect to the Premises pursuant to the terms and provisions of any of the Compliance Requirements.

5.07 Proof of Payment. Upon request of the BIA, Tenant shall provide proof of payment by Tenant of any amounts required to be paid to Landlord under this Lease.

SECTION 6 **SECURITY DEPOSIT**

6.01 Delivery of Security Deposit. Tenant, concurrently with the execution of this Lease, has deposited with Landlord a security deposit in the amount of One Hundred Thousand Dollars (\$100,000) ("Security Deposit"). The Security Deposit shall be held by Landlord as security for the faithful performance by Tenant of all the agreements, obligations and covenants of this Lease to be kept and performed by Tenant during the Term; provided that Tenant shall not be excused from the payment of any Rent or other amount due hereunder because of such Security Deposit. If Tenant defaults with respect to any provision of this Lease, so as to give rise to an Event of Default, Landlord may, but shall not be required to, use or retain all or any part of the Security Deposit to cure such default, including to pay Rent or any other amount or charge (any such payments to be applied and allocated as determined by Landlord in its sole discretion), or to compensate Landlord for any other demonstrable loss or damage which Landlord may suffer arising directly from the Event of Default. If any portion of the Security Deposit is so used or applied and Landlord acknowledges that there has been a cure of the Event of Default that gave rise to the application of the Security Deposit, Tenant shall, within ten (10) days after written demand therefor, deposit cash with Landlord in an amount sufficient to restore the Security Deposit to its original amount.

6.02 Return of Security Deposit. So long as Tenant complies with all of its obligations under this Lease, the Security Deposit shall be returned to Tenant thirty (30) days following expiration of the Post-Operations Term. Landlord shall keep the Security Deposit in a separate interest-bearing account, with all interest accruing for the benefit of Tenant and added to the amount of the Security Deposit. Notwithstanding the foregoing, Tenant shall have no right to the Security Deposit or any interest thereon except as expressly set forth herein.

SECTION 7 **CONDUCT OF TENANT OPERATIONS;** **OWNERSHIP OF IMPROVEMENTS AND PERSONALTY**

7.01 Management, Control and Funding of Tenant Operations. Tenant shall have full management, control and responsibility over and for Tenant Operations, including the installation of the Solar Power Facilities and associated infrastructure, subject to the provisions of (a) the Definitive Agreements; (b) the Environmental Impact Statement, Project Plans and Project Approvals (collectively, together with the Definitive Agreements, the "Controlling Documents"); and (c) applicable Laws. Tenant shall bear all costs of Tenant Operations.

7.02 Best Management Practices. Using Best Management Practices, and in a manner

consistent with and subject to all applicable requirements, standards and limitations under the Controlling Documents and applicable Laws, Tenant shall exercise commercially reasonable efforts to take or cause to be taken the following actions:

- (A) obtain, to the extent not already obtained, all Project Approvals and Third Party Rights, with the reasonable cooperation of Landlord;
- (B) design, construct, maintain, repair and/or replace all structures, facilities and equipment, including the removal of any idle, improperly functioning, or abandoned equipment and procure all materials, equipment, supplies and services, necessary for Tenant Operations in accordance with all applicable provisions of the Compliance Plan;
- (C) employ and/or contract with and supervise all personnel and other parties necessary for the conduct of Tenant Operations, with full authority over such personnel and parties, the size of the work force, its wages and other conditions of employment in accordance with all applicable provisions of the Compliance Plan;
- (D) protect health, safety and the environment affected by the conduct of Tenant Operations;
- (E) do all other things reasonably necessary for the lawful conduct of Tenant Operations; and
- (F) surrender the Premises on or before the last day of any Post-Operations Term.

7.03 Proposed Approval Applications. (A) Tenant is required, by no later than the Construction Commencement Date, to have submitted all anticipated applications, filings and other submissions required by Governmental Authorities under applicable Laws, and obtained all necessary Project Approvals required to commence construction, including Project Approvals of the Project Plans from Landlord pursuant to this Lease. Landlord shall, at no cost to Landlord, execute any applications and shall provide such further reasonable assistance and cooperation to Tenant in good faith as Tenant may reasonably require in connection with the Project Approvals. (B) In the event that following the Construction Commencement Date additional or modified Project Approvals are required to be obtained due to a validly-executed change in applicable Law, or due to a permitted change in the Project or the Construction Plans that triggers the application of Laws not previously applicable (collectively, “Supplemental Approvals”), Tenant shall promptly provide written notice of each such requirement to Landlord and submit all applications, filings and other submissions with respect to any such Supplemental Approvals (collectively, “Supplemental Applications”) to the appropriate Governmental Authorities, shall concurrently deliver a copy of such Supplemental Applications to Landlord, and shall diligently pursue obtaining the same. With respect to both (A) and (B) above, Tenant shall respond to any requests from such Governmental Authorities and promptly file any and all additional information required in connection with such filings as soon thereafter as practicable. Tenant shall timely pay all fees and costs required by such Governmental Authorities in connection with the submission of Supplemental Applications and with obtaining the Supplemental Approvals. Tenant shall keep Landlord promptly and regularly apprised of the status of any communications (including providing copies to Landlord of same) with, and any inquiries or requests for additional

information from, such Governmental Authorities and shall comply promptly with any such inquiry or request. Tenant shall provide Landlord with reasonable advance notice of all meetings and public hearings with respect to the Supplemental Applications and/or Supplemental Approvals. Landlord shall, at no cost to Landlord, execute any applications and shall provide such further reasonable assistance and cooperation to Tenant in good faith as Tenant may reasonably require in connection with the Supplemental Applications. Tenant shall use Best Management Practices, work in good faith, and exercise due diligence in its efforts to obtain all such Supplemental Approvals as promptly as possible. If after one (1) year from the submission of an application for any Supplemental Approval, such Supplemental Approval has not been obtained and Tenant has worked in good faith and used reasonable and diligent commercial efforts to obtain such Supplemental Approval, then Tenant shall have the right to immediately terminate this Lease upon written notice to Landlord with no additional Rent or other sums due to Landlord and no other obligations of Tenant under the Lease shall survive, except the decommissioning obligations of Section 12. If the need for any Supplemental Approval arises during the Initial Construction Term or the Extended Construction Term, then Tenant shall continue to pay the Rent as set forth in Schedule 5.01. If the need for any Supplemental Approval arises during the Operations Term, then Tenant's obligation to pay the Rent set forth in Schedule 5.01 shall be abated on a pro rata basis in proportion to that portion of the Solar Power Facilities that is demonstrated and documented as being unusable due to the absence of the needed Supplemental Approval, provided that any such abatement shall continue for no longer than one (1) year. Notwithstanding anything herein to the contrary, in no event shall Landlord be obligated to pay any fees or costs required by any Governmental Authorities in connection with the submission of the Supplemental Applications and/or obtaining the Supplemental Approvals.

7.04 Ownership of Improvements and Personality.

(A) Existing Infrastructure Improvements. At all times during the Term, Landlord shall own and (other than any Existing Infrastructure Improvements which Tenant is expressly required to maintain pursuant to the terms of any Controlling Documents) maintain all Existing Infrastructure Improvements, subject to: (a) Tenant's use, management and control rights as set forth in this Section 7 and in the Definitive Agreements; and (b) any Leasehold Mortgagee's security interests in such use, management and control rights under a mortgage meeting the requirements of Section 23.05. During the Term, Tenant shall own all Infrastructure and Improvements, including the Solar Power Facilities and associated infrastructure, that are installed on the Premises or Right of Way Areas by Tenant after the Effective Date, other than any Existing Infrastructure Improvements and any facilities owned by any utility or other service provider to the Project or any successors thereof or any other Person (collectively, "Tenant Infrastructure Improvements"). These Tenant Infrastructure Improvements shall be treated as permanent improvements and are the subject of the Construction Plan and Tenant Work, otherwise referred to as a "resource development plan" pursuant to BIA regulations codified at 25 CFR 162.543.

(B) Ownership of Tenant Improvements and Tenant's Personality. During the Term, all Tenant Improvements and all materials, supplies, equipment, production and other property, but excluding any Existing Infrastructure Improvements (collectively, "Tenant's Personality") and, together with the Tenant Improvements, including Tenant Infrastructure Improvements, the "Tenant's Property") shall be owned and controlled by Tenant. Tenant

may remove Tenant's Personalty from the Premises at any time so long as no Event of Default then exists under this Lease. Without limiting the generality of the foregoing, Landlord acknowledges that Tenant or its Affiliate, successor or assignee is the exclusive owner of electricity (kWh) generated by the Solar Power Facilities and owner of the Environmental Attributes, Environmental Incentives and Renewable Energy Credits of the Project. Landlord's rights with respect to Tenant Improvements following default by Tenant is subject to Section 19.02(C). Removal of Tenant's Property after termination of the Lease and Landlord's rights with respect to such property is subject to Section 12.

SECTION 8

CONSTRUCTION OF SOLAR POWER FACILITIES

8.01 Construction Obligations. Subject to receipt of all necessary Approvals, the Tenant Parties shall, at their sole cost and expense, commence and diligently pursue to completion all Tenant Work. As used herein, "Tenant Work" shall mean the designing, engineering, constructing and energizing of the Solar Power Facilities, the Tenant Infrastructure Improvements and all other Improvements related to and necessary for operation of the Solar Power Facilities (whether located on or off the Premises), and otherwise generally preparing the Premises and the Right of Way Areas so that Tenant may commence Tenant Operations on or before the Operations Commencement Deadline. Tenant hereby agrees that (a) any material change or modification to the Landlord approved Construction Plans for the Tenant Work shall be subject to Landlord's prior written approval pursuant to Section 8.02 below, which approval shall be considered in good faith and shall not be unreasonably withheld, conditioned or delayed; provided, however, that it shall not be unreasonable for Landlord to withhold approval to such change or modification to the Construction Plans for the Tenant Work if the same fail to meet the minimum building, construction and/or safety requirements (including the Building Code, Electrical Code, Plumbing Code, Mechanical Code and Solar Energy Code) set forth in the Code of Clark County, Nevada, and any other Laws which would be applicable to the Project if it were constructed under the jurisdiction of Clark County, Nevada, (b) Tenant shall be responsible for obtaining all applicable Project Approvals and Third Party Rights necessary for the completion of the Tenant Work, Tenant's occupancy of the Premises and Tenant's conducting of the Tenant Operations, (c) all Tenant Work shall be in a good and workmanlike manner and in compliance with the Construction Plans, (d) all Tenant Work shall be constructed in accordance with all building, construction and/or safety requirements (including the Building Code, Electrical Code, Plumbing Code, Mechanical Code and Solar Energy Code) set forth in the Code of Clark County, Nevada which would be applicable to the Project if it were constructed under the jurisdiction of Clark County, Nevada (or, if any deviation from such Code has been approved in advance in a writing signed by Landlord, then in accordance with such deviation), and (e) all Tenant Work shall comply with all insurance requirements set forth herein and with all applicable Laws. Tenant assumes full responsibility for the performance of all Tenant Work, including compliance with all applicable Laws, and for all of the property, equipment, materials, tools or machinery of Tenant's general contractor ("Contractor") placed or stored on the Premises during the completion thereof. All Tenant Work shall be conducted in accordance with the Compliance Plan, all Project Plans, and the Environmental Impact Statement.

8.02 Project Plans.

(A) Project Plans. If Tenant desires to materially modify or change (which shall

mean changes or modifications to greater than five percent (5%) of the total cost of the Improvements, plans or layout described in the applicable Project Plan) any of the Project Plans (each a "Revised Plan"), Tenant or the Contractor (at Tenant's direction) shall submit its proposed Revised Plan to Landlord for review and approval, which approval shall be considered in good faith and shall not be unreasonably withheld, conditioned or delayed; provided, however, that it shall not be unreasonable for Landlord to withhold approval of any Revised Plan if the same fails to meet the minimum building, construction and/or safety requirements (including the Building Code, Electrical Code, Plumbing Code, Mechanical Code and Solar Energy Code) set forth in the Code of Clark County, Nevada which would be applicable to the Project if it were constructed under the jurisdiction of Clark County, Nevada. Within fifteen (15) Business Days after Landlord's receipt of Tenant's proposed Revised Plan, with a cover letter stating that under this Section, Landlord has fifteen (15) Business Days to act, Landlord shall either approve or disapprove Tenant's Revised Plan. If Landlord fails to so approve or disapprove Tenant's Revised Plan during such 15-Business Day period, such failure shall be deemed approval by Landlord of Tenant's Revised Plan. Landlord shall take all Revised Plans under consideration in good faith and any disapproval of a Revised Plan shall include a detailed, written explanation of the reason for such disapproval. If Landlord disapproves Tenant's proposed Revised Plan, Tenant or the Contractor (at Tenant's direction) shall submit a revised version of Tenant's proposed Revised Plan to Landlord for its review within thirty (30) days after Tenant's receipt of Landlord's disapproval notice. Landlord and Tenant shall continue the above approval procedure until Landlord approves or is deemed to approve Tenant's Revised Plan. No such modifications shall be effective until approved in writing by both Landlord and Tenant, after which approval the Revised Plan shall govern over any contradictory provisions of the prior approved version of the corresponding Project Plan. Notwithstanding anything in the foregoing to the contrary, upon approval of the Project Plans or of a Revised Plan as the case may be, Landlord shall have no further approval rights with respect to such approved Project Plans or approved Revised Plan, as the case may be, or Tenant's implementation thereof or activities thereunder (except as otherwise provided in this Lease or the Definitive Agreements), unless Tenant shall propose to materially change or modify any such Project Plans, in which case Landlord shall have the right to approve such change or modification as set forth herein, and any such revised or modified Project Plans shall not be effective for purposes of this Lease unless and until such revised or modified Project Plans have been so approved by Landlord.

(B) No Warranty. Landlord's approval or deemed approval of Tenant's Construction Plans shall create no warranty, responsibility or liability on the part of Landlord for their completeness, design, sufficiency, or compliance with any applicable Laws.

8.03 Commencement of Tenant Work. Tenant Parties shall not commence Tenant Work until: (a) Tenant or the Contractor (at Tenant's direction), has provided to Landlord evidence of compliance with the insurance requirements set forth in this Lease, and the Contractor and the construction contract with the Contractor ("Construction Contract") have been approved in accordance with the Compliance Plan; (b) Tenant or the Contractor (at Tenant's direction) has provided to Landlord a copy of the executed Construction Contract, which shall be redacted as necessary to remove confidential and/or proprietary information, and all Project Approvals

required to commence construction which have not already been provided to Landlord in their final approved form; (c) Landlord has approved Tenant's Construction Plans and any material changes thereto; and (d) the Contractor has obtained the insurance policy or policies required by Exhibit E attached hereto and Landlord has approved the same. Upon Tenant's fulfillment of the foregoing requirements, and provided Tenant has obtained all Project Approvals, including Supplemental Approvals, then Tenant Parties shall (i) promptly commence Tenant Work, except that in no event shall Tenant be required to commence or continue Tenant Work until all Project Approvals, including Supplemental Approvals, have been obtained, (ii) diligently prosecute such construction to completion, except that Tenant shall not be required to diligently prosecute such construction until any necessary Supplemental Approvals, as such may arise during the prosecution of Tenant Work, are obtained, and (iii) commence Tenant Operations no later than the Operations Commencement Deadline. Tenant shall cause the Contractor and all subcontractors, vendors and/or suppliers to comply with the Compliance Plan and to execute, contemporaneously with receipt of payment, lien waivers in the applicable form set forth in NRS 108.2457(5), copies of which shall be immediately delivered to Landlord. Following completion of construction of the Tenant Work, and to the extent allowed under applicable Laws, Tenant shall submit a black-line translucent bond set or similar hard copy, and two (2) compact discs or DVDs, of "As-Built" drawings (in Adobe ".pdf" format or other computerized file format in which such drawings were generated and used by Tenant, the Contractor and construction subcontractors) to Landlord for its records, along with copies of all construction contracts (including the Construction Contract), and proof of compliance with the requirements set forth in Section 8.05, including copies of final, unconditional lien waivers signed by the Contractor and all subcontractors, vendors and/or suppliers providing materials and/or labor for the completed Tenant Work in the form required by NRS 108.2457(5)(d), as amended. Notwithstanding the above, all construction related materials provided to Landlord by Tenant shall be marked "Confidential" pursuant to Section 24 hereof. Tenant shall cause the Contractor and all subcontractors, vendors and/or suppliers to use all reasonable efforts to cause any sales or deliveries of materials to be used in construction of the Tenant Work to be made on the Reservation. Landlord hereby waives its rights set forth in NRS 108.234 with respect to any and all works of improvement installed or constructed on or otherwise related to the Property and agrees that Tenant shall not be required to comply with the requirements of NRS 108.2403 and 108.2407 with respect to this Lease. Landlord shall, at Tenant's sole cost and expense, (i) record a written notice of waiver of Landlord's rights set forth in NRS 108.234 as and when required by NRS 108.2405(1)(b), and (ii) serve such notice by as and when required by NRS 108.2405(2). This waiver is not limited to any particular work of improvement to the Premises but shall apply to any and all works of improvement installed or constructed on or otherwise related to the Premises.

8.04 Indemnification for Tenant Work. Without limiting Tenant's indemnification obligations in Section 21.01, Tenant shall indemnify, defend and hold harmless Landlord, each Mortgagee and the other Landlord Indemnified Parties from and against any and all Losses of any kind arising out of, or resulting from the performance of Tenant Work, including mechanic's, materialman's or other liens or claims (and all costs associated therewith). Tenant shall also immediately repair or cause to be repaired, at its expense, all damage caused to the Premises or the Reservation by the Contractor and/or subcontractors, vendors and/or suppliers providing materials and/or labor for the Tenant Work. Tenant shall repair, place into service, or remove from the site within sixty (60) days any idle, improperly functioning or abandoned equipment or facilities that have been inoperative continuously for a period of one hundred eighty (180) days,

unless the inoperability is agreed upon by the Parties, such as due to a suspension of operations. Mere installation and operation of the Solar Power Facilities during the Term as contemplated by this Lease shall not be grounds to claim additional payments for Losses or damages under this section.

8.05 Liens.

(A) No Liens. Subject to Section 8.05(B) hereof, Tenant, at all times, shall keep the Landlord, the Premises, any Existing Infrastructure Improvements and the leasehold estate of Tenant created by this Lease (“Leasehold Estate”) free and clear from any claim, Lien or encumbrance, tax lien or levy, mechanic’s or materialman’s lien, attachment, garnishment or encumbrance (other than a Leasehold Mortgage) arising directly or indirectly from any obligation, action or inaction of Tenant (or any of its consultants, contractors or other agents) whatsoever, whether during the Term or prior thereto.

(B) Removal of Liens. If any Lien, other than a Leasehold Mortgage which has been consented to by Landlord in accordance with Section 23.05, is recorded against the Premises as a result of any activity by Tenant or any of the Tenant Parties, Tenant shall remove such Lien, either by payment or by posting adequate bond in compliance with NRS 108.2415, within thirty (30) days from the recording of such Lien. If Tenant fails to timely remove such Lien, Landlord may, but shall not be required to, pay the amount of the claim and any costs, and the amount so paid, together with attorneys’ fees and costs incurred in connection therewith, shall be immediately due and owing from Tenant to Landlord as Additional Rent. Should any claims of Lien be recorded against the Premises, the Party receiving notice of such Lien shall forthwith give the other Party notice thereof. Notwithstanding the foregoing, to the extent Tenant is actively contesting a Lien in good faith by appropriate proceeding, Tenant shall have the right to dispute such Lien without payment or bonding, provided that (i) Tenant holds funds in a reserve sufficient to pay the Lien, and (ii) if there has been commencement of a foreclosure or other sale of any portion of the Premises on account of such Lien, Tenant shall remove such Lien, either by payment or by posting adequate bond with a court of competent jurisdiction within five (5) days of the commencement of such foreclosure or other sale.

8.06 Other Tenant Alterations and Additions. Upon completion of the Tenant Work, Tenant, or the Contractor (at Tenant’s direction), shall not materially replace or reduce any existing Tenant Work or make or allow to be made any other material alterations, additions or improvements to or of the Premises or any part thereof not contemplated by the Project Plans without first obtaining the written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, none of the following shall require Landlord’s consent pursuant to this Section, provided that they do not result in more glare or noise than the solar panels originally approved in the Project Plans, and when installed, are not more than fifty-five (55) feet from the normal ground level: (a) removal or replacement of solar panels due to damage or degradation, (b) installation of additional panels in locations designated in the Project Plans, (c) any removals, replacements, alterations, additions or improvements reasonably required in accordance with Best Management Practices, (d) any removals, replacements, alterations, additions or improvements reasonably required to maintain Tenant Operations, including the operational capacity of the Solar Power Facilities and the Water Supply Infrastructure (as defined below) and (e) any alterations, additions or improvements, the aggregate

value of which per year is less than Two Million Dollars (\$2,000,000). In the event Tenant or the Contractor (at Tenant's direction) makes any material alterations, additions or improvements to the Premises, whether by Landlord consent or as otherwise permitted herein (collectively, "Tenant Alterations"), the same shall be made by Tenant or the Contractor (at Tenant's direction) at Tenant's sole cost and expense, and in accordance with the requirements of Section 8. Upon Landlord's written request, Tenant shall promptly remove any replacement, alterations, additions, or improvements constructed in violation of this Section 8. Tenant shall, or the Contractor (at Tenant's direction) shall, cause all Tenant Parties to, comply with the Compliance Plan in making or causing to be made any Tenant Alterations.

8.07 Performance Bond or Guaranty. Subject to this Section 8.07, before beginning construction of any Improvements on the Premises, Tenant agrees to provide, at Tenant's election, either a security via a Performance Bond in the form attached hereto as Exhibit I, or via a parent company guaranty, so long as the parent company has a market capitalization greater than \$1 billion, to guarantee completion of the Improvements and payment in full of claims of all persons for work performed on, or materials furnished for construction, such Performance Bond or guaranty to remain in effect until the Improvements are satisfactorily completed. Tenant may also provide such security by requiring the Contractor to post a corporate surety bond issued by a company approved by the U.S. Department of the Treasury in an amount equal to the cost of the Improvements for which the Contractor is employed or contracted by the Tenant to construct, proof of such bond to be deposited with the Secretary and to remain in effect until the Improvements are satisfactorily completed. Such bond shall be conditioned upon the faithful performance of the Contractor in completing the Improvements as provided for in this Lease, and shall be further conditioned on the payment by Contractor's subcontractor(s) of all just claims of all persons for work performed on or materials furnished for construction. The bond shall be deposited with the Landlord, be made payable to the Landlord, shall require BIA approval for redemption, and provide the Landlord and BIA the right of action to recover upon the bond in any suit brought for failure to complete the Improvements and/or for failure to pay for work performed or in material furnished for construction. Any corporate surety bond provided pursuant to this Section 8.07 shall be issued by a company having an A.M. Best Rating not less than B+. Notwithstanding the foregoing, Landlord has determined that, given Tenant's successful history in developing and constructing other utility scale solar projects, and to induce Tenant to enter into this Lease rather than pursuing other siting alternatives, Landlord has agreed to waive the performance bond and/or security requirements of 25 CFR 162.559, including, the requirements of this Section 8.07 and Section 12.05, and concurrently with Landlord's submission of this Lease to BIA for approval Landlord shall submit a Tribal resolution to BIA requesting that BIA defer to the Landlord's determination to waive performance bond and/or security requirements of 25 CFR 162.559 in accordance with 25 CFR 162.559(f) and (g). If BIA does not defer to Landlord's determination to waive the performance bond and/or security requirements of 25 CFR 162.559, including the requirements of this Section 8.07, Tenant shall nonetheless not be required to post a Performance Bond or corporate security bond so long as (a) Tenant has a net worth of at least One Hundred Million Dollars (\$100,000,000), (b) Tenant is a financial sponsor, private equity fund or other similar investor that owns and manages assets valued in excess of Fifty Million Dollars (\$50,000,000), (c) Tenant has outstanding securities rated "investment grade" or better by a generally recognized rating agency, or (d) Tenant's obligations are guaranteed by a parent company or other Affiliate of Tenant, and such parent or other Affiliate: (i) has a market capitalization greater than \$1 billion or (ii) is a financial sponsor, private equity fund or other

similar investor that owns and manages assets valued in excess of One Hundred Million Dollars (\$100,000,000).

SECTION 9

RIGHTS OF WAY FOR ROADS AND TRANSMISSION FACILITIES

9.01 Right of Way Plans. To the extent not executed by Landlord prior to, or concurrently with, the execution of this Lease, Landlord shall enter into one or more Right of Way Agreements, each in the form attached hereto as Exhibit H (each, a “Right of Way Agreement”), with reasonable modifications as Tenant may require, taking into consideration the specific nature and scope of each Right of Way, necessary to grant to Tenant the Rights of Way on the Reservation (other than those portions of the Reservation constituting the Premises under this Lease, which per BIA regulations does not require separate right-of-way authorizations), in the locations and with the scope and other criteria as set forth in the Right of Way Plan.

9.02 Rights of Way. Subject to the provisions of this Section 9 and any other relevant provisions of this Lease, the other Controlling Documents and applicable Laws, Landlord agrees to consent to, grant, or cooperate with Tenant to cause to be granted, as applicable, to Tenant and such utility companies and providers as Tenant may reasonably require (collectively, “Utility Providers”), certain non-exclusive Rights of Way during the Term which are required to be granted by, or require the consent or approval of, any other parties and/or any applicable Governmental Authorities in connection with the Project in, upon, over, under and across certain portions of the Reservation, at such locations and with the scope and other criteria as set forth in the Right of Way Plan approved by Landlord pursuant to this Lease and the Option Agreement, for the purposes of: (a) ingress to and egress from the Solar Power Facilities, the Transmission Facilities (as defined below) and the Water Supply Infrastructure by means of all existing roads and such other roads as Tenant may construct from time to time pursuant to the provisions of this Lease (collectively, “Roads”); provided that such use may not unreasonably interfere with use of any existing Roads by Landlord, the Landlord Parties and any applicable Governmental Authorities and their respective employees, agents, members (and their families and respective invitees) and any other Persons authorized by Landlord or such Governmental Authorities or who have lawful rights to the use of such Roads; (b) maintaining, repairing, replacing and improving Roads, including strengthening Roads to be suitable for general construction traffic and project equipment delivery vehicles; and (c) temporary construction staging for, and/or erecting, installing, constructing, replacing, maintaining, repairing and using (i) in connection with the Solar Power Facilities, a line or lines of towers, with such wires and cables as may be suspended therefrom, and/or underground wires and cables (which shall be buried at least three (3) feet underground), 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 the foregoing; and (ii) one or more substations or interconnection or switching facilities from which Tenant or others that generate energy (whether on the Premises or elsewhere) may interconnect to a utility transmission system or the transmission system of another purchaser of electrical energy (such towers, wires, cables, substations and facilities collectively, the “Transmission Facilities”), and (iii) the Water Supply Infrastructure. Notwithstanding anything herein to the contrary, Tenant shall have no right whatsoever to construct any Roads, Transmission Facilities or any other Improvements on the Premises or the Reservation or portion thereof unless (x) the location, plans and specifications for such Roads, Transmission Facilities and other Improvements have been

previously approved by Landlord in writing, (y) the applicable Right of Way Documents have been entered into by the applicable parties and (z) Tenant has otherwise complied with the provisions of Section 8 and all other applicable Sections of this Lease and Right of Way Documents with respect thereto. For those Roads used solely by Tenant for the Project (without regard to Landlord's exercise of its access rights pursuant to Section 2.02, Tenant, at its sole cost and expense, shall be responsible for improving, maintaining and repairing such Roads as is commercially reasonable to allow for access on, over and across the Roads by trucks and other vehicles. In the event that Tenant obtains non-exclusive Rights of Way over Roads that are shared by other Right of Way grantee(s) and/or Landlord, Tenant will work in good faith to negotiate a joint use, maintenance, and repair agreement with the shared Right of Way grantee(s) and/or Landlord for maintenance and repair of such Roads. For the avoidance of doubt, any fee paid pursuant to a Right of Way Document shall be considered Additional Rent under this Lease.

9.03 Right of Way Documents. Each Right of Way on the Reservation shall be set forth in and established in a separate Right of Way Document, which shall be applied for by Tenant and either issued by Landlord and approved by the BIA or issued by the BIA with the consent of Landlord, pursuant to applicable laws; provided that applications for Rights of Way within the BLM Corridor shall be submitted to the BLM on the conditions set forth in Sections 2(b) and (c) of the 1980 Act. Each Right of Way Document shall provide, among other things, that Tenant shall maintain its improvements within all Rights of Way at Tenant's sole cost and expense during the Term, except that maintenance of those non-exclusive Rights of Way for Roads shared with other grantee(s) shall be governed by any joint maintenance and repair agreement between the Tenant and such other grantee(s), but in no case will Landlord be responsible for maintenance and repair of Roads constructed by Tenant and Tenant shall continue to retain all liability for use of such Rights of Way by the Tenant Parties under this Lease. Tenant's applications for all such Rights of Way shall comply with and be subject to the requirements of applicable Laws and shall be granted on such terms and conditions regarding location, purpose, duration, compensation, design, construction, maintenance, repair, use, restoration, ownership of permanent improvements and management thereof, bond, insurance, and other security, record of notice to all Indian landowners, consent of the Landlord, environmental reviews, as required, and other matters as Landlord and/or the applicable Governmental Authorities may reasonably require and as shall be reasonably acceptable to Tenant and any other parties thereto. Each such Tenant application and Right of Way Document shall include as an exhibit thereto an ALTA/NSPS Land Title Survey and any Improvements located thereon meeting the requirements of the 2016 Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys (the "Survey"), which Survey shall be reasonably acceptable to Landlord, together with a copy of the preliminary title report performed by a title and escrow company selected by Tenant and supporting documentation (including copies of any title exceptions) referenced therein. The Survey shall be prepared at the sole cost and expense of Tenant by a surveyor licensed in the State of Nevada, selected by Tenant and reasonably satisfactory to Landlord. Without limiting the foregoing, the Survey shall certify to the Parties that the Survey correctly shows the legal description and acreage of the Right of Way and the locations of any and all visible Improvements, easements, utility lines and rights-of-way thereon as described in the preliminary title report. Upon issuance of a title policy for the area subject to the preliminary title report, Tenant shall provide Landlord with a copy of the final title report. Notwithstanding anything herein to the contrary, Landlord and Tenant acknowledge and agree that Tenant has no right to grant any Rights of Way for utility facilities and service directly to the applicable Utility Provider providing such facilities and service to the Premises.

9.04 Termination of Rights of Way.

(A) At Tenant's Election. Subject to the provisions of the applicable Right of Way Document(s), Tenant's right to use a particular Right of Way, and Tenant's obligations to maintain and repair such Right of Way (except those set forth in Section 9.05), shall terminate immediately upon Tenant advising Landlord in writing that the use of such Right of Way is no longer necessary for the conduct of Tenant Operations.

(B) At Cessation of Operations. Subject to the provisions of the applicable Right of Way Document(s) and to Tenant's rights to enter the Reservation for purposes of exercising its rights and fulfilling its obligations during and in connection with any Post-Operations Term, Tenant's rights to use all Rights of Way not previously terminated, and Tenant's obligations to maintain and repair the Rights of Way (except those set forth in Section 9.05), shall terminate upon expiration of the Post-Operations Term.

9.05 Tenant's Duties Upon Termination. Upon the termination under Section 9.04 of Tenant's right to use a particular Right of Way with respect to a Road, Tenant shall have the following obligations with respect to such Right of Way in addition to such other obligations set forth in the applicable Right of Way Document(s) and this Lease:

(A) Restore Road to Safe Condition. Within ninety (90) days after such termination, Tenant shall cause each Road to be restored and repaired such that it is in a condition at least as good as that which existed as of the commencement of the applicable Right of Way, as reasonably determined by Landlord, unless Landlord elects to require the elimination or closure of such Road under Section 9.05(B).

(B) Eliminate Roads. With respect to each Road constructed by Tenant, Landlord shall have the right, to be exercised by written notice given to Tenant within sixty (60) days of such termination, to require Tenant to eliminate or close the Road, through filling, grading, revegetation, dismantling or other appropriate method, to Landlord's reasonable satisfaction, within twelve (12) months of termination.

SECTION 10 **WATER RIGHTS**

10.01 Water Supply Provisions. All provisions set forth or incorporated by reference in this Section 10 and all other relevant provisions of the Definitive Agreements (which provisions are incorporated by reference), constitute the entire agreement between Landlord and Tenant regarding the provision of water to the Solar Power Facilities from water rights owned by Landlord (collectively the "Water Supply Provisions"). These Water Supply Provisions constitute a contractual water supply arrangement under which Landlord commits water to the Solar Power Facilities solely from certain groundwater rights issued by the State of Nevada to Landlord. These Water Supply Provisions are not intended to provide, and do not provide, to Tenant a leasehold or other ownership interest in any water right owned by Landlord. All arrangements and activities required or authorized under these Water Supply Provisions, and all obligations imposed hereunder, shall be implemented and performed using Best Management Practices.

10.02 Landlord's Groundwater Permits and Their Diversion Points. The following

describes Landlord's Groundwater Permits and their points of diversion, from which the Water Supply will be available as provided herein:

(A) Groundwater Permits 70257, 70258 and 70259 and Wells ECP-1, ECP-2 and ECP-3. Groundwater Permits 70257, 70258 and 70259 were issued by the Nevada State Engineer on April 18, 2006, in response to change applications for Groundwater Permit 54075 which was then held by the Las Vegas Valley Water District ("LVVWD"). Landlord acquired ownership of Groundwater Permits 70257, 70258 and 70259 via a water rights deed and indenture executed and delivered to Landlord by LVVWD on April 20, 2006 ("2006 Water Rights Deed"), pursuant to a water supply agreement among Landlord, LVVWD, Southern Nevada Water Authority ("SNWA"), Muddy Valley Irrigation Company and Moapa Valley Water District ("2006 Water Supply Agreement"). Withdrawals under Groundwater Permits 70257, 70258 and 70259 may be made at wells ECP-1, ECP-2, and ECP-3 sited on the Reservation.

(B) Groundwater Permit 76643 and Well TH-1. Groundwater Permit 76643 was issued by the Nevada State Engineer to Landlord on August 18, 2008. Withdrawals under Groundwater Permit 76643 are made at a diversion point known as well TH-1 sited on the Reservation.

10.03 Combined Limit on Withdrawals. Groundwater withdrawals under Groundwater Permits 70257, 70258, 70259 and 76643 (together "Landlord's Groundwater Permits") may not collectively exceed 2,500 acre-feet per year ("afy"), at a collective rate not exceeding 5 cubic feet per second ("cfs").

10.04 Groundwater Permit Conditions.

(A) MOA. Pumping of groundwater under Landlord's Groundwater Permits is subject to a Memorandum of Agreement dated April 20, 2006, among Landlord, SNWA, United States Fish & Wildlife Service, Coyote Springs Investment, LLC, and Moapa Valley Water District ("MOA").

(B) Conditions. Pumping of groundwater is subject to certain conditions set forth in Landlord's Groundwater Permits, State Engineer Ruling 5115, the 2006 Water Supply Agreement, the 2006 Water Rights Deed, the MOA, and all applicable Laws. Such groundwater pumping may also be affected by State Engineer Interim Order 1303 and the processes provided for and contemplated therein. The Groundwater Permit Conditions are hereby incorporated by reference as part of these Water Supply Provisions.

(C) Acknowledgement of Receipt. Based on Landlord's representation that it has delivered to Tenant true, complete and current copies thereof, Tenant acknowledges that it has reviewed Landlord's Groundwater Permits, State Engineer Ruling 5115, State Engineer Interim Order 1303, the 2006 Water Supply Agreement, the 2006 Water Rights Deed, and the MOA, including all provisions thereof which control or otherwise impose conditions of pumping of groundwater under Landlord's Groundwater Permits.

(D) Quantum of Water Supply. Tenant has advised Landlord that total annual water deliveries of no more than 500 afy will be needed before the Operations

Commencement Date for construction of the Solar Power Facilities and related purposes, and no more than 50 afy will be needed to meet the water needs of all components of the Solar Power Facilities after the Operations Commencement Date. Before the Operations Commencement Date, Landlord shall make available up to 500 acre feet per calendar year to the extent needed for construction of the Solar Power Facilities and related purposes, and after the Operations Commencement Date, Landlord shall make available an amount of water needed for operations up to 50 afy (“Water Supply”). The Water Supply shall be provided to the Solar Power Facilities from the sources specified in Section 10.05, as, when and to the extent needed for the construction and operation of the Solar Power Facilities, and Tenant’s rights to such water shall have priority over the rights of Landlord (subject to Section 10.06(B)) and any other person contracting with Landlord after the Effective Date.

10.05 Sources of Water Supply. Subject to and in accordance with the terms and conditions set forth or incorporated by reference in these Water Supply Provisions, the Water Supply shall be provided from the following sources throughout the Term:

(A) Primary Source. The primary source of the Water Supply shall be groundwater produced under Groundwater Permit 76643 at well TH-1, including from storage tanks that are located approximately one (1) mile east of well TH-1 and are connected by pipe to well TH-1.

(B) Back-up Sources. If well TH-1 cannot provide all or any portion of the Water Supply at any time during the Term, the Water Supply deficit shall be provided from Groundwater Permit 70257, 70258 and/or 70259, from wells ECP-1, ECP-2 and/or ECP-3.

(C) No Non-Project Use. Without the prior written approval of Landlord given in its sole discretion, Tenant shall not use or authorize any third party to use the Water Supply for any project or purpose other than for the Solar Power Facilities.

10.06 Landlord’s Reserved Rights. Subject to Tenant’s right of access to and use of the Water Supply in accordance with these Water Supply Provisions, Landlord reserves the following rights:

(A) As to Landlord’s Groundwater Permits. Landlord reserves the rights of access to and use of any and all groundwater producible under Landlord’s Groundwater Permits, other than those portions of the Water Supply needed by Tenant to construct or operate the Solar Power Facilities (“Balance of Groundwater Permit Water”), for such projects or purposes as Landlord in its sole discretion deems appropriate (“Landlord Projects”), and the right to seek and obtain State Engineer approval of change orders facilitating such use. Tenant shall not protest or otherwise oppose the approval of any such changes that do not directly and adversely impact Tenant’s rights to water hereunder.

(B) As to First 100 AFY from TH-1. In the event that water permitted to be extracted under State Groundwater Permit 76643 (well TH-1) is decreased or curtailed by any action other than the request of Landlord, the Parties will agree to an appropriate sharing of the available water supply under Permit 76643; provided, however, that Landlord shall have a priority of supply for the first one hundred (100) afy from Permit 76643.

(C) As to Water Supply System. To the extent that the Water Supply Infrastructure (as defined below) has or may be modified or expanded, it shall be available to produce and deliver any portion of the Balance of Groundwater Permit Water or any other water rights owned or controlled by Landlord for Landlord Projects.

(D) Conversion to Federally-Reserved Rights. Although Landlord's Groundwater Permits are State of Nevada permits, Landlord reserves the right to take any action to characterize or establish its groundwater rights as federally-reserved rights, homeland rights, aboriginal rights, or some variant thereof.

(E) Ownership and Control of Surface Water Permits. All of Landlord's Groundwater Permits shall at all times be owned by Landlord. Accordingly, any applications, permits, certificates or other water rights-related documents covering the Water Supply shall be in the name of Landlord.

10.07 Regulatory Approvals. Landlord shall take all reasonable actions, in cooperation with Tenant, to secure and maintain any regulatory Approvals which may be necessary to provide the Water Supply to the Solar Power Facilities as provided in these Water Supply Provisions.

10.08 Information Regarding Water Supply. Landlord shall notify Tenant in writing of any fact, event or circumstance that could reasonably have an adverse effect on the reliable availability, accessibility, suitability or sufficiency of the Water Supply for the Solar Power Facilities, promptly on becoming aware of such fact, event, or circumstance and potential adverse effect.

10.09 Water Fees. Tenant covenants and agrees to pay to Landlord, as Additional Rent, nine hundred dollars (\$900) per acre foot of Water Supply used by Tenant for the Solar Power Facilities during the Term ("Base Water Fee"), plus, as provided in Section 10.18, a pro rata portion of the operation and maintenance costs ("O&M Costs") required to provide the Water Supply and any excess water under Section 10.10 below (together the "Water Supply Fee"). The Base Water Fee rate shall increase each Lease Year by an amount equal to 2% of the prior Lease Year's Base Water Fee. Payment of the Water Supply Fee shall be calculated on a quarterly basis, and shall be paid with the next monthly installment of Monthly Rent after the end of the quarter under the same terms and conditions as the Monthly Rent during the Term.

10.10 Excess Water Fee. Tenant shall also pay to Landlord, as further Additional Rent, One Thousand Dollars (\$1,000) per afy for all water in excess of the Water Supply used from Landlord's Groundwater Permit Rights by the Solar Power Facilities during the Term (the "Excess Water Fee"). The foregoing is not intended to grant to Tenant any right to increase the Water Supply without the written consent of Landlord given in its discretion. The Excess Water Fee rate shall increase each Lease Year by an amount equal to 2% of the prior Lease Year's Excess Water Fee. Tenant covenants and agrees to pay to Landlord the Excess Water Fee within thirty (30) days of receipt of written notice from Landlord that the payment is due.

10.11 Water Supply Infrastructure. Tenant shall bear all costs of or relating to the construction, permitting, installation, enlargement, modification or upgrading of Existing Infrastructure Improvements to the extent required solely to enable the provision or other handling of the Water Supply for the Solar Power Facilities, including with respect to installing any new or

upgrading any existing wells, pipelines, storage facilities, pumping equipment, water measurement meters and equipment, water treatment facilities, wastewater storage facilities, wastewater ponds, other wastewater facilities, power supply facilities, and other infrastructure, equipment or features related to any of the foregoing required for such purpose (collectively “Water Supply Infrastructure”). Landlord and Tenant hereby acknowledge and agree that title to all Water Supply Infrastructure shall at all times be vested in Landlord. No such construction, installation, enlargement, modification or upgrading of Water Supply Infrastructure shall cause the Existing Infrastructure Improvements to be considered Tenant Infrastructure Improvements, and under no circumstances shall Tenant have any rights to the Water Supply Infrastructure.

10.12 Water Supply Construction Plan. Tenant shall prepare plans and designs for the construction, modification or expansion of any new, enlarged, modified or further Infrastructure needed for the supply and delivery of the Water Supply in a manner which meets all requirements of these Water Supply Provisions (“Water Supply Construction Plan”). In carrying out such construction, Tenant shall consult closely with Landlord and shall comply with TERO as provided in the Definitive Agreements.

10.13 Access to Water Supply Sources. Upon completion of the Water Supply Construction Plan, Landlord and any Governmental Authority shall grant Tenant a Right of Way Agreement, for the Term of this Lease, for all Water Supply Infrastructure necessary for the delivery of the Water Supply to the Solar Power Facilities.

10.14 Incremental Capacity. Landlord may require that the initial design, construction, or equipping of the Water Supply Infrastructure, or any expansion, enlargement or other modification thereof, to provide capacity in excess of that needed for the Solar Power Facilities (“Incremental Capacity”), to enable use of such Incremental Capacity for Landlord Projects, provided that:

- (A) designs and cost estimates shall first be prepared at Landlord’s expense;
- (B) neither the establishment, modification nor use of Incremental Capacity shall interfere with the construction or operations of the Solar Power Facilities nor the delivery of the Water Supply and/or Excess Construction Water to Tenant;
- (C) Landlord shall bear all costs of equipping and constructing the Incremental Capacity; and
- (D) the Landlord Projects shall bear a pro rata share of O&M Costs as provided in Section 10.18.

10.15 Well Monitoring System. Tenant shall bear all costs of or relating to establishing and equipping monitoring wells required by the Nevada State Engineer to enable hydrogeological analysis or assessment of pumping the Water Supply.

10.16 Water Measurement. Tenant, at its expense, shall determine the volume of the Water Supply delivered to the Solar Power Facilities at each point of delivery by means of meters or other suitable equipment with recording devices (all of which shall be part of the Water Supply Infrastructure as defined in Section 10.11). Tenant shall calibrate for accuracy all such meters and equipment at the time of installation and shall confirm the accuracy of each calibration not less

frequently than annually and promptly report thereon in writing to Landlord. Tenant shall prepare and submit a written report to Landlord on a calendar quarter basis stating the quantity and flow rate of Water Supply delivered at each point of delivery to the Solar Power Facilities. Each report shall be submitted within thirty (30) calendar days of the end of the calendar quarter covered by the report. At all reasonable times, Landlord shall have the right to inspect the operation of, and confirm the accuracy of, any component of the Water Supply Infrastructure involved in metering and reporting on Water Supply for the Solar Power Facilities.

10.17 Water Supply Plan. Tenant shall prepare and comply with a written plan for the operation and maintenance of the supply and delivery system for the Water Supply in a manner that meets the requirements of these Water Supply Provisions ("Water Supply Plan"). The Water Supply Plan shall describe operating procedures and standards, staffing, all categories of O&M Costs (including energy costs, labor and management costs, replacement costs for pumps, and other anticipated replacement costs), and any other necessary or appropriate expenses.

10.18 Shared O&M Costs. Tenant shall bear all costs relating to the physical transport and delivery of the Water Supply to the Solar Power Facilities, and Tenant's use thereof. If, during the Term, any portion of the Water Supply Infrastructure produces or delivers water both for the Solar Power Facilities and for Landlord Projects, financial responsibility for O&M Costs for those portions of the Water Supply Infrastructure producing or delivering water for both the Solar Power Facilities and such Landlord Projects shall be shared between Tenant and Landlord based on the respective quantities of water delivered by the Water Supply Infrastructure to the Solar Power Facilities and the Landlord Projects.

10.19 Disclaimer. Tenant must satisfy itself, in its discretion, that the Water Supply will be sufficient in quantity, flow rate and quality for its intended use, and Landlord does not and shall not warrant or guarantee such sufficiency or quality. Landlord warrants that it has the right to use Landlord's Groundwater Permits and to allocate Water Supply therefrom to the Solar Power Facilities and the Tenant upon the terms and conditions set forth in the Water Supply Provisions.

SECTION 11 **TENANT'S MAINTENANCE AND REPAIR OBLIGATIONS**

11.01 "AS-IS" Condition. Except as expressly set forth herein, by entering upon and occupying the Premises pursuant to this Lease, Tenant is deemed to have accepted the Premises as delivered and in their "AS-IS" condition, with all faults, and except as expressly set forth herein, Landlord shall not be liable for any patent or latent defect. Tenant acknowledges and agrees that, except as expressly set forth in the Controlling Documents, neither Landlord nor any of Landlord's agents or employees have made any representations or promises concerning the Premises, the expenses of operation or any other matter affecting or related to the Premises or Tenant Operations, and no rights, easements or licenses with respect to the Premises shall be acquired by Tenant by implication or otherwise except as expressly set forth herein or in the Controlling Documents.

11.02 No Obligations of Landlord. Except as set forth in the Controlling Documents, Landlord shall have no obligation whatsoever to repair or maintain, or provide any service to, the Project or any portion thereof. Except as otherwise expressly provided herein, and other than to the extent resulting from the breach of the terms and conditions hereof or any other agreement made by the BIA and/or Landlord, or the negligence or willful misconduct of any Landlord

Indemnified Party (as hereinafter defined), none of Landlord, the BIA, or any of their respective Affiliates, representatives, officers, managers, directors, shareholders, members, agents, servants and employees (each, a “Landlord Indemnified Party,” and collectively, the “Landlord Indemnified Parties”) shall be liable for, and, without limiting Tenant’s other indemnification obligations herein, Tenant shall indemnify and hold the Landlord Indemnified Parties harmless from and against, all Losses arising from or in connection with any damage or injury to the Person, business (or any loss of income therefrom), goods, wares, merchandise or other property of Tenant, Tenant’s employees, invitees, customers, or any other Person in or about the Project, or any other Person claiming under Tenant to the extent resulting from the breach of the terms and conditions hereof or any other agreement made by Tenant with Landlord and/or BIA, or Tenant’s or any Tenant Party’s (as defined below) negligence or willful misconduct, whether such damage or injury is caused by or results from: (a) any defect or shortcoming in the Tenant Improvements or any failure of the systems serving the same, (b) any Tenant Property becoming out of repair, (c) the failure, delay or diminution in the quality or quantity of water or any utilities or services made available for or supplied to the Project, (d) any conditions arising in or about the Project, or from other sources or places, caused by Tenant, Tenant Parties or the Tenant Improvements, or (e) any negligent or tortious act on the part of Tenant, Offtaker, its Leasehold Mortgagee or Tenant’s Affiliates, or any of their respective officers, managers, directors, shareholders, members, agents, servants, contractors, licensees, customer business invitees or employees and their respective successors and assigns (each, a “Tenant Party,” and collectively, the “Tenant Parties”), or (f) any act or omission of Tenant or any of the Tenant Parties; nor shall any of the foregoing be construed as an eviction of Tenant, nor, unless otherwise permitted under this Lease, work an abatement of Rent, nor relieve Tenant from any obligation under this Lease. The provisions of this Section 11.02 shall not, however, exempt any of the Landlord Indemnified Parties from liability for any Landlord Indemnified Party’s negligence or willful misconduct or breach of any of the Definitive Agreements. All obligations under this Section 11.02 shall survive the expiration or termination of this Lease for a period of two (2) years.

11.03 Tenant’s Obligations. Tenant shall, at its sole cost and expense, keep and maintain the Project including all Solar Power Facilities, in good working order, condition and repair and shall repair any damage to the Premises and any Rights of Way caused by the Tenant Parties. Tenant shall also keep and maintain in good order, condition and repair, including any such replacement and restoration as is required for that purpose, Improvements, special equipment, furnishings, fixtures or facilities installed by Tenant on the Project. Tenant shall, and shall cause any Tenant Parties to, comply with the Compliance Plan in performing any maintenance or repair of the Project and/or the Premises. Nothing in this Section 11.03 shall prevent Tenant from conducting operations, maintenance and repair of the Project consistent with prudent utility practice. Tenant’s repair obligations under this Section 11 shall apply to all of the activities of Tenant (or any of its consultants, contractors or other agents) on the Premises, whether during the Term or prior thereto, and in furtherance of the foregoing, Tenant, at its sole cost and expense, shall promptly repair any damage to the Premises caused by tests, inspections, examinations, studies and related activities of Tenant (or any of its consultants, contractors or other agents) in connection with the Project.

SECTION 12

DECOMMISSIONING; SURRENDER

12.01 Landlord's Decommissioning Election Notice. Except upon the occurrence of a complete and total Taking, not later than two hundred seventy (270) days prior to the expiration of the Active Term of this Lease (or not later than thirty (30) days following the earlier termination of the Active Term of this Lease (including any termination pursuant to Section 17)), Landlord shall deliver written notice to Tenant ("Landlord's Election Notice" and the date of that notice, the "Notice Date") electing, at Landlord's sole option, that Tenant, upon the expiration or earlier termination of the Active Term of this Lease, shall: (a) remove all of Tenant's Property, including Tenant Infrastructure Improvements, from the Premises, (b) remove all of Tenant's Property, except for Tenant Infrastructure Improvements, from the Premises, or (c) not remove any of Tenant's Property including Tenant Infrastructure Improvements, from the Premises. Any of Tenant's Property that Landlord elects not to be removed from the Premises and, if Landlord makes the election in (b) above, that is physically separable from the to-be-removed Tenant's Property without material cost or damage, shall hereinafter be referred to as the "Subject Property." Tenant shall, at Tenant's sole cost and expense, comply with Landlord's direction set forth in the Landlord's Election Notice in accordance with the provisions of this Section 12. In no event shall Tenant remove any Existing Infrastructure Improvements or be entitled to any payment therefor.

12.02 Decommissioning of Solar Power Facilities. If Landlord makes the election set forth in Section 12.01(a) or Section 12.01(b), Tenant shall, within sixty (60) days following the expiration of the Active Term of this Lease or the earlier termination of the Active Term of this Lease, submit to Landlord for Landlord's review and approval Tenant's proposed plans for Decommissioning ("Decommissioning Plans"), with a cover letter stating that under this Section 12.02, Landlord has fifteen (15) Business Days to act. If Landlord fails to so approve or disapprove the Decommissioning Plans within fifteen (15) Business Days following Landlord's receipt of the Decommissioning Plans, such failure shall be deemed approval by Landlord of Tenant's Decommissioning Plans. Any disapproval shall include a detailed written explanation of the disapproved components of the Decommissioning Plans. If Landlord disapproves the Decommissioning Plans, Tenant shall submit the revised version of the Decommissioning Plans to Landlord for its review thirty (30) days after Tenant's receipt of Landlord's disapproval notice. Landlord and Tenant shall continue the above approval procedure until Landlord approves the Decommissioning Plans (collectively, "Final Decommissioning Plans"). If after three (3) revisions, Landlord and Tenant are unable to agree on the Final Decommissioning Plans, then Landlord and Tenant shall each select a licensed engineer who specializes in solar facilities. The two engineers shall attempt to reach an agreement regarding the Final Decommissioning Plans, but if the two engineers are unable to do so, then the two engineers shall select a third licensed engineer who specializes in solar facilities and the decision of the third engineer shall be binding on Landlord and Tenant. The costs of the engineer hired by Tenant shall be borne solely by Tenant and the costs of the engineer hired by Landlord shall be borne solely by Landlord. Landlord and Tenant shall split evenly the cost of the third engineer. Landlord's approval or deemed approval of the Final Decommissioning Plans shall create no warranty, responsibility or liability on the part of Landlord for their completeness, sufficiency, or compliance with all applicable Laws. Tenant shall, at Tenant's sole cost and expense, Decommission any and all of Tenant's Property exclusive of any Subject Property (collectively, "Remaining Property") within twelve (12) months following Landlord's approval or deemed approval of the Final Decommissioning Plans. "Decommissioning" shall include (a) the removal of all Remaining Property, including the removal of all above-grade portions of the Remaining Property to not less than three (3) feet below grade; (b) the burying of all foundations, footings and other similar improvements constituting

Remaining Property below three (3) feet of grade; and (c) the repair and restoration of the Premises to substantially the same condition of the Premises on the Effective Date (subject to changes in environmental conditions not caused by Tenant), except that the Subject Property, if any, shall continue to be located on the Premises. Tenant shall, and shall cause any Tenant Parties, to comply with the Compliance Plan in the process of Decommissioning. Decommissioning will be conducted in accordance with Best Management Practices and meet the minimum building, construction and/or safety requirements (including the Building Code, Electrical Code, Plumbing Code, Mechanical Code and Solar Energy Code) set forth in the Code of Clark County, Nevada, and any other Laws which would be applicable to the Project if it were decommissioned under the jurisdiction of Clark County, Nevada.

12.03 Transfer of Subject Property Under Section 12.01(b) or 12.01(c).

(A) Purchase Price. If Landlord makes the election set forth in Section 12.01(b) or Section 12.01(c), then the purchase price for the Subject Property shall be the amount equal to the fair market value of the Subject Property exclusive of Infrastructure (“Purchase Price”). For the avoidance of doubt, the Parties have agreed that although Tenant Infrastructure Improvements are part of the Subject Property for purposes of this Lease, the Purchase Price shall not include the fair market value of Infrastructure. If Landlord and Tenant cannot mutually agree upon the Purchase Price for the Subject Property within thirty (30) days following the Notice Date (“Agreement Deadline”), Landlord and Tenant shall, within fifteen (15) days following the Agreement Deadline, jointly appoint an independent outside qualified appraiser, licensed in the State of Nevada (the “Appraiser”). The Appraiser shall be familiar with solar power facilities throughout the southwestern region of the United States, and shall use reasonable and customary appraisal standards. If Landlord and Tenant cannot agree on a single appraiser within such time period, Landlord and Tenant shall each select an independent outside qualified appraiser, which two appraisers together shall select a third independent outside qualified appraiser, and such third independent outside qualified appraiser shall be the “Appraiser” for purposes hereof. Any determination by the Appraiser regarding the fair market value of the Subject Property exclusive of Infrastructure shall be binding upon Landlord and Tenant. Landlord and Tenant shall each pay one-half of the fees and costs of the Appraiser in determining the fair market value of the Subject Property exclusive of Infrastructure. If Landlord thereafter determines that it is unable to afford or is otherwise unwilling to pay for all or part of the Subject Property, Landlord may elect not to acquire all or part of such Subject Property, whereupon Tenant shall retain ownership of such property rejected by Landlord and shall decommission it as provided in this Section 12. Such election by Landlord must be exercised in writing within 60 days of Landlord’s receipt of the Appraiser’s determination.

(B) Closing. If Landlord makes the election set forth in Section 12.01(b) or Section 12.01(c), the following shall be the additional terms with respect to the consummation of the transfer of the Subject Property (except for those portions of the Subject Property rejected by Landlord under Section 12.03(A)) from Tenant to Landlord (“Closing”):

(1) The Closing, including Landlord’s payment of the Purchase Price to Tenant in cash or its equivalent, shall occur on the later of the date that is sixty (60) days after the Notice Date or the expiration or earlier termination of the Active

Term;

(2) At Closing, Tenant shall convey to Landlord good and marketable title to the Subject Property on an “as is – where is” basis, free of all Liens, by executing and delivering to Landlord a bill of sale and such other documents as Landlord may reasonably require, all in form and substance reasonably satisfactory to Landlord;

(3) Any and all rent, taxes and assessments, utility charges and other expenses of the Subject Property shall be prorated as of Closing; and

(4) Possession of the Subject Property shall be delivered (to the extent practicable) to Landlord at Closing, free from all third party rights of possession.

12.04 Transfer of Tenant Infrastructure. If Landlord’s Election Notice makes the election set forth in Section 12.01(b) or Section 12.01(c), then in addition to Tenant’s obligations under Section 12.01(b) or Section 12.01(c), within ten (10) days following the Notice Date and at no cost or expense to Landlord, Tenant shall, (a) convey to Landlord good and marketable title to the Infrastructure built by or on behalf of Tenant, free of all Liens, by executing and delivering to Landlord a bill of sale and such other documents as Landlord may reasonably require, all in form and substance reasonably satisfactory to Landlord; and (b) deliver (to the extent practicable) to Landlord possession of the Infrastructure built by or on behalf of Tenant free from all third party rights of possession.

12.05 Decommissioning Security.

(A) Acceptable Security Instruments. On or prior to the Effective Date (“Decommissioning Security Deadline”), Tenant shall have delivered to Landlord, as additional collateral for performance by Tenant of its obligations to decommission the Solar Power Facilities as set forth in Section 12 of this Lease, any of the following forms of security (or otherwise in form acceptable to Landlord in its sole discretion) (the “Decommissioning Security”):

(1) cash (“Decommissioning Cash Security”) in the amount of One Hundred Fifty Thousand Dollars (\$150,000) (“Decommissioning Security Amount”);

(2) a standby, unconditional, irrevocable, transferable letter of credit (“Decommission Letter of Credit”) in the form of Exhibit B attached hereto, containing the terms required herein, in the face amount of the Decommissioning Security Amount, naming Landlord as beneficiary, issued by a credit worthy financial institution, acceptable to Landlord in Landlord’s reasonable discretion, permitting multiple and partial draws thereon;

(3) a surety bond (“Decommissioning Bond”) containing the terms required herein, in the face amount of the Decommissioning Security Amount, naming Landlord as beneficiary, issued by a credit worthy bonding company acceptable to Landlord in Landlord’s reasonable discretion, permitting multiple and

partial draws thereon; or

(4) a guaranty from Tenant's parent ("Decommissioning Guaranty") containing the terms required herein, in the face amount of the Decommissioning Security Amount, naming Landlord as beneficiary, issued by Tenant's parent.

Tenant shall cause the Decommissioning Security to be irrevocable and continuously maintained in effect (whether through replacement, renewal or extension) in the Decommissioning Security Amount through the date ("Decommissioning Security Expiration Date") that is 120 days after the scheduled expiration date of the Term. The Decommissioning Security Amount shall be adjusted, and Tenant shall deliver replacement Decommissioning Security, or increase the amount of the Decommissioning Cash Security, in such amount, on the fifth (5th) anniversary of the Decommissioning Security Deadline and each five (5) years thereafter in accordance with any change in the Index for all Urban Consumers published by the United States Department of Labor, Bureau of Labor Statistics ("Index") which is published most immediately preceding the date of such adjustment, from the Index published most immediately preceding the first day of the immediately preceding five (5) year term. If such Index is not published, the Parties shall use any similar or replacement index. If the Decommissioning Security held by Landlord expires earlier than the Decommissioning Security Expiration Date (whether by reason of a stated expiration date or a notice of termination or non-renewal given by the issuing bank), Tenant shall deliver new Decommissioning Security or certificate of renewal or extension to Landlord not later than thirty (30) days prior to the expiration date of the Decommissioning Security then held by Landlord. Any renewal or replacement Decommissioning Security shall comply with all of the provisions of this Section 12.05, shall be irrevocable, transferable and shall remain in effect through the Decommissioning Security Expiration Date upon the same terms as the expiring Decommissioning Security or such other terms as may be acceptable to Landlord in its sole discretion.

(B) Drawings under Decommissioning Security. Subject to BIA approval, Landlord shall have the immediate right to draw upon the Decommissioning Security, in whole or in part, at any time and from time to time: (i) if Tenant fails to timely perform its obligations to decommission the Solar Power Facilities pursuant to Section 12 of this Lease; or (ii) if the Decommissioning Security held by Landlord expires earlier than the Decommissioning Security Expiration Date (whether by reason of a stated expiration date or a notice of termination or non-renewal given by the issuing bank), and Tenant fails to deliver to Landlord, at least thirty (30) days prior to the expiration date of the Decommissioning Security then held by Landlord, a renewal or substitute Decommissioning Security that is in effect and complies with the provisions of this Section 12.05. No condition or term of this Lease shall be deemed to render a Decommission Letter of Credit conditional to justify the issuer of the Decommission Letter of Credit in failing to honor a drawing upon such Decommission Letter of Credit in a timely manner. Tenant hereby acknowledges that Landlord is entering into this Lease in material reliance upon the ability of Landlord to draw upon the Decommissioning Security upon the occurrence of the events described in this Section 12.05(B).

(C) Use of Proceeds by Landlord. The proceeds of the Decommissioning Security shall constitute Landlord's sole and separate property (and not Tenant's property or the property of Tenant's bankruptcy estate) and Landlord may immediately upon any draw (and without notice to Tenant) apply or offset the proceeds of the Decommissioning

Security to fulfill Tenant's obligation pursuant to Section 12 of this Lease to decommission the Solar Power Facilities. If Tenant has timely performed all of its obligations under this Lease, Landlord will pay to Tenant within thirty (30) days after the Decommissioning Security Expiration Date the amount of any proceeds of the Decommissioning Security received by Landlord and not applied as allowed above; provided that if prior to the Decommissioning Security Expiration Date a voluntary petition is filed by Tenant, or an involuntary petition is filed against Tenant by any of Tenant's creditors, under the Federal Bankruptcy Code, then Landlord shall not be obligated to make such payment in the amount of the unused Decommissioning Security proceeds until either all preference issues relating to payments under this Lease have been resolved in such bankruptcy or reorganization case or such bankruptcy or reorganization case has been dismissed, in each case pursuant to a final court order not subject to appeal or any stay pending appeal.

(D) Additional Covenants of Tenant. If, as result of any application or use by Landlord of all or any part of the Decommissioning Security, the amount of the Decommissioning Security shall be less than the Decommissioning Security Amount, Tenant shall, within ten (10) Business Days following notice thereof, provide Landlord with additional Decommissioning Security in an amount equal to the deficiency (or a replacement Decommissioning Security in the total Decommissioning Security Amount), and any such additional (or replacement) Decommissioning Security shall comply with all of the provisions of this Section 12.05. Tenant further covenants and warrants that it will neither assign nor encumber the Decommissioning Security or any part thereof and that neither Landlord nor its successors or assigns will be bound by any such assignment, encumbrance, attempted assignment or attempted encumbrance.

(E) BIA Approval of Exemption From Security Requirement. If the exemption set forth in Section 8.07 is approved by the BIA, the requirements of this Section 12.05 shall not apply so long as Tenant (a) has a net worth of at least One Hundred Million Dollars (\$100,000,000), (b) is a financial sponsor, private equity fund or other similar investor that owns and manages assets valued in excess of Fifty Million Dollars (\$50,000,000), (c) has outstanding securities rated "investment grade" or better by a generally recognized rating agency, or (c) Tenant's parent company or other Affiliate of Tenant provides a Decommissioning Guaranty, and such parent or other Affiliate: (i) has a market capitalization greater than \$1 billion or (ii) is a financial sponsor, private equity fund or other similar investor that owns and manages assets valued in excess of One Hundred Million Dollars (\$100,000,000).

12.06 Surrender. Immediately upon the completion of the Decommissioning required by Section 12.02, Tenant shall thereupon surrender to Landlord the Premises in the condition required by Section 12.02. If Tenant shall fail to remove any such Remaining Property as required by Section 12.02, Landlord may, at its sole option, retain all or any portion thereof as abandoned by Tenant, or Landlord may, but is not obligated to, at Tenant's cost and expense, remove all of such property not removed and repair all damage to the Premises resulting from such removal, and Landlord shall have no responsibility whatsoever to Tenant for losses or damages caused by or resulting from such removal. Notwithstanding the foregoing, in the event that Landlord makes the election set forth in Section 12.01(c), upon the expiration or earlier termination of the Active Term, Tenant shall surrender to Landlord the Premises in their then current state.

SECTION 13

TAXES; ADDITIONAL PAYMENTS

13.01 Taxes. Tenant hereby acknowledges and agrees that subject to the terms of the Tribal Agreement and applicable BIA regulations, including 25 CFR §§ 162.017 and 168.11, it shall be solely responsible, without giving rise to any claim for offset, deduction or abatement of Rent, for the payment of all Taxes imposed by any Governmental Authority relating in any way to the Project and/or the Premises, including all Taxes and other exactions on Tenant or Tenant's rights, interests, real or personal property, activities, payments, expenses, revenues, profits or income associated with, used in connection with, or generated by, the Project except any such Taxes that arise from Landlord's exercise of its rights as set forth in Section 2.02. Tenant shall timely pay such amounts not under dispute to the applicable taxing Governmental Authority in accordance with applicable Laws. Within ten (10) Business Days of written demand from Landlord, Tenant shall furnish Landlord evidence satisfactory to Landlord of the timely payment of any such Taxes. Whenever Landlord shall receive any statement or bill for any Taxes, payable in whole or in part by Tenant, or shall otherwise be required to make any payment on account thereof, Tenant shall pay the amount due hereunder within ten (10) Business Days after written demand therefor from Landlord accompanied by delivery to Tenant of a copy of such Tax statement.

13.02 Tribal Agreement. Notwithstanding the provisions of Section 13.01, Tenant and Landlord have entered into that certain Tribal Agreement attached hereto as Exhibit J, whereby Tenant agrees, among other things, to pay certain Taxes to Landlord. All Taxes in effect as of the Execution Date shall be set forth in the Tribal Agreement. If relief from Nevada state property taxes is only available if the Pilot Payments (defined in the Tribal Agreement) equal at least the property tax rate charged by the State of Nevada and/or its subdivisions, then the Pilot Payments with respect to the Project shall be 100% of the rate that would apply if the Project were located were located on land outside the Reservation in the State of Nevada but within 50 miles of the Reservation, but all other payments due to Landlord under this Lease shall be adjusted so that the net financial effect for Tenant shall be equivalent to payment of Pilot Payments at 80% of the off-Reservation rate.

13.03 Additional Payments. In addition to those other amounts required to be paid by Tenant to Landlord under this Section 13, and subject to the limitations provided in the Tribal Agreement, Tenant shall pay the following additional charges, fees, assessments and/or other amounts (and if to Landlord, such payments shall constitute Additional Rent):

(A) any payment or other amount which any Governmental Authority advises is required and non-waivable for a Right of Way as a matter of federal statute or regulation, which payments and/or amounts Tenant shall promptly pay to Landlord in accordance with all applicable Laws (or as otherwise directed by the applicable Governmental Authorities);

(B) a tortoise mitigation fee established and used as directed by the U.S. Fish and Wildlife Service's biological opinion, in respect of the Premises, which fee shall be paid to Landlord, unless otherwise directed by the U.S. Fish and Wildlife Service, at such time as is required by U.S. Fish and Wildlife Service, provided that in no instance shall such fee be paid or otherwise expended by Tenant more than once;

(C) payments to Landlord for any rights or privileges sought by Tenant from Landlord, and granted by Landlord beyond those rights and privileges granted or to be granted to Tenant under the terms of this Lease; and

(D) any payment, cost or other amount payable to Landlord pursuant to the Compliance Plan or as elsewhere provided in this Lease.

SECTION 14 **UTILITIES**

Tenant shall pay directly to the Utility Provider all applicable (a) tap-in and/or hook-up fees for utility services being provided to Tenant at the Premises and/or the Project; and (b) fees, charges and taxes for all water, gas, electricity, refuse disposal, environmental waste disposal, telephone service, sewer service charges and sewer rentals charged or attributable to the Tenant and/or the Project, and all other services or utilities used by Tenant in, upon or about the Premises and/or Project, except, in each case, any of the foregoing attributable to Landlord's exercise of its rights under Section 2.02.

SECTION 15 **REPRESENTATIONS, WARRANTIES AND COVENANTS**

15.01 Landlord's Representations and Warranties. Landlord hereby represents and warrants to Tenant, as of the Effective Date and at all times during the Term, that:

(A) Status of Landlord. Landlord is a federally-recognized Indian tribe possessing sovereign powers and rights of self-government, including the power to authorize and conduct business on lands located on the Reservation pursuant to federal law.

(B) Premises. The Premises is located on a portion of the Reservation, has never been allotted and is held in trust by the United States for the benefit of the Tribe.

(C) Power and Authority. This Lease (including all Exhibits and Schedules attached hereto) has been duly executed and delivered by Landlord and, upon approval by the Secretary following review by BIA, constitutes the valid and binding obligation of Landlord, enforceable against Landlord in accordance with its terms, subject, as to enforcement, to general principles of equity.

(D) No Violations. The execution and delivery by Landlord of, the performance by Landlord of its obligations under, and the consummation of the transaction contemplated by, this Lease do not (i) violate, breach or conflict with any provision of Tribal Law; or (ii) result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any material benefit) under, or require any consents, permits, Approvals or authorizations under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, contract or obligation to which Landlord is a party.

(E) No Broker. Landlord has not employed any broker, financial adviser or finder or incurred any Liability for any brokerage fees, commissions or finder's fees in

connection with the transactions contemplated by this Lease.

(F) No Proceedings. There are no Proceedings pending or, to Landlord's knowledge, threatened against Landlord before any Governmental Authority, which, if determined adversely to Landlord, could prevent or materially delay Landlord from completing the transactions contemplated by this Lease.

(G) Approvals. All Approvals of or with any Governmental Authority required in order for Landlord to execute and deliver this Lease shall be obtained by the Execution Date. Notwithstanding the foregoing, Tenant expressly understands, recognizes, and agrees that the Lease shall be valid and binding upon the Parties only after the Lease is approved by the Secretary following review by BIA.

(H) Title. The United States holds the land in trust for the benefit of Landlord.

(I) Hazardous Substances. Landlord represents and warrants to Tenant that to the actual knowledge of Landlord's officials charged with administration and enforcement of environmental matters on the Reservation:

(i) The Premises are free from contamination by Hazardous Substances, and the Premises and the activities conducted thereon do not pose any significant hazard to human health or the environment or violate any Environmental Laws. There is no evidence of a release of any Hazardous Substances at the Premises.

(ii) There has been no generation, treatment or storage of any Hazardous Substances at the Premises nor any activity at the Premises which could have produced Hazardous Substances.

(iii) There are no ponds, lakes, estuaries, lagoons, waste piles, landfills, injection wells, underground storage areas, tanks, storage vessels, drums, containers or other man-made facilities at the Premises which may have accommodated Hazardous Substances at the Premises. Neither Landlord, nor any third person, has stored, placed, buried or had a release of any Hazardous Substances at the Premises, including the soil, surface water and ground water.

(iv) There has been no generation, treatment, storage or release of any Hazardous Substances on Reservation land adjacent or near to the Premises which may constitute a risk of contamination of the Premises or surface water or, ground water flowing to the Premises.

(v) No inspection, audit, inquiry or other investigation has been or is being conducted by any Governmental Authority or other third person with respect to the presence or discharge of Hazardous Substances at the Premises or the quality of the air, or surface or subsurface conditions at the Premises. Landlord has not received notice that any such inspection, audit, inquiry or investigation is pending or proposed. Neither Landlord, nor to Landlord's knowledge, any previous owner of the Premises has received any warning, notice, notice of violation, administrative complaint, judicial complaint or other formal or informal notice or request for information alleging that Hazardous Substances

have been stored or released at the Premises or that conditions at the Premises are in violation of any Environmental Laws or requesting information regarding the use, storage, release or potential release of any Hazardous Substances at the Premises.

(J) Landlord is not indebted to any contractor, laborer, mechanic, materialman, architect or engineer for work, labor or services performed or rendered, or for materials supplied or furnished, in connection with the Premises for which any person could claim a lien against the Premises and has not done any work on the Premises within one hundred eighty (180) days prior to the Execution Date.

(K) To Landlord's actual knowledge, there are no zoning Laws applicable to the Premises which would interfere in any material respect with the Tenant Operations and any ancillary or other activities incidental thereto as contemplated by this Lease, including the ownership, operation and maintenance of the Solar Power Facilities.

(L) There is no action, suit or proceeding pending or, to Landlord's actual knowledge, threatened by or against or affecting Landlord or the Premises which does or will involve or will affect the Premises or title thereto or Landlord's ability to perform its obligations under this Lease or any documents entered into pursuant to this Lease.

(M) Except for the Final Environmental Impact Statement to be developed with respect to the Project, there are no additional pre-decisional environmental reviews required by Landlord or any agency or political subdivision thereof.

15.02 Tenant's Representations and Warranties. Tenant hereby represents and warrants to Landlord, as of the Effective Date and at all times during the Term, that:

(A) Organization. Tenant is a limited liability company, duly organized, validly existing and in good standing under the laws of its state of organization and has all requisite power and authority to carry on its business as now being conducted. Tenant is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification or licensing required under applicable Laws.

(B) Power and Authority; Enforceability. Tenant has all requisite power and authority to enter into this Lease (including all Exhibits and Schedules attached hereto) and to consummate the transactions contemplated hereby. The execution and delivery by Tenant of this Lease and the consummation by Tenant of the transactions contemplated hereby have been duly authorized by all required action of Tenant. This Lease has been duly executed and delivered by Tenant and constitutes the valid and binding obligation of Tenant, enforceable against Tenant in accordance with its terms, subject, as to enforcement, to (i) applicable bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereinafter in effect affecting creditors' rights generally and (ii) general principles of equity.

(C) No Violations. The execution and delivery by Tenant of, the performance by Tenant of its obligations under, and the consummation of the transactions contemplated by, this Lease do not and will not, (i) violate, breach or conflict with any provision of the certificate of incorporation and bylaws, or certificate of formation and limited liability

company agreement, or other applicable organizational documents of Tenant; (ii) result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any material benefit) under, or require any consents, permits, Approvals or authorizations under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, contract or obligation to which Tenant is a party or by which it or any of its properties or assets are or may be bound; or (iii) conflict with or violate any Approval with, by or from any Governmental Authority (or otherwise), any judgment or any Law, in each case applicable to Tenant or by which any of its properties or assets are or may be bound.

(D) No Approvals. Except for the Project Approvals set forth in Schedule 15.02(D), no Approval of or with any Governmental Authority is required by or with respect to Tenant in connection with the execution and delivery of this Lease by Tenant or the consummation of the transactions contemplated hereby. Concurrently with the execution of this Lease, Tenant shall deliver to Landlord complete copies of those Project Approvals theretofore obtained by Tenant, and shall provide to Landlord complete copies of those Project Approvals contained on Schedule 15.02(D) immediately upon Tenant's receipt thereof. Notwithstanding the foregoing, Tenant expressly understands, recognizes, and agrees that the Lease shall be valid and binding upon the Parties only after the Lease is approved by the Secretary following review by BIA.

(E) No Proceedings. There are no Proceedings pending or, to Tenant's knowledge, threatened against Tenant before any Governmental Authority, which, if determined adversely to Tenant, could prevent or materially delay Tenant from completing the transactions contemplated by this Lease.

(F) No Broker. Tenant has not employed any broker, financial adviser or finder or incurred any Liability for any brokerage fees, commissions or finder's fees in connection with the transactions contemplated by this Lease.

SECTION 16

INSURANCE

16.01 Liability Policy. Tenant shall, at all times during the Term, at its sole cost and expense, procure and maintain in full force and effect a policy or policies of commercial liability insurance insuring against loss, damage and liability for injury or death to persons and loss or damage to property occurring in connection with the Premises or Tenant's use thereof, including automobile liability insurance. Tenant shall provide to the BIA any and all documentation relating to insurance policies as is required to be so provided under applicable Laws, which may include full and correct copies of insurance policies or then-current certificates of insurance. Umbrella or excess liability coverages may be used to supplement primary coverages noted in Section 16.01 to meet the required limits. Such liability insurance shall be issued pursuant to the requirements of Section 16.04 and shall encompass the following coverage and be in amounts as shown:

COMMERCIAL GENERAL LIABILITY

General Aggregate (other than products)	\$15,000,000
Products & Completed Operations	\$2,000,000
Personal Injury & Advertising Injury	\$2,000,000
Each Occurrence Limit	\$3,000,000
Fire Damage Limit (any one fire)	\$1,000,000

AUTOMOBILE

Minimum Combined Single Limit (including \$10,000,000 coverage for all owned, non-owned and hired automobiles brought on the Premises)

UMBRELLA LIABILITY

\$3,000,000	Per Occurrence
\$15,000,000	Products/Completed Operations Aggregate

All such insurance shall specifically insure the performance by Tenant of its indemnity obligations as to liability for injury to or death of persons and loss of or damage to property contained in Section 21.01 hereof. Without limiting any provisions of this Section 16, Tenant shall, at all times during the Term, at its sole cost and expense, procure and maintain in full force and effect such other or additional insurance policies, if any, as may be generally employed in solar power facilities and associated energy projects of a type similar to the Project.

16.02 Business Interruption Policy. Tenant shall, at its sole cost and expense, procure and maintain in full force and effect business interruption insurance covering all Rent due hereunder for at least twelve (12) months of Tenant Operations.

16.03 Worker's Compensation Insurance. Unless and until Landlord adopts and promulgates its own worker's compensation Laws, any claims against Tenant by members of the Project workforce for Project-related injuries occurring on or off the Reservation shall be subject to and limited by all relevant provisions of the worker's compensation Laws of the State of Nevada, irrespective of whether the State of Nevada has authority unilaterally to impose such Laws on Tenant Operations on the Reservation. Although not hereby conceding the applicability of such Laws as a matter of law to Tenant Operations on the Premises: (a) the Parties shall take all reasonable actions via cooperative agreement with the State of Nevada or other available means to arrange for and facilitate the application of such Laws to Tenant Operations on the Reservation and the administration thereof by the State of Nevada; and (b) Tenant shall bear all premiums, fees and other charges imposed by the State of Nevada for the establishment, maintenance and administration of the foregoing. At such time as Landlord adopts and promulgates its own worker's compensation Laws, Tenant agrees to comply with the same.

16.04 Policy Requirements. All insurance required of Tenant shall be issued and underwritten by solvent companies licensed to transact business in the State of Nevada with a general policyholders' rating of not less than A-VIII as rated in the most recent edition of Best's Insurance Reports or any successor reporting service. Notwithstanding the foregoing, Tenant may self-insure so long as such self-insurance provides coverage in amounts that would satisfy the

policy requirements set forth in this Section 16. All commercial general liability and automobile insurance carried by Tenant shall include Landlord and the United States as additional insureds (collectively, "Additional Insureds"). Any policies of insurance carried by Tenant in accordance with this Section 16 and any policies taken out in substitution or replacement of any such policies shall provide (a) that if an insurer seeks to cancel such insurance for any reason whatsoever, except for non-payment of any premium due, or any substantial change is made in the coverage which affects the interests of the Additional Insureds, such cancellation or lapse or reduction shall not be effective as to Additional Insureds until after thirty (30) days following delivery to Landlord of written notice from such insurer or Tenant of such cancellation, lapse or reduction (or, if any deviation from such notice or coverage requirements has been approved in advance in a writing signed by Landlord, then in accordance with such deviation, Landlord's approval of such deviation not to be unreasonably withheld, and it shall be unreasonable for Landlord to withhold approval if the provision in this subparagraph (a) is not generally and commercially available in the insurance market); (b) written notice of cancellation of any policy affecting the interest of the Additional Insureds as a result of non-payment of any premium due shall be given to the Additional Insureds at least ten (10) days prior to such cancellation; (c) that as to the interest of the Additional Insureds in such policies, the insurance shall not be invalidated by any action or omission, negligent or otherwise, by Tenant or any other person and shall insure the Additional Insureds regardless of any breach or violation of any warranties, declarations or conditions contained in such policy by Tenant or any other person (or that such insurance shall be primary without right of contribution from any other insurance which is carried by the Additional Insureds); and (d) that all the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each of the Additional Insureds. Each policy of insurance carried by Tenant shall also contain an express waiver of any and all rights of subrogation thereunder whatsoever against the Additional Insureds. For each policy of insurance required to be maintained by Tenant under this Lease, including any policy renewals, Tenant shall supply Landlord and the BIA with either a copy of the insurance policy or a certificate of the insurance company issuing the insurance on ACORD Form 28, and Tenant hereby agrees that same shall be in such form as shall be reasonably acceptable to Landlord. In the event Tenant fails to obtain any such insurance, Landlord may obtain same and the cost thereof shall be paid by Tenant as Additional Rent. Tenant's insurance shall be primary without right of contribution from any other insurance which is carried by Landlord or any Additional Insured.

16.05 Minimum Coverage. Any other provision contained in this Section 16 or elsewhere in this Lease notwithstanding, the amounts of all insurance required to be paid by Tenant shall be not less than an amount sufficient to prevent Landlord or the United States from becoming a co-insurer.

16.06 Waiver of Subrogation. Tenant hereby expressly waives any right of recovery against Landlord for any loss, damage or destruction of property which is insured under the policies Tenant maintains or is required to maintain hereunder, notwithstanding that the damage may be due to the negligent acts or omissions of Landlord and/or any of its representatives, officers, managers, directors, members, agents, servants and employees. In obtaining any insurance covering or relating to the Premises, the Project or Tenant Operations, Tenant shall place its insurance with companies that will agree to acknowledge, by endorsement to the policies of Tenant if necessary (if such companies will provide such insurance at a commercially reasonable price), that the insurance will not be invalidated should Tenant waive in writing prior to a loss any or all

right of recovery against Landlord for loss occurring to the property described therein.

16.07 Waiver of Claims. Tenant hereby waives all rights of recovery and causes of action against Landlord and its respective representatives, officers, managers, directors, members, agents, servants and employees, and all persons claiming through or under Landlord relating to loss of business or business interruption resulting from any damage or destruction to the Premises or any property required to be insured by Tenant hereunder, notwithstanding that any such damage or destruction may be due to the negligence of Landlord and/or any of its respective representatives, officers, managers, directors, members, agents, servants and employees.

16.08 Adjustments. The coverage limits set forth in Section 16.01, specified in constant dollars as of the Effective Date, shall be adjusted for inflation in the manner provided in Section 16.09 every five (5) years after the first (1st) Lease Year. Upon the written request of either Party made no earlier than five (5) years after the Effective Date of this Lease and no more frequently than once every five (5) years thereafter, the Parties shall jointly review the adequacy of the limits of all insurance provided under Section 16.01. If it is jointly found that any such limit is inadequate or excessive for the Project under relevant industry standards, the Parties shall endeavor to agree on an appropriate adjustment.

16.09 Adjustment for Inflation.

(A) Producer Price Index. As used in this Section 16.09, “Producer Price Index” or “PPI” means the standard national index published by the United States Department of Labor, Bureau of Labor Statistics, known as the Producer Price Index for Electric Power Generation. If such index is converted to a different standard reference base or is otherwise revised, the adjustment for inflation under this Section 16.09 shall be made by use of such conversion factor, formula or table as may be published by the Bureau of Labor Statistics or, failing such publication, by a nationally recognized publisher of similar statistical information. If such index ceases to be published, there shall be substituted for it another index, as similar to the PPI as reasonably possible, agreed upon in writing by the Parties.

(B) Adjustment of Insurance Coverage Limits. The insurance coverage limits set forth in Section 16.01 are specified in constant dollars as of the Effective Date. To account for inflation, each coverage limit shall, on each of the dates set forth in Section 16.08, be adjusted to and obtained at the amount yielded by the following formula:

$$\text{adjusted amount} = [\text{Insurance Coverage Limit}] \times [\text{PPI}_2 / \text{PPI}_1]$$

where: PPI_1 = PPI for [same month] [same day] of the then-current Lease Year

PPI_2 = PPI for [same month] [same day] of the year preceding the then-current Lease Year.

Tenant shall provide in writing to Landlord for review the inflation adjustment calculation for such insurance coverage limit as and when required by Section 16.08.

16.10 Value of PPI_2 Unavailable. If the value of PPI_2 is not published and available in time to enable calculation of any particular adjustment referred to in Section 16.08, the particular payment shall be calculated by considering PPI_2 to have a value equal to the last published value

of the PPI.

16.11 No Prohibited Items. Tenant agrees that it will not keep, use, sell or offer for sale in or upon the Premises any article or permit any activity which may be prohibited by any insurance policy required to be maintained by Tenant in accordance with this Lease.

SECTION 17 **CASUALTY LOSS**

At any time during the Term, if any Improvements are damaged and/or destroyed in whole or in part by fire, theft, the elements, or any other casualty (collectively, “Casualty”), Tenant shall promptly provide notice to Landlord of such Casualty and this Lease shall continue in full force and effect. If such Casualty causes the destruction of less than fifty percent (50%) of the value of the Solar Power Facilities, unless otherwise required by the terms of any Offtaker agreement or the financing documents entered into between Tenant or any Affiliate of Tenant and a Financing Party wherein such Financing Party provides construction, interim or long-term financing or refinancing to Tenant or any Affiliate of Tenant for the construction or operation of the Project, then Tenant, at its sole cost and expense, shall repair and restore the damaged or destroyed Improvements according to the original Construction Plans approved by Landlord to the extent reasonably practicable to do so on a commercially reasonable basis or otherwise as provided for in Section 8.02, with such plans to be approved in writing by Landlord in accordance with the provisions of Section 8.02, whether or not there are sufficient insurance proceeds to cover the repair and restoration expenses, but with any excess insurance proceeds with respect to insurance held by Tenant being the property of Tenant. Such work of repair and restoration shall be commenced by Tenant as soon as reasonably practicable and shall be performed with all reasonable diligence in accordance with the requirements of Section 8. If the Casualty causes the destruction of fifty percent (50%) or more of the value of the Solar Power Facilities, then Tenant shall have the right to terminate this Lease upon notice to Landlord within thirty (30) days after the post-Casualty determination of the value of the Solar Power Facilities. In the event of such termination, any unearned Rent paid by Tenant shall be prorated and refunded to Tenant. Following such termination, the decommissioning obligations of Section 12 shall be applicable.

SECTION 18 **CONDEMNATION**

18.01 Interests of Parties on Condemnation. Landlord shall not exercise condemnation authority over the Project or this Lease. If the Premises or any part thereof shall be taken for public purpose by condemnation as a result of any action or proceeding in eminent domain, or shall be transferred in lieu of condemnation to any Governmental Authority entitled to exercise the power of eminent domain other than the Tribe (collectively, “Taken” and each such event, a “Taking”), the interests of Landlord and Tenant in the award or consideration for such Taking, and the allocation of the award and the other effect of the Taking upon this Lease, shall be as provided by this Section 18. The Parties agree that the operation and any effects of Section 12.04 and Section 19.02 shall not constitute a Taking.

18.02 Total Taking – Termination. If the entire Premises is Taken, this Lease and all of the right, title, and interest thereunder shall cease on the date title to such land so Taken vests in the condemning Governmental Authority.

18.03 Partial Taking – Termination. In the event of the Taking of a part of the Improvements, leaving the remainder of the Improvements in such location, or in such form, shape or reduced size as to be not effectively and practicably usable in the good faith opinion of Tenant for Tenant Operations, this Lease and all right, title and interest thereunder may be terminated by Tenant giving, within sixty (60) days of the date Tenant receives notice of such Taking, thirty (30) days' notice to Landlord of Tenant's intention to terminate, provided that upon such date of termination, the Active Term shall terminate and the Post-Operations Term shall commence with regard to the remainder of the Improvements, followed by the termination of this Lease and the provisions of Section 12 shall apply.

18.04 Partial Taking – Continuation. In the event Tenant does not terminate this Lease pursuant to Section 18.03 or in the event of the Taking of only a part of the Improvements which leaves the remainder thereof in such location and in such form, shape or size as to be used effectively and practicably in the good faith opinion of Tenant for the purpose of operation thereon of Tenant's business, this Lease shall terminate as to the portion of the Improvements so Taken as of the date title to such portion vests in the condemning Governmental Authority, but shall continue in full force and effect as to the portion of the Improvements not so Taken. If title and possession of a portion of the Premises is Taken, and this Lease continues as to the portion remaining, Rent shall not be abated during any period of repair or restoration, but rather shall continue to be payable to Landlord (subject to pro rata reduction in proportion to the impact on the production of the Project after the Taking relative to the production of the Project prior to the Taking), and all compensation and damages payable to Tenant by reason of any Improvements so Taken shall be available to be used, to the extent reasonably needed, by Tenant in replacing any Improvements, with any excess being payable to Tenant. All plans and specifications for such replacement of Improvements shall be subject to Landlord's prior approval in accordance with the provisions of Section 8, and all such repairs shall be in compliance with Section 8 hereof, any other applicable provisions hereof and all then existing Laws governing the Premises.

18.05 Allocation of Award. Any compensation and damages awarded or payable to Landlord or Tenant because of the Taking shall be awarded in accordance with the values of their respective interests in the Premises and all Improvements thereon immediately prior to the Taking. Such values shall be those determined in the proceeding relating to such Taking or, if no separate determination of the values is made in such proceeding, those determined by agreement between Landlord and Tenant. If such agreement cannot promptly be reached, each Party shall select an MAI appraiser, and if such appraisers cannot reach such agreement, they shall select a third MAI appraiser whose decision regarding such determination shall be final. In the event of separate awards, then Landlord and Tenant may retain such separate awards made to each and any of them.

18.06 Voluntary Conveyance. A voluntary conveyance by Landlord to a public utility, agency, or other Governmental Authority under threat of a Taking shall be deemed a Taking within the meaning of this Section 18, provided that the same is consented to by Tenant in its reasonable discretion.

18.07 Notice of Taking; Cooperation. Landlord and Tenant shall promptly notify the other of the commencement of any eminent domain, condemnation or other similar Proceedings with regard to the Premises, including any notice of intended Taking, the service of any legal process, any Proceedings or negotiations, or any discussions regarding a transfer in lieu of condemnation. No agreement, settlement, sale or transfer to or with the condemning Governmental Authority shall

be made without the consent of Landlord and Tenant. Landlord and Tenant each agree to execute and deliver to the other any instruments that may be required to effectuate or facilitate the provisions of this Lease relating to condemnation. Landlord and Tenant covenant and agree to fully cooperate in any condemnation, eminent domain, or similar Proceeding in order to maximize the total award receivable in respect thereof. Any termination of this Lease pursuant to this Section 18 shall not affect the rights of Landlord and Tenant to any such award.

SECTION 19

DEFAULT BY TENANT; LANDLORD'S REMEDIES

19.01 Events of Default. Tenant shall be deemed to be in default of this Lease if any of the following events shall occur (each, an "Event of Default"):

(A) Tenant fails to timely pay any installment of Rent, Additional Rent or any other amount required to be paid by Tenant to Landlord pursuant to the terms of this Lease, provided that Tenant shall have the right to cure any default with respect to such non-payment within seven (7) days following the date on which written notice of non-payment of such amount is received by Tenant from Landlord; provided further that any Financing Party shall be entitled, but not obligated, to make any such payment on behalf of Tenant, and if Tenant fully cures its non-payment default as provided above, or if any such Financing Party makes any such payment in full on behalf of Tenant within eleven (11) days after the expiration of the 7-day period described above, Tenant's original failure to make such payment shall no longer be deemed to have been an Event of Default;

(B) Tenant fails to perform any agreement, obligation or covenant of Tenant contained in this Lease, provided that to the extent such failure is susceptible to cure, Tenant shall have the right to cure any default with respect to such failure within thirty (30) days after written notice thereof by Landlord to Tenant; provided that if the failure complained of in such notice is of such a nature that the same can be rectified or cured, but cannot with reasonable diligence be done within such 30-day period, then such failure shall be deemed to be rectified or cured if Tenant shall, within such 30-day period, commence to rectify and cure the same and shall thereafter complete such rectification and cure with all due diligence, and in any event, within ninety (90) days from the date of giving of such notice;

(C) (i) Tenant files a petition, or an involuntary petition is filed against Tenant, under Chapter 11 of the United States Bankruptcy Code or any other state or federal bankruptcy, insolvency or similar law (whether presently in existence or enacted hereafter); (ii) Tenant is determined by a court to be insolvent; (iii) Tenant is placed in receivership or a receiver or trustee is appointed to operate or control Tenant or all or substantially all of its assets; or (iv) Tenant is voluntarily or involuntary subject to a general assignment for the benefit of creditors, in each case, which has not been dismissed, stayed, remanded or vacated within ninety (90) days following the filing or entry thereof;

(D) Tenant does or permits or omits to do any act or thing which results in a nuisance or an illegal condition, or negligent use or waste of the Premises, or which causes or threatens serious damage or injury to life, limb or property and to the extent such nuisance or offensive or illegal condition is susceptible to cure, such nuisance or condition shall continue for a period of thirty (30) days after written notice thereof by Landlord to Tenant;

provided that if such nuisance or condition complained of in such notice is of such a nature that the same can be rectified or cured, but cannot with reasonable diligence be done within such 30-day period, then such nuisance or condition shall be deemed to be rectified or cured if Tenant shall, within such 30-day period, commence to rectify and cure the same and shall thereafter complete such rectification and cure with all due diligence, and in any event, within ninety (90) days from the date of giving of such notice; and provided further, however, that the normal and customary operation of the Solar Power Facilities in accordance with the terms of this Lease shall not be deemed to constitute a nuisance or offensive or illegal condition for purposes of this paragraph;

(E) Tenant fails to comply with material provisions of applicable Laws or other legal requirements under 25 C.F.R. § 162.014, provided that Tenant shall have the right to cure any default with respect to such non-compliance within thirty (30) days after written notice thereof by Landlord to Tenant; provided that if the compliance condition in such notice is of such a nature that the same can be rectified or cured, but cannot with reasonable diligence be done within such 30-day period, then such nuisance or condition shall be deemed to be rectified or cured if Tenant shall, within such 30-day period, commence to rectify and cure the same and shall thereafter complete such rectification and cure with all due diligence, and in any event, within ninety (90) days from the date of giving of such notice;

(F) Tenant fails to comply with a payment obligation under any of the Definitive Agreements beyond any applicable cure period, or if no stated cure period, the cure period set forth in Section 19.01(A) above;

(G) any material representation or warranty made by Tenant in the Lease was false or misleading in any material respect when made and, to the extent the same is susceptible to being cured, such representation remains false or misleading for a period of thirty (30) days after written notice thereof by Landlord to Tenant; provided that if such false or misleading representation or warranty complained of in such notice is of such a nature that the same can be rectified or cured, but cannot with reasonable diligence be done within such 30-day period, then such false or misleading representation or warranty shall be deemed to be rectified or cured if Tenant shall, within such 30-day period, commence to rectify and cure the same and shall thereafter complete such rectification and cure with all due diligence, and in any event, within ninety (90) days from the date of giving of such notice;

(H) Tenant abandons the Premises during the Term or fails to operate the Premises for longer than thirty (30) consecutive days except due to an event of Force Majeure for which notice is provided pursuant to Section 29.14. The failure of Tenant to have a person or representative appear at the Premises is not an indicator of vacating or abandoning the Premises, as long as the Project is otherwise under preparation for construction, in construction or is otherwise used for Tenant Operations; or

(I) Tenant permits the Premises to be used for a concentrated solar tower facility where a field of heliostats concentrates sunlight onto a central tower in violation of the definition of Solar Power Facilities in Section 1.

19.02 Remedies. Upon the occurrence of an Event of Default, in addition to any other rights or remedies provided for herein or at law or in equity, including those remedies enumerated in 25 C.F.R. Part 162, and without barring election of any other remedy, Landlord, at its sole option, shall have the following rights:

(A) Termination. Upon the occurrence of any Event of Default Landlord may terminate this Lease and Tenant's estate hereunder by written notice of such termination, provided that upon such notice, the Active Term shall terminate and the Post-Operations Term shall commence, followed by the termination of this Lease and the provisions of Section 12 shall apply; and provided further that the mere giving by Landlord of a notice to pay (or perform) or a notice to quit shall not, of itself, constitute a notice of termination of this Lease, and Landlord shall recover from Tenant all damages incurred by Landlord by reason of the Event of Default including (i) the worth at the time of the award of the unpaid Rent and other charges which had been earned at the time of the termination; (ii) the worth at the time of the award of the amount by which the unpaid Rent and other charges which would have been earned or would have been paid after termination until the time of the award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; (iii) the worth at the time of the award of the amount by which the unpaid Rent and other charges which would have been paid for the balance of the Term after the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided through commercially reasonable mitigation efforts by Landlord; and (iv) any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including any costs or expenses incurred by Landlord in maintaining or preserving the Premises after such default, the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation or alteration of the Premises, Landlord's reasonable attorneys' fees and costs incurred in connection therewith, and any real estate commission paid or payable. Landlord shall use its commercially reasonable efforts to mitigate damages to Landlord resulting from any Event of Default by Tenant if and to the extent such damages are capable of being so mitigated. As used in subparts (i) and (ii) above, the "worth at the time of the award" is computed by allowing interest on unpaid amounts, which interest shall accrue from the date such payments are due until paid, at a rate equal to the lesser of (a) three percentage points (3%) over that fluctuating rate of interest announced from time to time by Bank of America, National Association, as its prime or reference commercial lending rate of interest (or in the event such bank is no longer announcing such rate, by such other federally regulated banking institution of comparable stature as Landlord shall reasonably determine), or (b) the maximum interest rate permitted by law, if any. As used in subpart (iii) above, the "worth at the time of the award" is computed by discounting such amount at the discount rate of Bank of America, National Association, at the time of the award, plus one percent (1%);

(B) Strict Performance. Without taking possession of the Premises, Landlord may require strict performance of all of the agreements, obligations and covenants hereof as the same shall respectively accrue, and shall have the right of action therefor; and

(C) Take Possession. Landlord may take possession of the Premises through suit

or otherwise, for the purpose of re-letting the Premises for the account of Tenant, and in that event, may re-let the Premises, or any part thereof, at such rental and upon such terms and conditions as Landlord shall reasonably deem proper. Reentry or taking possession of the Premises by Landlord shall be construed as an election by Landlord to terminate this Lease. In addition to the remedies set forth herein and available at law or in equity, upon an Event of Default and only following Tenant's failure to timely decommission the Premises as set forth in Section 12 above, Landlord shall have the right to retain all Tenant Improvements and Tenant's Property at no cost or expense to Landlord. In the event that Landlord reenters, takes possession, and/or retains Tenant Improvements and/or Tenant's Property, then Landlord shall use its commercially reasonable efforts to mitigate damages to Landlord resulting therefrom if and to the extent such damages are capable of being so mitigated. In addition to any and all other damages sustained by Landlord, Tenant shall be liable for all expenses incurred by Landlord for such reletting, including repairs, alterations or improvements as Landlord may consider reasonably appropriate to accomplish such reletting, agents' or brokers' commissions, and reasonable attorneys' fees and costs. Tenant shall be entitled to a credit for the net amount of rental so received after deducting such expenses and any other items thereof, and shall pay Landlord such sums as may be required from time to time to make up the Rent, such Rent to be the amount of Rent payable by Tenant on the first (1st) day of the month immediately preceding such Event of Default, and Tenant shall likewise continue to be liable for the performance and observance of all other agreements, obligations and covenants hereof. Landlord shall have from time to time as the same shall accrue, or at any longer intervals, or at or after the expiration of the Term, a right of action against Tenant for all sums so accruing, and the statute of limitations shall not commence to run against such right of action until the expiration the Term; and

(D) Right to Cure. Whenever under any provision of this Lease, Tenant shall be obligated to make any payment or expenditure, make any improvement or repair, or do any act or thing, or to incur any liability whatsoever, and Tenant fails, refuses or neglects to perform within the time period herein required, Landlord shall be entitled, but shall not be obligated, to make any such payment or to do any such act or thing, or to incur any such liability, all on behalf of, and at the reasonable cost and for the account of Tenant. In such event, the amount thereof with interest thereon at the Default Rate commencing on the date paid by Landlord and until such time as paid in full by Tenant shall constitute Additional Rent and is due and owing from Tenant within thirty (30) days of receipt by Tenant of an invoice evidencing such amounts.

19.03 Statutory Notices. All notices given pursuant to Section 19.02 shall, to the extent permitted by law, constitute the required statutory notice, if any, and any time given Tenant by law to cure or remedy a default hereunder shall run from the time of the giving of such notice. Pursuant to BIA regulations, including 25 CFR § 162.590, the Landlord must notify the BIA of any termination under this Lease, and the Parties must notify any surety or mortgagee of any violation that may result in a termination and any termination.

19.04 Remedies Cumulative. The various rights, options, elections and remedies of Landlord contained in this Lease shall be cumulative and no one of them shall be construed as exclusive of any other, or of any right, priority or remedy allowed or provided for by law or in equity.

SECTION 20

DEFAULT BY LANDLORD; TENANT'S REMEDIES

20.01 Landlord's Default. Landlord shall not be in default under this Lease unless (A) Landlord fails to perform any of its obligations hereunder within thirty (30) days after written notice from Tenant specifying such failure (each, a "Landlord Event of Default"); provided that if the failure complained of in such notice is of such a nature that the same can be rectified or cured, but cannot with reasonable diligence be done within such 30-day period, then such failure shall be deemed to be rectified or cured if Landlord shall, within such 30-day period, commence to rectify and cure the same and shall thereafter complete such rectification and cure with all due diligence, or (B) Landlord breaches or defaults under any of the Controlling Documents beyond any applicable cure period.

20.02 Tenant's Remedies Upon Landlord Default. Upon the occurrence of a Landlord Event of Default, Tenant may exercise any of its rights or remedies available at law or in equity, including a right to offset, provided that except as otherwise provided in this Lease, Tenant shall have no right to terminate this Lease unless the Landlord Event of Default is a material Event of Default or shall constitute a constructive eviction of Tenant's right to possession of the Premises. Termination is not a remedy for partial or non-material Events of Default. Notwithstanding anything herein to the contrary, all obligations of Landlord hereunder shall be construed as covenants and not conditions.

SECTION 21

INDEMNIFICATION

21.01 Tenant Indemnification of Landlord. In addition to the indemnification by Tenant of the Landlord Indemnified Parties as required elsewhere in this Lease, Tenant shall and hereby does indemnify and save the Landlord Indemnified Parties harmless from and against and in respect of, and shall reimburse the Landlord Indemnified Parties for, all Liabilities, obligations, damages, fines, penalties, claims, suits, proceedings, actions, causes of action, demands, costs, charges, judgments, liens and expenses, whether founded in tort, contract or otherwise, including reasonable attorneys' fees and all costs incurred due to any investigation of the Premises or the Project or due to any clean-up, removal or restoration mandated by a Governmental Authority (collectively, the "Losses"), of any kind or nature which may be imposed upon or incurred or paid by or asserted against any of the Landlord Indemnified Parties or Landlord's interest in the Premises or the Project by reason of or in connection with any of the following (whether during the Term or prior thereto), except to the extent caused by the negligence or willful misconduct of any Landlord Indemnified Parties (each, a "Landlord Indemnity Claim"):

(A) any work performed by or material furnished to or for the account of Tenant, including the Tenant Work and any mechanic's, materialman's or other liens or claims related thereto, and anything done in, on or about the Premises, the Project or any part thereof in connection therewith during the Term;

(B) Tenant's use, possession, occupation, operation, maintenance or management of the Premises, the Project, or any part thereof, during the Term;

(C) any negligent or tortious act or willful misconduct on the part of Tenant or

any Tenant Parties;

(D) any accident, injury, death or damage to any Person or property occurring in, on or about the Premises, the Project or any part thereof, during the Term to the extent arising from Tenant Operations;

(E) any failure on the part of Tenant to perform or comply with any of the agreements, obligations (including payment obligations), covenants, conditions or limitations contained in this Lease or in any other agreement relating to or in connection with the Project or the Premises, on its part to be performed or complied with, or any inaccuracy in any representations or warranty made by Tenant hereunder or in any such other agreement relating to or in connection with the Project or the Premises;

(F) the presence of Hazardous Substance in or under the Premises, the Project or portion thereof, to the extent the Hazardous Substance was released by Tenant or any Tenant Parties and was not present on the Premises, the Project or any portion thereof prior to the Effective Date and ~~/~~ or was not disposed, released or discharged by Landlord; or

(G) any Tenant Event of Default.

Tenant's obligations under this Section 21.01 shall survive the expiration or termination of this Lease for a period equal to the statute of limitations applicable to the indemnified action.

21.02 Tenant's Defense of Indemnity. Landlord shall promptly notify Tenant of the existence of any Landlord Indemnity Claim to which Tenant's indemnification obligations would apply and shall give Tenant thirty (30) days (or such shorter period as required by the contingencies of such Landlord Indemnity Claim involving liabilities to third parties) in which to elect to defend the same at its own expense and with counsel of its own selection, who shall be approved by Landlord, which approval shall not be unreasonably withheld; provided that Landlord shall at all times also have the right to fully participate in the defense at its own expense. Notwithstanding the immediately preceding sentence if Tenant shall, within such 30-day period, fail to defend such Landlord Indemnity Claim, Landlord shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle (exercising reasonable business judgment) such Landlord Indemnity Claim on behalf, for the account, and at the risk and expense of Tenant. Tenant shall not compromise or settle any Landlord Indemnity Claim without the prior written consent of the applicable Landlord Parties, such consent not to be unreasonably withheld. If a Landlord Indemnity Claim is one that cannot by its nature be defended solely by Tenant, Landlord shall make available all information and assistance that Tenant may reasonably request; provided that any associated expenses shall be paid by Tenant.

21.03 Insurance. The provisions of this Section 21 shall not in any way be affected by the absence in any case of any covering insurance or by the failure or refusal of any insurance company to perform any obligation on its part.

21.04 Landlord's Indemnification of Tenant. Landlord agrees to hold Tenant and Tenant Parties harmless from liability from injury to any person or damage to property resulting from (i) the condition of the Premises, but only if such condition is a result of Landlord's material breach of its representations and warranties set forth in Section 15.01, (ii) any acts or omissions of Landlord

or the Landlord Indemnified Parties resulting in a material breach the representations and warranties set forth in Section 15.01, or (iii) the gross negligence or willful misconduct of Landlord or the Landlord Indemnified Parties which materially breach its representations and warranties set forth in Section 15.01.

SECTION 22

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT

22.01 Subordination. Tenant hereby acknowledges and agrees that Landlord shall have the right to enter into one or more mortgages, deeds of trust, security agreements, collateral assignments or other instruments imposing liens, security interests or similar encumbrances covering all or part of its/their interest in the Reservation, or portion thereof, along with any increases, renewals, modifications, consolidations, replacements and extensions thereof (collectively, "Mortgages"). Landlord hereby acknowledges and, as a condition to entering into any Mortgage, shall require the Mortgagee to acknowledge that, Tenant's right to quiet possession of the Premises during the Term, including Decommissioning, shall not be disturbed nor shall Tenant be named in any foreclosure action (unless foreclosure proceedings would not be able to commence or proceed unless Tenant is named therein) so long as, in each case, no Event of Default exists. Upon request of any Mortgagee, and after the Mortgagee has executed a document granting Tenant, along its successors and assigns (including any Leasehold Mortgagee, Financing Party or their respective designees) the right to quiet possession, Tenant agrees to execute an attornment and non-disturbance agreement confirming the same in form and substance acceptable to such Mortgagee and reasonably acceptable to Tenant and contains customary terms and conditions consistent with this Section 22.01.

22.02 Attornment. Tenant shall, in the event any proceedings are brought for the foreclosure of the Premises by Mortgagee or in the event of exercise of the power of sale by Mortgagee under any Mortgage covering the Premises, attorn to the purchaser upon such foreclosure or sale, and recognize such purchaser as Landlord under this Lease. Such purchaser shall be responsible for all Landlord obligations under this Lease arising following such foreclosure or sale.

SECTION 23

ASSIGNMENT AND SUBLETTING; LEASEHOLD MORTGAGE

23.01 Consent and Advance Notice Required. Notwithstanding any references herein to successors, assigns, transferees, subtenants and licensees, except for any transfer to any Person that is an Approved Transferee, Tenant shall not assign or in any manner transfer, sublease, mortgage, pledge, hypothecate or encumber (collectively, "Transfer") this Lease or any right or interest of Tenant herein or any of the other Controlling Documents without the prior notice to and written consent (or deemed consent as provided in Section 23.05) of Landlord (not to be unreasonably withheld) and the BIA in each instance, including the receipt of BIA approval based on 25 CFR §§ 162.576 & 577 (assignments); 162.580 & 162.581 (subleases); 162.584 & 162.585 (leasehold mortgage). Notwithstanding anything herein to the contrary, no Transfer (including any Transfer to an Approved Transferee or any other Person) shall be effective unless and until Tenant has provided at least 15 days' advance written notice to Landlord, setting forth the identity of the transferee, and for any Transfer not involving an Approved Transferee, also providing with specificity (as determined by Landlord) the terms of such Transfer, including any compensation

or other consideration provided to Tenant with respect thereto to the extent Tenant is not restricted from disclosing any such information pursuant to a contractual confidentiality provision. The BIA, by its approval of this Lease, hereby approves Transfers to any of the Approved Transferees in accordance with 25 CFR §§ 162.574 (assignments) and 162.578 (subleases), and acknowledges that transfers to Financing Parties or their designees that acquire by foreclosure or sale need not be approved under either this Lease or 25 CFR § 162.574(c). The Landlord hereby acknowledges that no further action, consent or approval of Landlord shall be required for a Transfer of the Lease to an Approved Transferee. Tenant's request to Landlord and the BIA for a consent to a Transfer of this Lease (to a non-Approved Transferee) and Tenant's rights and interests herein shall include a written disclosure (which shall be subject to all confidentiality requirements of this Lease) of: (i) the Net Worth, credit standing, and relevant experience and record of performance of the proposed transferee demonstrating ability to perform its obligations under the Lease; (ii) the essential terms and conditions of the proposed Transfer which are not confidential; (iii) any other such non-confidential information as Landlord may reasonably request; (iv) the potential assignee's agreement in writing to assume all of the obligations and conditions of this Lease; (v) proof of enforceability of the Lease against the proposed transferee; and (vi) the potential assignee's agreement in writing that any transfer of this Lease will be in accordance with applicable Laws under 25 C.F.R. § 162.014. Tenant shall pay all reasonable attorneys' fees and other reasonable costs and expenses that may be incurred or paid by Landlord in processing, documenting or administering any request for Landlord's and the BIA's consent in accordance with applicable Laws and this Section 23.01. Without limiting the foregoing, it is understood and agreed that neither this Lease nor the leasehold interest created hereunder shall pass by operation of law under any state or federal insolvency, bankruptcy or inheritance act, or any similar law now or hereafter in effect, to any trustee, receiver, assignee for the benefit of creditors, heirs, legatees, devisees, or any other Person whomsoever. For the avoidance of doubt, any change in Control of Tenant shall constitute a Transfer subject to the provisions of this Section 23.01 (including the provision in the first sentence of this Section that provides that any such Transfer to an Approved Transferee shall not be subject to the prior written consent of Landlord or the BIA). Tenant's successors and assigns, including Approved Transferees, shall succeed to and benefit from all rights and obligations under this Lease.

23.02 Assumption of Liability. No Transfer (other than pursuant to a Leasehold Mortgage or a Transfer resulting from change of Control of Tenant) shall be effective until receipt by Landlord and the BIA of an assignment and assumption agreement pursuant to which the Approved Transferee or other transferee assumes all accrued and future liabilities and obligations of Tenant under or with respect to this Lease.

23.03 Continuance of Tenant's Liability; No Waiver. No Transfer of this Lease by Tenant shall act as, or effect a release of, Tenant from any of the agreements, obligations and covenants of this Lease to be performed by Tenant hereunder prior to the date of such Transfer, nor diminish any supervisory authority of the BIA provided for under an approved Transfer. The acceptance of Rent by Landlord from any other Person shall not be deemed to be a waiver of any provision of this Lease or consent to the Transfer of this Lease or Tenant's interest herein. If Landlord and the BIA provide their consent to a Transfer of this Lease and Tenant's rights and interest herein on one occasion, such consent shall not be deemed to waive or diminish the requirement for a consent with respect to any subsequent Transfer, unless otherwise permitted under the BIA regulations. Any non-permitted Transfer shall be void.

23.04 No Partial Assignments. Notwithstanding anything herein to the contrary, in no event shall Tenant be permitted to Transfer less than all of this Lease and Tenant's rights and interests herein without Landlord's and BIA's consent. If Landlord or the BIA refuses to grant consent to a Transfer of less than all of this Lease and Tenant's rights or interests herein, such refusal shall be deemed reasonable.

23.05 Leasehold Financing.

(A) Leasehold Mortgage. To any Person other than an Approved Transferee, with the prior written consent of Landlord and the BIA (BIA's approval, deemed approval or disapproval shall be governed by 25 C.F.R. §§ 162.584 and 162.585), and to any Approved Transferee, Tenant may create one or more liens on, or encumber, by mortgage, deed of trust or trust deed in the nature of a mortgage (each, a "Leasehold Mortgage") the leasehold interest of Tenant in the Premises, and may convey, transfer and assign its interest under this Lease to a mortgagee or trustee, or its designee, under a Leasehold Mortgage given to secure any note or other obligation of Tenant (each, a "Leasehold Mortgagee"). Notwithstanding anything herein to the contrary, by executing and approving this Lease Landlord and BIA have consented to Tenant's grant of a Leasehold Mortgage to any Financing Party specifically identified to Landlord at least 30 days in advance of any proposed or purported Transfer, and no further consent of Landlord or approval by the BIA shall be required for any Leasehold Mortgage for which the Leasehold Mortgagee, or the beneficiary of any Leasehold Mortgage, is a Financing Party identified to Landlord at least 30 days in advance of any proposed or purported Transfer. Written notification of such Leasehold Mortgage and a copy of the Leasehold Mortgage shall be provided to Landlord and the BIA. Within ten (10) days after any funding of the loan secured by any such Leasehold Mortgage, Tenant shall serve written notice upon Landlord and the BIA of the existence thereof, shall designate a post office address where notice may be served upon the Leasehold Mortgagee under any such Leasehold Mortgage and shall furnish Landlord with a copy of such Leasehold Mortgage. Failure of Tenant to serve such notice in a timely manner shall not affect any Leasehold Mortgagee's or other Financing Party's rights hereunder. A Leasehold Mortgagee or other Financing Party shall have the right to make such services and deliveries upon Landlord.

(B) Certain Benefits to Leasehold Mortgagee and Financing Party. If Tenant shall execute any Leasehold Mortgage or obtain financing from any Financing Party, then, in such event and for so long as such Leasehold Mortgage shall constitute a Lien against the Leasehold Estate or such financing from a Financing Party remains outstanding, in whole or in part, the following provisions shall apply:

(1) Amendment of Lease. No agreement by Landlord and Tenant for the cancellation, surrender, acceptance of surrender, termination, or material modification or amendment of this Lease shall be effective as to any Financing Party without the written consent of such Financing Party. If the Leasehold Mortgagee whose lien has first priority consents to an amendment or modification, any Leasehold Mortgagee of a junior lien on the Premises will be deemed to have consented to such amendment.

(2) Exercise of Section 365(h)(i) Rights. Landlord agrees, for the

benefit of Leasehold Mortgagee, that the right of election arising under Section 365(h)(i) of the Bankruptcy Code shall be exercised by Leasehold Mortgagee and not by Tenant. Any attempted exercise by Tenant of such right of election in violation hereof shall be void.

(3) Loss Payee. The name of such Financing Party shall be added as an Additional Insured, loss payee and mortgagee (as applicable) of any and all insurance policies required to be carried by Tenant under this Lease.

(4) Merger. If Tenant shall acquire fee title, or any other estate, title or interest in the Premises which is the subject of this Lease, or any part thereof, or if the Leasehold Estate, or any portion thereof, shall be assigned, sold or otherwise transferred to the owner of such fee title or other estate, title or interest in the Premises which is the subject of this Lease, then in either such event, upon the election of the Leasehold Mortgagee first in priority expressly made in writing at any time thereafter, the Leasehold Mortgage held by such Leasehold Mortgagee shall attach to and be a lien upon such fee title and/or other estate so acquired (but only as the same pertains to the Premises), and such fee title and/or other estate so acquired shall be considered as mortgaged, assigned and conveyed to such Leasehold Mortgagee and the lien of such Leasehold Mortgage spread to cover such estate with the same force and effect as though specifically mortgaged, assigned or conveyed in such Leasehold Mortgage (and upon request of such Leasehold Mortgagee, either or both Landlord and Tenant shall execute further mortgages, assignments of leases and rents, amendments to documents and instruments as such Leasehold Mortgagee may reasonably require for such purpose); provided that notwithstanding the foregoing, if and so long as any of the indebtedness secured by any such Leasehold Mortgage shall remain unpaid, unless the Leasehold Mortgagee thereunder shall otherwise in writing expressly consent, the fee title to the Premises which is the subject of this Lease and the Leasehold Estate shall not merge but shall always be kept separate and distinct, notwithstanding the union of such estates either in Landlord or in Tenant, or in a third party, by purchase or otherwise.

(5) Right of Entry. Each Financing Party shall have the right to enter upon the Premises at any time for any purpose not inconsistent with the Definitive Agreements, including curing any Events of Default under this Lease, and Landlord hereby agrees to accept performance and compliance by any such Financing Party of any covenants, agreements, provisions, conditions and limitations on Tenant's part to be kept, observed or performed hereunder, with the same force and effect as though kept, observed and performed by Tenant. Each Financing Party shall use commercially reasonable efforts to provide Landlord with reasonable advance notice prior to entering upon the Premises.

(6) Notice of Default. Concurrently with serving Tenant with any notice of (A) an Event of Default pursuant to the provisions of this Lease or (B) a matter on which Landlord may predicate or claim an Event of Default, Landlord shall provide a copy of such notice to each Leasehold Mortgagee or Financing Party that has properly notified Landlord (in accordance with the procedures set forth in Section 28 in the same manner as applicable to the Parties) of its identity and valid

and current mailing address and/or facsimile number, and no such notice by Landlord to Tenant under this Section 23.05(B)(6) shall have been deemed duly given unless and until a copy thereof has been so provided to each such Leasehold Mortgagee or Financing Party (at the mailing address and/or facsimile number so provided) that has so notified Landlord.

(7) Additional Cure Period. From and after the time such notice as provided in Section 23.05(B)(6) has been served upon any Leasehold Mortgagee or Financing Party, such Leasehold Mortgagee or Financing Party shall have the same period, after the service of notice upon it, for curing any Event of Default, or acts or omissions the subject of such notice, as is given Tenant after the service of notice upon Tenant, if any, plus in each instance (including any instance that constitutes an Event of Default that would otherwise give rise to Landlord's right to immediately terminate this Lease) an additional sixty (60) days (unless, with respect to non-monetary Events of Default which are reasonably susceptible of being cured by such Leasehold Mortgagee or Financing Party, if such Leasehold Mortgagee or Financing Party shall have promptly commenced curing same within such 60-day period and shall diligently prosecute the same to completion, but such cure requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature reasonably be performed, done or removed, as the case may be, within such 60-day period, in which case there shall be allowed to such Leasehold Mortgagee or Financing Party such additional time as may be reasonably necessary using commercially reasonable diligence to effect such cure).

(8) Termination. Anything contained in this Lease to the contrary notwithstanding, if any Event of Default shall occur which entitles Landlord to terminate this Lease, or to exercise any other rights, powers or remedies available to it under this Lease, Landlord shall have no right to terminate this Lease or to exercise any of such rights, powers or remedies unless following the expiration of the period of time given Tenant to cure such Event of Default (or the act or omission which gave rise to such Event of Default), Landlord shall provide (but only to those Leasehold Mortgagees or Financing Parties to which Landlord would then be required to deliver notices pursuant to Section 23.05(B)(6)) notice of Landlord's intent to so terminate or exercise any such rights, powers or remedies (each, a "Default Notice") at least thirty (30) days in advance of the proposed effective date of such termination or the exercise by Landlord of such rights, power or remedies if such Event of Default is capable of being cured by the payment of money, or at least sixty (60) days in advance of the proposed effective date of such termination or the exercise by Landlord of any such rights, powers or remedies if such Event of Default is not capable of being cured by the payment of money (the "Default Notice Period").

(9) Procedure upon Event of Default.

(a) If Landlord shall elect to terminate this Lease or exercise any other rights, powers or remedies available to it under this Lease by reason of any Event of Default, and a Leasehold Mortgagee or other Financing Party shall have notified Landlord of its desire to cure such Event of

Default, the specified date for the termination of this Lease as fixed by Landlord in its Default Notice or for the exercise of any other rights, powers or remedies available to it under this Lease shall be extended for a period of sixty (60) days, provided that such Leasehold Mortgagee or other Financing Party shall, during such 60-day period:

(i) Pay or cause to be paid the monetary obligations of Tenant under this Lease as the same become due, and continue its good faith efforts to perform all of Tenant's other obligations under this Lease, excepting (1) obligations of Tenant to satisfy or otherwise discharge any lien, charge or encumbrance against Tenant's interest in this Lease or the Premises junior in priority to the lien of the mortgage held by such Leasehold Mortgagee and (2) past non-monetary obligations constituting an Event of Default and not reasonably susceptible of being cured by such Leasehold Mortgagee or other Financing Party; and

(ii) With respect to a Leasehold Mortgagee, if not enjoined or stayed, take steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgage or other appropriate means and prosecute the same to completion with due diligence.

(b) If at the end of such sixty 60-day period such Leasehold Mortgagee or other Financing Party is complying with Section 23.05(B)(9)(a), then this Lease shall not then terminate, and the time for completion by such Leasehold Mortgagee of its proceedings shall continue so long as such Leasehold Mortgagee is enjoined or stayed and thereafter for so long as such Leasehold Mortgagee proceeds to complete steps to acquire or sell Tenant's interest in this Lease by foreclosure of the Leasehold Mortgage or by other appropriate means with reasonable diligence. Nothing in this Section 23.05(B)(9), however, shall be construed to extend this Lease beyond the original Term thereof or to require a Leasehold Mortgagee to continue such foreclosure proceedings after the Event of Default has been cured. If the Event of Default shall be cured and the Leasehold Mortgagee shall discontinue such foreclosure proceedings, this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

(c) If a Leasehold Mortgagee is complying with Section 23.05(B)(9)(a), then upon the acquisition of Tenant's estate herein by such Leasehold Mortgagee or its designee or any other purchaser at a foreclosure sale or otherwise (and the discharge of any lien, charge or encumbrance against Tenant's interest in this Lease or the Premises which is junior in priority to the lien of the Leasehold Mortgage held by such Leasehold Mortgagee and which Tenant is obligated to satisfy and discharge by reason of the terms of this Lease) this Lease shall continue in full force and effect as if Tenant had not defaulted under this Lease.

(10) No Assumption. For purposes of this Section 23.05(B)(10), the making of a Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of this Lease or of the Leasehold Estate, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or transferee of this Lease or of the Leasehold Estate, so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder, but the purchaser at any sale of this Lease and of the Leasehold Estate in any proceedings for the foreclosure of any Leasehold Mortgage, or the assignee or transferee of this Lease and of the Leasehold Estate under any instrument of assignment or transfer in lieu of the foreclosure of any Leasehold Mortgage, shall be deemed to be an assignee or transferee within the meaning of this Section 23.05(B)(10) and shall be deemed to have agreed to perform all of the terms, covenants and conditions on the part of Tenant to be performed hereunder arising and accruing from and after the date of such purchase and assignment, but only for so long as such purchaser or assignee is the owner of the Leasehold Estate.

(11) Leasehold Mortgagee Transfer. The Transfer of Tenant's leasehold estate to the Leasehold Mortgagee or other Person pursuant to foreclosure, assignment in lieu of foreclosure or other similar proceedings shall not require further consent of Landlord or the BIA if such assignee has delivered to Landlord and the BIA its written agreement to be bound by all of the provisions of this Lease from and after the date of such assignment and such Transfer is otherwise in accordance with applicable law under 25 CFR § 162.014. No Transfer of this Lease to the Leasehold Mortgagee or any other Person pursuant to foreclosure, assignment in lieu of foreclosures or other similar proceedings shall act as, or affect a release of, Tenant from any of the agreements, obligations and covenants of this Lease to be performed by Tenant hereunder, nor diminish any supervisory authority of the BIA provided for under such Transfer.

(12) New Lease. In the event of the termination of this Lease as a result of an Event of Default prior to the expiration of the Term which was not reasonably susceptible of cure or in the event of a rejection by Landlord or Tenant of this Lease under Chapter 11 of the Bankruptcy Code, Landlord shall, in addition to providing the notices of Event of Default and termination as required by this Lease, provide each Leasehold Mortgagee with written notice that this Lease has been terminated or that Landlord has filed a request with a bankruptcy court seeking to reject this Lease, together with a statement of all sums which would at that time be due under this Lease but for such termination or rejection, and of all other Events of Default, if any, then known to Landlord. Upon the request of the Leasehold Mortgagee, or its designee, whose lien upon the Leasehold Estate is superior to the lien of any and all other Leasehold Mortgages, but subject to 25 U.S.C. § 415 (to the extent applicable), Landlord agrees to enter into a new lease (a "New Lease") of the Premises with such Leasehold Mortgagee or its designee for the remainder of the Term of this Lease, effective as of the date of termination or rejection, as the case may be, at the Rent, and upon the terms, covenants and conditions of this Lease, provided that:

(a) Such Leasehold Mortgagee shall make written request upon Landlord for such New Lease within sixty (60) days of the date such Leasehold Mortgagee receives Landlord's notice of termination or rejection of this Lease given pursuant to this Section 23.05(B)(12). The Parties shall enter into such New Lease within thirty (30) days of Leasehold Mortgagee's request for such New Lease.

(b) Such Leasehold Mortgagee or its designee shall pay or cause to be paid to Landlord at the time of the execution and delivery of such New Lease, any and all sums which would at the time of execution and delivery thereof be due pursuant to this Lease but for such termination and, in addition thereto, all reasonable expenses, including reasonable attorneys' fees, court costs and costs and disbursements, which Landlord shall have incurred by reason of such termination and the execution and delivery of the New Lease and which have not otherwise been received by Landlord from Tenant or other party in interest under Tenant.

(c) Tenant under any New Lease shall have the same right, title and interest in and to the Premises and buildings and improvements thereon as Tenant under this Lease.

(d) If more than one (1) Leasehold Mortgagee shall request a New Lease pursuant to this Section 23.05(B)(12), Landlord shall enter into such New Lease with the Leasehold Mortgagee whose mortgage is in the first lien position, or with the designee of such Leasehold Mortgagee. Landlord, without liability to Tenant or any Leasehold Mortgagee with an adverse claim, may rely upon a mortgagee title insurance policy issued by a responsible title insurance company doing business within the state in which the Premises are located as the basis for determining the appropriate Leasehold Mortgagee who is entitled to such New Lease.

23.06 Further Assurances. Each Party shall, from time to time after the execution of this Lease, execute and deliver such instruments, documents and assurances and take such further acts as the other Party may reasonably request to carry out the purpose and intent of this Lease without undue delay, including a commercially reasonable subordination, non-disturbance and attornment agreement in favor of a Leasehold Mortgagee or the beneficiary of a Leasehold Mortgagee who is a Financing Party (each, a "Beneficiary"), in each case, in connection with a permitted Transfer, or other consent reasonably requested by a Financing Party in connection with a permitted Transfer, in form and substance agreeable to Landlord, confirming (a) the rights of such Leasehold Mortgagee, Beneficiary or Financing Party, as applicable, in the Premises and the Solar Power Facilities pursuant to the provisions of this Lease, as applicable, and (b) that, so long as no Event of Default under this Lease has occurred, Landlord shall not disturb Tenant's possession of the Premises and, upon foreclosure of a Leasehold Mortgage where such Leasehold Mortgagee or Beneficiary or other Person is the successful bidder at the foreclosure sale, such successful Leasehold Mortgagee's or Beneficiary's or other Person's possession of the Premises.

23.07 Power Purchase Agreement Offtaker: Subject to a Leasehold Mortgagee's rights, the following provisions shall apply.

(A) Within ten (10) days after execution of a power purchase agreement with any Person for energy generated by the Solar Power Facilities, Tenant shall serve written notice upon Landlord and the BIA of the existence thereof, shall designate a post office address where notice may be served upon the Offtaker and shall furnish Landlord with a copy of such power purchase agreement if, and to the extent, Tenant is not contractually restricted from disclosing the terms of the power purchase agreement.

(B) Offtaker shall have the right to enter upon the Premises at any time for any purpose not inconsistent with the Definitive Agreements, including curing any Events of Default under this Lease, and Landlord hereby agrees to accept performance and compliance by any such Offtaker of any covenants, agreements, provisions, conditions and limitations on Tenant's part to be kept, observed or performed hereunder, with the same force and effect as though kept, observed and performed by Tenant. Offtaker shall use commercially reasonable efforts to provide Landlord with reasonable advance notice prior to entering upon the Premises.

(C) Landlord shall, upon serving Tenant with any notice of (A) an Event of Default pursuant to the provisions of this Lease, or (B) a matter on which Landlord may predicate or claim an Event of Default, at the same time serve a copy of such notice upon every Offtaker that has served Landlord with notice of its identity and address, and no such notice by Landlord to Tenant hereunder shall have been deemed duly given unless and until a copy thereof has been so served on every such Offtaker.

(D) From and after the time such notice as provided in Section 23.07(C) has been served upon Offtaker, such Offtaker shall have the same period, after the service of notice upon it, for curing any Event of Default, or acts or omissions the subject of such notice, as is given Tenant after the service of notice upon Tenant, if any, plus in each instance (including any instance that constitutes an Event of Default that would otherwise give rise to Landlord's right to immediately terminate this Lease) an additional sixty (60) days (unless, with respect to non-monetary Events of Default which are reasonably susceptible of being cured by such Offtaker, if the Offtaker shall have promptly commenced curing same within such 60-day period and shall diligently prosecute the same to completion, but such cure requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature reasonably be performed, done or removed, as the case may be, within such 60-day period, in which case there shall be allowed to such Offtaker such additional time as may be reasonably necessary using commercially reasonable diligence to effect such cure).

(E) Anything contained in this Lease to the contrary notwithstanding, if any Event of Default shall occur which entitles Landlord to terminate this Lease, or to exercise any other rights, powers or remedies available to it under this Lease, Landlord shall have no right to terminate this Lease or to exercise any of such rights, powers or remedies unless following the expiration of the period of time given Tenant to cure such Event of Default (or the act or omission which gave rise to such Event of Default), Landlord shall provide Default Notice to any Offtaker during the Default Notice Period.

SECTION 24 **CONFIDENTIALITY**

The Parties agree that the financial terms of this Lease and any and all other information that a Party (the “Disclosing Party”) shares with the other Party (the “Receiving Party”) and identifies to the Receiving Party (either prior to such disclosure or promptly thereafter, and in any event before any subsequent disclosure by the Receiving Party) as “confidential” (“Confidential Information”) shall be the confidential and proprietary information of the Disclosing Party and shall remain privileged and confidential in all instances, including from disclosure under the Freedom of Information Act pursuant to 383 DM 15, Section 5.6, Exemption 4. All Confidential Information provided by a Disclosing Party to the Receiving Party shall be kept confidential and, under no circumstances shall the Receiving Party disclose such information to any other Person except only: (a) at the written direction of the Disclosing Party; (b) to those employees and/or representatives of the Receiving Party who are required to have access to or knowledge of the Confidential Information so long as such Persons agree not to disclose the Confidential Information except as provided herein; (c) to the extent required to comply with Law or a valid order of a court of competent jurisdiction, in which event the Receiving Party shall so notify the Disclosing Party as promptly as practicable (and, if possible, prior to making any disclosure) and shall in all cases seek confidential treatment of such information to the extent consistent with applicable Law; (d) to the extent disclosure is required to comply with any securities regulations or public disclosure obligations; or (e) in order to enforce its rights under this Lease. In no circumstance shall the Receiving Party use the Confidential Information provided by the Disclosing Party in transactions or litigation adverse to the Disclosing Party except as expressly permitted pursuant to this Section 24. Information shall not constitute Confidential Information hereunder if such information (i) is in the public domain or becomes public knowledge other than as a result of breach of this Lease by the Receiving Party or a breach of confidentiality obligations by any other Person, which breach is known by the Receiving Party; (ii) was known to the Receiving Party at the time of its receipt from the Disclosing Party, provided that such information was obtained by the Receiving Party from a third party under no duty of confidentiality; (iii) has been independently developed by the Receiving Party without reference to any Confidential Information, as demonstrated by its business records; or (iv) is obtained by the Receiving Party from a third Person lawfully in possession of such information and having the legal right to transmit the same. Notwithstanding anything to the contrary herein, Landlord and Tenant shall have the right to disclose the terms of this Lease to Persons within their respective organizations (including, with respect to Landlord, its membership), attorneys, accountants, Affiliates, financial and business advisers, lenders, and prospective purchasers of or investors (and their attorneys and other advisers) so long as such Persons agree not to disclose the Confidential Information except as provided herein. Notwithstanding the above, the Receiving Party may, without consulting the Disclosing Party, disclose Confidential Information as required by a Governmental Authority and/or in connection with efforts to obtain Approvals for the Project.

SECTION 25

ESTOPPEL CERTIFICATES

Upon the request of Landlord or Tenant (as applicable, the “Requesting Party”), the other Party (the “Certifying Party”) shall acknowledge and deliver to the Requesting Party, within thirty (30) days after written request by the Requesting Party, a certificate certifying (a) that this Lease is unmodified and in full force and effect (or, if there have been modifications, that this Lease is in full force and effect, as modified, and stating the modifications), (b) the dates, if any, to which Rent and other sums payable hereunder have been paid, (c) that no notice has been received by the

Certifying Party of any Event of Default by the Requesting Party which has not been cured, except as to Events of Default specified in such certificate, and (d) such other information as the Requesting Party may reasonably request and as reasonably agreed to by the Certifying Party, which in any event may contain knowledge qualifiers and other caveats as the Certifying Party may deem appropriate to reflect actual circumstances as of the date delivered. Landlord and Tenant acknowledge and intend that any such estoppel certificate requested or provided hereunder may be relied upon by any prospective purchaser, mortgagee, assignee, or subtenant and the Requesting Party. If either Party does not deliver any such certificate to the other Party within such 30-day period, such other Party, and any of its prospective purchasers, mortgagees or assignees, may conclusively presume and rely upon the following facts: (i) that the terms and provisions of this Lease have not been changed except as otherwise represented by such Party; (ii) that this Lease has not been canceled or terminated except as otherwise represented by such Party; (iii) that not more than one month's Monthly Rent or other charges have been paid in advance; and (iv) that such Requesting Party is not in default under the Lease. In such event, such Party shall be estopped from denying the truth of such facts.

SECTION 26

QUIET ENJOYMENT

Tenant, upon observing, keeping and performing all of the terms and provisions of this Lease on its part to be observed, kept and performed, shall lawfully, peaceably, and quietly have, hold, occupy and enjoy the Premises during the Term without ejection, disturbance, nuisance, interference or any other hindrance by Landlord or by any persons lawfully claiming under Landlord whether on the Reservation or adjacent land. Furthermore, during the Term, Landlord shall not construct or install (or cause or permit to be constructed or installed) any structure, building, towers, fences, poles, wires, cables or any other above-ground improvements of any kind or character which will shade or obstruct any solar gathering device constituting part of the Solar Power Facilities on the Premises. Notwithstanding the foregoing, Landlord and its authorized agents and representatives shall be entitled to enter the Premises (i) immediately in exigent circumstances where delay would interfere with Landlord's imminent and substantial law enforcement needs or imminently endanger public safety or (ii) on all the same terms and conditions set forth in Section 2.02, for the purpose of (a) observing, posting or keeping posted thereon notices provided for hereunder or required by applicable Laws, or such other notices as Landlord may reasonably deem necessary or appropriate; (b) reasonably inspecting the Premises; (c) repairing any improvements on the Premises serving the outside Reservation, provided that, if such improvements are being used by Tenant and such repairs pertain to damage caused by Tenant, the cost and expense of such repairs shall be immediately due and owing from Tenant to Landlord as Additional Rent hereunder; (d) observing and inspecting the Premises for determining compliance with and conformity to all applicable Laws and this Lease; (e) enforcing Tribal laws; and (f) in the final twenty-four (24) months of the Term only, exhibiting the Premises to prospective purchasers or tenants. Landlord may enter the Premises and exercise all or any of the foregoing rights without being deemed guilty of an eviction or disturbance of Tenant's use or possession, and without being held liable in any manner except as expressly provided herein to Tenant, or entitling Tenant to any abatement in Rent. Landlord shall indemnify Tenant and Tenant's Parties for any damages related to injury to the Project, person or property that results from Landlord's exercise of its rights under this Section 26.

SECTION 27 **SPECIAL PROVISIONS**

27.01 Obligations to the United States. Tenant acknowledges that the Premises are held in trust by the United States, and agrees that all of Tenant's obligations under this Lease, and the obligations of its sureties, shall also inure to the benefit of the United States. As provided in 25 CFR 162.542(c)(6), the BIA may, at its discretion, treat as a Lease violation any failure by Tenant to cooperate with a BIA request to make appropriate non-proprietary records, reports, or information available for BIA inspection and duplication.

27.02 Preferences in Employment and Contracting; Ancillary Commercial Opportunities. Tenant shall provide preference in employment and contracting for goods and services in Tenant Operations in accordance with the Compliance Plan. The Parties agree to comply, and Tenant shall cause the Tenant Parties to comply, with the terms and provisions of the Compliance Plan during the Term. The Plan will contain a stipulation that if and to the extent there are any inconsistencies between the provisions of the Compliance Plan and the provisions of the TERO Ordinance, the provisions of the Compliance Plan shall control.

27.03 Disclaimer of State Jurisdiction. Notwithstanding the agreement of the Parties regarding worker's compensation Laws pursuant to Section 16.03 and except as provided herein, including the Governing Law and Dispute Resolution provisions under Section 29, the Parties agree that nothing in this Lease or in any other component of the Definitive Agreements shall be interpreted as conceding or agreeing to, or authorizing Tenant, without the prior written consent of Landlord, to concede, agree to, or assert in any administrative or judicial forum, the applicability of the laws of the State of Nevada or any other state or political subdivision thereof to the rights, interests, property or activities on the Reservation of a Party or its employees or agents, or its contractors or subcontractors or their employees or agents, connected with this Lease or any other component of the Definitive Agreements; provided, however, Landlord acknowledges that Tenant will be required, in connection with its development of the Project, to make certain filings relating to the Premises and the Right of Way Areas with the Public Utilities Commission of Nevada pursuant to the Nevada Utility Environmental Protection Act, and such filings and related proceedings shall not constitute violation of the provisions of this Section 27.03. Notwithstanding the above, Landlord does not object to the choice of the laws of the State of Nevada (or any other state) as the governing law with respect to any agreement between or among Tenant, its contractors and their respective contractors and agents so long as no Landlord Party is a party to such agreement.

27.04 Legal Characteristics. In pursuing Project Approvals, and in any administrative or judicial Proceedings against third parties arising from the Project, Tenant shall neither assert nor concede any claim or defense regarding the legal status, authorities or immunities of the Landlord or the Reservation, or regarding rights, interests, property or activities on the Reservation, without first consulting with Landlord regarding the nature of the claim or defense which Tenant proposes to assert or concede and obtaining Landlord's written consent thereto (which consent shall not be unreasonably withheld, conditioned or delayed); provided that Landlord hereby consents that Tenant shall be authorized to assert positions pertaining to Taxes consistent with the Tribal Agreement without any further Landlord consent.

27.05 News Releases. Prior to its issuance or implementation, a Party proposing to adopt

a news release or public relations program regarding this Lease and/or the Project shall obtain consent of the other Party (that will not be unreasonably withheld, conditioned or delayed) to the form and substance of any such release or disclosure, provided that the foregoing shall not apply to (a) releases by Tenant regarding Tenant's ongoing alternative energy marketing activities not limited exclusively to the Project; (b) emergency Project health, safety or security notifications; and (c) other public releases reasonably necessary to the conduct of Tenant Operations or to the process of obtaining Project Approvals. The Party issuing a release described in clauses (b) or (c) above shall provide written notice thereof to the other Party as promptly as reasonably practicable after such release.

27.06 Cooperation. The Parties shall reasonably cooperate with respect to: (a) to the extent not already obtained, obtaining necessary Project Approvals and the Third Party Rights; (b) addressing issues related to endangered species affected by the Project; and (c) obtaining prompt resolution of any issues arising from the discovery on the Premises of human remains, sacred objects, cultural items or similar matters affecting Tenant's planned or actual Tenant Operations, in accordance with all applicable Laws including the Native American Graves Protection and Repatriation Act, 25 U.S.C. § 3001 *et seq.*. Notwithstanding the foregoing, Landlord's cooperation hereunder shall be at no cost or expense to Landlord. If historic properties, archaeological resources, human remains, or other cultural items not previously reported are encountered during the course of activity associated with this Lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and Tenant shall contact BIA and Landlord to determine how to proceed and appropriate disposition in accordance with 25 CFR § 162.542(c)(4). Should any applicable Governmental Authority or either Party desire that Tenant obtain an Indian Trader's Act license under 25 U.S.C. §§ 261 - 264 and 25 C.F.R. Part 140 (2003), the Parties shall reasonably cooperate in seeking the issuance of such license on terms reasonably acceptable to the Parties.

27.07 Termination of Trust Status. No provision in this Lease shall operate to delay or prevent termination of federal trust responsibilities with respect to the Premises by issuance of a fee patent or otherwise during the Term, provided that such termination shall not abrogate this Lease or any other component of the Definitive Agreements, or diminish or impair the obligations, rights or remedies of the Parties thereunder.

27.08 Relinquishment of Supervision by BIA. Should the BIA during the Term relinquish supervision of all or part of the Premises, the BIA shall no longer have the right to approve those matters set forth in this Lease as requiring such approval and the following provisions shall thereafter apply:

(A) Payments. Any payments to be made under this Lease by Tenant to the BIA or BLM, as applicable, for the benefit of Landlord shall thereafter be paid directly to Landlord.

(B) Bond. If Tenant has paid all accrued payment obligations, and has fully performed all of its other accrued obligations under the Controlling Documents and applicable Laws, the Performance Bond shall be released and discharged, and Tenant shall thereupon immediately deliver to Landlord a Performance Bond in favor of Landlord only, in the amount of the discharged Performance Bond, securing the performance of those matters secured by the discharged Performance Bond.

(C) Lease Continues. This Lease and all other components of the Definitive Agreements shall continue in full force and effect.

27.09 Endangered Species Plan. In addition to Tenant's payment obligation set forth in Section 13.03(B), Landlord and Tenant shall each strictly comply with all conditions, requirements or obligations of the Endangered Species Plan to the extent applicable to such Party. Landlord and Tenant shall work diligently in good faith with all Governmental Authorities and other parties associated with the Endangered Species Plan to ensure that all conditions, requirements or obligations of the Endangered Species Plan are satisfied to the extent applicable to the Project. Tenant shall be responsible for all costs, fees, and expenses associated with compliance with the Endangered Species Plan to the extent pertaining to the Project, and Landlord and Tenant shall each work together in good faith to accomplish the relocation, translocation and monitoring of desert tortoise in accordance with the Endangered Species Plan. Tenant shall not contract with any party to satisfy any condition, requirement or obligation of the Endangered Species Plan without first complying with the Compliance Plan. Failure by Tenant to timely pay any costs, fees, or expenses associated with the Endangered Species Plan which Tenant is required to pay in connection with the Project shall constitute an Event of Default as defined in Section 19.01(A) under this Lease. Failure by Landlord or Tenant to comply with any of the conditions, requirements or obligations of the Endangered Species Plan applicable to such Party after receipt of written notice by the other Party, the U.S. Bureau of Land Management, the Bureau of Indian Affairs, the U.S. Fish and Wildlife Service or any federal agency shall constitute an Event of Default as defined in Section 19.01(B) or Section 20.01, as applicable, under this Lease, except that if the failure complained of in such notice is of such a nature that the same can be rectified or cured, but cannot with reasonable diligence be rectified or cured within such 30-day period, then such failure shall be deemed to be rectified or cured if such Party shall, within such 30-day period, commence to rectify and cure the same and shall thereafter complete such rectification and cure with all due diligence, and in any event, as soon as practical thereafter given the guidelines of the relevant federal agencies, including the Fish and Wildlife Service. Landlord shall make land available for the relocation or translocation of desert tortoise in accordance with the Endangered Species Plan at no additional cost to Tenant, and make such lands available for so long as may be required by the Endangered Species Plan. Landlord shall have no obligations, monetary or otherwise, except as expressly agreed to herein, with respect to the Endangered Species Plan.

SECTION 28

NOTICES

Any notice or other communication required or permitted to be given by a Party hereunder shall be in writing, and shall be deemed to have been given by such Party to the other Party or Parties (a) on the date of personal delivery, (b) on the date delivered by a nationally recognized overnight courier service, (c) on the next Business Day following any facsimile transmission to a Party at its facsimile number set forth below; provided that such delivery is concurrent with delivery pursuant to the provisions of clauses (a), (b) or (d) of this Section 28, or (d) three (3) Business Days after being placed in the United States mail, as applicable, registered or certified, postage prepaid addressed to the following addresses (each of the Parties shall be entitled to specify a different address and/or contact person by giving notice as described above):

If to Tenant:

325MK 8ME LLC
 c/o Capital Dynamics
 Attn: Benoit Allehaut
 10 E 53rd St., 17th Floor
 New York, NY 10022
 Phone: (212) 798-3422

With a copy to:

Amis, Patel & Brewer LLP
 1399 New York Avenue, NW
 Suite 701
 Washington, DC 20005
 Phone: (202) 601-8503
 Email: nikpatel@apbllp.com

And to:

325MK 8me LLC
 c/o Arevon Asset Management
 8800 N. Gainey Center Dr., Suite 250
 Scottsdale, AZ 85258
 Phone: (480) 653-8383

If to Landlord:

The Moapa Band of Paiute Indians
 1 Lincoln Street
 P.O. Box 340
 Moapa, NV 89025
 Attn: Tribal Chair
 Facsimile: (702) 865-2875
 Email: ddaboda@mvdsl.com

With a copy to:

Ziontz Chestnut
 2101 Fourth Avenue, Suite 1230
 Seattle, WA 98121
 Attn: Richard M. Berley and
 Brian W. Chestnut
 Facsimile: (206) 448-0962
 Email: rberley@ziontzchestnut.com;
bchestnut@ziontzchestnut.com

If to BIA:

United States Department of the Interior
 Bureau of Indian Affairs
 Southern Paiute Agency
 P.O. Box 720
 St. George, UT 84771

SECTION 29 **MISCELLANEOUS**

29.01 Memorandum of Lease; Recording of Interests. The Lease shall be recorded in the BIA's Land Titles and Record Office with jurisdiction over the Premises. The Parties agree that this Lease shall not be recorded in the Recorder's Office of Clark County, Nevada (the "Official Records"), but agree to execute, acknowledge and record in the Official Records a Memorandum of Lease (the "Memorandum of Lease"), in substantially the form attached hereto as Exhibit F. A Memorandum of Termination of Lease (the "Memorandum of Termination"), in substantially the form attached hereto as Exhibit G, shall also be executed and acknowledged by the Parties promptly following the Effective Date, to be held by Landlord until, and recorded by Landlord in the Official Records upon, the termination of this Lease.

29.02 Effect of Waiver. No waiver of any condition or covenant of this Lease or of the breach of any condition or covenant shall be taken to constitute a waiver of any subsequent breach of such condition or covenant, or to justify or authorize the nonobservance on any other occasion of the same or any other condition or covenant thereof. The acceptance of Rent by Landlord at any time when there exists an Event of Default of any covenant or condition shall not be construed as a waiver of such Event of Default or of Landlord's rights under this Lease (except if the Event of Default alleged is failure by Tenant to pay the Rent so accepted).

29.03 Successors and Assigns. This Lease and the covenants and conditions herein contained shall inure to the benefit of and be binding upon Landlord, its successors and assigns, and shall inure to the benefit of and be binding upon Tenant and its permitted successors and assigns.

29.04 Severability. In case any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Lease, but this Lease shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein.

29.05 Entire Agreement. This Lease together with all of the exhibits and schedules referenced herein and attached hereto (collectively, the "Entire Agreement") contains the entire agreement between the Parties hereto with respect to the matters contained herein. All understandings and agreements previously made between the Parties (including those provisions of the Option Agreement identified as surviving the exercise of the Option or the termination of the Option Agreement) are superseded by this Lease, and neither Party is entering into this Lease in reliance upon any warranty, statement or representation not contained in this Lease. Any agreement hereafter made shall not operate to change, modify, terminate or discharge this Lease, in whole or in part, unless such agreement is in writing and signed by each of the Parties hereto, and approved by the BIA.

29.06 Limitation of Liability. EXCEPT FOR TENANT'S LIABILITY FOR ANY AND ALL RENTS AND OTHER AMOUNTS, WHICH ARE EXPRESSLY MADE AVAILABLE TO LANDLORD IN THE EVENT OF ANY EVENT OF DEFAULT AS SET FORTH IN SECTION 19, IN NO EVENT SHALL ANY PARTY BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OR LOST PROFITS ARISING FROM THIS LEASE OR THE PERFORMANCE (OR NON-PERFORMANCE) OF EITHER PARTY'S OBLIGATIONS HEREUNDER. Tenant and Landlord agree that, in the event Tenant or Landlord shall assert or have any claim against the other Party under this Lease arising out of the subject matter of this Lease, the asserting Party's recourse shall be against the other Party's interest in assets lawfully available to satisfy the claim, judgment or decree requiring the payment of money as a result of a breach hereof or otherwise in connection with this Lease, and no other property or assets of Landlord's or Tenant's respective representatives, officers, managers, directors, members, agents, servants and employees, or any of their respective successors or assigns, shall be subject to the levy, execution or other enforcement procedure for the satisfaction of any such claim, judgment, injunction or decree.

29.07 Time of Essence. Time is of the essence in this Lease and each and all of its provisions.

29.08 Waiver of Jury Trial. Each of the Parties waive trial by jury in any action or proceeding brought in connection with this Lease.

29.09 Interpretation. This Lease is to be deemed to have been prepared jointly by the Parties hereto, and if any inconsistency or ambiguity exists herein, it shall not be interpreted against either Party but according to the application of rules of the interpretation of contracts, if such an uncertainty or ambiguity exists. Each Party acknowledges that it has had the availability of legal counsel with respect to its negotiation and execution of this Lease.

29.10 Third Persons. Except as otherwise specifically set forth in this Lease (including as to (i) Landlord and its respective representatives, officers, managers, directors, members, agents, servants and employees of Landlord and (ii) any Financing Party), nothing in this Lease, expressed or implied, is intended to confer upon any Person other than the Parties hereto any rights or remedies under or by reason of this Lease.

29.11 Attorneys' Fees. In the event any Party incurs legal fees or other costs to enforce any of the terms of this Lease, to resolve any dispute with respect to its provisions, or to obtain damages for breach thereof, whether by prosecution or defense, the unsuccessful Party to such action shall pay the prevailing party's reasonable expenses, including reasonable attorneys' fees, costs and expenses, incurred in such action.

29.12 Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

29.13 Survival. All provisions of this Lease which by their express terms survive termination of this Lease or which by the operation of their terms are intended to be performed, in whole or in part, after termination of this Lease, shall survive any termination of this Lease. Unless this Lease specifically provides otherwise, all obligations of indemnification contained in this Lease shall survive the termination or expiration of this Lease.

29.14 Force Majeure. Neither Party shall be deemed in breach hereunder and neither shall be liable to the other if either fails to perform any of its obligations hereunder by reason of any fire, earthquake, flood, epidemic, accident, explosion, labor dispute, riot, civil disturbance, act of public enemy or terrorism, embargo, war, act of God or similar event beyond such Party's control (financial inability excepted), and specifically in regard to Landlord's obligations under the Water Supply Provisions in Section 10, any governmental or judicial order to reduce the water volume or flow rate because of the impact of Project use on the aquifer, any spring, the Muddy River, Lake Mead, endangered or threatened species or habitats, or other water users or wells, after Landlord has exhausted all administrative and judicial remedies, (collectively, "Force Majeure"); provided that no Party shall be entitled to relief under this Section 29.14 unless such Party shall have given the other Party reasonable notice after the occurrence of such Force Majeure event.

29.15 Recording Fees. Tenant shall pay all recording fees by reason of the recordation of the Memorandum.

29.16 Sale of the Premises. In the event of any sale of the Premises by Landlord and provided that any Security Deposit is transferred to such purchaser, Landlord shall be relieved of

all liability under any and all of its agreements, obligations and covenants contained in or derived from this Lease arising out of any act, occurrence or omission relating to the Premises or the Reservation occurring after the consummation of such sale or exchange and Tenant hereby agrees to attorn to such purchaser and look solely to such purchaser for performance of such subsequently accruing obligations, provided that Tenant does not reasonably object to such sale, such assessment of reasonableness being tied to the continuation of all of Tenant's rights under this Lease and the Tribal Agreement.

29.17 Governing Law. Except as may be preempted by applicable federal law including 25 C.F.R. Parts 162 and 169, and specifically noting the existence of a limited waiver of sovereign immunity from Landlord to Tenant, the Parties expressly agree that this Entire Agreement shall be governed by and interpreted under, the internal laws of the State of Nevada, without giving effect to its conflict of law provisions.

29.18 Dispute Resolution; Binding Arbitration; Limited Waiver of Sovereign Immunity.

(A) If a dispute arises regarding interpretation or enforcement of this Entire Agreement, the disputing Landlord Parties, Tenant Parties, and/or Financing Parties (collectively, as applicable, the "Disputing Parties") shall diligently work to resolve the issue informally. If informal dispute resolution is unsuccessful, then the preferred forum will be binding arbitration in accordance with this Section. To initiate arbitration, the claiming Disputing Parties shall notify the other Disputing Parties in writing. The Commercial Arbitration Rules of the American Arbitration Association shall apply to the proceedings. One arbitrator shall preside and shall be selected by the American Arbitration Association. The arbitrator's fee shall be divided equally between the Disputing Parties. The arbitration shall take place in Clark County, Nevada, or such other place as the Disputing Parties agree. The arbitrator shall render an award within forty-five (45) days from the conclusion of the arbitration. The decision of the arbitrator shall be final and binding and enforced with the same force and effect as a decree of a court having competent jurisdiction.

(B) The Disputing Parties anticipate that recourse to binding arbitration should obviate the need for recourse in any court, except to the extent that a court order may be necessary to compel a Disputing Party to participate in arbitration, or to enforce the arbitration award. However, a Disputing Party may elect to bring a claim authorized under this Agreement in the United States District Court for the District of Nevada to the extent a Disputing Party determines that federal court review is necessary to address the disputed issues.

(C) Landlord expressly and irrevocably grants a limited waiver of its sovereign immunity solely as to any claim of Tenant, Tenant Parties or a Financing Party pertaining to this Entire Agreement ("Limited Waiver") in the preferred forum of binding arbitration or in the United States District Court for the District of Nevada provided that the claim alleges an existing or threatened Default under this Entire Agreement and seeks one or more of the following: (i) some specific action, or discontinuance of some specific action (including, without limitation, a preliminary or permanent injunction) to bring Landlord into compliance with the duties and obligations expressly agreed to by Landlord under this Entire Agreement; (ii) a declaratory judgment interpreting the rights and obligations of the Disputing Parties; (iii) enforcement of any rights under this Entire Agreement; or (iv) damages, which shall be

limited in accordance with the Limitation of Liability provision under Section 29.06, including attorneys' fees and costs to the extent permitted by Section 29.11. Landlord also expressly and irrevocably grants a limited waiver of its sovereign immunity with respect to proceedings in federal or state courts located in Nevada with territorial jurisdiction over Clark County, but solely to the extent necessary to compel Landlord to participate in arbitration, or to enforce the arbitration award. This Limited Waiver does not allow recovery from Landlord of consequential, incidental, special, punitive or exemplary damages or lost profits, nor recovery from any appointed or elected officials, officers or employees of Landlord for any monetary damages whatsoever. Landlord further covenants and agrees it shall not move for an exhaustion or tribal court remedies or apply to Tribal Court or any other tribal forum for resolution of any claim or proceeding relating to or arising under this Entire Agreement. In any legal action or proceeding as to which Landlord has waived its sovereign immunity as set forth in this Section, Landlord irrevocably agrees that process against it shall be effective if served on Landlord's chairperson or his or her legally-authorized designee.

(D) Landlord covenants and agrees that its limited waiver of sovereign immunity and other waivers and agreements contained herein are valid, binding, enforceable and irrevocable, notwithstanding any future changes in the structure or composition of Landlord's tribal government, and agrees not to revoke or seek to revoke, repudiate or further limit, in whole or in part, any of such waivers or agreements. These covenants are set forth in Landlord's duly-executed Tribal Resolution, which is attached hereto as Schedule 15.01(G).

(E) In the event Landlord (i) revokes, further limits or attempts to revoke or further limit the limited waiver of sovereign immunity contained herein, (ii) takes any action which is inconsistent with the such waivers or (iii) fails to submit to the dispute resolution forums and governing law provided for in this Section, the Parties recognize and agree that (A) there remains no adequate remedy at law available, (B) there will be irreparable injury upon any revocation or further limitation of these waivers and agreements, and (C) Landlord hereby consents to the entry of appropriate injunctive relief, consistent with the terms of the Entire Agreement, without the need to prove that actual damages or monetary relief would not be an adequate remedy and without having to post a bond. In such event, an affected party may immediately seek judicial injunctive relief in the dispute resolution forums authorized herein.

(F) To the extent necessary, the Parties agree that this Entire Agreement comports with any applicable requirements of the Moapa Commercial Transactions Ordinance, and as such, enjoys any privileges or immunities set forth in said Ordinance.

(G) Specific Agreement to Arbitration Provisions. By initialing below, Landlord and Tenant each grant and confirm their specific authorization to submit disputes arising under this Lease to arbitration upon, and subject to the terms and conditions of, this Section 29.18. Landlord and Tenant each specifically acknowledge that such Party has thoroughly reviewed this Section 29.18 with counsel of its choosing, and each of Landlord and Tenant voluntarily grant such Party's specific authorization to these arbitration provisions through this paragraph, which serves to confirm that such Party has affirmatively agreed to the arbitration provisions set forth in this Section 29.18. For the purpose of clarity, each Party has affirmatively agreed to the arbitration provisions set forth in this Section 29.18, and each

Party intends that this paragraph, and the specific acknowledgements below, satisfy the requirements of NRS 597.995(1).

Landlord's Acknowledgement: _____

Tenant's Acknowledgement: _____

29.19 Government Savings Clause. Each of the Parties agrees to execute, deliver, and, if necessary, to record any and all additional instruments, certifications, amendments, modifications and other documents as may be required by the United States Department of the Interior, Bureau of Indian Affairs, Bureau of Land Management, the Office of the Solicitor, any Tribal regulatory agency, any Governmental Authority, or any Laws in order to effectuate, complete, perfect, continue or preserve the respective rights, obligations and interests of the Parties hereto to the fullest extent permitted by Laws; provided, that any such additional instrument, certification, amendment, modification or other document shall not materially change the respective rights, remedies or obligations of Landlord or Tenant under this Lease or any other agreement or document related hereto.

29.20 Interests of Members of Congress. No member of, or delegate to, Congress or resident commissioner of the U.S. House of Representatives shall be admitted to any share or part of this Lease or to any benefit that may arise herefrom. Notwithstanding the foregoing, this provision shall not be construed to extend to a corporation or company for its general benefit.

29.21 Approvals, Consents and Determinations. Any provision of this Lease that requires the approval or consent of either Party, or that requires a determination to be made by either Party shall be read to mean that such consent, approval or determination shall not be unreasonably withheld, conditioned or delayed. Where Landlord's approval is required for any Plans, Tenant shall provide such Plans to Landlord, with a cover letter stating that under this Section, Landlord has fifteen (15) Business Days to either approve or disapprove such Plans. If Landlord fails to so approve or disapprove such Plans during such 15-Business Day period, such failure shall be deemed approval by Landlord of such Plans.

29.22 Economic Neutrality of New Tribal Laws. During the Term of the Lease, should Landlord or any agency or political subdivision of Landlord enact, adopt or enforce any Taxes or other Tribal Laws imposing an economic burden or financial obligation in addition to or greater than those contemplated by this Lease and the Tribal Agreement set forth as Exhibit J (any such adoption or enforcement, a "New Tribal Law"), Tenant may, after providing Landlord with thirty (30) days' written notice and documentation substantiating the claimed increased economic burden or financial obligation, offset the marginal amount of such economic burden or financial obligation solely attributable to such New Tribal Law (such amount, the "Increased Financial Obligation") from other amounts owed Landlord. Attached hereto as Schedule 29.22 is a list of all Tribal Laws applicable to the Lease in effect as of the Effective Date. Any Tribal Law not identified in Schedule 29.22 shall be deemed a New Tribal Law for purposes of this Section, to the extent the adoption or enforcement thereof shall impose an Increased Financial Obligation. This provision shall not apply to the extent that a New Tribal Law would result in an economic burden which is the same that Tenant would bear if the project were located immediately off of Landlord's Reservation in Clark County, Nevada.

IN WITNESS WHEREOF, the Parties hereto have executed this Lease as of the Effective Date.

LANDLORD:

THE MOAPA BAND OF PAIUTE INDIANS,
a federally recognized Indian tribe

By: _____
Name: _____
Title: _____

TENANT:

325MK 8ME LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

APPROVED:

The foregoing Solar Energy Ground Lease Agreement, and all attachments thereto, are hereby approved pursuant to, as applicable, 25 U.S.C. § 415, 25 U.S.C. § 323, 25 U.S.C. § 81, 25 C.F.R. Part 162 and 25 C.F.R. Part 169 under delegated authority of 209 DM 8, 230 DM I, and 3 IAM 4.

UNITED STATES DEPARTMENT OF THE INTERIOR

Approval Dated: _____20__

By: _____
Name: _____
Title: _____

LANDLORD'S ACKNOWLEDGEMENT

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on _____, 2020 by
_____ as _____ of The Moapa Band of Paiute Indians, a
federally recognized Indian tribe.

(Signature of Notarial Officer)

(Seal)

TENANT'S ACKNOWLEDGEMENT

STATE OF _____

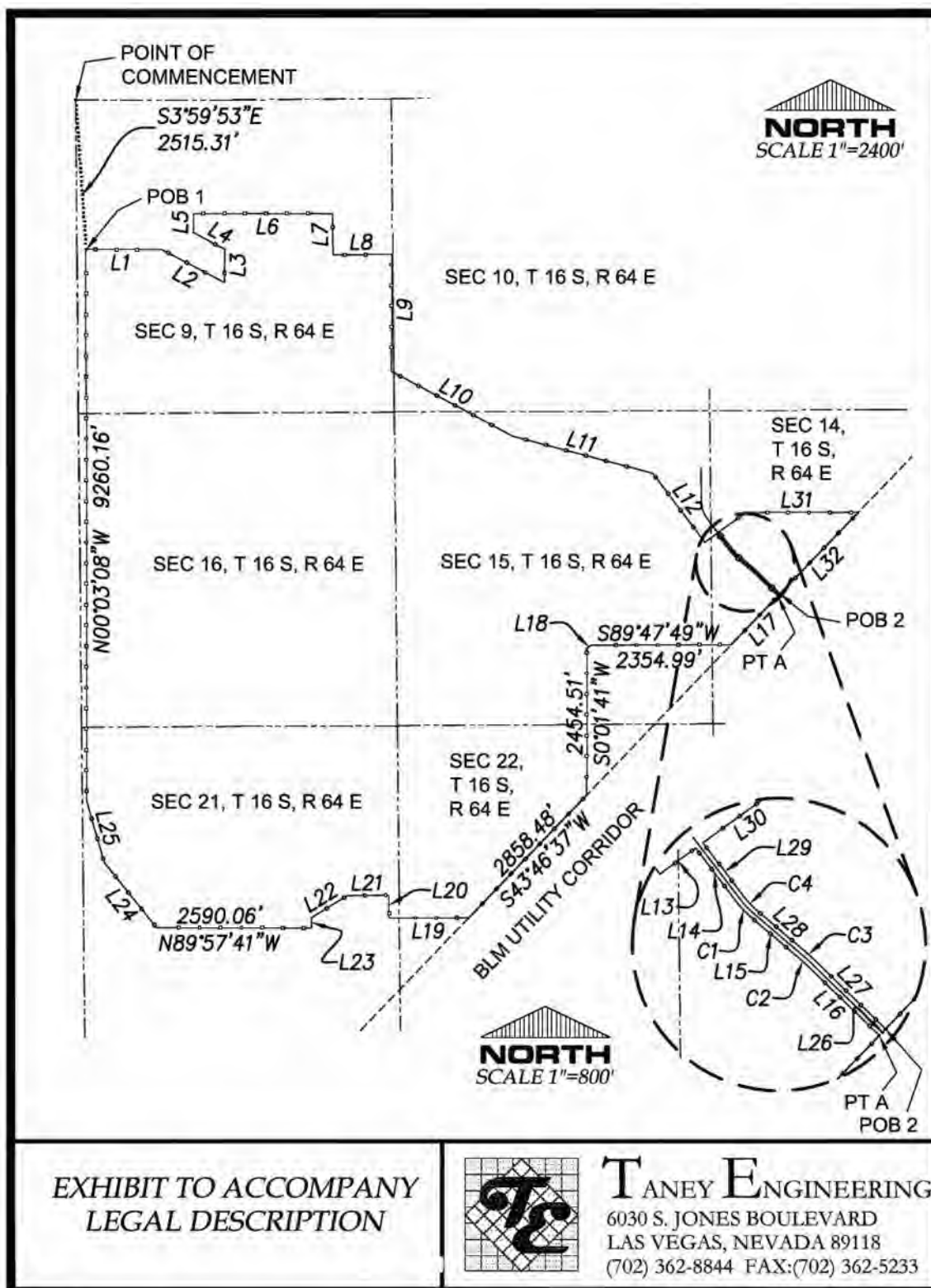
COUNTY OF _____

This instrument was acknowledged before me on _____, 2020 by _____ as _____ of 325MK 8me LLC, a Delaware limited liability company.

(Signature of Notarial Officer)

(Seal)

EXHIBIT A-1
DEPICTION OF PREMISES



SOUTH			NORTH		
LINE NO.	BEARINGS	LENGTH	LINE NO.	BEARINGS	LENGTH
L1	S89°01'00"E	1000.00	L17	S89°01'00"E	1000.00
L2	S62°11'30"E	1190.24	L18	S45°29'54"W	88.86
L3	N68°45'05"E	555.67'	L19	N05°51'50"W	1237.66'
L4	N01°47'20"W	600.00	L20	N01°47'24"E	300.20
L5	N0°09'40"E	318.40'	L21	S80°11'09"W	701.00'
L6	S88°51'42"E	1000.00	L22	S88°51'42"W	1000.00
L7	S0°55'21"E	694.12'	L23	S0°09'22"E	172.09'
L8	N00°11'18"E	878.95'	L24	N38°18'58"W	1000.00'
L9	S0°06'33"W	1900.00	L25	N15°57'08"W	1084.74
L10	S61°59'47"E	734.95'	L26	N43°46'37"E	50.00'
L11	S75°05'07"E	2117.11	L27	N15°17'00"W	875.12
L12	S37°01'38"E	1450.79'	L28	N49°32'17"W	366.67'
L13	S89°01'00"E	1000.00	L29	S89°01'00"E	1000.00
L14	S37°10'59"E	380.69	L30	N53°55'43"E	544.44
L15	S10°20'47"E	755.57'	L31	S89°01'50"W	1000.00'
L16	S45°47'00"E	575.75	L32	S45°40'37"W	1004.50
EXHIBIT TO ACCOMPANY			TAXES		
LEGAL DESCRIPTION			TAXES		
			(702) 362-8844 FAX (702) 362-5233		

CURVE TABLE				
CURV NO.	DELTA	RADIUS	LENGTH	TANGENT
C1	12°21'21"	525.00'	113.22'	56.83'
C3	3°44'21"	525.00	34.26	17.14
C4	30°12'01"	475.00'	302.43'	51.42'

EXHIBIT A-2

LEGAL DESCRIPTION OF PREMISES

A PORTION OF SECTIONS 9, 10, 14, 15, 16, 21 AND 22, ALL WITHIN TOWNSHIP 16 SOUTH, RANGE 64 EAST OF THE MOUNT DIABLO MERIDIAN, CLARK COUNTY, NEVADA, DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 9; THENCE SOUTH 03°59'53" EAST, 2515.31 FEET TO THE **POINT OF BEGINNING** THENCE SOUTH 89°51'52" EAST, 1265.71 FEET; THENCE SOUTH 62°11'30" EAST, 1190.24 FEET; THENCE NORTH 00°45'25" EAST, 555.67 FEET; THENCE NORTH 61°47'26" WEST, 606.85 FEET; THENCE NORTH 00°09'40" EAST, 318.49 FEET; THENCE SOUTH 89°54'42" EAST, 2333.78 FEET; THENCE SOUTH 00°55'21" EAST, 694.12 FEET; THENCE NORTH 89°41'10" EAST, 978.95 FEET; THENCE SOUTH 00°06'33" WEST, 1960.06 FEET; THENCE SOUTH 61°52'47" EAST, 2314.86 FEET; THENCE SOUTH 75°06'57" EAST, 2417.44 FEET; THENCE SOUTH 37°01'38" EAST, 1450.79 FEET; THENCE NORTH 53°56'43" EAST, 255.58 FEET; THENCE SOUTH 35°53'20" EAST, 368.19 FEET TO

A POINT OF CURVATURE; THENCE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 525.00 FEET, THROUGH A CENTRAL ANGLE OF 13°38'56", AN ARC DISTANCE OF 125.07 FEET; THENCE SOUTH 49°32'17" EAST,

367.26 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 475.00 FEET, THROUGH A CENTRAL ANGLE OF 03°44'21", AN ARC DISTANCE OF 34.26 FEET; THENCE SOUTH

45°47'56" EAST, 579.79 FEET TO A POINT ON THE NORTHWEST LINE OF THE UTILITY CORRIDOR AS DEPICTED ON THE

BUREAU OF LAND MANAGEMENT SURVEY OF TOWNSHIP 16 SOUTH, RANGE 64 EAST, OF THE MOUNT DIABLO MERIDIAN, NEVADA, APPROVED BY THE CHIEF CADASTRAL SURVEYOR ON AUGUST 13, 1990, SAID POINT HEREINAFTER REFERED TO AS POINT A; THENCE ALONG SAID NORTHWEST LINE OF THE UTILITY CORRIDOR, SOUTH 43°46'37" WEST, 1133.20 FEET; THENCE SOUTH 89°47'49" WEST, 2354.99 FEET; THENCE SOUTH 45°29'54" WEST, 88.86 FEET; THENCE SOUTH 00°01'41" WEST, 2454.51 FEET TO A POINT ON SAID NORTHWEST LINE OF THE UTILITY CORRIDOR; THENCE ALONG SAID NORTHWEST LINE OF THE UTILITY CORRIDOR, SOUTH 43°46'37" WEST, 2858.48 FEET; THENCE NORTH 89°54'59" WEST, 1333.66 FEET; THENCE NORTH 00°14'24" EAST, 380.23 FEET; THENCE SOUTH 89°13'09" WEST, 701.99 FEET; THENCE SOUTH 58°24'05" WEST, 704.96 FEET; THENCE SOUTH 00°09'22" EAST, 172.09 FEET; THENCE NORTH 89°57'41" WEST, 2590.06 FEET; THENCE NORTH 38°42'52" WEST, 1402.20 FEET; THENCE NORTH 15°57'08" WEST, 1084.74 FEET; THENCE NORTH 00°03'08" WEST, 9260.16 FEET TO THE **POINT OF BEGINNING**.

TOGETHER WITH THE FOLLOWING DESCRIBED PARCEL:

COMMENCING FROM THE AFOREMENTIONED POINT A, SAID POINT BEING ON SAID NORTHWEST LINE OF THE UTILITY CORRIDOR AS DEPICTED ON THE BUREAU OF LAND MANAGEMENT SURVEY OF TOWNSHIP 16 SOUTH, RANGE 64 EAST, OF THE

MOUNT DIABLO MERIDIAN, NEVADA, APPROVED BY THE CHIEF CADASTRAL SURVEYOR ON AUGUST 13, 1990; THENCE ALONG SAID NORTHWEST LINE, NORTH $43^{\circ}46'37''$ EAST, 50.00 FEET TO THE **POINT OF**

BEGINNING; THENCE NORTH $45^{\circ}47'56''$ WEST, 579.42 FEET TO A POINT OF CURVATURE; THENCE ALONG THE ARC OF A CURVE TO THE LEFT, HAVING A RADIUS OF 525.00 FEET, THROUGH A CENTRAL ANGLE OF $03^{\circ}44'21''$, AN ARC

DISTANCE OF 34.26 FEET; THENCE NORTH $49^{\circ}32'17''$ WEST, 367.26 FEET TO A POINT OF CURVATURE; THENCE

ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 475.00 FEET, THROUGH A CENTRAL ANGLE OF $13^{\circ}38'56''$, AN ARC DISTANCE OF 113.15 FEET; THENCE $35^{\circ}53'20''$ WEST, 368.33 FEET; THENCE NORTH $53^{\circ}56'43''$

EAST, 536.13 FEET TO A POINT ON SAID NORTHWEST LINE OF THE UTILITY CORRIDOR; THENCE ALONG SAID NORTHWEST LINE OF THE UTILITY CORRIDOR, SOUTH $89^{\circ}49'59''$ WEST, 1894.30 FEET TO THE **POINT OF BEGINNING.**

PARCEL CONTAINS 2,098.27 ACRES, MORE OR LESS.

STEVEN M DUMOVICH, PLS
NEVADA CERTIFICATE NO. 14347
TANEY ENGINEERING
6030 S JONES BLVD
LAS VEGAS, NEVADA 89118
702.362.8844



EXHIBIT A-3**DEPICTION OF RESTRICTED AREAS**

Reference is made to the legal description of the Premises set forth in Exhibit A-2, which is incorporated herein by reference, fully as if such legal description were set forth in this Exhibit A-3, and the entirety of such Premises shall constitute the Restricted Areas.

EXHIBIT B**FORM OF LETTER OF CREDIT**

[BANK LETTERHEAD]

_____, 20____

IRREVOCABLE, UNCONDITIONAL LETTER OF CREDIT NO. ____

The Moapa Band of Paiute Indians
 1 Lincoln Street
 P.O. Box 340
 Moapa, NV 89025
 Attn: Tribal Chair

Gentlemen:

_____, a _____ (“**Bank**”) **[PLEASE PROVIDE NAME OF BANK]**, of _____, _____ hereby issues its Irrevocable, Unconditional Standby Letter of Credit in favor of THE MOAPA BAND OF PAIUTES, a federally recognized Indian Tribe (“**Tribe**”), for the account of _____, a _____ (“**Tenant**”), up to the aggregate amount of _____ and No/100ths Dollars (\$_____) (US Dollars), available at sight by the drafts of the Tribe on the Bank. Drafts drawn on this Letter of Credit will be honored when presented, accompanied only by a letter or certificate purportedly signed by a member of the board of directors of the Tribe or the tribal administrator stating that the Tribe is entitled to draw on this Letter of Credit under the terms of the Solar Energy Ground Lease Agreement dated as of _____, 20____, between the Tribe and Tenant (the “**Lease**”). Multiple and partial draws shall be permitted hereunder. This Letter of Credit is transferable in whole or in part. The Bank shall look solely to Tenant for payment of any fee for such transfer. Such payment is not a condition to transfer.

The Bank shall be entitled (and required) to rely upon the statements contained in the above-described letter or certificate and will have no obligation to verify the truth of any statements set forth therein.

The Bank hereby agrees with drawers, endorsers, and bona fide holders of this Letter of Credit that all drafts drawn by reason of this Letter of Credit and in accordance with the above conditions, will meet with due honor when presented at the office of the Bank in Clark County, Nevada.

The obligations of the Bank shall not be subject to any claim or defense by reason of the invalidity, illegality, or inability to enforce any of the agreements set forth in the Lease.

This Letter of Credit is subject to the International Standby Practices–ISP98, International Chamber of Commerce Publication 590 when not in conflict with the express terms of this Letter of Credit.

This Letter of Credit shall terminate at 3:00 p.m. Pacific Time on _____ *[Insert date 120 days following scheduled expiration of the Term]* which shall be the final expiration date of this Letter of Credit, unless, at least 60 days prior to the then current expiration date, we notify you in writing by certified mail, return receipt requested, at the following address (or at such other address as you may specify by written notice to us), that this Letter of Credit will not be extended beyond the current expiration date; provided, that our obligation to make any payment hereunder in respect of a drawing request made prior to the expiry hereof shall continue until payment is made:

The Moapa Band of Paiute Indians
 1 Lincoln Street
 P.O. Box 340
 Moapa, NV 89025
 Attn: Tribal Chair

Amounts drawn upon this Letter of Credit are to be endorsed on the reverse side of this Letter of Credit by the negotiating bank.

By: _____
 Name: _____
 Title: _____

EXHIBIT C**FORM OF CERTIFICATE OF COMMENCEMENT****CERTIFICATE OF COMMENCEMENT**

THIS CERTIFICATE OF COMMENCEMENT (this “Certificate”) is made this ____ day of _____, 20____, by and between THE MOAPA BAND OF PAIUTE INDIANS (“Landlord”) and _____ (“Tenant”).

WITNESSETH:

WHEREAS, Landlord and Tenant entered into a Solar Energy Ground Lease Agreement, dated as of _____ (the “Lease”); and

WHEREAS, it is the desire of the parties hereto pursuant to the Lease to confirm the Operations Commencement Date and other dates pursuant to the Lease in compliance with Section 4.03(A) of the Lease. All capitalized terms used in this Certificate and not otherwise defined herein shall have the meaning as set forth in the Lease.

NOW, THEREFORE, in consideration of the rents received and covenants and conditions more particularly set forth in the Landlord and Tenant do hereby covenant, promise and agree as follows:

1. The Operations Commencement Date occurred on _____.
2. The Initial Operations Term will expire on _____.
3. Tenant shall have until _____ to provide the Option Notice to exercise the Extended Operations Term.

This Certificate shall extend to and be binding upon the parties hereto and their legal representatives, heirs, successors and assigns. This Certificate is executed by the parties solely for the purpose of providing a record of the dates set out in items 1 through 3 above. Nothing in this Certificate is intended to change or modify the rights of the parties under the Lease.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the parties, by their duly authorized representatives, have executed this Certificate as of the day and year first above written.

LANDLORD:

THE MOAPA BAND OF PAIUTE INDIANS,
a federally recognized Indian tribe

By: _____
Name: _____
Title: _____

TENANT:

_____,
a _____

By: _____
Name: _____
Title: _____

EXHIBIT D

TERO COMPLIANCE PLAN

I. Services Subcontracts

During the term of the Lease, Tenant shall identify in writing all proposed contracts to be entered into by Tenant in amounts in excess of \$25,000 for work to be performed on the Reservation that will not be performed by employees of Tenant or employees of Tenant's Affiliates, and the material aspects of such work to be performed ("Lease Subcontract" and the provider performing the Lease Subcontract a "Lease Subcontractor"). This identification of Lease Subcontracts by Tenant ("Lease Subcontractors Designation") shall be submitted to the Moapa Tribal Employment Rights Ordinance Officer ("TERO Officer") as soon as commercially reasonable, but in no event less than thirty (30) days prior to the time such work on the Reservation is scheduled to commence. For the purpose of this Section I, Tenant's Contractor and the Contractor's subcontractors are not considered Tenant's Affiliates, and any Lease Subcontract with the Tenant's Contractor or the Contractor's subcontractor should be included in the Lease Subcontractors Designation.

The Lease Subcontractors Designation shall include:

1. The projected number of employees for each Lease Subcontract.
2. The projected number of manhours for each classification of employee necessary to complete the Lease Subcontract.
3. A job description for each classification of employee necessary to complete the Lease Subcontract, including technical qualifications and necessary certifications.
4. The proposed method of Lease Subcontractor selection, including:
 - a. Any request for proposals, bids, or qualifications used by Tenant
 - b. Any screening criteria used by Tenant

Within fifteen (15) days of receipt of the Lease Subcontractors Designation, the TERO Officer shall determine if there are registered Moapa Indian-Owned Businesses that can perform any of the Lease Subcontracts and shall notify the Tenant in writing of this determination ("Subcontract TERO List"). If the TERO Officer fails to submit the Subcontract TERO List to Tenant within such fifteen (15) day period, Tenant will be deemed to have met its TERO obligations for the Lease Subcontractors Designation associated with such Subcontract TERO List. This will not preclude Tenant from continuing to consult with TERO Officer regarding the Lease Subcontractors Designation, at the discretion of Tenant. For the purposes of this Compliance Plan, the term "Moapa Indian-Owned Business" is a business that is at least fifty percent (50%) owned by an enrolled member of a federally recognized Indian tribe and whose principal place of business is located within a fifty (50) mile radius of the Premises leased to Tenant.

The Subcontract TERO List shall include:

1. The registered Moapa Indian-Owned Business name, address, telephone number and contact information.
2. The business background and expertise of the Moapa Indian-Owned Business, including any technical qualifications and certifications.
3. The projected number of qualified individuals that can be provided by the Moapa

Indian-Owned Business for each Lease Subcontract.

4. The projected work or portion of work in the Lease Subcontract that can be performed by the Moapa Indian-Owned Business.

Upon receipt of the Subcontract TERO List, the Tenant shall contact each registered Moapa Indian-Owned Business identified on the List. The Moapa Indian-Owned Business will be invited to: (a) participate in any request for proposals, bids or qualifications used by Tenant for the Lease Subcontract; or (b) otherwise participate in the bidding and selection process utilized by Tenant to hire subcontractors for the Lease Subcontract.

The Tenant shall:

1. Give preference to any Moapa Indian-Owned Business that Tenant determines is qualified to perform the work or a portion of the work in accordance with a Lease Subcontract if the Moapa Indian-Owned Business has proposed performing the work on terms materially similar to and for a price that: (a) matches the price and terms proposed by the bidder that Tenant would otherwise select for the work, or; (b) is below the price and has better terms than those proposed by the bidder that Tenant would otherwise select for the work, or (c) is no more than three percent (3%) above the price proposed by the bidder and has at least as favorable terms as those from the bidder that Tenant would otherwise select for the work;
2. Duly consider the recommendations of the TERO Officer in: (a) the selection and hiring of any Moapa Indian-Owned Business that otherwise satisfies the requirements for performing subcontract work in accordance with this Compliance Plan, and (b) training programs and specialized instruction designed to increase the number of Moapa Indian-Owned Businesses qualified to perform subcontract work for Tenant.

In no event shall a Lease Subcontractor be hired to perform a Lease Subcontract without Tenant first complying with the requirements of this Compliance Plan.

For each Moapa Indian-Owned Business identified on the Subcontract TERO List, the Tenant will submit a report to the TERO Officer that identifies: a) whether the Moapa Indian-Owned Business was hired by the Tenant to perform work on the Lease Subcontract, and; b) if the Moapa Indian-Owned Business was not selected, the specific factors or criteria utilized by the Tenant in choosing the successful subcontractor.

II. Goods Contracts

During the term of the Lease, Tenant shall identify in writing all goods that will be purchased by Tenant for use on the Reservation and all material terms applicable to the acquisition of such goods ("Lease Goods Contract"). This identification of Lease Goods Contracts by Tenant ("Lease Goods Contracts Designation") shall be submitted to the TERO Officer as soon as commercially reasonable prior to the purchase of such goods. This Paragraph II shall not apply to solar panels and other principal components of the Project, items that are governed by unique specifications or specialized technology, or other items that by their nature would be supplied by Tenant, Tenant's Affiliates, Tenant's Contractor, or a principal subcontractor thereof, or to contracts for goods

totaling less than \$10,000 per contract. For the purposes of this Compliance Plan, the term “Moapa Indian-Owned Business” is a business that is at least fifty percent (50%) owned by an enrolled member of a federally recognized Indian tribe and whose principal place of business is located within a fifty (50) mile radius of the Premises leased to Tenant.

The Lease Goods Contracts Designation shall include:

1. A description of the specific goods that will be purchased by Tenant, including any technical specifications.
2. The projected total cost of the goods.
3. The proposed method of provider selection, including:
 - a. Any request for proposals or bids used by Tenant
 - b. Any screening criteria used by Tenant
4. The material terms of the procurement agreement.

Within fifteen (15) days of receipt of the Lease Goods Contracts Designation, the TERO Officer shall determine if there are registered Moapa Indian-Owned Businesses that can supply any of the goods and will notify the Tenant in writing of this determination (“Subcontract TERO Goods List”). If the TERO Officer fails to submit the Subcontract TERO Goods List to Tenant within such fifteen (15) day period, Tenant will be deemed to have met its TERO obligations for the Lease Goods Contracts Designation associated with such Subcontract TERO Goods List. This will not preclude Tenant from continuing to consult with TERO Officer regarding the Lease Goods Contracts Designation, at the discretion of Tenant.

The Subcontract TERO Goods List shall include:

1. The registered Moapa Indian-Owned Business name, address, telephone number and contact information.
2. The business background and expertise of the Moapa Indian-Owned Business, including any technical qualifications and certifications.
3. The goods or portion of the goods that can be supplied by the Moapa Indian-Owned Business.

Upon receipt of the Subcontract TERO Goods List, the Tenant shall contact each registered Moapa Indian-Owned Business identified on the List. The Indian-owned business will be invited to: (a) participate in any request for proposals or bids used by Tenant for the Lease Goods Contract; or (b) otherwise participate in the bidding and selection process utilized by Tenant to supply goods under a Lease Goods Contract.

The Tenant shall:

1. Give preference to any Moapa Indian-Owned Business that Tenant determines is qualified to provide goods in accordance with a Lease Goods Contract if the Moapa Indian-Owned Business has proposed providing the goods on terms materially similar to and for a price that: (a) matches the price and terms proposed by the bidder that Tenant would otherwise select, or; (b) is below the price and has better terms than those proposed by the bidder that Tenant would otherwise select, or; (c) is no more than three percent (3%) above the price proposed by the bidder and has

at least as favorable terms as those from the bidder that Tenant would otherwise select.

2. Duly consider the recommendations of the TERO Officer in: (a) the selection and hiring of any Moapa Indian-Owned Business to provide goods if such business otherwise satisfies the requirements for performing subcontract work in accordance with this Compliance Plan, and (b) training programs and specialized instruction designed to increase the number of Moapa Indian-Owned Businesses qualified to provide goods to Tenant.

In no event shall a provider be selected to provide goods under a Lease Goods Contract without Tenant first complying with the requirements of this Compliance Plan.

For each Moapa Indian-Owned Business identified on the Subcontract TERO Goods List, the Tenant will submit a report to the TERO Officer that identifies: a) whether the Moapa Indian-Owned Business was utilized by the Tenant to provide goods under an Lease Goods Contract, and; b) if the Indian-owned business was not selected, the specific factors or criteria utilized by the Tenant in choosing the successful provider.

III. Employment

It is a key goal of Tenant and Landlord that the construction and operation of the Project should maximize on-reservation employment and training opportunities for members of the Moapa Band of Paiutes (the “Tribe”) and members of other Indian tribes. To this end, to the extent that work relating to the Project is to be performed on the Reservation, Tenant shall coordinate closely with the Tribe’s TERO Officer to assure that all employment and training opportunities relating to the Project, including opportunities with Tenant’s contractors and subcontractors, are made reasonably available to qualified members of the Tribe. Tenant shall use commercially reasonable efforts to actively recruit members of the Tribe for employment and training by Tenant and its contractors and subcontractors, and shall promote and facilitate cooperation among Tenant, its contractors and subcontractors, officials of relevant unions and the Tribe’s TERO Officer to maximize such opportunities. Without limiting the aforementioned obligations, except to the extent that such actions may be barred under other provisions of this TERO Compliance Plan, Tenant shall, within 90 days of the Effective Date of the Lease, provide to the Tribe’s TERO Officer a detailed report setting forth all expected employment opportunities for work relating to the Project to be performed on the Reservation (the “Expected Hiring Report”). The Expected Hiring Report shall include, to the extent available and to the best of Tenant’s knowledge with respect to the employment opportunities of its contractors and subcontractors: the nature of the opportunities, duties, qualifications, rate of pay, benefits, application deadline, and start date, and any other information needed so Tribal members may be notified of any anticipated employment opportunities relating to the Project to be performed on the Reservation. The Expected Hiring Report shall thereafter be updated no less frequently than quarterly. Notwithstanding the foregoing, the Parties acknowledge that the Expected Hiring Report only sets forth those employment opportunities that Tenant, in reasonable consultation with its contractors and subcontractors, expects will arise at the time of preparation of the Expected Hiring Report, and Tenant and its contractors and subcontractors may hire for opportunities not previously set out on the Expected Hiring Report as may be necessary in connection with the Project, and in such

instances Tenant shall promptly provide the relevant details of the opportunity to the Tribe's TERO Officer.

IV. Fees

During the Term of the Lease Tenant shall pay the Tribe the following Tribal Employee Rights Ordinance Compliance ("TERO Compliance") fee per year which shall be Additional Rent under the Agreement to which this Compliance Plan is attached: (i) prior to Substantial Completion, the annual TERO Compliance fee of seventy five dollars (\$75) per acre of the Premises, which fee shall increase by three percent (3%) annually; and (ii) after Substantial Completion, the annual TERO Compliance fee shall be fifty dollars (\$50) per acre of the Premises, which fee shall increase by three percent (3%) annually. This payment will be made in lieu of the 2.5% TERO tax pursuant to Tribal Law. The first payment shall be paid within forty five (45) days after the Agreement is signed by the Tenant and every year thereafter on the anniversary of the Effective Date of the Agreement.

Each Lease Subcontractor must pay the Tribe a one-time fee of five hundred dollars (\$500) before it may begin work on behalf of the Tenant. This fee will be waived for any Moapa Indian-Owned Business selected to provide services to Tenant. Tenant shall include notice of this fee in all requests for proposals or bids.

V. Supremacy

This Compliance Plan sets forth all requirements on Tenant with respect to services subcontracts, goods contracts and employment in compliance with the Tribal Employment Rights Ordinance, Indian Preference Regulations and other current or future employment ordinances and regulations. To the extent there are any inconsistencies between the provisions of this Compliance Plan and the provisions of the Tribal Employment Rights Ordinance, Indian Preference Regulations or other current or future employment ordinances and regulations, the provisions of this Compliance Plan shall control (provisions of the Compliance Plan, the TERO Ordinance and other employment ordinances collectively referred to in this Section V as "TERO Rules"). The term "Tenant" as used in this Compliance Plan shall include Tenant's subcontractors.

In order for Tenant to obtain a power purchase agreement ("PPA"), it must agree to abide by certain union rules that would apply during the construction period. The offtaker under the PPA is also bound to follow certain union rules and Minority Business Enterprises ("MBE") and Women Business Enterprises ("WBE") rules in its operations. Tenant is also required to observe certain MBE / WBE rules during the term of the PPA and may be required to observe certain union rules during the operation of the Project. Accordingly, to the extent that there are any inconsistencies between the TERO Rules and (i) union rules that apply to construction of the Project; or (ii) union rules and MBE / WBE rules that apply to an offtaker's operations in the event that the offtaker acquires the Project from Tenant; or (iii) MBE/WBE rules that apply or union rules that may apply during the term of the PPA (collectively "PPA Rules"), Tenant shall provide written notice of such inconsistency to the TERO Officer and the Chairman of the Tribe (the "PPA Notice"). The PPA Notice shall include the provision of the PPA Rules inconsistent with this Compliance Plan, along with a detailed summary of the services or goods likely to be affected by this inconsistency. The PPA Notice will be filed with the TERO Officer and will control and

Tenant (or offtaker if an offtaker acquires the Project) shall be deemed to have complied with the requirements of the TERO Rules to the extent that it adheres to such PPA Rules identified in the PPA Notice.

EXHIBIT E

INSURANCE REQUIREMENTS

Tenant's Contractor and its subcontractors shall not commence work until each of them has obtained all insurance referred to herein and provided proof as set forth herein and has been approved by Landlord. At Tenant's sole risk and discretion, Contractor and subcontractor coverage limits may be consistent with their scope of work, size of their Site workforce and any other relevant risk factors Tenant deems appropriate.

Tenant's Contractor and its subcontractors shall secure, pay for and maintain the following insurance policies in full force and effect throughout the time during which they are engaged to perform any services for the Tenant Work that such insurance coverages are required of Tenant:

(1) Property insurance upon all tools, material and equipment (owned, borrowed or leased by the Contractor the subcontractors or any of their employees) to the full replacement value thereof during the Term. This insurance shall insure against damage or loss caused by fire and all other perils covered by a standard "All Risk" insurance policy. Failure of the Contractor and its subcontractors to secure and maintain adequate coverage shall not obligate Landlord or its agents or employees for any losses.

(2) Unless and until Landlord adopts and promulgates its own worker's compensation laws, worker's compensation & employer's liability insurance affording coverage under the workers compensation Laws of the State of Nevada, irrespective of whether the State of Nevada has authority unilaterally to impose such Laws on Tenant's Contractor and its subcontractors on the Reservation. Although not hereby conceding the applicability of such Laws as a matter of law to Tenant's Contractor and its subcontractors on the Reservation, Tenant's Contractor and its subcontractors shall take all reasonable actions via cooperative agreement with the State of Nevada or other available means to arrange for and facilitate the application of such Laws to Tenant's Contractor and its subcontractors on the Reservation and the administration thereof by the State of Nevada. At such time as Landlord adopts and promulgates its own worker's compensation Laws, Tenant agrees to comply, and to cause Tenant's Contractor and its subcontractors to comply, with the same. Required Employers liability limits are \$500,000 per injury/disease/accident.

(3) Commercial general liability insurance for limits of \$3,000,000 per occurrence and \$15,000,000 in the aggregate (per project) inclusive of personal and advertising injury, contractual liability, and products/completed operations. The policy shall be written on an occurrence basis with deductibles in accordance with industry standards. Umbrella or excess liability coverages may be used to supplement primary coverage to meet the required limits. Contractor and its subcontractors shall be responsible for all claims within any deductible.

(4) Automobile liability insurance for bodily injury and property damage in the amount of \$10,000,000 combined and covering all owned, non-owned and hired vehicles, if autos are to be used on the job. Umbrella or excess liability coverages may be used to supplement primary coverage to meet the required limits.

(5) Umbrella liability insurance at not less than a \$15,000,000 limit providing excess coverage over all limits and coverages noted in paragraph (2), (3), and (4) above. This policy shall be written on an "occurrence" basis.

All policies noted above shall be issued and underwritten by solvent companies licensed to transact business in the State of Nevada with a general policyholders' rating of not less than A-VIII as rated in the most recent edition of Best's Insurance Reports or any successor reporting service. In addition, all policies shall be endorsed to name each of Tenant, Landlord and the BIA as an "additional insured". Definition of "additional insured" shall include all partners, officers, directors, employees, subsidiaries, agents and representatives of the named entities, and each of their successors and assigns as their interests may appear. Further, coverage for the "additional insured" shall apply on a primary basis irrespective of any other insurance, whether collectible or not.

EVIDENCE (NOTICES) OF COMPLIANCE

All policies shall be endorsed to provide that in the event of cancellation, non-renewal or material modification, Landlord shall receive at least thirty (30) days written notice thereof (or, if any deviation from such notice or coverage requirements has been approved in advance in a writing signed by Landlord, then in accordance with such deviation, Landlord's approval of such deviation not to be unreasonably withheld and it shall be unreasonable for Landlord to withhold approval if the provision in this notice section is not generally and commercially available in the insurance market).

Contractor shall furnish Landlord and the BIA with Certificates of Insurance evidencing compliance with all insurance provisions noted above no later than five (5) days prior to commencement of any portion of Tenant Work.

EXHIBIT F

FORM OF MEMORANDUM OF LEASE

APN(S): _____

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

[_____]

[_____]

[_____]

Attn: [_____]

(Space Above for Recorder's Use Only)

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE (this "Memorandum") is made and entered into as of _____, 20__, by and between the Moapa Band of Paiutes, a federally recognized Indian Tribe ("Landlord"), and _____ ("Tenant").

1. Lease. Pursuant to that certain Solar Energy Ground Lease Agreement, dated of even date herewith, by and between Landlord and Tenant (the "Lease"), Landlord leased to Tenant, and Tenant leased from Landlord, that certain real property, which constitutes a portion of the Moapa River Indian Reservation, located in Clark County, Nevada, as more particularly described in Annex A attached hereto (the "Premises"), together with certain rights related to the Premises, as more particularly described in the Lease, all subject to the terms and provisions thereof.

2. Term. As of the date of this Memorandum, the current term of the Lease is thirty-five (35) years, commencing on _____, 20__ and expiring on _____, 20__ unless extended or earlier terminated pursuant to the provisions of the Lease.

3. Notice. This Memorandum is prepared solely for the purpose of giving constructive notice of the Lease and in no way modifies the express provisions of the Lease. In the event of conflict between the terms of the Lease and this Memorandum, the terms of the Lease shall control. This Memorandum shall continue to constitute notice of the Lease, even if the Lease is subsequently amended.

4. Counterparts. This Memorandum may be executed in one or more counterparts, each of which shall be an original instrument, but all of which, when taken together, shall constitute one and the same instrument.

[Signature and acknowledgement pages follow]

IN WITNESS WHEREOF, this Memorandum has been executed as of the date first written above.

LANDLORD:

THE MOAPA BAND OF PAIUTES,
a federally recognized Indian tribe

By: _____
Name: _____
Title: _____

TENANT:

_____,

By: _____
Name: _____
Title: _____

LANDLORD'S ACKNOWLEDGEMENT

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on _____, 20__ by
_____ as _____ of _____.

(Signature of Notarial Officer)

(Seal)

TENANT'S ACKNOWLEDGEMENT

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on _____, 20__ by
_____ as _____ of _____.

(Signature of Notarial Officer)

(Seal)

ANNEX A TO MEMORANDUM OF LEASE

LEGAL DESCRIPTION OF PREMISES

EXHIBIT G

FORM OF MEMORANDUM OF TERMINATION OF LEASE

APN(S): _____

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Attn: _____

(Space Above for Recorder's Use Only)

MEMORANDUM OF TERMINATION OF LEASE

THIS MEMORANDUM OF TERMINATION OF LEASE (this "Memorandum") is made and entered into as of _____, 20__, by and between the Moapa Band of Paiutes, a federally _____ recognized Indian Tribe ("Landlord"), and _____ ("Tenant").

1. Termination of Lease. Landlord and Tenant entered into that certain Solar Energy Ground Lease Agreement (the "Lease") dated _____, 20__, disclosed pursuant to a Memorandum of Lease which was recorded on _____, 20__ in the Official Records of Clark County, Nevada in Book _____, as Instrument No. _____. Notice is hereby given that the Lease was terminated effective _____, 20__ and is no longer of any force or effect.

2. Further Assurances. Tenant agrees that, from time to time, upon the request of Landlord, Tenant shall execute and deliver such other instruments evidencing the termination of the Lease and take such other actions as Landlord may reasonably require to more effectively evidence the termination of the Lease.

3. Counterparts. This Memorandum may be executed in one or more counterparts, each of which shall be an original instrument, but all of which, when taken together, shall constitute one and the same instrument.

[Signature and acknowledgement pages follow]

IN WITNESS WHEREOF, this Memorandum has been executed as of the date first written above.

LANDLORD:

THE MOAPA BAND OF PAIUTE INDIANS,
a federally recognized Indian Tribe

By: _____
Name: _____
Title: _____

TENANT:

_____,

By: _____
Name: _____
Title: _____

LANDLORD'S ACKNOWLEDGEMENT

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on _____, 20__ by
_____ as _____ of _____.

(Signature of Notarial Officer)

(Seal)

TENANT'S ACKNOWLEDGEMENT

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on _____, 20__ by
_____ as _____ of _____.

(Signature of Notarial Officer)

(Seal)

EXHIBIT H**FORM OF RIGHT OF WAY AGREEMENT**

APN(s): _____

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:_____

Attn: _____

RIGHT OF WAY AGREEMENT

THIS RIGHT OF WAY AGREEMENT (this “**Agreement**”), made as of this ____ day of _____, 20__ (the “**Effective Date**”), is entered into by and between THE MOAPA BAND OF PAIUTE INDIANS, a federally recognized Indian Tribe (the “**Tribe**” or “**Landlord**”), and _____, a _____ (“**Grantee**”).

RECITALS

A. Landlord and Grantee have entered into that certain Solar Energy Ground Lease Agreement, dated _____, 20__ (the “**Lease**”), pursuant to which Grantee has leased from Landlord a portion of the Moapa River Indian Reservation (the “**Reservation**”) more particularly described in Exhibit H-1 attached hereto (the “**Premises**”), which Reservation is held in trust for the Tribe, an Indian tribe federally recognized under Section 16 of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378);

B. Assuming any and all extensions of the term of the Lease are granted, the term of the Lease will be, at the most, fifty (50) years from the Effective Date; and

C. Pursuant to the Lease, Landlord has agreed to consent to, grant, or use its commercially reasonable efforts to cause to be granted, to Grantee, subject to the terms and conditions set forth herein and in the Lease, certain rights of way in, upon, over, under and across certain portions of the Reservation as more particularly set forth herein.

AGREEMENT

NOW, THEREFORE, for consideration each to the other paid and in consideration of the actions and agreements set forth in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that the foregoing recitals are true and correct and as follows:

SECTION 1
TERMS AND CONDITIONS

1.01 Grant. Landlord hereby agrees to consent and does consent to the grant by the

Secretary or by an authorized representative on behalf of the Secretary under delegated authority (“**Grantor**”) or, if applicable and to the extent permitted under federal law, grant or use its commercially reasonable efforts to cause to be granted, to Grantee, and its permitted successors and assigns, the following non-exclusive rights of way (collectively, the “**Rights of Way**”):

(A) for the period commencing on the Effective Date and ending on the earlier of the expiration or earlier termination of the Lease, as it may be extended or renewed (the “**Term**”):

(1) [a non-exclusive [forty (40) foot] wide right of way (the “**Water Facilities Right of Way**”) to construct, maintain, repair, replace, use and operate water facilities, including but not limited to a water line and water storage tank, serving the Premises (collectively, the “**Water Facilities**”) in, upon, over and across that portion of the Reservation described and depicted on Exhibit H-2 attached hereto (the “**Water Facilities Right of Way Area**”);

(2) a non-exclusive [one hundred fifty (150) foot] wide right of way (the “**Transmission Right of Way**”) to construct, maintain, repair, replace, use and operate an up to 500 kilovolt transmission line or lines and related facilities including, but not limited to, a maintenance road, serving the Premises (collectively, the “**Transmission Facilities**”) in, upon, over and across that portion of the Reservation described and depicted on Exhibit H-3 attached hereto (the “**Transmission Right of Way Area**”); provided, however, that the poles and related facilities suspending the transmission line above-ground shall not in any event exceed one hundred fifty (150) feet in height;

(3) a non-exclusive [thirty (30) foot] wide right of way (the “**Communications Right of Way**”) to construct, maintain, repair, replace, use and operate poles, towers, and associated fixtures including, but not limited to, antennae, receptors, transmitters, dishes, lines, all necessary and proper foundations, footing and crossarms, and a maintenance road, for purposes of providing communications services (collectively, the “**Communications Facilities**”) in, upon, over and across that portion of the Reservation described and depicted on Exhibit H-4 attached hereto (the “**Communications Right of Way Area**”); and

(4) a non-exclusive [one hundred (100) foot] wide right of way (the “**Access Road Right of Way**”) to construct, maintain, repair, replace, use and operate a roadway for vehicular ingress, egress and access to the Premises (the “**Road Facilities**”) in, upon, over and across that portion of the Reservation described and depicted on Exhibit G-4 attached hereto (the “**Road Right of Way Area**” and, together with the Water Facilities Right of Way Area, the Transmission Right of Way Area, and the Communications Right of Way Area, the “**Right of Way Areas**”).]¹

¹ NTD: Scope and nature of rights of way to be determined pursuant to final Right of Way Plan.

1.02 Reservation. Notwithstanding the foregoing or anything herein to the contrary, Landlord hereby reserves for itself and its successors and assigns all air space rights above the ground level of each of the Right of Way Areas, other than those occupied by the Transmission Facilities and the Communications Facilities.

1.03 “AS IS”. Grantee accepts the Right of Way Areas in their “as is” condition (including both latent and patent condition) without any representation or warranty whatsoever by Landlord as to their fitness for the intended use or condition. Grantee acknowledges that it has had the opportunity to inspect the Right of Way Areas with expert consultants of its choosing and has determined to accept the Right of Way Areas in their present condition.

1.04 Construction of Right of Way Improvements. Subject to the provisions of the Lease, Grantee agrees to obtain, at its sole cost and expense, all necessary permits, licenses and approvals from any and all Governmental Authorities (as defined below) having jurisdiction over the Right of Way Areas in connection with the development, construction, improvement, maintenance and operation of each of the Water Facilities, the Road Facilities, the Transmission Facilities, and the Communications Facilities (collectively, the **“Right of Way Improvements”**), as applicable. Grantee agrees to install and construct the Right of Way Improvements and perform the Restoration Work (as defined below) (a) at Grantee’s sole cost and expense; (b) in a good and workmanlike manner; (c) in accordance with all Laws (as defined below) applicable to the construction and removal of the Right of Way Improvements; and (d) in accordance with the provisions of the Lease. **“Governmental Authority”** means any governmental or quasi-governmental authority of any nature, including any federal, state, local, county, municipal, tribal or other government, and any division, authority, department, agency, court, arbitrator, tribunal, commission, board, official, organization, body or other instrumentality thereof, including, as applicable, the Moapa Band of Paiutes or any agency, council or political subdivision thereof, the Bureau of Indian Affairs, the BLM and any other agency of the United States Department of the Interior. **“Laws”** means and includes any and all of the following, as the same may be in effect from time to time and applicable to the transactions contemplated by this Lease: (a) federal, state and municipal statutes, laws, ordinances, codes, orders and regulations, including Environmental Laws; (b) regulations, permits, or ordinances of any Governmental Authority; (c) covenants, conditions, and restrictions contained in any deed or other form of conveyance or in any other instrument of any nature that is now or hereafter placed of record that relate in any way or are applicable to the Premises or the use, ownership or occupancy thereof; (d) Tribal Laws; and (e) decisions and rulings by, of or from any Governmental Authority interpreting or otherwise relating to any of the foregoing.

1.05 No Liens. Neither Grantee nor any of Grantee’s officers, managers, directors, shareholders, members, agents, servants, contractors and their employees, subcontractors (and their employees), licensees, business invitees or employees (collectively, the **“Grantee Parties”**) shall commit or permit to be caused any kind of waste upon the Reservation. Grantee, at all times, shall keep Grantor, the Tribe and the Reservation (including the Premises), free and clear from any claim, lien or encumbrance, tax lien or levy, mechanic’s lien, attachment, garnishment or encumbrance arising directly or indirectly from any obligation, action or inaction of Grantee whatsoever (collectively, the **“Lien”**). In the event any Lien, other than a leasehold mortgage permitted pursuant to Section 23.05 of the Lease, is recorded against the Reservation as a result of any activity by Grantee or any Grantee Party, Grantee shall remove such Lien, either by payment

or by posting adequate bond in compliance with NRS 108.2415, within thirty (30) days from the recording of such Lien. If Grantee fails to timely remove such Lien, Landlord may, but shall not be required to, pay the amount of the claim and any costs, and the amount so paid, together with attorneys' fees incurred in connection therewith, shall be immediately due and owing from Grantee to Landlord. Should any claims of Lien be recorded against the Reservation, the party receiving notice of such Lien shall forthwith give the other party notice thereof. Without limiting Grantee's indemnification obligations in Section 3.02 below or in the Lease, Grantee shall indemnify, defend and hold harmless Grantor and Landlord from and against any and all liabilities, obligations, damages, fines, penalties, claims, suits, proceedings, actions, causes of action, demands, costs, charges, judgments, liens and expenses, whether founded in tort or in contract, including reasonable attorneys' fees (collectively, the "**Losses**"), of any and every kind or nature arising out of, or resulting from Grantee's construction, installation, maintenance, repair and replacement of the Right of Way Improvements, including any and all Liens (including all costs associated therewith), except as such Losses may be caused by the gross negligence or willful misconduct of Grantor and Landlord.

1.06 Maintenance and Repair of Right of Way Areas; Costs Associated Therewith. Subject to the provisions of the Lease, Grantee shall be solely responsible for, and shall pay any and all hard and soft costs, expenses, fees and obligations incurred in connection with the design, permitting, construction, installation, maintenance, repair, replacement, use and operation of the Right of Way Improvements. Subject to the provisions of the Lease, during the Term, Grantee, at its sole cost and expense, shall maintain the Right of Way Areas in good condition and shall also keep and maintain the Right of Way Improvements in good order, condition and repair, including any such replacement and restoration as is required for that purposes. In addition, Grantee shall pay all costs of utilities furnished to the Right of Way Areas or utilized by the Right of Way Improvements. To the extent required by the Lease and in accordance with the provisions of the Lease, Grantee shall promptly restore, at its sole cost and expense, the surface of the Right of Way Areas to as good condition as they were in prior to disturbance of the same as promptly as reasonably practical after completion of the installation, construction, maintenance, repair or replacement of any Right of Way Improvements. All work shall be prosecuted by Grantee in a manner intended to assure minimum interference with the use of the surface of the Right of Way Areas as is consistent with good construction practice, and to restore the surface of the Right of Way Areas not occupied by any Right of Way Improvements, which is disturbed by installation, construction, maintenance, replacement or repair of such Right of Way Improvements, to its condition prior to entry, ordinary wear and tear excepted.

1.07 Compliance with Laws. Subject to the terms and provisions of the Lease and the Tribal Agreement (as it may be extended or renewed), Grantee shall, and shall cause each Grantee Party to, comply with all Laws and cause the Right of Way Areas, all Right of Way Improvements, their use of the Right of Way Areas and Right of Way Improvements and the exercise of their rights hereunder to comply with all Laws. Without limiting the foregoing, Grantee shall, in connection with the construction, maintenance, repair, replacement, use and operation of the Right of Way Improvements and the Right of Way Areas, (a) implement and comply with all dust control measures required by the Code of Clark County, Nevada which would be applicable if such Right of Way Improvements and Right of Way Areas were under the jurisdiction of Clark County, Nevada; and (b) mitigate for tortoises in accordance with the Endangered Species Plan.

1.08 Right of Way Fee. Grantee shall pay a right of way fee (“**Right of Way Fee**”) in consideration for the Rights of Way in a per-acre amount equal to the per-acre Rent rate for the Premises pursuant to the Lease, as it may change from time to time pursuant thereto, which Right of Way Fee shall be paid in the same manner as the Rent under the Lease. Upon agreement of the parties, Grantee may pay the Right of Way Fee by electronic funds transfer and in such event, Landlord agrees to provide to Grantee bank routing information for such purpose upon request of Grantee. Responsive to 25 C.F.R. § 169.12, Landlord acknowledges, agrees and represents that the Right of Way Fee is not less than the fair market value of the rights to be granted pursuant to the Rights of Way, plus severance damages, if any.

1.09 Restrictions. During the Term, Landlord shall not place upon the Right of Way Areas any buildings, structures, fences, trees, shrubs or improvements or landscaping which would unreasonably interfere with Grantee’s use of the Rights of Way.

1.10 Surrender. To the extent required by the Lease and in accordance with the provisions of the Lease, Grantee shall, at its sole cost and expense, prior to the expiration of the Term, or immediately upon the earlier termination of this Agreement, (a) abandon the Right of Way Areas and its use of the Rights of Way; and (b) surrender or remove the Right of Way Improvements (other than the Water Facilities) as required by the Lease and promptly proceed to restore, at its sole cost and expense, the Right of Way Areas to as good condition as they were in prior to disturbance of the same as promptly as reasonably practical, except as set forth in the Lease or as directed in writing by Landlord (collectively, the “**Restoration Work**”).

1.11 Limitation. Notwithstanding anything herein to the contrary, Grantee acknowledges and agrees that Landlord’s grant of the Rights of Way herein shall only be effective and enforceable to the extent that Landlord may grant such Rights of Way and that such grant may be made without any consent or approval whatsoever from any Governmental Authority (other than the Tribe) or third party.

SECTION 2

INSURANCE

Grantee shall at all times maintain commercial general liability and property damage insurance, covering the legal liability against all claims for any bodily injury or death of persons and for damage to or destruction of property occurring on, in or about the Right of Way Areas. The general commercial liability insurance required by this Agreement shall be carried with reputable insurance companies authorized to do business in Nevada and shall be in an amount no less than Two Million Dollars (\$2,000,000.00), or in the alternative, a policy or policies covering other liabilities and locations, e.g., a blanket coverage policy, may be substituted in lieu of general commercial liability insurance so long as the limits of such insurance shall apply separately to each location. The amount of such coverage shall be adjusted on the fifth (5th) anniversary of the Effective Date and each five (5) years thereafter in accordance with any change in the Consumer Price Index for all Urban Consumers published by the United States Department of Labor, Bureau of Labor Statistics (the “**Index**”), which is published most immediately preceding the date of such adjustment, from the Index published most immediately preceding the first day of the immediately preceding five (5) year term. If such Index is not published in the future, the parties shall use any

similar or replacement index acceptable to Landlord. All such policies of insurance shall name Landlord as an additional insured and shall provide that notice be given to the additional insured of any material change or cancellation thirty (30) days in advance thereto. Upon request, Grantee shall provide Landlord and the Grantor with certificates of insurance satisfactorily evidencing such insurance.

SECTION 3

RELEASE AND INDEMNITY

3.01 Grantee hereby waives and releases all claims against Grantor and Landlord, including officers, members, employees, and agents of Grantor and Landlord (hereinafter collectively the “**Indemnitees**” and each an “**Indemnitee**”) for injury to or death of persons or damage to property arising in any way (a) from the exercise of rights granted to Grantee or any Grantee Party by this Agreement, (b) from the activities of Grantee or any of Grantee’s Parties on the Reservation, (c) from Grantee’s failure to ensure compliance with the relevant Laws; or (d) from any negligent use of the Rights of Way or the Right of Way Areas by Grantee or any Grantee Party.

3.02 Without limiting Grantee’s indemnification obligations set forth in the Lease, Grantee shall indemnify and defend Indemnitees and each of them against and hold each Indemnitee harmless from any and all Losses whatsoever arising (a) from any injury to or death of persons or damage to property occurring in, on or about the Reservation as a result of the exercise by Grantee or any Grantee Party of its rights under this Agreement or any other activities by Grantee or any Grantee Party, or (b) from any other act or omission of Grantee or any Grantee Party in entering upon any Right of Way Area, or (c) from any use of any Right of Way or any Right of Way Area by Grantee or any Grantee Party, except that this indemnity shall not apply to any injury or damage which may be caused by the gross negligence or willful misconduct of any such Indemnitee. Grantee’s obligations under this Section 3.02 shall survive the expiration or termination of this Agreement.

SECTION 4

REMEDIES

Each party shall upon an Event of Default (as defined below), except as otherwise expressly provided herein, have all remedies available at law or in equity with respect to any Event of Default. In the event of any breach or default of this Agreement, such breach or default shall constitute an “**Event of Default**” in the event that the defaulting party does not commence to cure such breach with reasonable promptness following receipt of written notice thereof from the other party, does not diligently prosecute such cure to completion subject to force majeure, or does not complete such cure within thirty (30) days following receipt of such notice; provided that, if cure cannot reasonably be effected within such 30-day period, including as the result of force majeure, the failure to timely complete such cure shall not be an Event of Default so long as such cure was commenced with reasonable promptness and is diligently prosecuted to completion, in any event, within ninety (90) days after written notice thereof. Except in emergency circumstances (in which event the foregoing notice and cure rights may be reduced or dispensed with to the extent

reasonably appropriate in light of such emergency), no self-help or other remedy to which either party would otherwise be entitled with respect to any such breach or default shall be exercised by such party unless and until such breach or default becomes an Event of Default. The fact that a breach or default has not yet become and/or never becomes an Event of Default (i.e. is timely cured) shall not be construed to shield the applicable defaulting party from liability for damages resulting from such violation, default or breach to the extent that the violation, default or breach constitutes gross negligence or willful misconduct by the defaulting party. NOTWITHSTANDING THE FOREGOING OR ANYTHING HEREIN TO THE CONTRARY, IN NO EVENT SHALL ANY PARTY BE LIABLE FOR CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OR LOST PROFITS ARISING FROM THIS AGREEMENT OR THE PERFORMANCE (OR NON-PERFORMANCE) OF EITHER PARTY'S OBLIGATIONS HEREUNDER.

SECTION 5

MISCELLANEOUS

5.01 No Dedication. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of the Right of Way Areas to the general public or for any public use or purpose whatsoever, it being the intention of the parties hereto and their successors and assigns that nothing in this Agreement, expressed or implied, shall confer upon any Person other than the parties hereto and their successors and assigns any rights or remedies under or by reason of this Agreement.

5.02 Survival. All terms, provisions, covenants, agreements and indemnities which are intended to survive the termination of this Agreement shall survive such termination.

5.03 Attorneys' Fees. Except as otherwise specifically set forth in this Agreement, in the event that any action or proceeding is instituted to interpret or enforce the terms and provisions of this Agreement, each party to such action shall pay its own expenses, including attorneys' fees, costs and expenses, incurred in such action.

5.04 Entire Agreement. This Agreement sets forth the entire understanding of the parties, and supersedes all previous agreements, negotiations, memoranda, and understandings, whether written or oral, with respect to its subject matter.

5.05 Authority to Execute/Record. Each person executing this Agreement represents and warrants that it is duly authorized to execute this Agreement by the party on whose behalf it is so executing. Either party may record this Agreement against the Right of Way Areas in the Official Records of Clark County, Nevada or in the appropriate BIA Land Titles and Record Office.

5.06 Additional Documents. Each party covenants and agrees to execute and deliver to the other such further documents or instruments as may reasonably be required to fully effectuate the manifest intent of the parties and the transactions contemplated hereby.

5.07 Modifications. This Agreement shall not be modified, amended or changed in any manner unless in writing executed by the parties hereto.

5.08 Waivers. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver, and no waiver shall be binding unless evidenced by an instrument in writing and executed by the party making the waiver.

5.09 Severability. If any term, provision, covenant or condition of this Agreement, or any application thereof, should be held by an arbitrator or a court of competent jurisdiction to be invalid, void or unenforceable, that provision shall be deemed severable and all provisions, covenants, and conditions of this Agreement, and all applications thereof not held invalid, void or unenforceable, shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

5.10 Relationship of Parties. Nothing herein contained shall be construed as creating a partnership, joint venture or agency agreement between the parties hereto. Nothing herein contained shall be interpreted or construed as being for the benefit of any third party. Neither party shall hold himself or itself out contrary to the terms of this clause. Neither party shall be bound by or become liable for any representation, commitment, act or omission whatsoever of the other party contrary to the provisions hereof.

5.11 Notices. Any notice or other communication required or permitted to be given by a party hereunder shall be in writing, and shall be deemed to have been given by such party to the other party or parties (a) on the date of personal delivery, (b) on the date delivered by a nationally recognized overnight courier service, (c) on the next business day following any facsimile transmission to a party at its facsimile number set forth below; provided that such delivery is concurrent with delivery pursuant to the provisions of clauses (a), (b) or (d) of this Section 5.11, or (d) three (3) business days after being placed in the United States mail, as applicable, registered or certified, postage prepaid addressed to the following addresses (each of the parties shall be entitled to specify a different address and/or contact person by giving notice as described above):

If to Grantee:

With a copy to:

If to Landlord:

The Moapa Band of Paiute Indians
1 Lincoln Street
P.O. Box 340
Moapa, NV 89025
Attn: Tribal Chair
Facsimile: (702) 865-2875

With a copy to:

Ziontz Chestnut
2101 Fourth Avenue, Suite 1230
Seattle, WA 98121
Attn: Richard M. Berley and
Brian W. Chestnut
Facsimile: (206) 448-0962
Email: rberley@ziontzchestnut.com;
bchestnut@ziontzchestnut.com;

If to Landlord:

The United States Department of the
Interior
Bureau of Indian Affairs
Southern Paiute Agency
P.O. Box 720
St. George, UT 84771

5.12 Section Headings. The section headings herein are inserted only for convenience of reference and shall in no way define, limit or prescribe the scope or intent of any provisions of this Agreement.

5.13 Exhibits. Each exhibit referred to herein and attached hereto is an integral part of this Agreement and is incorporated herein by this reference.

5.14 Governing Law. Except as may be preempted by applicable federal law including 25 C.F.R. Parts 162 and 169, and specifically noting the existence of a limited waiver of sovereign immunity from Landlord to the Grantee, this Agreement shall be governed by and interpreted under, the internal laws of the State of Nevada, without giving effect to its conflict of law provisions.

5.15 Dispute Resolution; Binding Arbitration; Limited Waiver of Sovereign Immunity.

(A) If a dispute arises regarding interpretation or enforcement of this Agreement, the Disputing Parties (as defined in the Lease) shall diligently work to resolve the issue informally. If informal dispute resolution is unsuccessful, then the dispute shall be resolved by binding arbitration in accordance with this Section. To initiate arbitration, the claiming Disputing Parties shall notify the other Disputing Parties in writing. The claim shall be resolved in accordance with the Commercial Arbitration Rules of the American Arbitration Association. One arbitrator shall preside and shall be selected by the American Arbitration Association. The arbitrator's fee shall be divided equally between the Disputing Parties. The arbitration shall take place in Clark County, Nevada, or such other place as the parties agree. The arbitrator shall render an award within forty-five (45) days from the conclusion of the arbitration. The decision of the arbitrator shall be final and binding and enforced with the same force and effect as a decree of a court having competent jurisdiction.

(B) The Disputing Parties anticipate that recourse to binding arbitration should obviate the need for recourse in any court, except to the extent that a court order may be necessary to compel a Disputing Party to participate in arbitration, or to enforce the arbitration award. However, a Disputing Party may elect to bring a claim authorized under this Agreement in the United States District Court for the District of Nevada to the extent a Disputing Party determines that federal court review is necessary to address the disputed issues.

(C) Landlord expressly and irrevocably grants a limited waiver of its sovereign immunity solely as to any claim of Grantee or another Disputing Party pertaining to this Agreement ("Limited Waiver"). Landlord also expressly and irrevocably grants a limited

waiver of its sovereign immunity with respect to proceedings in federal or state courts located in Nevada with territorial jurisdiction over Clark County, but solely to the extent necessary to compel Landlord to participate in arbitration, or to enforce the arbitration award. This Limited Waiver does not allow recovery from Landlord of consequential, incidental, special, punitive or exemplary damages or lost profits, nor recovery from any appointed or elected officials, officers or employees of Landlord for any monetary damages whatsoever. Landlord further covenants and agrees it shall not move for an exhaustion or tribal court remedies or apply to Tribal Court or any other tribal forum for resolution of any claim or proceeding relating to or arising under this Agreement. In any legal action or proceeding as to which Landlord has waived its sovereign immunity as set forth in this Section, Landlord irrevocably agrees that process against it shall be effective if served on Landlord's chairperson or his or her legally-authorized designee.

(D) Landlord covenants and agrees that its limited waiver of sovereign immunity and other waivers and agreements contained herein are valid, binding, enforceable and irrevocable, notwithstanding any future changes in the structure or composition of Landlord's tribal government, and agrees not to revoke or seek to revoke, repudiate or further limit, in whole or in part, any of such waivers or agreements. These covenants are set forth in Landlord's duly-executed Tribal Resolution, which is attached as Schedule 15.01(G) to the Lease.

(E) In the event Landlord (i) revokes, further limits or attempts to revoke or further limit the limited waiver of sovereign immunity contained herein, (ii) takes any action which is inconsistent with the such waivers or (iii) fails to submit to the dispute resolution forums and governing law provided for in this Section, the Parties recognize and agree that (A) there remains no adequate remedy at law available, (B) there will be irreparable injury upon any revocation or further limitation of these waivers and agreements, and (C) Landlord hereby consents to the entry of appropriate injunctive relief, consistent with the terms of the Agreement, without the need to prove that actual damages or monetary relief would not be an adequate remedy and without having to post a bond. In such event, an affected party may immediately seek judicial injunctive relief in the dispute resolution forums authorized herein.

(F) To the extent necessary, the Parties agree that this Agreement comports with any applicable requirements of the Moapa Commercial Transactions Ordinance, and as such, enjoys any privileges or immunities set forth in said Ordinance.

(G) Specific Agreement to Arbitration Provisions. By initialing below, Grantor and Grantee each grant and confirm their specific authorization to submit disputes arising under this Agreement to arbitration upon, and subject to the terms and conditions of, this Section 5.15. Grantor and Grantee each specifically acknowledge that such Party has thoroughly reviewed this Section 5.15 with counsel of its choosing, and each of Grantor and Grantee voluntarily grant such Party's specific authorization to these arbitration provisions through this paragraph, which serves to confirm that such Party has affirmatively agreed to the arbitration provisions set forth in this Section 5.15. For the purpose of clarity, each Party has affirmatively agreed to the arbitration provisions set forth in this Section 5.15, and each Party intends that this paragraph, and the specific

acknowledgements below, satisfy the requirements of NRS 597.995(1).

Grantor's Acknowledgement: _____

Grantee's Acknowledgement: _____

5.18 Government Savings Clause. Each of the Parties agrees to execute, deliver, and, if necessary, to record any and all additional instruments, certifications, amendments, modifications and other documents as may be required by the United States Department of the Interior, Bureau of Indian Affairs, Bureau of Land Management, the Office of the Solicitor, the Tribe, any Governmental Authority, or any Laws in order to effectuate, complete, perfect, continue or preserve the respective rights, obligations and interests of the parties hereto to the fullest extent permitted by Laws; provided, that any such additional instrument, certification, amendment, modification or other document shall not materially change the respective rights, remedies or obligations of Grantor, Landlord or Grantee under this Agreement or any other agreement or document related hereto.

5.19 No Assignment without Landlord's Consent; Leasehold Mortgage.

(A) Grantee shall not assign or in any manner transfer, sublease, mortgage, pledge, hypothecate or encumber (collectively, "**Transfer**") this Agreement or any right or interest of Grantee herein without the prior written consent of Landlord; provided that notwithstanding anything herein to the contrary, Landlord hereby consents to any Transfer of this Agreement or of any Right of Way to the extent such Transfer is made in connection with a permitted Transfer of an interest in the Lease to an Additional Approved Transferee (as defined in the Lease), or pursuant to a Leasehold Mortgage (including, without limitation, a collateral assignment of this Agreement or any Right of Way to a Leasehold Mortgagee or other Financing Party) and foreclosure or assignment as provided in Section 23.05 of the Lease.

(B) No Transfer shall be effective until receipt by Landlord of an assignment and assumption agreement, sublease, license or other conveyance document, as applicable, in a form reasonably satisfactory to Landlord, by which the Additional Approved Transferee assumes all accrued and future liabilities and obligations of Grantee under or with respect to this Agreement, including pursuant to a foreclosure under a Leasehold Mortgage as provided in Section 23.05 of the Lease.

(C) No Transfer of this Agreement by Grantee shall act as, or affect a release of, Grantee from any of the agreements, obligations and covenants of this Agreement to be performed by Grantee hereunder. The acceptance of payments by Landlord from any other Person shall not be deemed to be a waiver of any provision of this Agreement or consent to the Transfer of this Agreement or Grantee's interest herein. If Landlord provides its consent to a Transfer of this Agreement and Grantee's rights and interest herein on one occasion, such consent shall not be deemed to waive or diminish the requirement for a consent with respect to any subsequent Transfer. Any non-permitted Transfer shall be void and constitute an Event of Default hereunder.

(D) Notwithstanding anything herein to the contrary, in no event shall Grantee

be permitted to Transfer less than all of this Agreement and Grantee's rights and interests herein except to the extent such a Transfer is made in connection with a permitted Transfer of the Lease to an Additional Approved Transferee. If Landlord refuses to grant consent to a Transfer of less than all of this Agreement and Grantee's rights or interests herein, such refusal shall be deemed reasonable.

(E) To the extent not inconsistent with 25 C.F.R. § 169.20, Section 23.05(B)(1) of the Lease and Section 23.05(B)(6)-(10), inclusive, of the Lease are hereby incorporated herein by this reference and made a part hereof as if set out in full herein, provided that for purposes of this Agreement, all references in such sections of the Lease to (i) "Tenant" shall be deemed to refer to Grantee, (ii) "Lease" shall be deemed to refer to this Agreement, (iii) "Section 23.05" of the Lease or subsections thereof shall be deemed to refer to the subsections of such section of the Lease as incorporated into this Agreement and (iv) "Section 28" of the Lease shall be deemed to refer to Section 5.11 of this Agreement.

5.20 Counterparts. This Agreement may be executed in multiple counterparts, which together shall constitute one and the same document.

IN WITNESS WHEREOF, the undersigned have hereunto affixed their signatures as of the Effective Date.

LANDLORD:

THE MOAPA BAND OF PAIUTE INDIANS,
a federally recognized Indian tribe

By: _____
Name: _____
Title: _____

GRANTEE:

_____,
a _____

By: _____
Name: _____
Title: _____

APPROVED:

The foregoing Right of Way Agreement, and all attachments thereto, are hereby approved pursuant to, as applicable, 25 U.S.C. 415, 25 U.S.C. 323, 25 U.S.C. § 81, 25 C.F.R. Part 162 and 25 C.F.R. Part 169 under delegated authority of 209 DM 8, 230 DM I, and 3 IAM 4.

UNITED STATES DEPARTMENT OF THE INTERIOR

Approval Dated: _____20____

By: _____
Name: _____
Title: _____

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on this ____ day of _____, 20__ by
_____ as _____ of _____.

(Seal, if any)

(Signature of Notarial Officer)

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on this ____ day of _____, 20__ by
_____ as _____ of _____.

(Seal, if any)

(Signature of Notarial Officer)

RIGHT OF WAY EXHIBIT H-1
OVERVIEW, DESCRIPTION AND DEPICTION OF THE PREMISES
AND THE RIGHTS OF WAY

[attached]

RIGHT OF WAY EXHIBIT H-2
DESCRIPTION AND DEPICTION OF THE
WATER FACILITIES RIGHT OF WAY AREA

[attached]

RIGHT OF WAY EXHIBIT H-3
DESCRIPTION AND DEPICTION OF THE
TRANSMISSION RIGHT OF WAY AREA

[attached]

RIGHT OF WAY EXHIBIT H-4

DESCRIPTION AND DEPICTION OF THE
COMMUNICATIONS RIGHT OF WAY AREA

[attached]

RIGHT OF WAY EXHIBIT H-5
DESCRIPTION AND DEPICTION OF THE
ACCESS ROAD RIGHT OF WAY AREA

[attached]

EXHIBIT I**FORM OF PERFORMANCE BOND**

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, _____, a limited liability company organized under the laws of the State of _____ (the "Tenant"), and _____, a surety organized under the laws of the State of Nevada (the "Surety"), are held and firmly bound unto the BUREAU OF INDIAN AFFAIRS, an agency of the United States Department of the Interior (the "BIA"), and THE MOAPA BAND OF PAIUTES, a federally recognized Indian Tribe (the "Landlord"), in the penal sum of _____ Dollars (\$_____) lawful money of the United States of America, for the payment of which sum the Tenant and Surety bind themselves and their heirs, executors, administrators, successors and assigns, jointly and severally by these presents (the "Performance Bond").

WHEREAS, the Tenant has on the ____ day of _____, 20____, entered into a Solar Energy Ground Lease Agreement (the "Lease") with the Landlord and approved by the BIA to lease premises located on a portion of the Moapa River Indian Reservation consisting of approximately two thousand three hundred (2,300) acres of vacant land in Clark County, Nevada for the operation of a Solar Power Facility and all ancillary and incidental activities and uses related thereto (together, the "Project"). The Lease is incorporated by reference into this Performance Bond. Capitalized terms used but not defined herein shall have the same meaning as set forth in the Lease.

WHEREAS, pursuant to Section 8.07 of the Lease, the Tenant is required to comply with certain terms and conditions which include furnishing a Performance Bond to continuously serve as financial assurance for the completion of construction of the Project and the Tenant's compliance with the Lease, all Controlling Documents and applicable Laws.

WHEREAS, the Surety has agreed to provide said Performance Bond and the Surety affirms that it is licensed and authorized to issue surety by the state of Nevada pursuant to NRS 683A and expressly affirms that the Surety is in agreement with Section 8.07 of the Lease.

NOW, THEREFORE, the conditions of this Performance Bond are such that if the Tenant:

1. Promptly and faithfully observes, abides by and performs each and every covenant, condition and part of the Lease, including but not limited to, its warranty provisions, in the time and manner prescribed in the Lease;
2. Pays the BIA and the Landlord all losses, damages (liquidated or actual, including but not limited to, damages caused by delays in the performance of the Lease), expenses, costs and attorneys' fees that the BIA and the Landlord sustain resulting from any breach or default by the Tenant under the Lease; and
3. Upon Substantial Completion, the Tenant shall deliver to the Landlord a notice that Substantial Completion has occurred. Pursuant to the terms and conditions of Section 8.07 of the Lease, the BIA and the Landlord shall then authorize release of the Performance Bond making null and void; otherwise it shall remain in full force and effect.

The Surety shall become liable on this Performance Bond obligation only when the Tenant has failed to fulfill the conditions described above. If there is no Landlord Default under the Lease, the Surety's obligation under this Performance Bond shall arise pursuant to Section 8.07 of the Lease.

PROVIDED FURTHER, that the Surety, for value received, hereby stipulates and agrees that any and all changes, including material changes, in the Lease or compliance or noncompliance with the formalities in the Lease for making such changes shall not affect the Surety's obligations under this Performance Bond and the Surety hereby waives notice of any such changes.

PROVIDED FURTHER, the liability of the Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penal sum of the bond, but in no event shall the obligation of the Surety hereunder exceed the amount of said penal sum.

IN WITNESS WHEREOF, the Tenant and the Surety have executed these presents and set their seals as of this _____ day of _____, 20____.

Seal of Tenant:

TENANT, _____,
a _____

By : _____

Title: _____

Seal of Surety:

SURETY, [Insert information here]

By : _____

Title: _____

State of Nevada License No.: _____

ATTORNEY-IN-FACT
AUTHORITY FROM THE SURETY

By : _____

Title: _____

Two witnesses, with the post office address of each, are required to each signature.

Signature of Witness:

Address of Witness:

(A copy of the Power of Attorney of the Authorized Agent of the Surety must accompany the Performance Bond.)

EXHIBIT J

FORM OF TRIBAL AGREEMENT

TRIBAL AGREEMENT

THIS TRIBAL AGREEMENT (this “Agreement”) is made and entered as of _____, 20__ (the “Execution Date”), by and between THE MOAPA BAND OF PAIUTE INDIANS OF THE MOAPA RIVER INDIAN RESERVATION, NEVADA, an Indian tribe federally recognized under Section 16 of the Indian Reorganization Act (the “Tribe”), and _____ (“Project Company”). Each of the Tribe and Project Company may be referred to herein collectively as the “Parties” and individually as a “Party.”

RECITALS

A. The Tribe is an Indian tribe federally recognized under Section 16 of the Indian Reorganization Act.

B. Project Company is in the business of constructing and operating solar-powered electrical energy generating facilities for the conversion of solar energy into electrical energy intended for sale.

C. Concurrently with this Agreement, the Parties have entered into that certain Solar Energy Ground Lease Agreement by and between Project Company and the Tribe (the “Lease”), to which this Agreement shall be attached as Exhibit J.

D. Pursuant to federal and state law, no part of the Project will be subject to real estate taxation by either the State of Nevada or any local governmental authority, or division, department, agency, court, arbitrator, tribunal, commission, board, official, organization, body or other instrumentality thereof.

E. Pursuant to its constitution and ordinances, the Tribe has jurisdiction to levy fees and taxes on projects located on the Moapa River Indian Reservation (the “Reservation”).

F. In connection with the transactions contemplated thereby, the Parties wish to enter into this Agreement on the terms and subject to the conditions set forth herein, and deem it necessary and proper to do so.

AGREEMENT

The Parties, in consideration of the mutual representations, warranties and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree that the foregoing recitals are true and correct and as follows:

SECTION 1 **DEFINITIONS**

1.01 Definitions. Unless otherwise expressly provided in this Agreement (including the preamble hereof and the recitals hereto), capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Lease.

1.02 Terms and Usage Generally. Where the context so requires or such interpretation is appropriate, any word used herein denoting gender shall include all genders, natural or artificial, and the singular and plural shall be interchangeable. All references herein to sections, exhibits and schedules shall be deemed to be references to sections of, and exhibits and schedules to, this Agreement unless the context shall otherwise require. All exhibits and schedules attached hereto shall be deemed incorporated herein as if set forth in full herein. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. References to a Person are also to his, her or its successors and permitted assigns. Unless otherwise expressly provided herein, any agreement, instrument or statute defined or referred to herein or in any agreement or instrument defined or referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes, and references to all attachments thereto and instruments incorporated therein. The captions of the various provisions of this Agreement are for convenience only and in no way define, limit or describe the scope or intent of this Agreement or the provisions which they precede or in any other manner affect this Agreement.

SECTION 2

TERM OF AGREEMENT

The initial term of this Agreement shall commence on the Execution Date and shall continue thereafter as long as the Lease, unless earlier terminated as provided herein (the “Term”).

SECTION 3

SALES AND USE TAX AND ABATEMENT OF SALES AND USE TAX

Notwithstanding any provision in Section 4, below, Project Company agrees, on behalf of itself and the Tenant Parties, that sales of materials to be used in construction of the Tenant Work shall be structured, to the maximum reasonably feasible extent in accordance with applicable law, in such a way as to be taxable by the Tribe rather than the State of Nevada or its subdivisions, in accordance with the Moapa Tribal Tax Code (the “Tribal Tax Code”), *provided however that*:

(a) The Tribe agrees to file the Tribal Tax Code with the State of Nevada pursuant to Nevada Revised Statutes Section 372.805, to ensure that sales tax on any such transaction is payable only to the Tribe and to prevent duplicate taxation by the State, in each case to the extent that the prevention of duplicate taxation is within the control of the Tribe, and will provide evidence of filing to Project Company.

(b) It is agreed that sales tax on any sales of materials to be used in construction of the Tenant Work which sales occur prior to the filing of the Tribal Tax Code with the State, and which, as a result, are taxable by the State of Nevada, will not be taxable by the Tribe.

(c) The Parties agree that the tax rate to be paid on transactions described in this Section 3 shall be no greater than the rate that would otherwise apply to similar transactions pursuant to Nevada state law, as in effect from time to time.

(d) The Tribe further agrees, (i) pursuant to Section 881 of the Tribal Tax Code, that Project Company has been or in the future may be accorded an abatement of certain non-Tribal sales and use taxes under the statutes of Nevada, in particular the Nevada Renewable Energy Tax Abatement program enacted by AB 522, and (ii) if the Project Company has been granted an abatement of non-Tribal sales and use taxes under the statutes of Nevada, then the tax rate to be paid on transactions described in this Section 3 shall be abated to the rate that would otherwise apply to similar transactions granted a Nevada Renewable Energy Tax Abatement pursuant to state law, as in effect from time to time.

(e) Except as set forth in Section 827, 828 and 829 of the Tribal Tax Code, the Parties further agree that for any sales of materials to be used in construction of the Tenant Work which take place off-Reservation, sales tax shall be paid to the state, and not to the Tribe.

(f) Any revisions to the Tribal Tax Code made by the Tribe after the Execution Date shall be (a) limited to revisions involving the administration and implementation of the Tribal Tax Code and (b) consistent and in conformity with Section 7 of this Agreement and this Section 3.

SECTION 4

PAYMENTS IN LIEU OF TAXES OTHER THAN SALES AND USE TAX ON MATERIALS TO BE USED IN CONSTRUCTION OF THE PROJECT

From and after the Pilot Date and as long as the Lease is in effect, Project Company agrees to make payments (the “Pilot Payments”) in lieu of all taxes, tax levies or other tax assessments (other than sales and use tax as provided for in Section 3 above) that could be levied by the Tribe against Project Company or its contractors, against the Project, the Premises, the Improvements, the Infrastructure, the Rights of Way, the Solar Power Facilities, Tenant Improvements, Tenant Operations or any other property or activities of Project Company authorized under the Lease. Project Company shall pay to the Tribe the Pilot Payments on an annual basis and each such annual Pilot Payment shall be due on or prior to May 31st (the “Pilot Date”) of each Lease Year pursuant to the Lease. The Pilot Payments payable hereunder shall not exceed \$100 per acre of the aggregate Premises actually leased by Project Company during the year immediately preceding the Pilot Date, which \$100 per acre figure shall increase by three percent (3%) annually. Further, in no event shall any single annual Pilot Payment due and payable by Project Company hereunder be in an amount greater than eighty percent (80%) of the real property taxes that would be imposed by federal, state or local authorities if the Project were located on land outside the Reservation in the State of Nevada lying within Clark County Tax District No. 100 (Unincorporated County).

SECTION 5

OTHER FEES

Pursuant to the Lease, Project Company as Tenant is responsible to pay certain fees to the Tribe. These fees include, but are not limited to: (i) the annual TERO Compliance fee calculated in accordance with the provisions of the Lease; (iii) the tortoise mitigation fee calculated in

accordance with the provisions of the Lease; and (iv) certain fees in exchange for the granting to Tenant the right to use water with respect to the Premises.

SECTION 6

NONPAYMENT AND TERMINATION

During the Term of this Agreement, if Project Company fails to pay the Tribe any Pilot Payment due pursuant to Section 3 or fails to pay the Tribe any other fee due pursuant to the Lease or any of the Controlling Documents (collectively, “Tribal Fee”), then Project Company shall be obligated to pay to the Tribe such amount plus interest at the rate of five percent (5%) per annum on such amount, which interest shall continue to accrue until such time as such amount is paid by Project Company in full. If Project Company fails to pay any Pilot Payment or Tribal Fee and such failure shall continue unremedied for a continuous period of thirty (30) days following Project Company’s receipt of written notice of such failure, then the Tribe shall have the right to terminate this Agreement by providing written notice of such termination to Project Company and to pursue all other rights and remedies available to it at law or in equity.

SECTION 7

RIGHTS AND COVENANTS OF THE PARTIES

7.01 No Regulatory Interference or Taxation. Except as specifically provided herein and in the Lease, the Tribe covenants and agrees that it will not, and shall not permit any of its representatives, political subunits, councils, agencies, commissions, instrumentalities or enterprises to, directly or indirectly, at any time during the Term of the Lease, (i) demand or impose any regulatory or licensing requirements, approvals, permits, authorizations, orders or variances against Project Company, the Premises, the Project or any Affiliates, Contractors or Subcontractors of the Project Company with respect to the Premises, that, when combined with any impositions, regulatory rules or regulations imposed by federal or state authorities, would result in higher or more stringent impositions, regulatory rules or regulations, or regulatory or licensing requirements than would be imposed by federal, state or local authorities if the Project were located on land outside the Reservation in the State of Nevada but within 50 miles of the Reservation, and shall not impose any environmental regulatory or licensing requirements that are materially more stringent than those enumerated in the TEPO in effect on the Execution Date, or (ii) demand, impose, levy, assess or otherwise require payment by Project Company of, any tax, penalty or similar payment obligation or any other payment of cash, goods or services relating to Compliance Requirements or otherwise that are not specifically provided for in the Lease, any Right of Way Agreement or this Agreement, whether pursuant to any Tribal Law, ordinance, rule, regulation, order or other requirement of the Tribe now in effect or hereafter becoming effective, (iii) except as required by federal law, adopt, enact, promulgate or otherwise place into effect any Tribal Law, or amend, repeal or disavow any Tribal Law, which materially impairs or interferes with any right or remedy of Project Company under this Agreement or any other Definitive Agreement (as defined in the Lease) or, other than those Approvals (as defined in the Lease) specifically enumerated in the Lease, requires Project Company to obtain any Tribal or other business license or similar authorization in order to carry out its activities as authorized under the Lease, or (iv) violate, contravene, or otherwise fail to comply with the [TERO Compliance Plan Ordinance (the “TERO Compliance Plan Ordinance”)], or in any way assert the jurisdiction of the Moapa Tribal Employment Rights Commission or the application of the Existing TERO (as defined in the TERO

Compliance Plan Ordinance) in any manner contrary thereto or inconsistent therewith. In addition, the Tribe covenants and agrees that it will not, and shall not permit any of its representatives, political subunits, councils, agencies, commissions, instrumentalities or enterprises to, directly or indirectly, at any time during the Term of the Lease to re-zone the Premises and Rights of Way for other purposes or condemn the Project, the Premises or Rights of Way.

7.02 Denial of Quiet Enjoyment; Joining in Proceedings. In the event that Project Company's peaceful and quiet enjoyment of the Premises or the Project is denied or disturbed during the Term of the Lease other than by the Landlord in connection with an Event of Default, the Tribe shall, upon the written request of Project Company, join in any proceeding to protect and defend the quiet enjoyment of Project Company under the Lease, provided that Project Company is not in breach of any agreement with the Tribe and further provided that Project Company shall reimburse the Tribe for the cost of any such action.

7.03 Cooperation. The Parties shall reasonably cooperate with respect to the application for and maintenance of any Approvals or other filings and any other actions reasonably necessary or desirable to affect the intent of this Agreement.

SECTION 8 **REPRESENTATIONS AND WARRANTIES**

8.01 The Tribe's Representations and Warranties. The Tribe hereby represents and warrants to Project Company, as of the Execution Date and at all times during the Term (except as otherwise provided herein), that:

(A) Status of the Tribe. The Tribe is an Indian tribe federally recognized under Section 16 of the Indian Reorganization Act.

(B) No Approvals. No Approval of or with any Governmental Authority other than the Tribe is required in connection with the execution and delivery of this Agreement by the Tribe.

(C) Power and Authority. The execution and delivery by the Tribe of this Agreement and the consummation by the Tribe of the transactions contemplated hereby are consistent with all Tribal Laws have been duly authorized by all required action of the Tribe. This Agreement has been duly executed and delivered by the Tribe and constitutes the valid and binding obligation of the Tribe, enforceable against the Tribe in accordance with its terms.

(D) No Broker. The Tribe has not employed any broker, financial adviser or finder or incurred any Liability for any brokerage fees, commissions or finder's fees in connection with the transactions contemplated by this Agreement.

(E) No Violations. The execution and delivery by the Tribe of, the performance by the Tribe of its obligations under, and the consummation of the transaction contemplated by, this Agreement do not and will not (i) violate, breach or conflict with any provision of Tribal Law; or (ii) result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any material benefit) under, or require any consents, permits, approvals or authorizations

under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, contract or obligation to which the Tribe is a party.

(F) No Proceedings. There are no Proceedings pending or, to the Tribe's knowledge, threatened against the Tribe before any Governmental Authority, which, if determined adversely to the Tribe, could prevent or materially delay the Tribe from completing the transactions contemplated by this Agreement.

8.02 Project Company's Representations and Warranties. Project Company hereby represents and warrants to the Tribe, as of the Execution Date and at all times during the Term, that:

(A) Organization. Project Company is a limited liability company, duly organized, validly existing and in good standing under the laws of its state of organization and has all requisite power and authority to carry on its business as now being conducted. Project Company is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification or licensing required under applicable Laws.

(B) Power and Authority; Enforceability. Project Company has all requisite power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery by Project Company of this Agreement and the consummation by Project Company of the transactions contemplated hereby have been duly authorized by all required action of Project Company. This Agreement has been duly executed and delivered by Project Company and constitutes the valid and binding obligation of Project Company, enforceable against Project Company in accordance with its terms, subject, as to enforcement, to (i) applicable bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereinafter in effect affecting creditors' rights generally and (ii) general principles of equity.

(C) No Violations. The execution and delivery by Project Company of, the performance by Project Company of its obligations under, and the consummation of the transactions contemplated by, this Agreement do not and will not (i) violate, breach or conflict with any provision of the certificate of incorporation and bylaws, or certificate of formation and limited liability company agreement, or other applicable organizational documents of Project Company; (ii) result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any material benefit) under, or require any consents, permits, approvals or authorizations under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, contract or obligation to which Project Company is a party or by which it or any of its properties or assets are or may be bound; or (iii) conflict with or violate any Approval with, by or from any Governmental Authority (or otherwise), any judgment or any Law, in each case applicable to Project Company or by which any of its properties or assets are or may be bound.

(D) No Approvals. Except for the Project Approvals, which shall be sought by Project Company pursuant to the terms of the Lease, no Approval of or with any Governmental Authority is required by or with respect to Project Company in connection with the execution and delivery of this Agreement by Project Company or the consummation of the transactions

contemplated hereby.

(E) No Proceedings. There are no Proceedings pending or, to Project Company's knowledge, threatened against Project Company before any Governmental Authority, which, if determined adversely to Project Company, could prevent or materially delay Project Company from completing the transactions contemplated by this Agreement.

(F) No Broker. Project Company has not employed any broker, financial adviser or finder or incurred any Liability for any brokerage fees, commissions or finder's fees in connection with the transactions contemplated by this Agreement.

SECTION 9 **CONFIDENTIALITY**

The Parties agree that the terms of this Agreement and any and all other information that a Party (the "Disclosing Party") shares with the other Party (the "Receiving Party") and identifies to the Receiving Party (either prior to such disclosure or promptly thereafter, and in any event before any subsequent disclosure by the Receiving Party) as "confidential" ("Confidential Information") shall be the confidential and proprietary information of the Disclosing Party. All information provided by a Disclosing Party to the Receiving Party shall be kept confidential and, under no circumstances shall the Receiving Party disclose such information to any other Person except only: (a) at the written direction of the Disclosing Party; (b) to those employees and/or representatives of the Receiving Party who are required to have access to or knowledge of the Confidential Information so long as such Persons agree not to disclose the Confidential Information except as provided herein; (c) to the extent required to comply with Law or a valid order of a court of competent jurisdiction, in which event the Receiving Party shall so notify the Disclosing Party as promptly as practicable (and, if possible, prior to making any disclosure; or (d) in order to enforce its rights under this Agreement. Further, the Receiving Party shall not use the Confidential Information provided by the Disclosing Party for any purpose other than with respect to the transactions contemplated herein. Information shall not constitute Confidential Information hereunder if such information (i) is in the public domain or becomes public knowledge other than as a result of breach of this Agreement by the Receiving Party or a breach of confidentiality obligations by any other Person, which breach is known by the Receiving Party; (ii) was known to the Receiving Party at the time of its receipt from the Disclosing Party, *provided* that such information was obtained by the Receiving Party from a third party under no duty of confidentiality; (iii) has been independently developed by the Receiving Party without reference to any Confidential Information, as demonstrated by its business records; or (iv) is obtained by the Receiving Party from a third Person lawfully in possession of such information and having the legal right to transmit the same. Notwithstanding anything to the contrary herein, the Tribe and Project Company shall have the right to disclose the terms of this Agreement to their respective attorneys, accountants, financial and business advisers, and lenders so long as such Persons agree not to disclose the Confidential Information except as provided herein. Notwithstanding anything to the contrary contained herein, the Tribe shall have the right to disclose all terms of this Agreement to the members of the Corporation and the members of the Tribe, and Project Company acknowledges and agrees that the disclosure of Confidential Information by any such member shall not constitute a breach of the confidentiality provisions contained herein, and Project Company expressly waives any remedy it may have under this Agreement, at law or in equity as a result of

such disclosure.

SECTION 10 **ASSIGNMENT; LEASEHOLD MORTGAGE**

10.01 Consent Required. Project Company shall not assign or in any manner transfer, sublease, mortgage, pledge, hypothecate or encumber (collectively, “Transfer”) this Agreement or any right or interest of Project Company herein without the prior written consent of the Tribe (not to be unreasonably withheld); provided that notwithstanding anything herein to the contrary, the Tribe’s consent shall not be required in connection with any Transfer of this Agreement or of any Right of Way to the extent such Transfer is made in connection with a permitted Transfer of an interest in the Lease to an Additional Approved Transferee or a Leasehold Mortgage and foreclosure or assignment as provided in Section 23.05 of the Lease.

10.02 Assumption of Liability. No Transfer shall be effective until receipt by the Tribe of an assignment and assumption agreement, sublease, license or other conveyance document, as applicable, in a form reasonably satisfactory to the Tribe, by which the Additional Approved Transferee assumes all accrued and future liabilities and obligations of Project Company under or with respect to this Agreement, including pursuant to foreclosure under a Leasehold Mortgage as provided in Section 23.05 of the Lease.

10.03 Continuance of Project Company’s Liability; No Waiver. No Transfer of this Agreement by Project Company shall act as, or affect a release of, Project Company from any of the agreements, obligations and covenants of this Agreement to be performed by Project Company hereunder. The acceptance of payments by the Tribe from any other Person shall not be deemed to be a waiver of any provision of this Agreement or consent to the Transfer of this Agreement or Project Company’s interest herein. If the Tribe provides its consent to a Transfer of this Agreement and Project Company’s rights and interest herein on one occasion, such consent shall not be deemed to waive or diminish the requirement for a consent with respect to any subsequent Transfer. Any non-permitted Transfer shall be void.

10.04 No Partial Assignments. Notwithstanding anything herein to the contrary, in no event shall Project Company be permitted to Transfer less than all of this Agreement and Project Company’s rights and interests herein except to the extent such a Transfer is made in connection with a permitted Transfer of the Lease to an Additional Approved Transferee, including pursuant to a Leasehold Mortgage and foreclosure as provided in Section 23.05 of the Lease. If the Tribe refuses to grant consent to a Transfer of less than all of this Agreement and Project Company’s rights or interests herein, such refusal shall be deemed reasonable.

10.05 Leasehold Mortgage. Section 23.05(B)(1) of the Lease and Section 23.05(B)(6)-(10), inclusive, of the Lease are hereby incorporated herein by this reference and made a part hereof as if set out in full herein, provided that for purposes of this Agreement, all references in such sections of the Lease to (i) “Tenant” shall be deemed to refer to Project Company, (ii) “Landlord” shall be deemed to refer to the Tribe, (iii) “Lease” shall be deemed to refer to this Agreement, (iv) “Section 23.05” of the Lease or subsections thereof shall be deemed to refer to the subsections of such section of the Lease as incorporated into this Agreement and (v) “Section 28” of the Lease shall be deemed to refer to Section 11 of this Agreement. The Tribe hereby

consents to any Transfer of this Agreement pursuant to a Leasehold Mortgage (including, without limitation, a collateral assignment of this Agreement to a Leasehold Mortgagee or other Financing Party) and foreclosure or assignment as provided in Section 23.05 of the Lease.

SECTION 11 **MISCELLANEOUS**

11.01 Notices. Any notice or other communication required or permitted to be given by a Party hereunder shall be in writing, and shall be deemed to have been given by such Party to the other Party or Parties (a) on the date of personal delivery, (b) on the date delivered by a nationally recognized overnight courier service, (c) on the next Business Day following any facsimile transmission to a Party at its facsimile number set forth below; *provided* that such delivery is concurrent with delivery pursuant to the provisions of clauses (a), (b) or (d) of this Section 10.01, or (d) three (3) Business Days after being placed in the United States mail, as applicable, registered or certified, postage prepaid addressed to the following addresses (each of the Parties shall be entitled to specify a different address and/or contact person by giving notice as described above):

If to Project Company:

With a copy to:

If to Tribe:

The Moapa Band of Paiute Indians
1 Lincoln Street
P.O. Box 340
Moapa, NV 89025
Attn: Tribal Chair
Facsimile: (702) 865-2875

With a copy to:

Ziontz Chestnut
2101 Fourth Avenue, Suite 1230
Seattle, WA 98121
Attn: Richard M. Berley and
Brian W. Chestnut
Facsimile: (206) 448-0962
Email: rberley@ziontzchestnut.com;
bchestnut@ziontzchestnut.com

11.02 Effect of Waiver. No waiver of any condition or covenant of this Agreement or of the breach of any condition or covenant shall be taken to constitute a waiver of any subsequent breach of such condition or covenant, or to justify or authorize the nonobservance on any other occasion of the same or any other condition or covenant thereof. The acceptance of a payment by the Tribe at any time when Project Company is in default of any covenant or condition shall not be construed as a waiver of such default or of the Tribe's rights under this Agreement (except if the default alleged is failure by Project Company to pay the payment so accepted).

11.03 Successors and Assigns. This Agreement and the covenants and conditions herein contained shall inure to the benefit of and be binding upon the Tribe, its legal representatives, successors and assigns, and shall inure to the benefit and be binding upon Project Company and its permitted successors and assigns.

11.04 Severability. In case any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein.

11.05 Entire Agreement. This Agreement contains the entire agreement between the Parties hereto with respect to the subject matter hereof. All understandings and agreements previously made between the Parties are superseded by this Agreement, and neither Party is relying upon any warranty, statement or representation not contained in this Agreement. Any agreement hereafter made shall not operate to change, modify, terminate or discharge this Agreement, in whole or in part, unless such agreement is in writing and signed by each of the Parties hereto.

11.06 Time of Essence. Time is of the essence with respect to this Agreement and each and all of its provisions.

11.07 [*Intentionally omitted.*]

11.08 Interpretation. This Agreement is to be deemed to have been prepared jointly by the Parties hereto, and if any inconsistency or ambiguity exists herein, it shall not be interpreted against either Party but according to the application of rules of the interpretation of contracts, if such an uncertainty or ambiguity exists. Each Party acknowledges that it has had the availability of legal counsel with respect to its negotiation and execution of this Agreement.

11.09 Third Persons. Except as otherwise specifically set forth in this Agreement, nothing in this Agreement is intended to confer upon any Person other than the Parties hereto any rights or remedies under or by reason of this Agreement.

11.10 Attorneys' Fees. In the event any Party incurs legal fees or other costs to enforce any of the terms of this Agreement and the transactions contemplated thereby, to resolve any dispute with respect to its provisions, or to obtain damages for breach thereof, whether by prosecution or defense, each Party to such action shall pay its own expenses, including attorneys' fees, costs and expenses, incurred in such action.

11.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11.12 Survival. All provisions of this Agreement which by their express terms survive termination of this Agreement or which by the operation of their terms are intended to be performed, in whole or in part, after termination of this Agreement, shall survive any termination of this Agreement. Unless this Agreement specifically provides otherwise, all obligations of indemnification contained in this Agreement shall survive the termination or expiration of this Agreement.

11.13 Force Majeure. Neither Party shall be deemed in breach hereunder and neither shall be liable to the other if either fails to perform any of its obligations hereunder by reason of any event of Force Majeure; *provided* that no Party shall be entitled to relief under this Section 11.13 unless such Party shall have given the other Party reasonable notice after the occurrence of such

event of Force Majeure.

11.14 Government Savings Clause. Each of the Parties agrees to execute, deliver, and, if necessary, to record any and all additional instruments, certifications, amendments, modifications and other documents as may be required by the United States Department of the Interior, Bureau of Indian Affairs, Bureau of Land Management, the Office of the Solicitor, or any other Governmental Authority, or any Laws in order to effectuate, complete, perfect, continue or preserve the respective rights, obligations and interests of the Parties hereto to the fullest extent permitted by Laws; *provided*, that any such additional instrument, certification, amendment, modification or other document shall not materially change the respective rights, remedies or obligations of Project Company or the Tribe under this Agreement or any other agreement or document related hereto.

11.15 Governing Law. Except as may be preempted by applicable federal law including 25 C.F.R. Part 162, and specifically noting the existence of a limited waiver of sovereign immunity from the Tribe to Project Company, this Agreement shall be governed by and interpreted under, the internal laws of the State of Nevada, without giving effect to its conflict of law provisions.

11.16 Dispute Resolution; Binding Arbitration; Limited Waiver of Sovereign Immunity.

(A) If a dispute arises regarding interpretation or enforcement of this Agreement, the Disputing Parties (as defined in the Lease) shall diligently work to resolve the issue informally. If informal dispute resolution is unsuccessful, then the dispute shall be resolved by binding arbitration in accordance with this Section. To initiate arbitration, the claiming Disputing Parties shall notify the other Disputing Parties in writing. The claim shall be resolved in accordance with the Commercial Arbitration Rules of the American Arbitration Association. One arbitrator shall preside and shall be selected by the American Arbitration Association. The arbitrator's fee shall be divided equally between the Disputing Parties. The arbitration shall take place in Clark County, Nevada, or such other place as the parties agree. The arbitrator shall render an award within forty-five (45) days from the conclusion of the arbitration. The decision of the arbitrator shall be final and binding and enforced with the same force and effect as a decree of a court having competent jurisdiction.

(B) The Disputing Parties anticipate that recourse to binding arbitration should obviate the need for recourse in any court, except to the extent that a court order may be necessary to compel a Disputing Party to participate in arbitration, or to enforce the arbitration award. However, a Disputing Party may elect to bring a claim authorized under this Agreement in the United States District Court for the District of Nevada to the extent a Disputing Party determines that federal court review is necessary to address the disputed issues.

(C) The Tribe expressly and irrevocably grants a limited waiver of its sovereign immunity solely as to any claim of the Project Company or another Disputing Party pertaining to this Agreement ("Limited Waiver"). The Tribe also expressly and irrevocably grants a limited waiver of its sovereign immunity with respect to proceedings in federal or state courts located in Nevada with territorial jurisdiction over Clark County, but solely to the extent necessary to compel the Tribe to participate in arbitration, or to enforce the arbitration award. This Limited Waiver does not allow recovery from the Tribe of consequential, incidental, special, punitive or exemplary

damages or lost profits, nor recovery from any appointed or elected officials, officers or employees of the Tribe for any monetary damages whatsoever. The Tribe further covenants and agrees it shall not move for an exhaustion or tribal court remedies or apply to Tribal Court or any other tribal forum for resolution of any claim or proceeding relating to or arising under this Agreement. In any legal action or proceeding as to which the Tribe has waived its sovereign immunity as set forth in this Section, the Tribe irrevocably agrees that process against it shall be effective if served on the Tribe's chairperson or his or her legally-authorized designee.

(D) The Tribe covenants and agrees that its limited waiver of sovereign immunity and other waivers and agreements contained herein are valid, binding, enforceable and irrevocable, notwithstanding any future changes in the structure or composition of the Tribe's tribal government, and agrees not to revoke or seek to revoke, repudiate or further limit, in whole or in part, any of such waivers or agreements. These covenants are set forth in the Tribe's duly-executed Tribal Resolution, which is attached as Schedule 15.01(G) to the Lease.

(E) In the event the Tribe (i) revokes, further limits or attempts to revoke or further limit the limited waiver of sovereign immunity contained herein, (ii) takes any action which is inconsistent with the such waivers or (iii) fails to submit to the dispute resolution forums and governing law provided for in this Section, the Parties recognize and agree that (A) there remains no adequate remedy at law available, (B) there will be irreparable injury upon any revocation or further limitation of these waivers and agreements, and (C) the Tribe hereby consents to the entry of appropriate injunctive relief, consistent with the terms of the Agreement, without the need to prove that actual damages or monetary relief would not be an adequate remedy and without having to post a bond. In such event, an affected party may immediately seek judicial injunctive relief in the dispute resolution forums authorized herein.

(F) To the extent necessary, the Parties agree that this Agreement comports with any applicable requirements of the Moapa Commercial Transactions Ordinance, and as such, enjoys any privileges or immunities set forth in said Ordinance.

(G) Specific Agreement to Arbitration Provisions. By initialing below, Tribe and Project Company each grant and confirm their specific authorization to submit disputes arising under this Agreement to arbitration upon, and subject to the terms and conditions of, this Section 11.16. Tribe and Project Company each specifically acknowledge that such Party has thoroughly reviewed this Section 11.16 with counsel of its choosing, and each of Tribe and Project Company voluntarily grant such Party's specific authorization to these arbitration provisions through this paragraph, which serves to confirm that such Party has affirmatively agreed to the arbitration provisions set forth in this Section 11.16. For the purpose of clarity, each Party has affirmatively agreed to the arbitration provisions set forth in this Section 11.16, and each Party intends that this paragraph, and the specific acknowledgements below, satisfy the requirements of NRS 597.995(1).

Tribe's Acknowledgement: _____

Project Company's Acknowledgement: _____

[Signatures and acknowledgements appear on the following pages.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the Execution Date.

TRIBE:

THE MOAPA BAND OF PAIUTE INDIANS,
an Indian tribe federally recognized under Section
16 of the Indian Reorganization Act

By: _____
Name: _____
Title: _____

PROJECT COMPANY:

_____,

By: _____
Name: _____
Title: _____

APPROVED:

The foregoing Second Amended and Restated Tribal Agreement, and all attachments thereto, are hereby approved pursuant to, as applicable, 25 U.S.C. 415, 25 U.S.C. 323, 25 U.S.C. § 81, 25 C.F.R. Part 162 and 25 C.F.R. Part 169 under delegated authority of 209 DM 8, 230 DM I, and 3 IAM 4.

UNITED STATES DEPARTMENT OF THE INTERIOR

Approval Dated: _____20____

By: _____
Name: _____
Title: _____

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on this ____ day of _____, 20__ by
_____ as _____ of _____.

(Seal, if any)

(Signature of Notarial Officer)

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on this ____ day of _____, 20__ by
_____ as _____ of _____.

(Seal, if any)

(Signature of Notarial Officer)

EXHIBIT K**FORM OF CONSTRUCTION CONSULTING AGREEMENT****CONSTRUCTION CONSULTING AGREEMENT**

This Construction Consulting Agreement ("Agreement") is made and entered into as of the _____ day of _____, 20____ (the "Effective Date"), by and between MOAPA BAND OF PAIUTES, a federally recognized Indian Tribe ("Consultant") and _____ ("Client").

RECITALS:

Consultant and Client are parties to that certain Solar Energy Ground Lease Agreement (the "Lease"), of even date herewith, whereby Client (referred to as the "Tenant" in the Lease) is leasing from Consultant (referred to as the "Landlord" in the Lease) that certain real property, which is located on a portion of the Moapa River Indian Reservation, consisting of approximately 2,300 acres of vacant land, situated in Clark County, Nevada, as more fully described and depicted in Exhibit A-1 and Exhibit A-2 of the Lease (the "Premises").

Client intends to construct a utility scale solar photovoltaic generating facility (the "Facility") on the Premises and, in the course of the development and construction of the Facility will require certain services from Consultant.

In order to induce Consultant to execute the Lease, and in consideration of the terms and conditions set forth therein, Client has agreed to pay Consultant for its Services, all as more fully described in this Agreement.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing and the mutual undertakings set forth herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Consultant and Client hereby agree as follows:

1. **Scope:** Client intends to construct a Facility on the Premises and, in the course of the development and construction of the Facility will require certain services. Consultant agrees to provide, and Client agrees to accept, the consulting services (the "Services") regarding the development and construction of this Facility, as more specifically set forth on Exhibit A.

2. **Nature of Relationship:**

(a) Consultant is, for purposes of this Agreement, an independent contractor. Consultant shall not be deemed an employee of Client for any purpose, including but not limited to any Client employee benefit programs, income withholding taxes, or social security or similar withholding taxes, under the law of any jurisdiction and waives any and all rights to claim any of these benefits.

(b) As an independent contractor, Consultant shall be obligated to pay all taxes

based on or arising out of this Agreement which may now or hereafter be imposed under the authority of any taxing jurisdiction. Consultant shall further be responsible for securing any personal health, disability, workers' compensation and life insurance as it deems advisable.

(c) Client and Consultant shall jointly agree on the particular methods by which Consultant shall perform the Services required by this Agreement.

3. **Compensation:** In full consideration for the Services, commencing on the date on which Client shall Commence Construction of the Tenant Work and continuing until Substantial Completion, Client hereby agrees to pay to Consultant annual payments equal to \$150,000.00 each, on or before the first day of each calendar year during such term (the "Services Payment"):

4. **Terms and Conditions:** This Agreement shall take effect as of the Effective Date and shall continue in force until Substantial Completion and in any event shall terminate prior to seven years after the Effective Date. This Agreement may be terminated by Client at any time with written notice thereof to the Consultant. In the event this Agreement is terminated by Client, Client's sole obligation shall be to pay Consultant immediately the entire remaining unpaid amount of the Services Payment. Consultant shall not be entitled to any further compensation from Client as a result of its decision to terminate the Agreement.

5. **Event of Default.** Unless the Parties in their discretion otherwise agree in writing, any Breach of this Agreement shall constitute an Event of Default under the Lease. For purposes hereof, a "Breach" shall mean any one or more of the following:

(a) Client shall fail to pay when due any indebtedness or other amounts (including but not limited to the Services Payment) owed to Consultant, and such failure shall continue for thirty (30) days after Consultant gives Client written notice thereof.

(b) Client shall fail to comply with, observe or perform any of the covenants, conditions, agreements or provisions of this Agreement.

(c) Client has: (i) filed for relief under the United States Bankruptcy Code or has suffered the filing of an involuntary petition under the Bankruptcy Code that is not dismissed within sixty (60) days after filing; (ii) had a receiver appointed to take possession of all or substantially all of the property of Client; or (iii) suffered an assignment for the benefit of creditors.

6. **Confidential Information:**

(a) Consultant recognizes that in the course of rendering services to Client it will be necessary for Consultant to have access to confidential information which could include, but not be limited to, Client's business plans, construction plans, proposals, and strategies, or other information relating to Client's affairs; provided, however that the following will not constitute confidential information for purposes of this Agreement: (i) information which is or becomes generally available to the public other than as a result of a disclosure by Consultant, (ii) information which was already in Consultant's possession on a non-confidential basis prior to it being furnished to Consultant by Client hereunder, and (iii) information which becomes available to Consultant on a non-confidential basis from a source other than Client if such source was not subject to any prohibition against transmitting the information to Consultant. Consultant therefore acknowledges

that it is essential to the protection of Client's competitive position that all confidential information be kept secret and agrees that Consultant will not disclose this information to others or use this information to Consultant's own advantage or the advantage of others.

(b) The provisions of this Section 5 shall terminate one (1) year after termination of this Agreement.

7. **Entire Agreement:** This Agreement represents the entire Agreement between the parties with respect to the subject matter hereof and may be amended only by written agreement signed by each of them.

8. **Governing Law:** Except as may be preempted by applicable federal law including 25 C.F.R. Part 162, and specifically noting the existence of a limited waiver of sovereign immunity from Consultant to Client, this Agreement shall be governed by and interpreted under, the internal laws of the State of Nevada, without giving effect to its conflict of law provisions.

9. **Dispute Resolution; Binding Arbitration; Limited Waiver of Sovereign Immunity.**

(a) If a dispute arises regarding interpretation or enforcement of this Agreement, the Disputing Parties (as defined in the Lease) shall diligently work to resolve the issue informally. If informal dispute resolution is unsuccessful, then the dispute shall be resolved by binding arbitration in accordance with this Section. To initiate arbitration, the claiming Disputing Parties shall notify the other Disputing Parties in writing. The claim shall be resolved in accordance with the Commercial Arbitration Rules of the American Arbitration Association. One arbitrator shall preside and shall be selected by the American Arbitration Association. The arbitrator's fee shall be divided equally between the Disputing Parties. The arbitration shall take place in Clark County, Nevada, or such other place as the parties agree. The arbitrator shall render an award within forty-five (45) days from the conclusion of the arbitration. The decision of the arbitrator shall be final and binding and enforced with the same force and effect as a decree of a court having competent jurisdiction.

(b) The Disputing Parties anticipate that recourse to binding arbitration should obviate the need for recourse in any court, except to the extent that a court order may be necessary to compel a Disputing Party to participate in arbitration, or to enforce the arbitration award. However, a Disputing Party may elect to bring a claim authorized under this Agreement in the United States District Court for the District of Nevada to the extent a Disputing Party determines that federal court review is necessary to address the disputed issues.

(c) Consultant expressly and irrevocably grants a limited waiver of its sovereign immunity solely as to any claim of Client or another Disputing Party pertaining to this Agreement ("Limited Waiver"). Consultant also expressly and irrevocably grants a limited waiver of its sovereign immunity with respect to proceedings in federal or state courts located in Nevada with territorial jurisdiction over Clark County, but solely to the extent necessary to compel Consultant to participate in arbitration, or to enforce the arbitration award. This Limited Waiver does not allow recovery from Consultant of consequential, incidental, special, punitive or exemplary damages or lost profits, nor recovery from any appointed or elected officials, officers or employees of Consultant for any monetary damages whatsoever. Consultant further covenants and agrees it shall not move for an exhaustion or tribal court remedies or apply to Tribal Court or any other tribal forum for resolution of any claim or

proceeding relating to or arising under this Agreement. In any legal action or proceeding as to which Consultant has waived its sovereign immunity as set forth in this Section, Consultant irrevocably agrees that process against it shall be effective if served on Consultant's chairperson or his or her legally-authorized designee.

(d) Consultant covenants and agrees that its limited waiver of sovereign immunity and other waivers and agreements contained herein are valid, binding, enforceable and irrevocable, notwithstanding any future changes in the structure or composition of Consultant's tribal government, and agrees not to revoke or seek to revoke, repudiate or further limit, in whole or in part, any of such waivers or agreements. These covenants are set forth in Consultant's duly-executed Tribal Resolution, which is attached as Schedule 15.01(G) to the Lease.

(e) In the event Consultant (i) revokes, further limits or attempts to revoke or further limit the limited waiver of sovereign immunity contained herein, (ii) takes any action which is inconsistent with the such waivers or (iii) fails to submit to the dispute resolution forums and governing law provided for in this Section, the Parties recognize and agree that (A) there remains no adequate remedy at law available, (B) there will be irreparable injury upon any revocation or further limitation of these waivers and agreements, and (C) Consultant hereby consents to the entry of appropriate injunctive relief, consistent with the terms of the Agreement, without the need to prove that actual damages or monetary relief would not be an adequate remedy and without having to post a bond. In such event, an affected party may immediately seek judicial injunctive relief in the dispute resolution forums authorized herein.

(f) To the extent necessary, the Parties agree that this Agreement comports with any applicable requirements of the Moapa Commercial Transactions Ordinance, and as such, enjoys any privileges or immunities set forth in said Ordinance.

(g) Specific Agreement to Arbitration Provisions. By initialing below, Consultant and Client each grant and confirm their specific authorization to submit disputes arising under this Agreement to arbitration upon, and subject to the terms and conditions of, this Section 9. Consultant and Client each specifically acknowledge that such Party has thoroughly reviewed this Section 9 with counsel of its choosing, and each of Consultant and Client voluntarily grant such Party's specific authorization to these arbitration provisions through this paragraph, which serves to confirm that such Party has affirmatively agreed to the arbitration provisions set forth in this Section 9. For the purpose of clarity, each Party has affirmatively agreed to the arbitration provisions set forth in this Section 9, and each Party intends that this paragraph, and the specific acknowledgements below, satisfy the requirements of NRS 597.995(1).

Consultant's Acknowledgement: _____

Client's Acknowledgement: _____

10. **No Waiver:** No failure or delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power, or privilege hereunder.

11. **Amendment:** This Agreement may not be amended or changed except by the written agreement of Client and the Consultant.

12. **Assignment:** This Agreement and the rights and obligations hereunder shall not be assigned or otherwise transferred by either party without the express written consent of the other party or as authorized under the Lease.

13. **Limitation on Liability:** Except for damages resulting from the gross negligence or willful misconduct of Consultant, Consultant will not be liable for any losses, damages, costs or expenses, arising out of, resulting from, or related to the performance or breach of this Agreement.

14. **Tax Treatment.** For income tax purposes, Consultant's right to the Services Payment herein shall not be regarded by the Parties hereto as creating a tax partnership for federal, state, or local income or other tax purposes between Consultant and Client. Client shall provide to Consultant IRS Form 1099, or such other form as Consultant's accountants request, evidencing the Services Payment.

15. **No Partnership or Joint Venture.** Nothing contained herein shall be deemed or construed by the Parties hereto, or by any third party, as creating the relationship of a partnership or a joint venture between the Parties hereto, it being understood and agreed that neither any provisions contained in this Agreement nor any acts of the Parties to this Agreement shall be deemed to create any relationship between the Parties, other than the relationship of Consultant and Client, and as set forth in the Lease as Landlord and Tenant. The Parties acknowledge that in no event shall Consultant be liable to or indemnify Client for the payment of any losses resulting from Client's ownership, development or operation of the Premises. Further, in no event will Consultant be required to make any contributions or investments or to reinvest or recontribute any of the monies paid to Consultant by Client.

16. **Attorneys' Fees.** In the event of any litigation concerning this Agreement, the prevailing party shall recover, in addition to all other relief to which such party is entitled, court costs and reasonable attorneys' fees at both the trial and appellate levels.

17. **Benefit of Agreement; Recordation.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, legal representatives, successors and assigns. Consultant shall have the right to record a copy of this Agreement in the public records of Clark County, Nevada.

18. **Time of the Essence.** Time shall be of the essence with respect to the performance by the Parties of their respective obligations hereunder.

19. **Captions.** The captions of the sections of this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of this Agreement, or the intent of any provision hereof. Use of the masculine, feminine or neuter, or singular or plural, shall include the other when the sense requires.

20. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. The waiver by any party of a right provided hereunder shall not be deemed to be a continuing waiver of that right or a waiver of any other right hereunder.

21. **Further Assurances.** Each party agrees that at the request of the other party it will at any time hereafter make such further assurances and execute or cause to be executed such further instruments as may be reasonably requested by the other party in order that this Agreement may be fully performed in accordance with its intent and provisions.

22. **Consideration.** Each party agrees that the covenants and promises contained herein are good and sufficient consideration for the respective obligations required hereunder.

23. **Provisions Negotiated and Independent.** Each and every provision of this Agreement has been independently, separately and freely negotiated by the Parties as if this Agreement were drafted by all Parties hereto. The Parties, therefore, waive any statutory or common law presumption which would serve to have this Agreement construed in favor of, or against, either party. Unless otherwise defined herein, capitalized terms used herein shall have the respective meanings assigned to such terms in the Lease.

24. **Notices.** All notices or other communications required or permitted hereunder shall be in writing, and shall be delivered to the receiving party at the address below by: (i) personal delivery (including by means of professional messenger service); (ii) nationally recognized overnight courier; or (iii) registered or certified mail, postage prepaid, return receipt requested, and shall be deemed received upon the date of receipt (or refusal to accept delivery) thereof. Notice of change of address shall be given by written notice in the manner detailed in this Section.

If to Client:

With a copy to:

If to Consultant:

The Moapa Band of Paiute Indians
1 Lincoln Street
P.O. Box 340
Moapa, NV 89025
Attn: Tribal Chair
Facsimile: (702) 865-2875

With a copy to:

Ziontz Chestnut
2101 Fourth Avenue, Suite 1230
Seattle, WA 98121
Attn: Richard M. Berley and
Brian W. Chestnut
Facsimile: (206) 448-0962
Email: rberley@ziontzchestnut.com;
bchestnut@ziontzchestnut.com

As used herein, a "business day" is any day that is not a Saturday, Sunday, legal holiday or day on which banking institutions are generally authorized or obligated by law to close in the State of Nevada. Any time period not specifically referring to business days shall be measured in calendar days; however, if any period of time set forth in this Agreement expires on a day which is not a business day, then such expiration date or date for performance shall be on the next business day.

25. **Counterparts.** This Agreement may be executed in any number of counterparts,

each of which when so executed shall be deemed to be an original and such counterparts, together shall constitute and be one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the Parties hereto. Without limiting or otherwise affecting the validity of executed copies hereof that have been delivered by facsimile or email of a PDF document, the Parties will use their commercially reasonable efforts to deliver originals as promptly as possible after execution. Signature pages may be detached and reattached to physically form one document.

26. **Government Savings Clause.** Each of the parties agrees to execute, deliver, and, if necessary, to record any and all additional instruments, certifications, amendments, modifications and other documents as may be required by the United States Department of the Interior, Bureau of Indian Affairs, Bureau of Land Management, the Office of the Solicitor, any Tribal regulatory agency, any Governmental Authority, or any Laws in order to effectuate, complete, perfect, continue or preserve the respective rights, obligations and interests of the parties hereto to the fullest extent permitted by Laws; provided, that any such additional instrument, certification, amendment, modification or other document shall not materially change the respective rights, remedies or obligations of Consultant or Client under this Agreement or any other agreement or document related hereto.

27. **Interests of Members of Congress.** No member of, or delegate to, Congress or resident commissioner of the U.S. House of Representatives shall be admitted to any share or part of this Agreement or to any benefit that may arise herefrom. Notwithstanding the foregoing, this provision shall not be construed to extend to a corporation or company for its general benefit.

28. **Approval or Consent.** Any provision of this Agreement that requires the approval or consent of either party shall be read to mean that such consent or approval shall not be unreasonably withheld, conditioned or delayed.

29. **Leasehold Mortgage.** Section 23.05(B)(1) of the Lease and Section 23.05(B)(6)-(10), inclusive, of the Lease are hereby incorporated herein by this reference and made a part hereof as if set out in full herein, provided that for purposes of this Agreement, all references in such sections of the Lease to (i) "Tenant" shall be deemed to refer to Client, (ii) "Landlord" shall be deemed to refer to Consultant, (iii) "Lease" shall be deemed to refer to this Agreement, (iv) "Section 23.05" of the Lease or subsections thereof shall be deemed to refer to the subsections of such section of the Lease as incorporated into this Agreement, (v) "Section 28" of the Lease shall be deemed to refer to Section 11 of this Agreement, and (vi) "Event of Default" shall be deemed to refer to an Event or Default or Breach. Consultant hereby consents to any Transfer of this Agreement pursuant to a Leasehold Mortgage (including, without limitation, a collateral assignment of this Agreement to a Leasehold Mortgagee or other Financing Party) and foreclosure or assignment as provided in Section 23.05 of the Lease.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

CONSULTANT:

THE MOAPA BAND OF PAIUTE INDIANS,
an Indian tribe federally recognized under Section 16
of the Indian Reorganization Act

By: _____
Name: _____
Title: _____

CLIENT:

_____,

By: _____
Name: _____
Title: _____

APPROVED:

The foregoing Construction Consulting Agreement, and all attachments thereto, are hereby approved pursuant to, as applicable, 25 U.S.C. 415, 25 U.S.C. 323, 25 U.S.C. § 81, 25 C.F.R. Part 162 and 25 C.F.R. Part 169 under delegated authority of 209 DM 8, 230 DM I, and 3 IAM 4.

UNITED STATES DEPARTMENT OF THE INTERIOR

Approval Dated: _____20____

By: _____
Name: _____
Title: _____

Exhibit K - 8

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on this ____ day of _____, 20__ by
_____ as _____ of _____.

(Seal, if any)

(Signature of Notarial Officer)

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on this ____ day of _____, 20__ by
_____ as _____ of _____.

(Seal, if any)

(Signature of Notarial Officer)

Exhibit K - 9

EXHIBIT A

DESCRIPTION OF SERVICES

1. Provide logistical support and advice for the translocation of any biological items (plant or animal) from the Premises, prior to or during construction on the Premises. Support shall include, arranging for appropriate access to the translocation sites by Client and its contractors.
2. Provide logistical support and advice for transport of equipment to the Premises from the Consultant's Reservation border. This support will be provided to Client or its construction contractors or subcontractors.
3. To the extent that approvals for construction activity are required from the Tribal Council that governs Consultant, Consultant will assist Client (or its contractors and subcontractors) in applying for such approvals.

EXHIBIT L

FORM OF PROFIT SHARING SIDE AGREEMENT

PROFIT SHARING SIDE AGREEMENT

This Profit Sharing Side Agreement (this “Agreement”) is entered into as of _____, 20__ (the “Effective Date”), by and between MOAPA BAND OF PAIUTES, a federally _____ recognized Indian Tribe (“Landlord”) and _____ (“Tenant”).

RECITALS:

A. Landlord and Tenant are parties to that certain Solar Energy Ground Lease Agreement (the “**Lease**”), of even date herewith, whereby Tenant is leasing from Landlord that certain real property, which is located on a portion of the Moapa River Indian Reservation, consisting of approximately 2,300 acres of vacant land, situated in Clark County, Nevada, as more fully described and depicted in Exhibit A-1 and Exhibit A-2 of the Lease (the “**Premises**”).

B. In order to induce Landlord to execute the Lease, and in consideration of the terms and conditions set forth therein, Tenant has agreed to pay to Landlord a Profit Sharing Payment (defined below) in connection with the Conveyance (defined below).

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing and the mutual undertakings set forth herein, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant hereby agree as follows:

1. Profit Sharing.

(a) Tenant hereby agrees to pay to Landlord an amount equal to five percent (5%) of the Net Proceeds (as hereinafter defined) of the Conveyance (collectively, the “**Profit Sharing Payment**”). The Profit Sharing Payment shall be payable within fifteen (15) days after Tenant’s receipt of the Net Proceeds. “**Net Proceeds**” shall mean (i) the total gross sales proceeds and other compensation, including, without limitation, the fair market value of any non-cash property received by Tenant or its Affiliates in connection with the Conveyance (collectively, the “**Total Gross Sales Proceeds**”), including, without limitation, consideration for the value of: (A) the leasehold pursuant to the Lease, (B) Tenant’s business operations on the Premises, and (C) the improvements to be constructed by Tenant on the Premises; less (ii) (x) all amounts required to be and actually paid by Tenant and/or its Affiliates to a Financing Party in order to effectuate the Conveyance (for the avoidance of doubt, no amounts paid to Affiliates of Tenant shall be deducted from Total Gross Sales Proceeds for purposes of calculation of Net Proceeds), (y) the portion of any debt (principal, interest and other charges) under any loan, the proceeds of which actually have been used to develop or otherwise exploit the Premises pursuant to and in accordance with the Lease, which debt is paid by Tenant (or which Tenant is contractually bound to pay within thirty (30) days after the closing of the Conveyance) from amounts included in the Total Gross Sales Proceeds and (z) the amount of any direct, actual and reasonable out-of-pocket transaction fees,

including, without limitation, reasonable brokers' fees or commissions and reasonable attorneys' fees, in each case actually paid by Tenant and/or its Affiliates to third parties in order to effectuate the Conveyance and which payments have been documented by paid invoices. For the avoidance of doubt, no amount or expense shall be included in any determination under clause (ii) above, or shall otherwise serve to reduce the Total Gross Sales Proceeds, unless such amount or expense was paid out of the Total Gross Sales Proceeds. "**Conveyance**" shall mean the first conveyance, following the Operations Commencement Date, of Lessee's assets, including its operations and improvements constructed on the Premises, and assignment of the Lease from Lessee to a third-party; provided, however, that no conveyance of all or any portion of the Lease or Tenant's operations or improvements on the leased premises to any one or more of the following parties shall be deemed a "Conveyance": (i) to any Affiliate of Lessee, (ii) to any Financing Party (including, without limitation, to any Financing Party providing debt or tax equity financing, whether by collateral assignment, mortgage or deed of trust, as security, foreclosure, deed-in-lieu of foreclosure, or otherwise), or (iii) to any assignees of a Financing Party.

(b) On or before the date of the Conveyance, Tenant shall provide Landlord with detailed written documentation necessary to accurately determine the amount of the Profit Sharing Payment payable to Tenant in connection with the Conveyance.

(c) Following the Conveyance and Tenant's payment of the Profit Sharing Payment, Landlord shall have the one time right for a period of one year thereafter and upon fifteen days' notice, at its own expense, to access the books and records of Tenant as may be reasonably necessary to verify the accuracy of the amount of the Profit Sharing Payment. Such records shall be full, true and accurate and kept in accordance with the provisions of this Agreement and otherwise in accordance with generally accepted accounting principles. Such access shall be granted during normal business hours and at the office of Tenant at which such books and records are routinely maintained, as mutually agreed to by Landlord and Tenant, each acting reasonably and in good faith. If Landlord's audit or review of Tenant's detailed written documentation reveals any inaccuracies in the Profit Sharing Payment made to Landlord, then Landlord shall, within 15 days, notify Tenant in writing of its objection, in which event Landlord and Tenant shall commence negotiations to attempt to agree upon the amount of the Profit Sharing Payment due to Landlord.

(d) If the parties cannot agree within 30 days following Landlord's delivery of Landlord's objection notice, each acting in good faith but without any obligation to agree, Landlord's accountant and Tenant's accountant shall, within 15 days following expiration of such 30 day period, mutually identify a third independent certified accountant. Within 10 days after the selection of the third accountant, the three accountants shall collectively determine how the discrepancy shall be resolved, and deliver their written determination thereof to Landlord and Tenant, with the decision of two of the three accountants controlling; provided that if none of the accountants can agree, the amount of the average of the two closest figures out of the three shall prevail as to the discrepancy at issue. Each party shall bear the cost of the accountant selected by it, and the parties shall equally share the cost of the third accountant selected as aforesaid. The resolution of any discrepancy made in accordance with the foregoing process shall be final and binding upon Landlord and Tenant. If such determination shows any overpayment or underpayment of the Profit Sharing Payment to Landlord, then Landlord shall forthwith refund the amount of any overpayment to Tenant, or Tenant shall forthwith pay the amount of any underpayment to Landlord. If such determination or the audit (set forth in Section 1(d) above)

shows an understatement by Tenant of the Profit Sharing Payment calculation by more than five percent of what should have been correctly reported, then Tenant shall be obligated to pay all costs of such audit. The foregoing rights and obligations in this Section 2 shall survive the Conveyance and termination of this Agreement.

2. Method of Payment. The Profit Sharing Payment shall be made by wire transfer in accordance with the instruction attached hereto as Exhibit A.

3. Intentionally Omitted.

4. Event of Default. Unless the Parties in their discretion otherwise agree in writing, any Breach of this Agreement shall constitute an Event of Default under the Lease. For purposes hereof, a “**Breach**” shall mean any one or more of the following:

(a) Tenant shall fail to pay when due any indebtedness or other amounts (including but not limited to the Profit Sharing Payment) owed to Landlord, and such failure shall continue for thirty (30) days after Landlord gives Tenant written notice thereof.

(b) Tenant shall fail to comply with, observe or perform any of the covenants, conditions, agreements or provisions of this Agreement.

(c) Tenant has: (i) filed for relief under the United States Bankruptcy Code or has suffered the filing of an involuntary petition under the Bankruptcy Code that is not dismissed within sixty (60) days after filing; (ii) had a receiver appointed to take possession of all or substantially all of the property of Tenant; or (iii) suffered an assignment for the benefit of creditors.

5. Tax Treatment. For income tax purposes, Landlord’s right to the Profit Sharing Payment herein shall not be regarded by the parties hereto as creating a tax partnership for federal, state, or local income or other tax purposes between Landlord and Tenant. Landlord shall provide to Tenant IRS Form 1099, or such other form as Tenant’s accountants request, evidencing the Profit Sharing Payment.

6. No Partnership or Joint Venture. Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of a partnership or a joint venture between the parties hereto, it being understood and agreed that neither any provisions contained in this Agreement nor any acts of the parties to this Agreement shall be deemed to create any relationship between the parties, other than the relationship of Landlord and Tenant, as set forth in the Lease. The parties acknowledge that in no event shall Landlord be liable to Tenant for the payment of any losses resulting from Tenant’s ownership, development or operation of the Premises. Further, in no event will Landlord be required to make any further contributions or investments or to reinvest or recontribute any of the monies paid to Landlord by Tenant.

7. Attorneys’ Fees. In the event of any litigation concerning this Agreement, the prevailing party shall recover, in addition to all other relief to which such party is entitled, court costs and reasonable attorneys’ fees at both the trial and appellate levels.

8. Amendment. This Agreement may not be altered or modified, except by an instrument in writing signed by both parties.

9. Benefit of Agreement; Recordation. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors and assigns. Landlord shall have the right to record a copy of this Agreement in the public records of Clark County, Nevada.

10. Governing Law. Except as may be preempted by applicable federal law including 25 C.F.R. Part 162, and specifically noting the existence of a limited waiver of sovereign immunity from Landlord to Tenant, this Agreement shall be governed by and interpreted under, the internal laws of the State of Nevada, without giving effect to its conflict of law provisions.

11. Time of the Essence. Time shall be of the essence with respect to the performance by the parties of their respective obligations hereunder.

12. Captions. The captions of the sections of this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of this Agreement, or the intent of any provision hereof. Use of the masculine, feminine or neuter, or singular or plural, shall include the other when the sense requires.

13. Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. The waiver by any party of a right provided hereunder shall not be deemed to be a continuing waiver of that right or a waiver of any other right hereunder.

14. Further Assurances. Each party agrees that at the request of the other party it will at any time hereafter make such further assurances and execute or cause to be executed such further instruments as may be reasonably requested by the other party in order that this Agreement may be fully performed in accordance with its intent and provisions.

15. Consideration. Each party agrees that the covenants and promises contained herein are good and sufficient consideration for the respective obligations required hereunder.

16. Provisions Negotiated and Independent. Each and every provision of this Agreement has been independently, separately and freely negotiated by the parties as if this Agreement were drafted by all parties hereto. The parties, therefore, waive any statutory or common law presumption which would serve to have this Agreement construed in favor of, or against, either party. Unless otherwise defined herein, capitalized terms used herein shall have the respective meaning assigned to such terms in the Lease.

17. Notices. All notices or other communications required or permitted hereunder shall be in writing, and shall be delivered to the receiving party at the address below by: (i) personal delivery (including by means of professional messenger service); (ii) nationally recognized overnight courier; or (iii) registered or certified mail, postage prepaid, return receipt requested, and shall be deemed received upon the date of receipt (or refusal to accept delivery) thereof. Notice

of change of address shall be given by written notice in the manner detailed in this Section.

If to Tenant:

With a copy to:

If to Landlord:

The Moapa Band of Paiute Indians
 1 Lincoln Street
 P.O. Box 340
 Moapa, NV 89025
 Attn: Tribal Chair
 Facsimile: (702) 865-2875

With a copy to:

Ziontz Chestnut
 2101 Fourth Avenue, Suite 1230
 Seattle, WA 98121
 Attn: Richard M. Berley and
 Brian W. Chestnut
 Facsimile: (206) 448-0962
 Email: rberley@ziontzchestnut.com;
bchestnut@ziontzchestnut.com

As used herein, a “business day” is any day that is not a Saturday, Sunday, legal holiday or day on which banking institutions are generally authorized or obligated by law to close in the State of Nevada. Any time period not specifically referring to business days shall be measured in calendar days; however, if any period of time set forth in this Agreement expires on a day which is not a business day, then such expiration date or date for performance shall be on the next business day.

18. Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the parties hereto. Without limiting or otherwise affecting the validity of executed copies hereof that have been delivered by facsimile or email of a PDF document, the parties will use their commercially reasonable efforts to deliver originals as promptly as possible after execution. Signature pages may be detached and reattached to physically form one document.

19. Term. The term of this Agreement shall commence on the Effective Date and shall continue thereafter as long as the Lease, unless earlier terminated as a result of the payment of the Profit Sharing Payment as provided in Section 1(a) and the subsequent expiration of any audit period as provided in Section 1(d).

20. Dispute Resolution; Binding Arbitration; Limited Waiver of Sovereign Immunity.

(a) If a dispute arises regarding interpretation or enforcement of this Agreement, the Disputing Parties (as defined in the Lease) shall diligently work to resolve the issue informally. If informal dispute resolution is unsuccessful, then the dispute shall be resolved by binding arbitration in accordance with this Section. To initiate arbitration, the claiming Disputing Parties

shall notify the other Disputing Parties in writing. The claim shall be resolved in accordance with the Commercial Arbitration Rules of the American Arbitration Association. One arbitrator shall preside and shall be selected by the American Arbitration Association. The arbitrator's fee shall be divided equally between the Disputing Parties. The arbitration shall take place in Clark County, Nevada, or such other place as the parties agree. The arbitrator shall render an award within forty-five (45) days from the conclusion of the arbitration. The decision of the arbitrator shall be final and binding and enforced with the same force and effect as a decree of a court having competent jurisdiction.

(b) The Disputing Parties anticipate that recourse to binding arbitration should obviate the need for recourse in any court, except to the extent that a court order may be necessary to compel a Disputing Party to participate in arbitration, or to enforce the arbitration award. However, a Disputing Party may elect to bring a claim authorized under this Agreement in the United States District Court for the District of Nevada to the extent a Disputing Party determines that federal court review is necessary to address the disputed issues.

(c) Landlord expressly and irrevocably grants a limited waiver of its sovereign immunity solely as to any claim of Tenant or another Disputing Party pertaining to this Agreement ("Limited Waiver"). Landlord also expressly and irrevocably grants a limited waiver of its sovereign immunity with respect to proceedings in federal or state courts located in Nevada with territorial jurisdiction over Clark County, but solely to the extent necessary to compel Landlord to participate in arbitration, or to enforce the arbitration award. This Limited Waiver does not allow recovery from Landlord of consequential, incidental, special, punitive or exemplary damages or lost profits, nor recovery from any appointed or elected officials, officers or employees of Landlord for any monetary damages whatsoever. Landlord further covenants and agrees it shall not move for an exhaustion or tribal court remedies or apply to Tribal Court or any other tribal forum for resolution of any claim or proceeding relating to or arising under this Agreement. In any legal action or proceeding as to which Landlord has waived its sovereign immunity as set forth in this Section, Landlord irrevocably agrees that process against it shall be effective if served on Landlord's chairperson or his or her legally-authorized designee.

(d) Landlord covenants and agrees that its limited waiver of sovereign immunity and other waivers and agreements contained herein are valid, binding, enforceable and irrevocable, notwithstanding any future changes in the structure or composition of Landlord's tribal government, and agrees not to revoke or seek to revoke, repudiate or further limit, in whole or in part, any of such waivers or agreements. These covenants are set forth in Landlord's duly-executed Tribal Resolution, which is attached as Schedule 15.01(G) to the Lease.

(e) In the event Landlord (i) revokes, further limits or attempts to revoke or further limit the limited waiver of sovereign immunity contained herein, (ii) takes any action which is inconsistent with the such waivers or (iii) fails to submit to the dispute resolution forums and governing law provided for in this Section, the Parties recognize and agree that (A) there remains no adequate remedy at law available, (B) there will be irreparable injury upon any revocation or further limitation of these waivers and agreements, and (C) Landlord hereby consents to the entry of appropriate injunctive relief, consistent with the terms of the Agreement, without the need to prove that actual damages or monetary relief would not be an adequate remedy and without having to post a bond. In such event, an affected party may immediately seek judicial injunctive relief in

the dispute resolution forums authorized herein.

(f) To the extent necessary, the Parties agree that this Agreement comports with any applicable requirements of the Moapa Commercial Transactions Ordinance, and as such, enjoys any privileges or immunities set forth in said Ordinance.

(g) Specific Agreement to Arbitration Provisions. By initialing below, Landlord and Tenant each grant and confirm their specific authorization to submit disputes arising under this Agreement to arbitration upon, and subject to the terms and conditions of, this Section 20. Landlord and Tenant each specifically acknowledge that such Party has thoroughly reviewed this Section 20 with counsel of its choosing, and each of Landlord and Tenant voluntarily grant such Party's specific authorization to these arbitration provisions through this paragraph, which serves to confirm that such Party has affirmatively agreed to the arbitration provisions set forth in this Section 20. For the purpose of clarity, each Party has affirmatively agreed to the arbitration provisions set forth in this Section 20, and each Party intends that this paragraph, and the specific acknowledgements below, satisfy the requirements of NRS 597.995(1).

Landlord's Acknowledgement: _____

Tenant's Acknowledgement: _____

21. Interests of Members of Congress. No member of, or delegate to, Congress or resident commissioner of the U.S. House of Representatives shall be admitted to any share or part of this Agreement or to any benefit that may arise herefrom. Notwithstanding the foregoing, this provision shall not be construed to extend to a corporation or company for its general benefit.

22. Approval or Consent. Any provision of this Agreement that requires the approval or consent of either party shall be read to mean that such consent or approval shall not be unreasonably withheld, conditioned or delayed.

23. Leasehold Mortgage. Section 23.05(B)(1) of the Lease and Section 23.05(B)(6)-(10), inclusive, of the Lease are hereby incorporated herein by this reference and made a part hereof as if set out in full herein, provided that for purposes of this Agreement, all references in such sections of the Lease to (i) "Lease" shall be deemed to refer to this Agreement, (ii) "Section 23.05" of the Lease or subsections thereof shall be deemed to refer to the subsections of such section of the Lease as incorporated into this Agreement, (iii) "Section 28" of the Lease shall be deemed to refer to Section 17 of this Agreement, and (iv) "Event of Default" shall be deemed to refer to an Event or Default or Breach. Landlord hereby consents to any Transfer of this Agreement pursuant to a Leasehold Mortgage (including, without limitation, a collateral assignment of this Agreement to a Leasehold Mortgagee or other Financing Party) and foreclosure or assignment as provided in Section 23.05 of the Lease.

24. Assignment. This Agreement and the rights and obligations hereunder shall not be assigned or otherwise transferred by either party without the express written consent of the other party or as authorized under the Lease.

[Signatures and acknowledgements appear on the following pages.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

LANDLORD:

THE MOAPA BAND OF PAIUTE INDIANS,
an Indian tribe federally recognized under Section
16 of the Indian Reorganization Act

By: _____
Name: _____
Title: _____

TENANT:

_____,

By: _____
Name: _____
Title: _____

APPROVED:

The foregoing Profit Sharing Side Agreement, and all attachments thereto, are hereby approved pursuant to, as applicable, 25 U.S.C. 415, 25 U.S.C. 323, 25 U.S.C. § 81, 25 C.F.R. Part 162 and 25 C.F.R. Part 169 under delegated authority of 209 DM 8, 230 DM I, and 3 IAM 4.

UNITED STATES DEPARTMENT OF THE INTERIOR

Approval Dated: _____20____

By: _____
Name: _____
Title: _____

LANDLORD'S ACKNOWLEDGEMENT

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on _____, 20__ by
_____ as _____ of _____.

(Signature of Notarial Officer) (Seal)

TENANT'S ACKNOWLEDGEMENT

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on _____, 20__ by
_____ as _____ of _____.

(Signature of Notarial Officer) (Seal)

EXHIBIT A**LANDLORD WIRE INSTRUCTIONS**

The Profit Sharing Payment shall be made by Tenant to Landlord via wire transfer in accordance with the instruction below or to another account designated in writing by Landlord.

Bank Name:

Routing #:

Account:

Account #:

SCHEDULE 5.01

RENT

Annual Rent during the Term will be comprised of two components:

(A) Monthly Rent beginning as of the Effective Date equal to the quotient of: (1) \$460.00 multiplied by the actual acres of the Premises, subject to the Premises Adjustment, (2) divided by 12. The \$460.00 rate will escalate by 3% per annum, except upon commencement of the Extended Operations Term, if applicable, at which times the rate will escalate by 5% per annum; and

(B) Capacity Charge of \$800 per MW-ac phased in over 5 years, beginning with the Operations Commencement Date. The phasing will be as follows: (1) during the first year following the Operations Commencement Date, 20% of the Capacity Charge will be payable; (2) during the second year following the Operations Commencement Date, 40% of the Capacity Charge will be payable; (3) during the third year following the Operations Commencement Date, 60% of the Capacity Charge will be payable; (4) during the fourth year following the Operations Commencement Date, 80% of the Capacity Charge will be payable; and (5) during the fifth year following the Operations Commencement Date and for each subsequent year during the first thirty-five (35) years of the Term, 100% of the Capacity Charge will be payable. For purposes of calculation of the Capacity Charge, the MW-ac of the Project shall be determined definitively to be the certified nameplate capacity of the Project set out in the PPA (the “**Nameplate Capacity**”); provided, however, if at any single moment during a Lease Year Tenant delivers power in excess of the Nameplate Capacity to the Delivery Point (as defined in the PPA), due to the operation of an energy storage device or otherwise, then for such Lease Year the MW-ac of the Project for the purpose of determining the Capacity Charge shall be the higher amount as actually delivered to the Delivery Point.

The following is an example of the Monthly Rent payable for 300 MW-ac Solar Power Facilities occupying 2,000 acres:

Name Plate Capacity: 300MWac at the Point of Delivery

Lease Acreage: 2,000 acres

2nd year Rent: $\$460 \times 1.03 \times 2,000$ acres

2nd year Capacity Charge: $\$800 \times 300\text{MWac} \times 40\%$

2nd year Annual Rent: $(\$460 \times 1.03 \times 2,000) + (\$800 \times 300 \times 0.40) = \$947,600 + \$96,000 = \$1,043,600$

2nd year Monthly Rent = $\$1,043,600 / 12$ months = \$86, 967 (rounded to nearest dollar)

SCHEDULE 15.01(G)
TRIBAL RESOLUTIONS
[SEE ATTACHED]

SCHEDULE 15.02(D)**PROJECT APPROVALS****Permits and Approvals Obtained**

Description	Approving Entity
Approval of the Power Purchase Agreement	Public Utilities Commission of Nevada
NEPA Final Environmental Impact Statement	U.S. Bureau of Indian Affairs
National Historic Preservation Act, Section 106, Concurrence Determination and Finding of Eligibility	U.S. Bureau of Indian Affairs and Nevada State Historic Preservation Office
Record of Decision ^[1]	Secretary, Department of the Interior
Right of Way Grant	U.S. Bureau of Land Management
Endangered Species Act Section 7 Consultation, Biological Opinion and Incidental Take Statement for Desert Tortoise and Moapa Dace	U.S. Fish and Wildlife Service
Special Use Permit	Clark County Board of County Commissioners
Special Purpose Permit	Nevada Department of Wildlife
National Historic Preservation Act Section 106 Finding of Eligibility, Consultation, and Approval	Nevada State Historic Preservation Office
Utility Environmental Protection Act Compliance Order	Public Utilities Commission of Nevada
Utility Environmental Protection Act Compliance Order and Permit to Construct the Eagle Shadow Mountain Interconnection Facilities at Reid Gardner Substation	Public Utilities Commission of Nevada

Permits and Approvals to be Obtained

Description	Approving Entity
Approval of Solar Energy Ground Lease	U.S. Bureau of Indian Affairs
Approval of Solar Energy Ground Lease	Moapa Band of Paiutes Tribal Council
Dust Control Permit	Clark County Department of Air Quality
Temporary Groundwater Discharge Permit for Authorization to Discharge to Groundwater of the State of Nevada, NRS Ch. 445A	Nevada Division of Environmental Protection
Utility Environmental Protection Act Permit to Construct for Gen-Tie	Public Utilities Commission of Nevada

^[1] **Tenant Note:** The Record of Decision will be approved under the new “One Federal Decision” guidelines. It will be one ROD signed at the Secretary’s level for both agencies (BIA and BLM). There may be BLM signatures above the Secretary.

Description	Approving Entity
Wireline Crossing Permit, Road Crossing Permit, and Land Lease	Union Pacific Rail Road
Clean Water Act Section 402 NPDES Construction Stormwater General Permit and Storm Water Pollution Prevention Plan	U.S. Environmental Protection Agency

SCHEDULE 29.22**APPLICABLE TRIBAL LAWS IN EFFECT AS OF EFFECTIVE DATE**

- Moapa TERO ordinance
- Moapa Tribal Law and Order code
- Moapa Tribal Constitution & By Laws
- Moapa Tribal Air quality & Solid Waste ordinances.

Record of Decision (ROD)

Final Environmental Impact Statement

for the

Eagle Shadow Mountain Solar Project

U.S. Department of the Interior
Bureau of Indian Affairs
Western Regional Office
Phoenix, Arizona

U.S. Department of the Interior
Bureau of Land Management
Southern Nevada District
Las Vegas, Nevada

February 2020

DEPARTMENT OF THE INTERIOR

Record of Decision (ROD) for an up to 2,200-acre, long term lease for the development of a 300 megawatt (MW) Photovoltaic (PV) solar generation facility and approximately 2.4 acres of associated rights-of-way (ROW) for a transmission line on the Moapa River Indian Reservation (Reservation) and approximately 283 acres of ROW for a transmission line and access road on tribal lands within a designated utility corridor and on federal lands managed by the Bureau of Land Management (BLM) in Clark County, Nevada.

AGENCY: Bureau of Indian Affairs and Bureau of Land Management

ACTION: Record of Decision

SUMMARY: This document constitutes the United States Department of the Interior (DOI), the Bureau of Indian Affairs (BIA), and the Bureau of Land Management (BLM) ROD for the Eagle Shadow Mountain Solar Project (Project). This ROD represents BIA's approval of the Moapa Band of Paiute Indians (Band) solar energy ground lease with 325MK 8me LLC (Applicant) for the generation facility and associated ROW agreements for up to 40 years on the Reservation for the purposes of constructing, operating and maintaining, and decommissioning a 300 MW PV solar generation facility and associated infrastructure. This ROD also approves BLM's issuance of a ROW grant for a 230 kilovolt (kV) transmission line and associated maintenance road located within a designated utility corridor located on the Reservation but managed by BLM, a part of the transmission line located on federal lands managed by BLM, and for the use of an existing access road also located both within the utility corridor and on BLM-managed federal lands. The Project is analyzed in the Final Environmental Impact Statement (FEIS) (BIA 2019). The Environmental Protection Agency (EPA) published a Notice of Availability (NOA) for the FEIS in the *Federal Register* on December 20, 2019. The BIA also published an NOA for the FEIS in the *Federal Register* on December 20, 2019. Cooperating agencies for development of the FEIS included the BLM, Band, Environmental Protection Agency (EPA), U.S. Fish and Wildlife Service (USFWS), and Nevada Department of Wildlife (NDOW).

ADDITIONAL COPIES: Copies of the FEIS and ROD are available at the project web site www.esmsolareis.com/ as well as via links on the BIA and BLM websites. Additionally, copies will be available in the following locations: BIA Western Regional Office, 2600 North Central Avenue, 12th Floor, Suite 210, Phoenix, Arizona; U.S. Bureau of Land Management, 4701 N. Torrey Pines Drive Las Vegas, NV 89130; BIA Southern Paiute Agency, 180 North 200 East, Suite 111, St. George, Utah; and Moapa River Indian Reservation Tribal Hall, One Lincoln Street, Moapa, NV 89025-0340. A Federal Register notice regarding the availability of the FEIS was issued on December 20, 2019. Notices were also published in the Moapa Review and Las Vegas Review Journal newspapers.

FOR FURTHER INFORMATION CONTACT: Mr. Chip Lewis, BIA
Western Regional Office, Branch of Environmental Quality Services, 2600 North Central Avenue,
Phoenix, Arizona 85004-3008, telephone (602) 379-6782; or Mr. Garry Cantley at (602) 379-
6750.

Table of Contents

1.	INTRODUCTION	1
1.1	Background	1
1.2	Decisions Being Made	3
1.2.1	BIA	3
1.2.2	BLM	3
2.	ALTERNATIVES	3
2.1	Considered and Carried Forward for Detailed Analysis	3
2.1.1	Proposed Project (BIA's Proposed Action/Selected Alternative)	3
2.1.2	Alternative Gen-Tie Route	4
2.1.3	No Action Alternative	4
2.2	Alternatives Considered but Eliminated from Detailed Analysis	4
2.2.1	Alternative Reservation Locations	5
2.2.2	Alternative Off-Reservation Locations	5
2.2.3	Alternative Interconnection Options	5
2.2.4	Concentrated Photovoltaic (CPV) Technology	6
2.2.5	Distributed Solar Generation	6
2.2.6	Wind Generation	6
3.	PERMITS AND APPROVALS	7
4.	CORRECTIONS TO THE FINAL EIS	7
5.	MITIGATION MEASURES	7
5.1	Mitigations Measures Not Adopted	7
5.2	Mitigation Compliance Monitoring and Reporting	7
6.	PUBLIC INVOLVEMENT	8
6.1	Public Scoping Period	8
6.2	DEIS Preparation and Distribution	9
6.3	FEIS Preparation and Distribution	9
7.	DECISION RATIONALE	10
7.1	BLM Directive	10
7.2	BIA Directive	11
8.	FINAL AGENCY ACTION	13

Table of Contents

8.1	Bureau of Indian Affairs	13
	8.1.1 Protest and Appeal Opportunities	13
8.2	Bureau of Land Management	14
8.3	Protest and Appeal Opportunities	14
	Operations and Maintenance Minimization Measures	26
	Decommissioning Minimization Measures	27
	Compensatory Mitigation	27

Attachments

- A. Anticipated Permits for the Eagle Shadow Mountain Solar Project
- B. Required Mitigation for the Eagle Shadow Mountain Solar Project
- C. Final Memorandum of Agreement (MOA)

Record of Decision

Eagle Shadow Mountain Solar Project

1. INTRODUCTION

This document constitutes the United States Department of the Interior (DOI), the Bureau of Indian Affairs (BIA), and the Bureau of Land Management (BLM) Record of Decision (ROD) for the Eagle Shadow Mountain Solar Project (Project). This ROD represents BIA's approval of the Moapa Band of Paiute Indians (Band) solar energy ground lease with 325MK 8me LLC (Applicant) for the generation facility and associated ROW agreements for up to 40 years on the Moapa River Indian Reservation (Reservation) for the purposes of constructing, operating and maintaining, and decommissioning a 300 MW PV solar generation facility and associated infrastructure. The ROD also approves the BLM's issuance of a ROW grant for a 230 kilovolt (kV) transmission line and use of an existing access road located on tribal lands within a designated utility corridor and federal lands managed by the BLM.

This ROD provides background on the solar project, summarizes the decisions being made, summarizes the alternatives evaluated, discusses the mitigation measures to be implemented, and summarizes the public participation process all used in the rationale to reach a decision.

1.1 Background

325MK 8me LLC (Applicant) is proposing to construct a 300 megawatt (MW) solar Photovoltaic (PV) generation facility and associated infrastructure on the Reservation in Clark County, Nevada. The Project infrastructure would include an approximately 12.5-mile 230 kV electric transmission line (gen-tie line) that would connect the Project to the regional electric grid. The proposed Project would be located approximately 30 miles northeast of Las Vegas in Clark County, Nevada with the solar field (and ancillary facilities) on up to 2,200 leased acres within the Reservation. These lands are currently vacant with nearby roads, pipelines, and transmission line ROWs and tribal wells and an aggregate mine.

The gen-tie line would be located on the Reservation, tribal lands within a designated utility corridor that is managed by the BLM, federal lands managed by the BLM, and private lands (owned by NV Energy) that would connect to the Reid Gardner Substation.

The locations of the Project on the Reservation and federal lands managed by the BLM are described below (all locations are in Mount Diablo Meridian):

- Reservation
 - Solar Lease Area - Township 16 South, Range 64 East, Sections 9, 10, 11, 12, 14, 15, 16, 21, and 22
 - Gen-Tie Line - Section 14 of Township 16 South Range 64 East

Record of Decision

Eagle Shadow Mountain Solar Project

- Tribal Lands within a designated utility corridor managed by the BLM
 - Gen-Tie Line and associated maintenance road – Sections 12, 13, and 14 of Township 16 South Range 64 East; Sections 5, 6, and 7 of Township 16 South Range 65 East; Sections 12, 13, 14, 22, 23, 27, 28, 32, and 33 of Township 15 South Range 65 East
 - Existing Access Road – Sections 14, 22, 23, 27, 28, 33 of Township 16 South Range 64 East
- Federal Lands managed by the BLM
 - Gen-Tie Line and associated maintenance road - Section 7 of Township 16 South and Range 66 East
 - Existing Access Road – Sections 10 and 15 of Township 17 South Range 64 East

The BIA's mission is to “enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian Tribes, and Alaska Natives”. The Project would create an economic development opportunity for the Band by providing a long-term economically viable revenue source (lease income) and creating new jobs and employment opportunities for Band members; and develop clean renewable electricity generation from the Band's solar resources that can be efficiently connected to the regional grid to assist the Federal Government, the State of Nevada, and neighboring states and companies to meet their renewable energy goals. The proposed Project would also help meet the goals of the Federal Government to eliminate or reduce greenhouse gas (GHG) emissions and promote the deployment of renewable energy technologies.

The Band identified the proposed Project as a viable opportunity to meet its economic development goals because the lease would provide much needed revenue to the Band while occupying a small portion of the Reservation. Construction and operation of the Project would also afford employment opportunity to Band members. The proposed Project would also be consistent with the Band's tradition of respect for the land and would fulfill the purposes for which the 70,000 acres were restored to the Band by the Federal Government in 1980 (Moapa Paiutes, n.d.).

The Project would also assist in addressing the management objectives in the Energy Policy Act of 2005 (Title II, Section 211) and Secretarial Order 3285A1 (March 11, 2009) that established the development of environmentally responsible renewable energy as a priority for the DOI.

The Project is analyzed in the Final Environmental Impact Statement (FEIS) (BIA 2019). The Environmental Protection Agency (EPA published a Notice of Availability for the FEIS in the *Federal Register* on December 20, 2019. The BIA also published a Notice of Availability for the FEIS in the *Federal Register* on December 20, 2019. Cooperating agencies for development of the FEIS included the BLM, EPA, Nevada Department of Wildlife (NDOW), U.S. Fish and Wildlife Service (USFWS), and the Band.

1.2 Decisions Being Made

1.2.1 BIA

The BIA has a trust responsibility to protect and preserve the Band's land, assets, and resources while promoting tribal self-governance. The BIA, pursuant to 25 United States Code (U.S.C.) § 415, has decided to approve the solar energy ground lease for the generation facility and associated ROW agreements between the Band and Applicant for a short portion of the gen-tie line on the Reservation.

1.2.2 BLM

The BLM has decided to issue a ROW grant to the Applicant under Title V of the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. § 1761(a)) for the construction, operation and maintenance, and decommissioning of the portion of the proposed gen-tie line and use of the existing access road that is on tribal lands within a designated utility corridor and federal lands managed by the BLM. The casefile number for the gen-tie ROW is N-97443. This ROW would be in compliance with FLPMA, BLM ROW regulations (43 Code of Federal Register (CFR) § 2800), and other applicable Federal laws and policies.

2. ALTERNATIVES

2.1 Considered and Carried Forward for Detailed Analysis

2.1.1 Proposed Project (BIA's Proposed Action/Selected Alternative)

Under the Selected Alternative, also identified as the environmentally preferable alternative (40 CFR 1505.2(b)), the Applicant will lease up to 2,200 acres for up to 40 years for the purposes of constructing, operating and maintaining, and decommissioning a 300 MW PV solar energy facility on the Reservation located in Clark County, Nevada. Major on-site facilities include the solar field (blocks of photovoltaic panels mounted on fixed tilt or tracking systems and associated equipment), a battery energy storage system, a project substation, and operation and maintenance (O&M) facilities. The off-site facilities include a 230 kV gen-tie line located on the Reservation, tribal lands within a designated utility corridor that is managed by the BLM, federal lands managed by the BLM, and private lands owned by NV Energy. Additional offsite facilities include use of an existing access road.

The Project and related facilities will disturb an approximate total area of 2,203 acres on the Reservation. The solar arrays, battery energy storage, substation, and operations building and parking will disturb up to approximately 2,200 acres within a 4,770-acre lease study area on the Reservation. The 230 kV transmission ROW (up to 200-foot wide) connecting the solar facility to the Reid Gardner Substation will cover approximately 272 acres and will be approximately

Record of Decision

Eagle Shadow Mountain Solar Project

12.5 miles in length (about 0.1 miles on the Reservation, 10.8 miles on tribal lands within a designated utility corridor managed by the BLM, 0.3 miles on federal lands managed by the BLM, and 1.3 miles on private land owned by NV Energy). Project site access will be provided by a ROW grant issued by the BLM on an existing access road on tribal lands within the designated utility corridor (4.2 miles / 12.1 acres) and federal lands managed by the BLM (0.8 miles / 2.2 acres).

The Project site was identified as the best location for the Project for a number of reasons: it was identified by the Band as a viable solar site, it is close to transmission interconnection points at/near the Reid Gardner Substation (which offer near-term interconnection opportunities), it has existing road access, and it has limited anticipated impacts to jurisdictional waters.

A more detailed description of the selected alternative can be found in Chapter 2 of the FEIS.

2.1.2 Alternative Gen-Tie Route

The BIA analyzed an alternative gen-tie transmission line route in the FEIS that would originate on tribal lands at a solar project substation location and would follow a similar but different path. The alternative route for the gen-tie would locate the approximately 12.5-mile line parallel to and northwest of the proposed gen-tie location at the northwestern edge of the Designated Utility Corridor. This alternative gen-tie route would cross similar distances of land within the corridor and across BLM-administered lands and NV Energy-owned private lands before terminating at the Reid Gardner Substation. Once on private land, this alternative would follow the same route as the proposed Project to the Reid Gardner Substation. Under this alternative, all the onsite and temporary facilities would be the same as discussed in the proposed Project.

2.1.3 No Action Alternative

The No Action Alternative assumes that the lease agreement is not executed, the BLM utility ROWs would not be issued, and the Project would not be built. Under the No Action Alternative, the purpose and need would not be met. The Band would not benefit economically from the energy production that would be obtained from their prime solar resources and the development of sustainable renewable resources would not occur. The Federal government, Nevada, and neighboring states would not be assisted in their efforts to meet their renewable energy goals. The No Action Alternative forms the baseline against which the potential impacts of the Proposed Action and Alternatives are compared.

2.2 Alternatives Considered but Eliminated from Detailed Analysis

The National Environmental Policy Act (NEPA) requires federal officials to rigorously explore and objectively evaluate all reasonable alternatives and to briefly discuss the reasons for

eliminating any alternatives that were not developed in detail. 40 CFR § 1502.14. Specific alternatives that were eliminated from detailed analysis are discussed below, along with the rationale for their elimination.

2.2.1 Alternative Reservation Locations

Other sites on the Reservation were considered for potential solar development. This evaluation considered a variety of factors including up to 2,200 contiguous developable acres, favorable topography, drainage, potential impacts to sensitive resources (including special status species and cultural resources), and proximity to existing infrastructure, transmission interconnection points and access.

This process was designed to identify areas with the greatest potential for development while minimizing potential adverse impacts or permitting issues. This included making use of existing infrastructure to minimize disturbance and impacts associated with the access roads and gen-tie lines. Large portions of the Reservation were eliminated from further consideration by applying these criteria.

The other solar sites on the Reservation including the K Road Moapa Solar Project site, the approved Moapa Solar Energy Center site, the approved Aiya Solar site, and other sites on the Reservation previously studied and eliminated by the K Road Moapa Solar Facility EIS (BIA 2012) were also eliminated. In addition, the 6,000-acre desert tortoise relocation areas associated with the K Road Moapa Project are not available for development.

2.2.2 Alternative Off-Reservation Locations

The project is, by the terms of its purpose, limited to locations on the Reservation and held in trust by the BIA for the Band. Accordingly, BIA did not consider off-reservation alternatives.

2.2.3 Alternative Interconnection Options

Alternatives were considered that would interconnect the Project into the nearby Crystal Substation. The Applicant's transmission team considered factors including but not limited to available transmission capacity, interconnection costs, and existing projects in NV Energy's transmission queue. Based on the transmission and economic analysis, the Applicant determined that interconnecting at the Reid Gardner Substation was a superior option for being awarded a Power Purchase Agreement in an extremely competitive marketplace. The Applicant has an executed Interconnection Agreement with NV Energy for the Proposed Project for interconnection to the Reid Gardner Substation, an executed Power Purchase Agreement, and no flexibility for a different point of interconnection to result in a viable project.

2.2.4 Concentrated Photovoltaic (CPV) Technology

CPV technology uses layers of wafers to absorb different wavelengths of sunlight and provide more power conversion efficiency than typical PV panels. This technology requires dual tracking technology to provide critical alignment with the direct sunlight in order to be efficient. CPV is generally mounted on taller structures than traditional PV (as high as 40 feet above the surface). Because this technology is relatively new, there are risks for long-term performance reliability and manufacturing capacity to supply large-scale utility projects has not been proven to date. Therefore, this alternative has not been carried forward for detailed analysis.

2.2.5 Distributed Solar Generation

The concept of distributed solar generation locates smaller projects near the demand for electricity. Generally, these projects would generate power using PV panels (similar to all PV technologies). The PV panels could be installed on private or publicly owned residential, commercial, or industrial building rooftops or in other disturbed areas such as parking lots or disturbed areas adjacent to existing structures such as substations. To be a viable alternative to the proposed Project, there would need to be sufficient locations where new distributed solar generation could be installed to cumulatively generate 300 MW of capacity and sufficient local demand for this electricity. In order to meet the Project's purpose, generation would need to be located on the Reservation and there are insufficient rooftops or other disturbed areas on the Reservation to make this option viable. Also, a true distributed generation project could not meet one of the fundamental objectives of the proposed utility-scale solar project: to provide renewable energy to utility off-takers. Rooftop systems that lack transmission only generate power for on-site consumption and the limited on-reservation uses create only a fraction of the demand that this Project seeks to serve. Distributed generation projects cannot fill the same energy needs as utility scale projects and one is not a feasible alternative for the other so this alternative was eliminated from detailed analysis.

2.2.6 Wind Generation

Wind carries kinetic energy that can be utilized to spin the blades of wind turbine rotors and electrical generators, which then feed alternating current (AC) into the utility grid. Most state-of-the-art wind turbines operating today convert 35 to 40 percent of the wind's kinetic energy into electricity. The technology is well developed and can be used to generate significant amounts of power. Wind energy was eliminated from detailed discussion because this area has not been identified to have a sufficient wind resource and so would not be technically or economically feasible to implement.

3. PERMITS AND APPROVALS

See Attachment A. This attachment provides a synopsis of the permits and approvals that the Proponent has obtained or will need to obtain prior to beginning construction activities.

4. CORRECTIONS TO THE FINAL EIS

Comments on the FEIS were received from three state agencies (NDOW, Nevada Division of Water Resources, and Nevada Bureau of Safe Drinking Water) through the Nevada State Clearinghouse, EPA Region 9, and the Southern Nevada Water Authority. None of the comments received identified significant new circumstances or information relevant to environmental concerns that would require a change in the FEIS. Additionally, no grammatical errors or corrections were provided. Therefore, none of the comments require a response and no revisions or clarifications have been made to the FEIS.

5. MITIGATION MEASURES

As required by the Council on Environmental Quality (CEQ) NEPA regulations, 40 CFR § 1505.2(c), BIA and the BLM have identified and adopted all practicable mitigation measures to avoid or minimize environmental harm from the Selected Alternative (Proposed Action Alternative) according to federal laws, regulations, and policies. The construction of the Project will also incorporate adaptive management principals to mitigate unforeseen impacts. Adaptive management is a structured, iterative process of optimal decision making in the face of uncertainty with an aim to reducing uncertainty over time via system monitoring.

The mitigation measures in **Attachment B** to this ROD, as analyzed in the FEIS and required by this decision, represent best management practices (BMPs) and technologies, and the most current regulatory guidance to reduce adverse impacts to environmental resources such that the overall Project will pose minimal significant impact. The complete language of the mitigation measures, as well as design modifications and terms and conditions, are provided in the FEIS.

5.1 Mitigations Measures Not Adopted

All mitigation measures analyzed in the FEIS and recommended by state and federal agencies and the cooperating agencies were adopted for this Project.

5.2 Mitigation Compliance Monitoring and Reporting

All mitigation measures and plans discussed in the FEIS will be implemented by the Applicant and monitored by a third party as detailed in BLM's IM 2014-112. Third party monitors will report to the proper agencies as outlined in the plans, specifically, or directly to the BIA and BLM as

Record of Decision

Eagle Shadow Mountain Solar Project

determined by the lease and ROW agreements. Reporting procedures will be determined prior to onset of construction activities.

6. PUBLIC INVOLVEMENT

6.1 Public Scoping Period

The BIA published a Notice of Intent (NOI) to prepare an EIS for the proposed Project in the Federal Register on February 4, 2019. In addition, over 70 scoping letters were sent by the BIA to other various non-governmental organizations and other interested stakeholders. A legal notice/public notice announcing the public scoping meetings was published in two local newspapers on February 7, 20, 24, and 27, 2019. The BIA hosted two public information and scoping meetings - one on the Reservation on March 5, 2019 and the other located in Las Vegas, Nevada on March 6, 2019.

During the scoping period, the BIA identified issues to be addressed in the EIS. The scoping report, found in Appendix B of the Eagle Shadow Mountain Solar Project FEIS, summarizes the scoping process and comments received. The table below provides a summary of key issues identified by the comments provided during scoping for the Project.

KEY ISSUES IDENTIFIED DURING SCOPING	
ISSUE TOPIC	ISSUE/COMMENT
Water Resources	Need to comply with relevant floodplain and stormwater requirements to minimize erosion and sediment production
	Avoid development within major washes
	Describe the source of the water to be used during construction and operation
Soils	Should include measures to minimize soil disturbance to the extent possible
Vegetation	Should include measures to minimize vegetation clearing to the extent possible
	Should include measures to control weeds to the extent possible
Cultural Resources	Configure the project layout to avoid or minimize potentials effects to significant cultural sites in the lease study area
	Determine whether the project could impact the Old Spanish National Historic Trail
Land / Resource Use	Need to evaluate the potential impact of development of the Project and associated linear facilities on other existing and planned transmission and pipeline facilities within the designated utility corridor
	Consider the impact of precluding other uses by the Band and its members on these lands for the duration of the Project

Record of Decision

Eagle Shadow Mountain Solar Project

KEY ISSUES IDENTIFIED DURING SCOPING	
ISSUE TOPIC	ISSUE/COMMENT
Socioeconomics	Describe the economic development opportunity for the Band
	Describe the jobs for tribal members and others in the region that would be created
Wildlife	Describe the potential impacts to threatened and endangered species (including the desert tortoise) and other sensitive wildlife species
	Consider measures that minimize impacts to desert tortoise habitat and connectivity
	Describe the potential impacts to avian species from construction and operation of the project
Visual Resources	Evaluate the impact the project could have on views of the landscape
Air Quality/Public Health	Measures should be implemented to control and minimize fugitive dust and to prevent worker exposure to <i>Coccidioides</i> spores, if present
Cumulative Impacts	Identify impacts from other solar projects and other developments in the general area
	Discuss trends of and cumulative impacts to key resources including desert tortoise and desert washes

6.2 DEIS Preparation and Distribution

The BIA published an NOA announcing the publication of the Draft Environmental Impact Statement (DEIS) for the Proposed Project in the *Federal Register* on August 9, 2019. In addition, notices were placed in local newspapers and two public meetings were held to receive comments on the DEIS - one on the Reservation on September 3, 2019 and the other at the BLM offices located in Las Vegas, Nevada on September 4, 2019.

The DEIS was available on the project website (www.esmsolareis.com/), via link on the BIA and BLM websites and hard copies were available for review at the BIA Western Regional Office Branch of Environmental Quality Services, 2600 North Central Avenue, 4th Floor Mail Room, Phoenix, AZ 85004-3008, BIA Southern Paiute Agency in St. George, UT and the BLM Southern Nevada District office in Las Vegas, NV. In addition, a notice was sent, at their request, to any party who wished to provide comments to the DEIS and/or requested that they be added to the mailing list.

6.3 FEIS Preparation and Distribution

On December 20, 2019 the BIA published the NOA for the Eagle Shadow Mountain Solar Project FEIS in the *Federal Register*, Vol. 84 No. 245. The EPA NOA was published in the

Record of Decision

Eagle Shadow Mountain Solar Project

Federal Register (Vol. 84 No. 245) on December 20, 2019. The EPA NOA announced the public availability of the FEIS, which initiated the 30-day notice.

The FEIS was made available on the project website (www.esmsolareis.com/), via links on the BIA and BLM websites and hard copies at the BIA Western Regional Office Branch of Environmental Quality Services, 2600 North Central Avenue, 4th Floor Mail Room, Phoenix, AZ 85004–3008, BIA Southern Paiute Agency in St. George, UT and the BLM Southern Nevada District office in Las Vegas, NV. In addition, a notice was sent, at their request, to any party who provided comments on the DEIS and/or requested that they be added to the mailing list. Also, BIA acknowledged that the FEIS was publicly available in the *Federal Register* and within local papers. The FEIS took into account and addressed all public comment received from the DEIS.

7. DECISION RATIONALE

The BIA and BLM have identified the proposed Project as the Selected Alternative. Overall, the Selected Alternative will accomplish the purpose and need for the federal action, and help in fulfilling BIA and the BLM statutory missions and responsibilities, given consideration to economic, environmental, and technical factors. The Project location and the use of PV technology will minimize adverse environmental impacts. The chosen PV panels would have minimal visibility from a distance. The PV technology also minimizes the use of water resources – up to 200 acre-feet (AF) during an approximate 18-month construction period. PV consumes no water in operations and uses insignificant amounts of water for panel washing, dust control, and potable uses (up to 20 AF/year). The PV technology does not create noticeable noise. PV also is considered a “proven technology,” and represents a less expensive technology when compared to other solar technologies.

The Project also will assist in addressing the management objectives in the Energy Policy Act of 2005 (Title II, Section 211) and Secretarial Order 3285A1 (March 11, 2009) that established the development of environmentally responsible renewable energy as a priority for the Department of the Interior.

7.1 BLM Directive

The BLM, after careful consideration of the potential effects of the proposed Project, has decided to authorize the Applicant’s request for a ROW grant for a 230 kV transmission line and use of an existing access road, as described in the Proposed Action of the FEIS. For most of its length, the transmission line would be located on tribal lands within an existing designated utility corridor reserved to the BLM under Public Law 96-491(Dec. 2, 1980) with a portion of the line also on federal lands managed by the BLM. The existing access road is also located both within the utility corridor and on federal lands managed by BLM. The mitigation measures and BMPs

Record of Decision

Eagle Shadow Mountain Solar Project

identified in the FEIS and described in this ROD will be incorporated into the ROW grant, as well as BLM's standard ROW stipulations.

The authorization of the transmission line meets the BLM's identified purpose and need for federal action to reply to Applicant's ROW application for a transmission line and use of the existing access road and to determine whether to approve, approve with modification, or deny the issuance of a ROW grant taking into consideration the provisions of the Energy Policy Act of 2005 and other applicable Federal laws, regulations, and policies.

7.2 BIA Directive

The BIA has determined that the lease and associated agreements are in the best interest of the Band. The Project will create an economic development opportunity for the Band, provide lease income as a revenue source for the Band, create new jobs and employment opportunities for Band members, develop sustainable renewable resources, and provide other benefits by using the Band's solar resources.

The Project also will assist large power users in meeting their renewable energy goals and mandates by providing clean renewable electricity generated from the solar resources that may be efficiently connected to existing transmission lines in a manner that minimizes adverse site impacts.

The Project will assist the Federal Government, the State of Nevada, and neighboring states meet their renewable energy goals. The proposed Project would also help meet the goals of the Federal Government to eliminate or reduce GHG emissions and promote the deployment of renewable energy technologies. The Project's scale, technology, and location have been selected to provide substantial amounts of renewable energy to regional utility customers that reside in areas that are not suitable for solar development. The Project is designed to provide solar power at a price that is competitive with other renewable sources of power.

The Project location allows efficient connection of the energy from solar resources to existing transmission infrastructure. The selected site is well positioned to minimize impacts associated with interconnection into the existing transmission infrastructure as it is located very close to the existing Reid Gardner Substation with access to the regional transmission system and available capacity to carry the Project's output to market.

The solar facility is not within the FEMA 100 or 500 year flood zones and impacts to jurisdictional waters of the United States would be limited. Existing roads provide access to Interstate 15. The Project area has been documented as having limited cultural resource issues and moderate wildlife issues.

Record of Decision

Eagle Shadow Mountain Solar Project

The Project does not interfere with day-to-day tribal life and does not interfere with the Band's plans for other economic development initiatives. The economic benefits would accrue to the Band once the Project is completed.

7.2.1 Analysis of Required Factors

The BIA has chosen the Selected Alternative (Proposed Action Alternative) due to minimal short-term and long-term adverse impacts, beneficial long-term impacts for the Band, and the fact that no significant unmitigated impacts would occur. Adequate consideration has been given to the five approval criteria under 25 U.S.C. § 415(a), as follows:

1. The relationship between the use of the leased premises and the use of the neighboring lands. The BIA and the Band chose the Selected Alternative (Proposed Action Alternative) after considering alternative sites on the Reservation as well as alternative technologies. Alternative sites and technologies were eliminated from further consideration based on human and natural resource factors as discussed in the FEIS.
2. The height, quality, and safety of any structures or other facilities to be constructed on the leased premises. The chosen PV technology will have a low overall height and will have a low fire risk due to the lack of flammable materials. A fire protection system will be provided for the solar facility.
3. The availability of police and fire protection, utilities, and other essential community services. The FEIS shows that there will be no significant impact on utilities and other community services. In addition to on-site fire protection systems, Clark County is responsible for providing firefighting capability on the Reservation and law enforcement will be managed by the Moapa Tribal Police Department.
4. The availability of judicial forums for all criminal and civil matters arising on the leased premises. The lease specifically provides for arbitration or adjudication in the appropriate federal court. The lease provides that any claims/actions under the lease will be adjudicated in district court in Nevada.
5. The effect on the environment of the proposed land use. All relevant environmental impacts have been fully addressed in the FEIS.

Record of Decision

Eagle Shadow Mountain Solar Project

8. FINAL AGENCY ACTION**8.1 Bureau of Indian Affairs**

I hereby approve the decision to execute the Band's Solar Energy Ground Lease with 325MK 8me LLC for the up to 300 MW solar facility and associated ROW agreements, for up to 40 years on the Reservation, as described in the DEIS and FEIS. This decision includes the authorization of a gen-tie interconnection ROW on the Reservation totaling approximately three acres. This decision is subject to associated mitigation measures adopted by this ROD and as may be contained in Volume II of the FEIS.

This decision does not authorize construction to begin and does not apply to any BLM, State, or private lands, which may be involved in the Project and does not create any right or easement, nor establish eminent domain, across such lands.

8.1.1 Protest and Appeal Opportunities

Any person who may be adversely affected by this decision may appeal the decision to the Interior Board of Indian Appeals (IBIA) at 801 North Quincy Street, #300, Arlington, Virginia, 22203, in accordance with the regulations set forth at 25 CFR Part 2. The notice of appeal must be signed and postmarked within thirty days of the date of this decision. The notice will clearly identify the decision being appealed, and a copy of the decision will be attached to the notice of appeal. Copies of the notice must be sent to the Assistant Secretary for Indian Affairs, MS 4140-MIB, U.S. Department of the Interior, 1849 C Street, N.W., Washington, D.C., 20240, as well as to my office and to all other interested parties known to the person appealing the decision. The notice of appeal to the IBIA must also certify that the appealing party sent copies to each of these parties. The IBIA will notify an appealing party of further appeal procedures. If no appeal is timely filed, this decision will become final for the Department of the Interior.

Approved By:


 Bryan Bowker
 Director
 Bureau of Indian Affairs-Western Region


 Date

Record of Decision

Eagle Shadow Mountain Solar Project

8.2 Bureau of Land Management

I hereby approve the decision to grant a ROW only, for the construction, operation, maintenance, and decommissioning of the approximate 12.5 mile gen-tie line, associated maintenance road, and access road as described in the Project DEIS and FEIS. This decision is subject to the accepted BLM Plan of Development and associated mitigation measures adopted by this ROD and as may be contained in the Volume II of the FEIS. This decision includes the authorization of a ROW totaling approximately 260 acres within a federally designated utility corridor on the Reservation that is administered by the BLM Las Vegas Field Office and an additional 10 acres of BLM managed federal lands.

This authorization will be contingent upon approval of other state and federal agency authorization and implementation of mitigation measures. This decision does not authorize construction to begin and does not apply to any State or private lands, which may be involved in the Project and does not create any right or easement, nor establish eminent domain, across such lands.

8.3 Protest and Appeal Opportunities

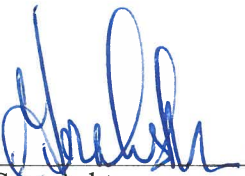
The decision of the Authorized Officer may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in (43 CFR Part 4 and Form 1842-1). If an appeal is taken, your notice of appeal must be filed in this office within 30 days from your receipt of this decision. The appellant has the burden of showing that the Decision appealed from is in error. If you wish to file a petition [pursuant to regulation (43 CFR 2801.10)] for a stay of the effectiveness of this Decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. A copy of the notice of appeal and petition for a stay also must be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay [43 CFR 4.21(b)]

Except as otherwise provided by law or by other pertinent regulation, a Petition for a Stay of a Decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,
- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

Approved By:



Gera Ashton

Acting District Manager

Bureau of Land Management-Southern Nevada District Office

2/10/2020
Date

Record of Decision

Eagle Shadow Mountain Solar Project

ATTACHMENT A

ANTICIPATED PERMITS / APPROVALS FOR THE PROPOSED PROJECT		
Land Ownership / Jurisdiction	Project Components	
	Solar Field	Transmission Line
Moapa River Indian Reservation / BIA	Lease approval, Right-of-way Grant (BIA)	Right-of-way Grant (BIA)
	Section 401 Water Quality Certification (EPA)	Section 401 Water Quality Certification (EPA)
	NPDES 402 Construction Stormwater Permit (EPA)	NPDES 402 Construction Stormwater Permit (EPA)
	Section 7 Consultation (USFWS)	Section 7 Consultation (USFWS)
	Section 106 Consultation (SHPO)	Section 106 Consultation (SHPO)
	Compliance with Tribal Environmental Policy Ordinance	Compliance with Tribal Environmental Policy Ordinance
	Section 404 Permit (USACE)	Section 404 Permit (USACE)
BLM	N/A	Section 404 Permit (USACE)
	N/A	Right-of-way Grant (BLM)
	N/A	Section 7 Consultation (USFWS)
	N/A	NPDES 402 Construction Stormwater Permit (NDEP)
	N/A	401 Water Quality Certification (NDEP)*
	N/A	Section 106 Consultation (SHPO)
	N/A	Clark County Dust Control Permit
	N/A	Clark County Special Use Permit
	N/A	Utility Environmental Protection Act (UEPA) Permit

Record of Decision

Eagle Shadow Mountain Solar Project

ANTICIPATED PERMITS / APPROVALS FOR THE PROPOSED PROJECT		
Land Ownership / Jurisdiction	Project Components	
	Solar Field	Transmission Line
	N/A	Encroachment / Crossing Permit with Railroad (UPRR)
	N/A	Special Purpose Permit (NDOW) (Desert Tortoise Relocation)
Private Land (NV Energy)	N/A	Clark County Special Use Permit
	N/A	Utility Environmental Protection Act (UEPA) Permit (PUCN)
	N/A	Interconnection Agreement, Easement (NVE)

Record of Decision

Eagle Shadow Mountain Solar Project

ATTACHMENT B

MITIGATION MEASURES

EAGLE SHADOW MOUNTAIN SOLAR PROJECT

Record of Decision

Eagle Shadow Mountain Solar Project

Applicant-Proposed Mitigation and Best Management Practices (BMPs) EAGLE SHADOW MOUNTAIN SOLAR PROJECT	
SOILS / EROSION	
Grading on the solar site would be minimized to only those areas where necessary to meet the construction and operational requirements of the Project.	
Construction and operational activities will be conducted in compliance with a stormwater pollution prevention plan (SWPPP) that would include BMPs and other erosion-control measures designed to minimize soil erosion and limit sheet flow and downstream sedimentation. The SWPPP would also incorporate adaptive management actions if erosion and sedimentation control measures are found to be insufficient to control surface water at the site.	
To minimize wind erosion, all construction activities shall comply with the Fugitive Dust Control Plan that would be developed and implemented for the Proposed Project.	
A Site Restoration Plan would be implemented as needed to limit impacts to temporary disturbance areas as much as practicable.	
HYDROLOGY / WATER QUALITY	
The drainage plan will be designed to maintain existing drainage patterns and control the rate and amount of surface water runoff.	
Final grading and drainage plans will be completed and submitted for approval prior to construction and would demonstrate that downstream flows would not be adversely impacted as a result of proposed changes to natural washes from proposed grading, drainage management measures or the addition of retention ponds.	
The paths for all stormwater flows would be identified and modeled as part of the final grading and drainage plan.	
The number of drainage crossings would be minimized to the extent possible and each would be designed to accommodate adequate flow.	
Post-storm monitoring of erosion and sedimentation would be conducted during construction. If localized gullies were to develop or result in increased rates of erosion and sedimentation, repairs would be made and erosion and sedimentation control measures would be updated.	
All large ancillary facilities (e.g., project substation) will be located outside of drainages. Some PV supports could be placed within ungraded drainages where technically feasible.	
A Spill Prevention, Control, and Countermeasure (SPCC) plan would be developed and implemented during construction and the operations phase of the Proposed Project. Adequately-sized secondary spill containment would be incorporated around the transformers at the on-site substation to ensure proper capture and control measures for potential spills. The Plan would also provide for hazardous material spill prevention and clean-up measures, were a spill to occur.	
AIR QUALITY	
The Project would obtain a dust control permit from Clark County for construction activities outside tribal land including any required supplements.	
The area of grading and vegetation removal would be limited to only that area required for Project construction and operation.	
Ground disturbing activities would be undertaken on both tribal and non-tribal lands in accordance with the applicable dust control plan(s) to minimize fugitive dust emissions.	
Vehicular speeds on non-paved roads would be limited 25 miles per hour.	
Grading operations would be phased where appropriate to limit the amount of disturbance at any one time, and water would be used for stabilization of disturbed surfaces under windy conditions.	
Water would be applied to disturbed areas to control dust and facilitate soil compaction, where necessary. Water will be applied using water trucks and application rates would be monitored to prevent runoff and ponding. Approved palliatives would be used to control dust as required.	
Exposed stockpiled material areas would be covered and excavation and grading would be suspended during windy conditions (forecast or actual wind conditions of approximately 25 miles per hour or greater).	
Open storage piles and disturbed areas would be stabilized by covering and/or applying water to stockpile to form a crust or organic dust palliative where appropriate at the completion of activity.	
All trucks hauling soil and other loose material would be covered or at least 2 feet of freeboard would be maintained.	
All paved roads would be kept clean of objectionable amounts of mud, dirt, or debris, as necessary. Gravel or other similar material would be used where non-paved access roads intersect paved roadways to prevent mud and dirt track-out.	
A traffic and parking management plan would be finalized to minimize traffic interference and maintain traffic flow.	

Record of Decision

Eagle Shadow Mountain Solar Project

Applicant-Proposed Mitigation and Best Management Practices (BMPs) EAGLE SHADOW MOUNTAIN SOLAR PROJECT
Unnecessary idling of equipment would be limited.
BIOLOGICAL RESOURCES
Prior to construction, a Weed Management Plan will be developed that includes measures designed to reduce the propagation and spread of designated noxious weeds, undesirable plants, and invasive plant species, or as determined by the agencies (BIA, BLM, etc.) in coordination with the Band.
The Applicant will implement controls at entry locations to facilitate weed management and invasive species control in order to minimize infestation to the project site from an outside source. Trucks and other large equipment will be checked before entering the site for any invasive species debris or seed.
To minimize activities that attract prey and predators during construction and operations, garbage will be placed in approved containers with lids and removed promptly when full to avoid creating attractive nuisances for wildlife. Open containers that may collect rainwater will also be removed or stored in a secure or covered location to not attract birds.
All work area boundaries will be conspicuously staked, flagged, or otherwise marked to minimize surface disturbance activities. All workers, equipment, vehicles, and construction materials shall remain within the ROW, existing roads, and designated areas. Staging areas will be located in previously disturbed areas whenever possible.
All transmission towers and poles will be designed to be avian-safe in accordance with the <i>Suggested Practices for Avian Protection on Power Lines: the State of the Art in 2006</i> (Avian Power Line Interaction Committee [APLIC] 2006) and the Avian Power Line Interaction Committee (APLIC 2006) and <i>Reducing Avian Collisions with Power Lines</i> by the U.S. Fish and Wildlife Service and the APLIC (APLIC 2012).
If construction activities are scheduled to commence during the breeding season for western burrowing owls (February 1 through August 31), a qualified biologist will conduct pre-construction surveys within 30 days prior to construction for Western Burrowing Owls within suitable habitat. All areas within 250 feet of ground disturbing activities will be surveyed, per USFWS 2007 Burrowing Owl guidance.
Lighting would be designed to provide the minimum illumination needed to achieve O&M objectives and not emit excessive light to the night sky by installing light absorbing shields on top of all light fixtures and focusing desired light in a downward direction.
A Facility Decommissioning Plan would be finalized and provided to the Band, BIA, and BLM addressing the Project facilities under their respective management. This plan would be submitted for approval at least six months prior to commencement of site closure activities.
Potential closure activities could include re-grading and restoration of original site contours and re-vegetation of areas disturbed by closure activities in accordance with the Site Reclamation Plan. Revegetation seed mixes will be composed of native plant species.
Worker environmental awareness training will be required for all maintenance and operation staff for the duration of the project. In addition to an overview of minimization measures for all biological resources, the training will include specific best management practices designed to reduce effects to the desert tortoise.
Prior to construction, temporary tortoise-proof fencing will be installed around the boundary of the solar facility. Biological monitors or biologists approved to handle and relocate tortoises will be present during fence installation to relocate all tortoises in harm's way to outside the permitted ROW.
Fence specifications will be agreed to in consultation with USFWS. Tortoise guards will be placed at all road access points where desert tortoise-proof fencing is interrupted to exclude desert tortoises from the project footprint. Gates or tortoise exclusion guards will be installed with minimal ground clearance and shall deter ingress by desert tortoises. Monitoring and maintenance will include regular removal of trash and sediment accumulation and restoration of minimal ground clearance between the ground and the bottom of the fence, including re-covering the subsurface portion of the fence if exposed.
The temporary desert tortoise fencing will be inspected monthly during periods of high tortoise activity (April 1 – May 31 and September 1 – October 31).
The Applicant will implement the Raven Management Plan (BLM 2014) to be provided by the BLM for portions of the Proposed Project on BLM-administered lands. The Applicant will inspect transmission structures annually for nesting ravens and other predatory birds and report observations of nests to the Service, BLM, and BIA.
No overnight hazards to desert tortoises (e.g., auger holes, trenches, pits, or other steep-sided depressions) will be left unfenced or uncovered; such hazards will be eliminated each day prior to the work crew and monitoring biologists leaving the site. All excavations will be inspected for trapped desert tortoises at the beginning, middle,

Record of Decision

Eagle Shadow Mountain Solar Project

Applicant-Proposed Mitigation and Best Management Practices (BMPs) EAGLE SHADOW MOUNTAIN SOLAR PROJECT	
and end of the workday, at a minimum, but will also be continuously monitored by a biological monitor or authorized biologist.	
CULTURAL RESOURCES	
A Memorandum of Agreement (MOA) between the Band, BIA, BLM, and SHPO will be required to define the steps that shall be taken to lessen, resolve, and/or mitigate the effects to cultural resources that may be adversely affected by the project.	
Archaeological and Tribal monitors will be employed during construction in the vicinity of cultural resource sites to ensure that cultural resources are not directly affected by the project.	
Fencing or other protective barriers will be placed to protect historic properties during construction as needed.	
Should any unrecorded and unanticipated cultural resources be discovered during construction, all activities within the immediate area of discovery shall cease. Any unanticipated discoveries of cultural resources or changes to the Project APE would be managed in accordance with an <i>Unanticipated Discoveries Plan</i> that would be developed in consultation with the Tribe, BIA, BLM, and SHPO.	
Should any unrecorded cultural resources be discovered during construction, all activities within the immediate area of discovery would cease. The Chairman of the Moapa Tribal Council, or his or her designated representative, and the BIA Regional Archeologist shall be notified immediately and, consulting with BLM and SHPO as appropriate, would make arrangements to assess the nature of discovered cultural resources and, if feasible, avoid the resources to the fullest extent practicable. If avoidance is not possible, the Applicant would minimize and mitigate any damages to any unanticipated discoveries before construction would be allowed resume in the immediate vicinity of the find/discovery.	
TRANSPORTATION	
A Traffic Management Plan would be finalized and approved by the Tribe and BIA that identifies BMPs to minimize construction-related traffic impacts.	
Deliveries of materials would be scheduled for off-peak hours, when practical, to reduce effects during periods of peak traffic.	
Truck traffic would be phased throughout construction, as much as practical.	
Carpooling or mass transportation options for construction workers would be encouraged.	
Before construction, the Applicant and agency representatives will document the pre-construction condition of the access route, noting any existing damage. After construction, any damage to public roads will be repaired to the road's pre-construction condition, as determined by the agency representatives.	
PUBLIC HEALTH AND SAFETY	
The Project would be designed in accordance with all applicable federal and industrial standards including the American Society of Mechanical Engineers (ASME), National Electrical Safety Code (NESC), International Energy Conservation Code (IECC), International Building Code (IBC), Uniform Plumbing Code (UPC), Uniform Mechanical Code (UMC), the National Fire Protection Association (NFPA) standards, and OSHA regulations.	
All employees and contractors would be required to adhere to appropriate health and safety plans and emergency response plans. All contractors would be required to maintain and carry health and safety materials including the MSDS of hazardous materials used on site.	
An Emergency Response Plan would be developed and implemented based on the results of a comprehensive facility hazard analysis.	
A Hazardous Waste Storage Plan would describe the storage, transportation, and handling of wastes and emphasize the recycling of construction wastes where possible.	
The Project would coordinate with the holders of all existing ROWs that would be crossed or paralleled by the Project ROWs (transmission lines and access roads) to minimize encroachment conflicts and possible effects to existing transmission lines and pipelines.	

Additional Agency-Required Mitigation EAGLE SHADOW MOUNTAIN SOLAR PROJECT	
BIOLOGICAL RESOURCES	
The measures below to reduce effects on the desert tortoise during construction, operation, and maintenance have been included in the Biological Opinion (BO) for ESMSP and would be required to be implemented:	

Record of Decision

Eagle Shadow Mountain Solar Project

Additional Agency-Required Mitigation EAGLE SHADOW MOUNTAIN SOLAR PROJECT

1. **Construction area flagging.** Work areas will be flagged prior to beginning construction activities, and disturbance will be confined to the work areas. A biological monitor will escort all survey crews onsite prior to construction. All survey crew vehicles will remain on existing roads and stay within the flagged areas to the maximum extent practicable. In cases where construction vehicles are required to go off existing roads, a biological monitor (on foot) will precede the vehicles.
2. **Desert tortoise fencing.** Temporary tortoise-proof fencing will be installed around the boundary of the solar facility. Biological monitors under supervision of an authorized biologist (approved by the Service) will be present during fence installation to relocate all tortoises in harm's way to outside the work area. Additional clearance surveys and activities will be conducted after completion of the tortoise fence to ensure that no tortoises remain inside the fenced construction boundaries.

Fence specifications will be consistent with those approved by the Service (Service 2009b). Tortoise guards will be placed at all road access points where tortoise-proof fencing is interrupted to exclude desert tortoises from the Project footprint. Gates or tortoise exclusion guards will be installed with minimal ground clearance and shall deter ingress by desert tortoises. The temporary tortoise-proof fencing will be removed once the Project is commissioned, allowing tortoises to re-occupy the site during operations.

During the tortoise active seasons, all new fences will be checked twice a day for the first two weeks after construction or the first two weeks after tortoises become active if fence construction occurs in the winter, including once each day immediately before temperatures reach lethal thresholds. After the first two weeks, all tortoise exclusion fencing will be inspected monthly during construction, quarterly for the life of the Project, and immediately following all major rainfall events. Any damage to the fence will be repaired within two days of observing the damage.

3. **Field Contact Representative.** The BIA and Applicant will designate a Field Contact Representative (FCR) who will be responsible for overseeing compliance of the minimization measures of the biological opinion. The FCR will be onsite during all active construction activities that could result in "take" of a desert tortoise. The FCR will have the authority to halt activities that are in violation of the desert tortoise protective measures until the situation is remedied.
4. **Authorized desert tortoise biologist.** All authorized desert tortoise biologists (and monitors) are agents of BIA and the Service and will report directly to BIA, the Service, BLM, and the Applicant concurrently regarding all compliance issues and take of desert tortoises; this includes all draft and final reports of non-compliance or take. Authorized desert tortoise biologists, monitors, and the FCR will be responsible for ensuring compliance with all conservation measures for the Project as described in the biological opinion. Prior to starting construction, authorized biologist(s) will submit documentation of authorization from the Service and approval from NDOW. Potential authorized desert tortoise biologists will submit their statement of qualifications to Service.

An authorized desert tortoise biologist will record each observation of a desert tortoise handled in the tortoise monitoring reports. This information will be provided directly to BIA, the Service, and BLM.

Potential authorized desert tortoise biologists must submit their statement of qualifications to the Service's Southern Nevada Fish and Wildlife Office in Las Vegas for approval, allowing a minimum of 30 days for Service response. The statement form is available in Chapter 3 of the Desert Tortoise Field Manual on the internet at: https://www.fws.gov/nevada/desert_tortoise/dt/dt_manuals_forms.html

Authorized desert tortoise biologist requests in southern Nevada should be e-mailed to:
ADTB_request@fws.gov

5. **Biological monitoring.** Under supervision of an authorized biologist, biological monitors will be present at all active construction locations (not including inside the solar field after it has been fenced with desert tortoise

Record of Decision

Eagle Shadow Mountain Solar Project

**Additional Agency-Required Mitigation
EAGLE SHADOW MOUNTAIN SOLAR PROJECT**

fencing and clearance surveys have been completed). Desert tortoise monitors will provide oversight to ensure proper implementation of protective measures, record and report desert tortoises and tortoise sign observations in accordance with approved protocol, and report incidents of noncompliance in accordance with the biological opinion and other relevant permits. The biological monitor(s) will survey the construction area to ensure that no tortoises are in harm's way. If a tortoise is observed entering the construction zone, work in the immediate vicinity will cease until the tortoise moves out of the area. Tortoises found aboveground during construction activities will be moved offsite by an authorized biologist following the protocols described in the Desert Tortoise Translocation Plan.

6. **Desert tortoise clearance surveys and translocation.** After installation of tortoise fencing around the perimeter of the solar facility and prior to surface-disturbing activities, biological monitors and the authorized desert tortoise biologists who supervise them will conduct a clearance survey to locate and remove all desert tortoises from harm's way including those areas to be disturbed, using techniques that provide full coverage of construction zones (Service 2009b).

No surface-disturbing activities shall begin until two consecutive surveys find no live tortoises. In sectors or zones where a live tortoise is found, surveys will be repeated until the two-pass standard is met.

An authorized biologist will excavate burrows potentially containing desert tortoises located in the area to be disturbed with the goal of locating and removing all desert tortoises and desert tortoise eggs. Typical tortoise burrows have a characteristic shape with a flat bottom and arched top similar to a capital letter 'D' with the flat side down. Clearance will include evaluation of caliche caves and dens, as tortoises are known to shelter there. Caliche is a naturally occurring hardened cemented soil composed of calcium carbonate, gravel, sand, and silt. The practice of excavating every obvious tortoise burrow will not be done as it has shown to be ineffective and inefficient in locating tortoises; instead, all obvious tortoise burrows will be scoped for presence and possible extraction. During clearance surveys, all handling of desert tortoises and their eggs and excavation of burrows shall be conducted solely by an authorized desert tortoise biologist in accordance with the most current Service-approved guidance (Service 2009b). If any active tortoise nests are encountered, the Service must be contacted immediately prior to removal of any tortoises or eggs from those burrows to determine the most appropriate course of action. Unoccupied burrows will remain in place to allow for tortoise use during operations. Outside construction work areas, all potential desert tortoise burrows and pallets within 50 feet of the edge of the construction work area will be flagged. If a desert tortoise occupies a burrow during the less-active season, the tortoise may be temporarily penned or will be translocated following Service approval, contingent upon weather conditions and health assessment results. No stakes or flagging will be placed on the berm or in the opening of a desert tortoise burrow. Desert tortoise burrows will not be marked in a manner that facilitates poaching. Avoidance flagging will be designed to be easily distinguished from access route or other flagging and will be designed in consultation with experienced construction personnel and authorized biologists. This flagging will be removed following construction completion.

An authorized desert tortoise biologist or biological monitor will inspect areas to be backfilled immediately prior to backfilling. Burrows with the potential to be occupied by tortoises within the construction area will be searched for presence. In some cases, a fiber optic scope will be used to determine presence or absence within a deep burrow.

A translocation plan following the 2018 guidance will be approved by the Service prior to the start of construction (Service 2018b). The plan identifies potentially suitable recipient locations, control site options, post-translocation densities, procedures for pre-disturbance clearance surveys and tortoise handling, as well as disease testing and post-translocation monitoring and reporting requirements. Tortoises found within 500 meters of the project boundary (fenceline) will be relocated outside of the nearest fence to a location that contains suitable habitat; tortoises found within the interior of the project site (>500 meters from a boundary fence) will be translocated to somewhere within the 4,070-acre lease area that contains suitable habitat.

Record of Decision

Eagle Shadow Mountain Solar Project

Additional Agency-Required Mitigation EAGLE SHADOW MOUNTAIN SOLAR PROJECT

BIA and the Applicant will have an authorized biologist relocate tortoises following the Service- approved protocol (Service 2009b) and according to the approved translocation plan. If the Service releases a revised protocol for handling desert tortoises before initiation of Project activities, the revised protocol will be implemented.

Tortoises found within the project area will be relocated outside of the ROW to an area of suitable habitat as directed by the Service. Translocation will follow installation of exclusionary tortoise fence, as determined in coordination with the agencies. Translocation events will occur to specific locations outlined in the approved project-specific translocation review package (TRP) and disposition plan, based on construction and translocation timing considerations for each tortoise. The project will employ two strategies for translocating tortoises, depending on the initial capture location of each animal:

a. **Short-distance Translocations:** Tortoises found within 500 meters of the solar site fenceline or within the gen-tie construction area will be relocated to areas immediately outside of the project's temporary exclusion fencing or outside of harm's way in the vicinity of the gen-tie ROW. All short-distance translocation tortoises will have health assessments, have blood samples drawn, and be marked. Following the completion of construction, the exclusion fencing will be removed, the permanent site fencing will be permeable to desert tortoises, and the existing vegetation on the project site is expected to be left relatively intact during construction and operation of the project. Therefore, the short-distance translocation strategy is designed to allow tortoises to freely re-occupy the site following construction.

b. **Long-distance Translocation:** Tortoises found in the interior of the solar site fenceline (>500 meters from the exclusion fence) will be translocated to recipient sites identified within the 1,870-acre area identified for the project but not proposed for project development. The following actions will occur:

- An authorized biologist will perform health assessments and draw blood samples for each tortoise relocated. Blood testing will determine whether any desert tortoise suffers from upper respiratory tract disease (URTD).
- Tortoises will be temporarily tagged with combination global positioning system (GPS)/radio-transmitter tags, so if the results of blood work indicate that a tortoise is infected with URTD, the tortoise can be retrieved and handled as directed by the Service.
- When determining a release location for an individual tortoise, release site preference will be to find a like-for-like shelter resource. Every attempt will be made to find similar cover sites and habitat to that at the location of each individual found on the Project site, otherwise all translocatees shall be released at the most appropriate and available unoccupied shelter sites (e.g., soil burrows, caliche caves, rock caves, etc.) or under the shade of a shrub. Because of the impermanent nature of soil burrows and cave availability, prior to submitting the final Disposition Plan and determining exact areas of release, potential release sites will be re-investigated for existing burrows and caliche or rock caves that can be used for shelter sites. Known active and inactive tortoise burrows discovered during the surveys will be re-investigated for this purpose. If insufficient shelter sites exist in an area to be used for translocation, the Applicant shall coordinate with the agencies to determine the most appropriate course of action, such as reviewing an alternate release site, modifying/improving existing burrows and partial burrows, or artificially creating burrows per Service protocols prior to translocation. The number of artificial burrows per translocated tortoise will be included in the TRP/Disposition Plan, as feasible, and may include more than one burrow per tortoise to increase translocation success (i.e. tortoises remaining within their release locations). The disposition of relocated tortoises will be evaluated and reported on following the reporting requirements of the biological opinion.
- If a tortoise voids its bladder while being handled, it will be given the opportunity to rehydrate before release. Tortoises will be offered fluids by soaking in a shallow bath or an authorized desert tortoise biologist will administer nasal-oral fluid or injectable epicelomic fluids. Any tortoise hydration support beyond offering water or shallow soaking will only be provided by an authorized biologist who has received advanced training in health assessments and been specifically approved by the Service for these procedures.

Record of Decision

Eagle Shadow Mountain Solar Project

Additional Agency-Required Mitigation EAGLE SHADOW MOUNTAIN SOLAR PROJECT

7. **Integrated Weed Management Plan.** Prior to construction, an Integrated Weed Management Plan will be developed that includes measures designed to reduce the propagation and spread of designated noxious weeds, undesirable plants, and invasive plant species, or as determined by the cooperating or reviewing agencies (BIA, BLM, NDOW, etc.). Measures in the plan will include but are not limited to the following:
 - Areas with current weeds will be mapped. Topsoil with the presence of weeds will not be salvaged and reused elsewhere in the Project. The topsoil from such areas will be disposed of properly.
 - Inspect heavy equipment for weed seeds before they enter the Project area. Require that such equipment be cleaned first to remove weed seeds before being allowed entry. Clean equipment that has been used in weed infested areas before moving it to another area.
 - Any straw or hay wattles are used for erosion control must be certified weed free.
8. **WEAP.** A WEAP will be presented to all personnel onsite during construction. This program will contain information concerning the biology and distribution of the desert tortoise, desert tortoise activity patterns, and its legal status and occurrence in the proposed Project area. The program will also discuss the definition of "take" and its associated penalties, measures designed to minimize the effects of construction activities, the means by which employees limit impacts, and reporting requirements to be implemented when tortoises are encountered. Personnel will be instructed to check under vehicles before moving them as tortoises often seek shelter under parked vehicles. Personnel will also be instructed on the required procedures if a desert tortoise is encountered within the proposed Project area. WEAP training will be mandatory, as such, workers will be required to sign in and wear a sticker on their hardhat to signify that they have received the training and agree to comply.
9. **Access roads.** Construction access will be limited to the Project area and established access roads.
10. **Speed limits and signage.** Until the desert tortoise fence has been constructed, a speed limit of 15 miles per hour will be maintained during the periods of highest tortoise activity (March 1 through November 1) and a limit of 25 mph during periods of lower tortoise activity. This will reduce dust and allow for observation of tortoises in the road. Speed limit and caution signs will be installed along access roads and service roads. After the tortoise-proof fence is installed and the tortoise clearance surveys are complete, speed limits within the fenced and cleared areas will be established by the construction contractor based on surface conditions and safety considerations and remain with limits established by the Service in the biological opinion.
11. **Trash and litter control.** Trash and food items will be disposed properly in predator proof containers with resealing lids. Trash will be emptied and removed from the Project site on a periodic basis as they become full. Trash removal reduces the attractiveness of the area to opportunistic predators such as ravens, coyotes, and foxes.
12. **Raptor control.** The applicant will inspect structures annually for nesting ravens and other predatory birds and report observations of nests to the Service and BIA as stated in the Raven Management Plan. Transmission line support structures and other facility structures will be designed to discourage their use by raptors for perching or nesting (e.g., by use of anti-perching devices) in accordance with the most current APLIC guidelines. In addition to increasing desert tortoise protection, following these guidelines during transmission line construction will reduce the possibility of avian electrocution and other hazards.
13. **Overnight hazards.** No overnight hazards to desert tortoises (e.g., auger holes, trenches, pits, or other steep-sided depressions) will be left unfenced or uncovered; such hazards will be eliminated each day prior to the work crew and monitoring biologists leaving the site. All excavations will be inspected for trapped desert tortoises at the beginning, middle, and end of the workday, at a minimum, but will also be continuously monitored by a biological monitor or authorized biologist. Should a tortoise become entrapped, the authorized biologist will remove it immediately.

Record of Decision

Eagle Shadow Mountain Solar Project

Additional Agency-Required Mitigation EAGLE SHADOW MOUNTAIN SOLAR PROJECT

When outside of the fenced areas of the Project site, Project personnel will not move construction pipes greater than 3 inches in diameter if they are stored less than 8 inches above the ground until they have inspected the pipes to determine the presence or absence of desert tortoises. As an alternative, the Applicant may cap all such structures before storing them outside of the fenced area.

14. **Blasting.** If blasting is required in desert tortoise habitat, detonation will only occur after the area has been surveyed and cleared by an authorized desert tortoise biologist no more than 24 hours prior. A minimum 200-foot buffered area around the blasting site will be surveyed. A larger area will be surveyed depending on the anticipated size of the explosion as determined by the authorized desert tortoise biologist. All desert tortoises above ground within the surveyed area will be moved 500 feet from the blasting site to a shaded location or placed in an unoccupied burrow. Desert tortoises that are moved will be monitored or penned to prevent returning to the buffered survey area. Tortoises located outside of the immediate blast zone and that are within burrows will be left in their burrows. All potential desert tortoise burrows, regardless of occupied status, will be stuffed with newspapers, flagged, and location recorded using a global positioning system (GPS) unit. Immediately after blasting, newspaper and flagging will be removed. If a burrow or cover site has collapsed that could be occupied, it will be excavated to ensure that no tortoises have been buried and are in danger of suffocation. Tortoises removed from the blast zone will be returned to their burrow if it is intact or placed in a similar unoccupied or constructed burrow.
15. **Penning.** Tortoises may be held *in-* or *ex-situ* (e.g., if temperatures do not allow for translocation or if tortoises do not pass the health assessment) for a maximum of 12 months. Previously constructed and approved enclosure pens are present adjacent to the Project site and will be used if any quarantine is necessary. Quarantine is not the preferred option for tortoises to be translocated and will only be used as necessary in coordination with the Service. This penning is not the same as the temporary penning described in the blasting measure.
16. **Stormwater Pollution Prevention Plan.** The applicant will oversee the establishment and functionality of sediment control devices as outlined in the stormwater pollution prevention plan.
17. **Tortoise Encounters During Construction.** If a tortoise is injured as a direct or indirect result of Project construction activities, it shall be immediately transported to a veterinarian or wildlife rehabilitation facility and reported within 24 hours or the next workday to the Service. Any Project construction-related activity that may endanger a desert tortoise shall cease in the immediate vicinity of a desert tortoise if encountered on the Project site. Project construction activities may resume after an Authorized Biologist removes the desert tortoise from danger or after the desert tortoise has moved to a safe area.

Operations and Maintenance Minimization Measures

The following minimization measures will be implemented during O&M of the Proposed Action to reduce effects on the desert tortoise and other species:

18. **WEAP Training.** WEAP training will be required for all O&M staff for the duration of the Project. In addition to an overview of minimization measures, the training will include specific BMPs designed to reduce effects to the desert tortoise. All Project personnel will check under vehicles or equipment before moving them. If Project personnel encounter a desert tortoise, they will avoid the tortoise. The desert tortoise will be allowed to move a safe distance away prior to moving the vehicle.
19. **Biological Monitoring.** A biological monitor(s) will be present during ground-disturbing and/or off-road O&M activities outside of the fenced solar facility to ensure that no tortoises are in harm's way. Tortoises found aboveground during O&M activities will be avoided or moved by an authorized biologist if necessary. Pre-maintenance clearance surveys followed by temporary exclusionary fencing also will be required if the maintenance action requires ground or vegetation disturbance. A biological monitor will flag the boundaries of

Record of Decision

Eagle Shadow Mountain Solar Project

**Additional Agency-Required Mitigation
EAGLE SHADOW MOUNTAIN SOLAR PROJECT**

areas where activities will need to be restricted to protect tortoises and their habitat. Restricted areas will be monitored to ensure their protection during construction.

20. Speed Limits. Speed limits within the project area, along transmission line routes, and access roads will be restricted to less than 25 mph during O&M. Speed limits in the solar facility will be restricted to 15 mph during O&M.

21. Trash and Litter Control and other Predator Deterrents. Trash and food items will be disposed properly in predator proof containers with resealing lids. Trash will be emptied and removed from the Project site on a periodic basis as they become full. Trash removal reduces the attractiveness of the area to opportunistic predators such as ravens, coyotes, and foxes. To reduce attractants for birds, open containers that may collect rainwater will be removed or stored in a secure or covered location.

Decommissioning Minimization Measures

The same minimization measures used for construction will be used for decommissioning.

Compensatory Mitigation

The applicant will pay the following required compensatory mitigation:

22. Habitat Compensation. Prior to surface disturbance activities within desert tortoise habitat, the Project proponent will pay a one-time remuneration fee (per acre of proposed disturbance). The compensation for habitat loss under Section 7 of the Endangered Species Act (ESA) is an annually adjusted rate, currently \$902/acre (subject to change annually on March 1). Fees are based on the current \$902/acre fee for all permanently disturbed acres. For all project acres that will be temporarily disturbed and leave vegetation in place, fees will be assessed at 50% of the current rate. All assessed fees will be applied toward a habitat use study and tortoise monitoring for the Project.

23. Habitat Use Study. The Project proponent will work with the University of Nevada, Las Vegas (UNLV), U.S. Geological Survey (USGS), or other agency to design and implement a 2-3-year study to compare onsite and off-site desert vegetation and climate (e.g., annual and perennial plant growth and cover, ambient temperature) to address metrics of habitat change, including how desert tortoises use the vegetation onsite for forage and cover. Results from tortoise monitoring as approved in the Project's Desert Tortoise Translocation Plan will also inform the tortoise use portion of this study.

PUBLIC HEALTH AND SAFETY

The Project needs to incorporate the following measures to reduce potential worker exposure to the *Coccidioides immitis* fungus that can cause Valley Fever:

- Include training for workers and supervisors on the potential presence of Valley Fever spores, methods to minimize exposure, and how to recognize symptoms
- Limit workers' exposure to outdoor dust in disease-endemic areas by (1) providing air-conditioned cabs for vehicles that generate dust and making sure workers keep windows and vents closed, (2) suspending work during heavy winds, and (3) directing them to remove dusty clothing after fieldwork and store in closed plastic bags until washed.
- When exposure to dust is unavoidable, provide approved respiratory protection to filter particles.

Record of Decision

Eagle Shadow Mountain Solar Project

ATTACHMENT C

**FINAL MEMORANDUM OF AGREEMENT
EAGLE SHADOW MOUNTAIN SOLAR PROJECT**

**MEMORANDUM OF AGREEMENT
AMONG THE
BUREAU OF INDIAN AFFAIRS, WESTERN REGIONAL OFFICE
MOAPA BAND OF PAIUTE INDIANS
AND
THE NEVADA STATE HISTORIC PRESERVATION OFFICER
REGARDING
RESOLUTION OF ADVERSE EFFECTS FOR THE
EAGLE SHADOW MOUNTAIN SOLAR PROJECT ON THE MOAPA RIVER INDIAN
RESERVATION**



Bureau of Indian Affairs, Western Regional Office
January 24, 2020

**MEMORANDUM OF AGREEMENT
 AMONG THE
 BUREAU OF INDIAN AFFAIRS, WESTERN REGIONAL OFFICE
 MOAPA BAND OF PAIUTE INDIANS
 AND
 THE NEVADA STATE HISTORIC PRESERVATION OFFICER
 REGARDING
 RESOLUTION OF ADVERSE EFFECTS FOR THE
 EAGLE SHADOW MOUNTAIN SOLAR PROJECT ON THE MOAPA RIVER INDIAN
 RESERVATION**

WHEREAS, the Regional Director of the Bureau of Indian Affairs, Western Regional Office (BIA/WRO), is responsible as the Agency Official for Western Region compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (NHPA), and codified in Subpart B of Code of Federal Regulations Title 36, Part 800 (36 CFR 800), and BIA/WRO shall serve as lead federal agency for the proposed undertaking; and

WHEREAS, the undertaking before BIA/WRO is approval of a lease and rights-of-way for the Eagle Shadow Mountain Solar Project, a 300 megawatt solar photovoltaic electricity generation facility that will encumber up to 2,300 acres on the Moapa River Indian Reservation and an additional 500 acres for transmission lines and access roads requiring rights-of-way approval from the Bureau of Land Management Southern Nevada District Office (BLM) (hereinafter referred to as the undertaking); and

WHEREAS, the Moapa Band of Paiute Indians (Tribe) is a federally recognized Indian tribe, organized under Section 16 of the Indian Reorganization Act of 1934, 25 U.S.C. § 476, which exercises general governmental jurisdiction over all lands of the Moapa River Indian Reservation; for purposes of this consultation is an Indian tribe as described at 36 CFR 800.2(c)(2)(i)(B); and as contemplated in the referenced regulation a Signatory to this Memorandum of Agreement (Agreement); and

WHEREAS, the BLM will grant an easement for right-of-way for an associated transmission line and access road for the undertaking that will encumber up to approximately 500 additional acres and is an Invited Signatory to this Agreement; and

WHEREAS, BLM has designated BIA/WRO as the lead federal agency for the purpose of Section 106 consultation pursuant to 36 CFR 800.2(a)(2); and

WHEREAS, 325MK 8ME, LLC as the project proponent, intends to construct, operate, and maintain the undertaking under lease terms extending up to a maximum period of fifty (50) years and is an Invited Signatory to this Agreement; and

WHEREAS, the Nevada State Historic Preservation Officer (SHPO) is authorized to enter into this Agreement as a Signatory in order to fulfill its role of advising and assisting federal agencies in carrying out their historic preservation responsibilities and to cooperate with these agencies under the following federal statutes: Sections 101 and 106 of the NHPA, 54 U.S.C. 306108, 36 CFR 800.2(c)(1)(i) and 800.6(b), and BIA/WRO has consulted with the SHPO pursuant to 36 CFR 800.6 in the development of this Agreement); and

WHEREAS, BIA/WRO has consulted with the Chemehuevi Indian Tribe, the Colorado River Indian Tribes, the Fort Mojave Indian Tribe, the Hopi Tribe, the Hualapai Indian Tribe, the Kaibab Band of Paiute Indians, the Las Vegas Paiute Tribe, and the Paiute Indian Tribe of Utah in accordance with 36 CFR 800.3(f)(2); and

WHEREAS, BIA/WRO has consulted with the National Park Service National Trails System-Intermountain Region, which has joint management responsibilities with BLM for the nearby congressionally-designated Old Spanish National Historic Trail, and is invited to concur with this Agreement; and

WHEREAS, BIA/WRO has notified the Advisory Council on Historic Preservation (ACHP) of this determination of adverse effect pursuant to 36 CFR 800.6(a)(1) and the ACHP has notified BIA/WRO by letter dated January 24, 2020 that it has declined to participate in this Agreement; and

WHEREAS, BIA/WRO is preparing an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA) for the undertaking and has used the public notification process embodied in NEPA to seek public input and notify the public of the potential effects of the undertaking on historic properties as required in 36 CFR Part 800; and

WHEREAS, the Signatories, Invited Signatories, and Concurring Party will hereinafter be referred to as the consulting parties; and

WHEREAS, BIA/WRO, in consultation with the consulting parties, has determined that the undertaking will cause adverse effects to the historic properties identified as 26CK10722, 26CK10724, 26CK10725, and 26CK10726, lithic scatters eligible under Criterion D and the unevaluated segments of 256CK4429/26CK5685; and

WHEREAS, no provision of this Agreement shall be construed by any of the consulting parties as abridging or debilitating any sovereign powers of the Tribe; affecting the trust relationship between the Secretary of the Interior and the Tribe; or interfering with the government-to-government relationship between the United States and the Tribe; and

NOW, THEREFORE, BIA/WRO, Tribe, and the SHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effects of the undertaking on historic properties.

STIPULATIONS.

BIAWRO shall ensure that the following stipulations are implemented.

I. HISTORIC PROPERTIES TREATMENT PLAN.

- A. BIAWRO, in consultation with the consulting parties, shall ensure that 325MK 8ME, LLC, through its qualified consultant meeting the Secretary of the Interior's Professional Qualifications standards appropriate to the historic property, develops and implements the fieldwork portion of a Historic Properties Treatment Plan (HPTP) to avoid, minimize, or otherwise mitigate adverse effects to historic properties within the area of potential effects (APE) before 325MK 8ME LLC initiates any ground disturbance associated with the undertaking. The HPTP will be consistent with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716-44737).

- B. The HPTP will include, but not be limited to:
 1. A description of the historic properties, or portions of historic properties, where treatment is to be carried out;
 2. The results of previous research relevant to the undertaking and the research questions to be addressed through data recovery, with an explanation of their relevance and importance;
 3. The field and laboratory analysis methods to be used, with an explanation of their relevance to the research questions;
 4. The methods to be used in data management and dissemination of data to the professional community and the public;
 5. A proposed schedule for cultural resource tasks, and a schedule for the submission of draft and final reports to the consulting parties;
 6. The proposed disposition and curation of recovered materials and records in accordance with 25 CFR 262;
 7. Procedures for monitoring, evaluating, and mitigating any unexpected effects to historic properties during construction of the undertaking, including consultation with consulting parties;
 8. A Native American Graves Protection and Repatriation Act (NAGPRA) Plan of Action for the treatment of human remains, in the event that such remains are discovered. The NAGPRA Plan of Action shall describe methods and procedures for the recovery, inventory, treatment, and disposition of Human Remains, Associated/Unassociated Funerary Objects, and Objects of Cultural Patrimony;
 9. A plan for the conclusion of mitigation in the event that the undertaking is suspended or terminated that stipulates the procedures to be followed;
 10. Preparation of a Preliminary Report of Findings and review process, as well as proposed timelines;

11. Preparation of a Data Recovery Report and review process, as well as proposed timelines.

C. Review and Comment on the HPTP.

1. 325MK 8ME, LLC, through its qualified consultant, shall submit a draft HPTP to BIA/WRO.
2. Upon receipt of the draft HPTP, BIA/WRO will review the document and provide comments within thirty (30) calendar days to 325MK 8ME, LLC.
3. 325MK 8ME, LLC shall address all BIA/WRO comments and submit any necessary draft updates within thirty (30) calendar days to BIA/WRO.
4. BIA/WRO shall submit the draft HPTP document concurrently to all consulting parties for review. All consulting parties shall have thirty (30) calendar days from receipt to review and provide written comments to BIA/WRO. If a consulting party does not respond to the submission within the review period, BIA/WRO may finalize the HPTP.
5. BIA/WRO shall ensure that any timely written comments received from the consulting parties are addressed during the preparation of the final draft HPTP.
6. BIA/WRO shall submit the final draft HPTP to all consulting parties. The consulting parties shall have thirty (30) calendar days from receipt to review the comments made by other consulting parties, review the revisions, and provide comments to BIA/WRO. If a consulting party fails to respond, BIA/WRO may finalize the HPTP.
7. BIA/WRO shall ensure that 325MK 8ME, LLC will address any timely written comments from the consulting parties on the final draft document during the preparation of the final HPTP.
8. BIA/WRO shall issue an authorization to proceed with the implementation of the HPTP to 325MK 8ME, LLC once consultation on the HPTP is complete and prior to construction. Fieldwork authorization will be contingent upon obtaining the necessary permits.
9. BIA/WRO shall ensure that copies of the final HPTP are provided to all consulting parties.

II. PRELIMINARY REPORT OF FINDINGS.

- A. 325MK 8ME, LLC, through its qualified consultant responsible for the work, will prepare and submit a brief Preliminary Report of Findings to BIA/WRO within fourteen (14) calendar days after the completion of all fieldwork. At a minimum, this report shall contain, but not be limited to:
 1. A discussion of the methods and treatments applied to each historic property or unevaluated resource, with an assessment of the degree to

which these methods and treatments followed the requirements of the HPTP along with a justification of all deviations, if any, from the approved HPTP; and

2. Topographic site plans for the historic properties and unevaluated resource depicting all features and treatment areas; and
3. General description of recovered artifacts and other data classes, including features excavated or sampled; and
4. Discussion of further analyses to be conducted, including any proposed changes in the methods or levels of effort from those proposed in the HPTP.
5. Draft images, as appropriate, of the unevaluated resource produced in accord with the terms of the HPTP.

B. Review of the Preliminary Report of Findings.

1. Upon receipt of the draft Preliminary Report of Findings, BIA/WRO will review the document and provide comments to 325MK 8ME, LLC.
2. 325MK 8ME, LLC shall address all BIA/WRO comments and submit any necessary draft updates to BIA/WRO.
3. BIA/WRO will distribute the revised draft Preliminary Report of Findings to all consulting parties for review. All consulting parties will have thirty (30) calendar days from receipt to review and provide written comments to BIA/WRO (electronic mail is acceptable). If a consulting party fails to respond to the request for review, BIA/WRO will finalize the document.
4. BIA/WRO will address any comments received from the consulting parties.
5. If BIA/WRO revises the draft Preliminary Report of Findings, BIA/WRO will distribute the revised document to all consulting parties. All consulting parties will have thirty (30) calendar days from receipt to review the revisions and provide comments to BIA/WRO.
6. BIA/WRO shall ensure that any written comments received are addressed during the preparation of the final document.
7. Once BIA/WRO finalizes the Preliminary Report of Findings, BIA/WRO will notify 325MK 8ME, LLC, BLM and the Tribe that construction for the undertaking may commence.

III. MITIGATION REPORT

- A. BIA/WRO shall ensure that within one (1) year of the completion of the Preliminary Report of Findings, 325MK 8ME, LLC, through its contracted qualified archaeologist, prepares a draft comprehensive Mitigation Report.

1. Upon receipt of the draft Mitigation Report, BIA/WRO will review the document and provide comments to 325MK 8ME, LLC.
2. 325MK 8ME, LLC shall address all BIA/WRO comments and submit any necessary draft updates to BIA/WRO.

3. BIA/WRO will distribute the draft Mitigation Report to all consulting parties for review. All consulting parties will have thirty (30) calendar days from receipt to review and provide written comments to BIA/WRO (electronic mail is acceptable). If a consulting party fails to respond to a request for review and comment, BIA/WRO will finalize the document.
4. If BIA/WRO makes revisions to the Mitigation Report, all consulting parties will have thirty (30) calendar days from receipt to review the revisions and provide comments to BIA/WRO.
5. BIA/WRO shall ensure that any written comments received are addressed during the preparation of the final document.
6. BIA/WRO shall ensure that copies of the final mitigation report are provided to all consulting parties.

IV. CONTINUATION OF CONSULTATION WITH NATIVE AMERICAN TRIBES

BIA/WRO shall ensure that consultation with the Native American Tribes that may attach religious or cultural importance to affected properties will continue throughout the life of the undertaking.

V. STANDARDS FOR MONITORING, TESTING, AND DATA RECOVERY

All cultural resources work carried out pursuant to this Agreement shall be carried out by or under the supervision of a person, or persons, meeting the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-44739) and under the terms of the permits issued for the archaeological investigations.

VI. CUSTODY OF ARCHAEOLOGICAL RESOURCES AND RECORDS

With the exception of human remains or objects that fall under NAGPRA and for the unevaluated resource not located on Tribal land, the disposition of recovered archeological resources shall follow the regulations at 25 CFR 262.8, whereby all such resources are property of the Tribe. BIA/WRO shall deliver all notes, photos, reports, and other records related to the undertaking to the Tribe upon completion of the final Data Recovery Report and the data are the property of the Tribe.

Subject to the terms and provisions of the Freedom of Information Act (FOIA), all archaeological and ethnographic reports generated by BIA/WRO efforts to comply with NHPA are to be considered confidential and privileged and shall be withheld from the public, pursuant to Section 304 of NHPA (36 CFR 800.11(c)) and Section 9 of the Archeological Resources Protection Act.

VII. DISCOVERIES IN THE APE

If cultural resources or human remains are discovered within the APE after construction begins, the 325MK 8ME, LLC Solar Construction Supervisor shall require construction to immediately cease within the area of the discovery, protect the discovery, and promptly report the discovery to the Tribe and BIA/WRO.

- A. If the discovery involves human remains or objects that fall under NAGPRA, Project Manager shall immediately secure the discovery and notify Tribal representatives identified in the NAGPRA Plan of Action in the HPTP provided for in Stipulation I of this Agreement.
- B. If human remains are not involved, the BIA/WRO, in consultation with the SHPO, shall determine if the approved HPTP provided for in Stipulation I of this Agreement is appropriate to the nature of the discovery. If appropriate, the HPTP shall be implemented by BIA/WRO. If the HPTP is not appropriate to address the discovery, BIA/WRO shall ensure that an alternative plan for the mitigation of adverse effects is developed and provided to the consulting parties for review and comment.
- C. The BIA/WRO shall immediately notify the Tribe and the SHPO of all discoveries.

VIII. CHANGES IN THE APE

BIA/WRO may amend the APE as needed, or as requested by any Signatory, without amending the Agreement proper. If this should occur, all consulting parties will receive a formal notification of proposed amended APE. Within thirty (30) calendar days of their receipt of the proposed amendment, any Signatory may request that the Agreement be amended in accord with the process outlined in Stipulation X. Following BIA/WRO receipt of the request, the Signatories shall prepare an amendment document.

IX. REVIEW OF PUBLIC OBJECTIONS

At any time during implementation of the measures stipulated in this Agreement, should an objection to any such measure, or its manner of implementation, be raised by a member of the public, BIA/WRO shall take the objection into account and consult as needed with the objecting party and the consulting parties to this Agreement to resolve the objection.

X. AMENDMENT

If any Signatory or Invited Signatory to this Agreement determines that its terms will not or cannot be carried out or that an amendment to its terms is necessary, that party shall immediately consult with the other Signatories to develop an amendment to this Agreement pursuant to 36 CFR 800.6(c)(7) and 800.6(c)(8). The amendment will be effective on the date a copy signed by all of the Signatories and Invited Signatories is filed with the ACHP.

XI. DISPUTE RESOLUTION

Should any Signatory or Invited Signatory to this Agreement object to any action(s) or plan(s) pursuant to this Agreement, BIA/WRO shall consult with the objecting party within thirty (30) days to resolve the objection. The objection must be identified specifically and the reasons for objection documented in writing. If the objection cannot be resolved, BIA/WRO shall notify the consulting parties to this Agreement of the objection and shall:

- A. Forward all documentation relevant to the dispute, including BIA/WRO's proposed resolution, to the ACHP in accordance with 36 CFR 800.2(b)(2). The ACHP shall provide BIA/WRO with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision regarding the dispute, BIA/WRO shall prepare a written response that takes into account any timely advice or comment provided by the ACHP, and all comments from the Signatories or Invited Signatories to this Agreement, and provide them with a copy of this written response. BIA/WRO will then proceed according to its final decision.
- B. If the ACHP does not provide any comments regarding the dispute within thirty (30) days after receipt of adequate documentation, BIA/WRO may render a decision regarding the dispute and proceed accordingly. Prior to reaching its decision, BIA/WRO shall prepare a written response that will take into account all written comments regarding the dispute from the consulting parties and provide them and the ACHP with a copy of such a written response.
- C. It is the responsibility of the BIA/WRO to carry out all other actions subject to the terms of this Agreement that are not the subject of the dispute.

XII. DURATION AND TERMINATION

This Agreement will expire if its stipulations are not carried out within ten (10) years from execution of the last Signatory signature on the Agreement or until BIA/WRO, in consultation with the consulting parties, determines that all of its terms have been satisfactorily fulfilled whichever comes first.

If any Signatory or Invited Signatory to this Agreement determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Stipulation X, above. If an amendment cannot be reached, any Signatory or Invited Signatory may terminate the Agreement upon written notification to the other Signatories. Within thirty (30) days following termination, the BIAWRO shall notify the parties if it will initiate consultation to execute an Agreement with the Signatories and Invited Signatory under 36 CFR 800.6(c)(1) or request the comments of the ACHP under 36 CFR 800.7(a) and proceed accordingly.

XIII. EXECUTION OF THIS AGREEMENT

Execution and implementation of this Agreement evidences that the BIAWRO has taken into account the effects of the undertaking on historic properties and has afforded the ACHP an opportunity to comment on the undertaking and its effects.

Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The BIAWRO will distribute copies of all signed pages to the consulting parties once the Agreement is executed in full.

[Remainder of page intentionally blank]

SIGNATORY PARTIES:

APPROVED: BUREAU OF INDIAN AFFAIRS, WESTERN REGIONAL OFFICE

By: [Signature] Date 1/27/20
Regional Director

APPROVED: MOAPA BAND OF PAIUTE INDIANS

By: [Signature] Date 1-31-2020
Chairperson, Moapa Business Council

APPROVED: NEVADA STATE HISTORIC PRESERVATION OFFICE

By: _____ Date _____
State Historic Preservation Officer

INVITED SIGNATORY PARTIES:

APPROVED: BUREAU OF LAND MANAGEMENT, SOUTHERN NEVADA DISTRICT,
LAS VEGAS FIELD OFFICEBy: _____ Date _____
Field Office Manager

APPROVED: 325MK 8ME, LLC

By: _____ Date _____
Senior Associate, Clean Energy Infrastructure

SIGNATORY PARTIES:

APPROVED: BUREAU OF INDIAN AFFAIRS, WESTERN REGIONAL OFFICE

By: [Signature] Date 1/27/20
Regional Director

APPROVED: MOAPA BAND OF PAIUTE INDIANS

By: _____ Date _____
Chairperson, Moapa Business Council

APPROVED: NEVADA STATE HISTORIC PRESERVATION OFFICE

By: Rebecca Palmer Date 01/27/20
State Historic Preservation Officer

INVITED SIGNATORY PARTIES:

APPROVED: BUREAU OF LAND MANAGEMENT, SOUTHERN NEVADA DISTRICT,
LAS VEGAS FIELD OFFICEBy: [Signature] Date 2-11-2020
Field Office Manager
ACTING DISTRICT MANAGER

APPROVED: 325MK 8ME, LLC

By: _____ Date _____
Senior Associate, Clean Energy Infrastructure

SIGNATORY PARTIES:**APPROVED: BUREAU OF INDIAN AFFAIRS, WESTERN REGIONAL OFFICE**

By:  Date 1/27/20
 Regional Director

APPROVED: MOAPA BAND OF PAIUTE INDIANS

By: _____ Date _____
 Chairperson, Moapa Business Council

APPROVED: NEVADA STATE HISTORIC PRESERVATION OFFICE

By: _____ Date _____
 State Historic Preservation Officer

INVITED SIGNATORY PARTIES:**APPROVED: BUREAU OF LAND MANAGEMENT, SOUTHERN NEVADA DISTRICT,
LAS VEGAS FIELD OFFICE**

By: _____ Date _____
 Field Office Manager

APPROVED: 325MK 8ME, LLC

By:  Date 1/29/2020
 Authorized Signatory

By:  Date 1/29/2020
 Authorized Signatory

CONCURRING PARTY:

APPROVED: NATIONAL PARK SERVICE, NATIONAL TRAILS

By: _____ Date _____
Superintendent

TRIBAL AGREEMENT

THIS TRIBAL AGREEMENT (this “Agreement”) is made and entered as of May 1, 2020 (the “Execution Date”), by and between THE MOAPA BAND OF PAIUTE INDIANS OF THE MOAPA RIVER INDIAN RESERVATION, NEVADA, an Indian tribe federally recognized under Section 16 of the Indian Reorganization Act (the “Tribe”), and 325MK 8ME LLC, a Delaware limited liability company (“Project Company”). Each of the Tribe and Project Company may be referred to herein collectively as the “Parties” and individually as a “Party.”

RECITALS

A. The Tribe is an Indian tribe federally recognized under Section 16 of the Indian Reorganization Act.

B. Project Company is in the business of constructing and operating solar-powered electrical energy generating facilities for the conversion of solar energy into electrical energy intended for sale.

C. Concurrently with this Agreement, the Parties have entered into that certain Solar Energy Ground Lease Agreement by and between Project Company and the Tribe (the “Lease”), to which this Agreement shall be attached as Exhibit J.

D. Pursuant to federal and state law, no part of the Project will be subject to real estate taxation by either the State of Nevada or any local governmental authority, or division, department, agency, court, arbitrator, tribunal, commission, board, official, organization, body or other instrumentality thereof.

E. Pursuant to its constitution and ordinances, the Tribe has jurisdiction to levy fees and taxes on projects located on the Moapa River Indian Reservation (the “Reservation”).

F. In connection with the transactions contemplated thereby, the Parties wish to enter into this Agreement on the terms and subject to the conditions set forth herein, and deem it necessary and proper to do so.

AGREEMENT

The Parties, in consideration of the mutual representations, warranties and covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree that the foregoing recitals are true and correct and as follows:

SECTION 1 DEFINITIONS

1.01 Definitions. Unless otherwise expressly provided in this Agreement (including the preamble hereof and the recitals hereto), capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Lease.

1.02 Terms and Usage Generally. Where the context so requires or such interpretation is appropriate, any word used herein denoting gender shall include all genders, natural or artificial, and the singular and plural shall be interchangeable. All references herein to sections, exhibits and schedules shall be deemed to be references to sections of, and exhibits and schedules to, this Agreement unless the context shall otherwise require. All exhibits and schedules attached hereto shall be deemed incorporated herein as if set forth in full herein. The words “include,” “includes” and “including” shall be deemed to be followed

by the phrase “without limitation.” The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. References to a Person are also to his, her or its successors and permitted assigns. Unless otherwise expressly provided herein, any agreement, instrument or statute defined or referred to herein or in any agreement or instrument defined or referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes, and references to all attachments thereto and instruments incorporated therein. The captions of the various provisions of this Agreement are for convenience only and in no way define, limit or describe the scope or intent of this Agreement or the provisions which they precede or in any other manner affect this Agreement.

SECTION 2

TERM OF AGREEMENT

The initial term of this Agreement shall commence on the Execution Date and shall continue thereafter as long as the Lease, unless earlier terminated as provided herein (the “Term”).

SECTION 3

SALES AND USE TAX AND ABATEMENT OF SALES AND USE TAX

Notwithstanding any provision in Section 4, below, Project Company agrees, on behalf of itself and the Tenant Parties, that sales of materials to be used in construction of the Tenant Work shall be structured, to the maximum reasonably feasible extent in accordance with applicable law, in such a way as to be taxable by the Tribe rather than the State of Nevada or its subdivisions, in accordance with the Moapa Tribal Tax Code (the “Tribal Tax Code”), *provided however that*:

(a) The Tribe agrees to file the Tribal Tax Code with the State of Nevada pursuant to Nevada Revised Statutes Section 372.805, to ensure that sales tax on any such transaction is payable only to the Tribe and to prevent duplicate taxation by the State, in each case to the extent that the prevention of duplicate taxation is within the control of the Tribe, and will provide evidence of filing to Project Company.

(b) It is agreed that sales tax on any sales of materials to be used in construction of the Tenant Work which sales occur prior to the filing of the Tribal Tax Code with the State, and which, as a result, are taxable by the State of Nevada, will not be taxable by the Tribe.

(c) The Parties agree that the tax rate to be paid on transactions described in this Section 3 shall be no greater than the rate that would otherwise apply to similar transactions pursuant to Nevada state law, as in effect from time to time.

(d) The Tribe further agrees, (i) pursuant to Section 881 of the Tribal Tax Code, that Project Company has been or in the future may be accorded an abatement of certain non-Tribal sales and use taxes under the statutes of Nevada, in particular the Nevada Renewable Energy Tax Abatement program enacted by AB 522, and (ii) if the Project Company has been granted an abatement of non-Tribal sales and use taxes under the statutes of Nevada, then the tax rate to be paid on transactions described in this Section 3 shall be abated to the rate that would otherwise apply to similar transactions granted a Nevada Renewable Energy Tax Abatement pursuant to state law, as in effect from time to time.

(e) Except as set forth in Section 827, 828 and 829 of the Tribal Tax Code, the Parties further agree that for any sales of materials to be used in construction of the Tenant Work which take place off-Reservation, sales tax shall be paid to the state, and not to the Tribe.

(f) Any revisions to the Tribal Tax Code made by the Tribe after the Execution Date shall be (a) limited to revisions involving the administration and implementation of the Tribal Tax Code and (b) consistent and in conformity with Section 7 of this Agreement and this Section 3.

SECTION 4

PAYMENTS IN LIEU OF TAXES OTHER THAN SALES AND USE TAX ON MATERIALS TO BE USED IN CONSTRUCTION OF THE PROJECT

From and after the Pilot Date and as long as the Lease is in effect, Project Company agrees to make payments (the "Pilot Payments") in lieu of all taxes, tax levies or other tax assessments (other than sales and use tax as provided for in Section 3 above) that could be levied by the Tribe against Project Company or its contractors, against the Project, the Premises, the Improvements, the Infrastructure, the Rights of Way, the Solar Power Facilities, Tenant Improvements, Tenant Operations or any other property or activities of Project Company authorized under the Lease. Project Company shall pay to the Tribe the Pilot Payments on an annual basis and each such annual Pilot Payment shall be due on or prior to May 31st (the "Pilot Date") of each Lease Year pursuant to the Lease. The Pilot Payments payable hereunder shall not exceed \$100 per acre of the aggregate Premises actually leased by Project Company during the year immediately preceding the Pilot Date, which \$100 per acre figure shall increase by three percent (3%) annually. Further, in no event shall any single annual Pilot Payment due and payable by Project Company hereunder be in an amount greater than eighty percent (80%) of the real property taxes that would be imposed by federal, state or local authorities if the Project were located on land outside the Reservation in the State of Nevada lying within Clark County Tax District No. 100 (Unincorporated County).

SECTION 5

OTHER FEES

Pursuant to the Lease, Project Company as Tenant is responsible to pay certain fees to the Tribe. These fees include, but are not limited to: (i) the annual TERO Compliance fee calculated in accordance with the provisions of the Lease; (iii) the tortoise mitigation fee calculated in accordance with the provisions of the Lease; and (iv) certain fees in exchange for the granting to Tenant the right to use water with respect to the Premises.

SECTION 6

NONPAYMENT AND TERMINATION

During the Term of this Agreement, if Project Company fails to pay the Tribe any Pilot Payment due pursuant to Section 3 or fails to pay the Tribe any other fee due pursuant to the Lease or any of the Controlling Documents (collectively, "Tribal Fee"), then Project Company shall be obligated to pay to the Tribe such amount plus interest at the rate of five percent (5%) per annum on such amount, which interest shall continue to accrue until such time as such amount is paid by Project Company in full. If Project Company fails to pay any Pilot Payment or Tribal Fee and such failure shall continue unremedied for a continuous period of thirty (30) days following Project Company's receipt of written notice of such failure, then the Tribe shall have the right to terminate this Agreement by providing written notice of such termination to Project Company and to pursue all other rights and remedies available to it at law or in equity.

SECTION 7

RIGHTS AND COVENANTS OF THE PARTIES

7.01 No Regulatory Interference or Taxation. Except as specifically provided herein and in the Lease, the Tribe covenants and agrees that it will not, and shall not permit any of its representatives, political

subunits, councils, agencies, commissions, instrumentalities or enterprises to, directly or indirectly, at any time during the Term of the Lease, (i) demand or impose any regulatory or licensing requirements, approvals, permits, authorizations, orders or variances against Project Company, the Premises, the Project or any Affiliates, Contractors or Subcontractors of the Project Company with respect to the Premises, that, when combined with any impositions, regulatory rules or regulations imposed by federal or state authorities, would result in higher or more stringent impositions, regulatory rules or regulations, or regulatory or licensing requirements than would be imposed by federal, state or local authorities if the Project were located on land outside the Reservation in the State of Nevada but within 50 miles of the Reservation, and shall not impose any environmental regulatory or licensing requirements that are materially more stringent than those enumerated in the TEPO in effect on the Execution Date, or (ii) demand, impose, levy, assess or otherwise require payment by Project Company of, any tax, penalty or similar payment obligation or any other payment of cash, goods or services relating to Compliance Requirements or otherwise that are not specifically provided for in the Lease, any Right of Way Agreement or this Agreement, whether pursuant to any Tribal Law, ordinance, rule, regulation, order or other requirement of the Tribe now in effect or hereafter becoming effective, (iii) except as required by federal law, adopt, enact, promulgate or otherwise place into effect any Tribal Law, or amend, repeal or disavow any Tribal Law, which materially impairs or interferes with any right or remedy of Project Company under this Agreement or any other Definitive Agreement (as defined in the Lease) or, other than those Approvals (as defined in the Lease) specifically enumerated in the Lease, requires Project Company to obtain any Tribal or other business license or similar authorization in order to carry out its activities as authorized under the Lease, or (iv) violate, contravene, or otherwise fail to comply with the [TERO Compliance Plan Ordinance (the “TERO Compliance Plan Ordinance”)], or in any way assert the jurisdiction of the Moapa Tribal Employment Rights Commission or the application of the Existing TERO (as defined in the TERO Compliance Plan Ordinance) in any manner contrary thereto or inconsistent therewith. In addition, the Tribe covenants and agrees that it will not, and shall not permit any of its representatives, political subunits, councils, agencies, commissions, instrumentalities or enterprises to, directly or indirectly, at any time during the Term of the Lease to re-zone the Premises and Rights of Way for other purposes or condemn the Project, the Premises or Rights of Way.

7.02 Denial of Quiet Enjoyment; Joining in Proceedings. In the event that Project Company’s peaceful and quiet enjoyment of the Premises or the Project is denied or disturbed during the Term of the Lease other than by the Landlord in connection with an Event of Default, the Tribe shall, upon the written request of Project Company, join in any proceeding to protect and defend the quiet enjoyment of Project Company under the Lease, provided that Project Company is not in breach of any agreement with the Tribe and further provided that Project Company shall reimburse the Tribe for the cost of any such action.

7.03 Cooperation. The Parties shall reasonably cooperate with respect to the application for and maintenance of any Approvals or other filings and any other actions reasonably necessary or desirable to affect the intent of this Agreement.

SECTION 8 REPRESENTATIONS AND WARRANTIES

8.01 The Tribe’s Representations and Warranties. The Tribe hereby represents and warrants to Project Company, as of the Execution Date and at all times during the Term (except as otherwise provided herein), that:

(A) Status of the Tribe. The Tribe is an Indian tribe federally recognized under Section 16 of the Indian Reorganization Act.

(B) No Approvals. No Approval of or with any Governmental Authority other than the

Tribe is required in connection with the execution and delivery of this Agreement by the Tribe.

(C) Power and Authority. The execution and delivery by the Tribe of this Agreement and the consummation by the Tribe of the transactions contemplated hereby are consistent with all Tribal Laws have been duly authorized by all required action of the Tribe. This Agreement has been duly executed and delivered by the Tribe and constitutes the valid and binding obligation of the Tribe, enforceable against the Tribe in accordance with its terms.

(D) No Broker. The Tribe has not employed any broker, financial adviser or finder or incurred any Liability for any brokerage fees, commissions or finder's fees in connection with the transactions contemplated by this Agreement.

(E) No Violations. The execution and delivery by the Tribe of, the performance by the Tribe of its obligations under, and the consummation of the transaction contemplated by, this Agreement do not and will not (i) violate, breach or conflict with any provision of Tribal Law; or (ii) result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any material benefit) under, or require any consents, permits, approvals or authorizations under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, contract or obligation to which the Tribe is a party.

(F) No Proceedings. There are no Proceedings pending or, to the Tribe's knowledge, threatened against the Tribe before any Governmental Authority, which, if determined adversely to the Tribe, could prevent or materially delay the Tribe from completing the transactions contemplated by this Agreement.

8.02 Project Company's Representations and Warranties. Project Company hereby represents and warrants to the Tribe, as of the Execution Date and at all times during the Term, that:

(A) Organization. Project Company is a limited liability company, duly organized, validly existing and in good standing under the laws of its state of organization and has all requisite power and authority to carry on its business as now being conducted. Project Company is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the property owned, leased or operated by it or the nature of the business conducted by it makes such qualification or licensing required under applicable Laws.

(B) Power and Authority; Enforceability. Project Company has all requisite power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery by Project Company of this Agreement and the consummation by Project Company of the transactions contemplated hereby have been duly authorized by all required action of Project Company. This Agreement has been duly executed and delivered by Project Company and constitutes the valid and binding obligation of Project Company, enforceable against Project Company in accordance with its terms, subject, as to enforcement, to (i) applicable bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereinafter in effect affecting creditors' rights generally and (ii) general principles of equity.

(C) No Violations. The execution and delivery by Project Company of, the performance by Project Company of its obligations under, and the consummation of the transactions contemplated by, this Agreement do not and will not (i) violate, breach or conflict with any provision of the certificate of incorporation and bylaws, or certificate of formation and limited liability company agreement, or other applicable organizational documents of Project Company; (ii) result in any violation or breach of, or constitute (with or without notice or lapse of time, or both) a default (or give rise to a right of termination,

cancellation or acceleration of any obligation or loss of any material benefit) under, or require any consents, permits, approvals or authorizations under, any of the terms, conditions or provisions of any note, bond, mortgage, indenture, lease, contract or obligation to which Project Company is a party or by which it or any of its properties or assets are or may be bound; or (iii) conflict with or violate any Approval with, by or from any Governmental Authority (or otherwise), any judgment or any Law, in each case applicable to Project Company or by which any of its properties or assets are or may be bound.

(D) No Approvals. Except for the Project Approvals, which shall be sought by Project Company pursuant to the terms of the Lease, no Approval of or with any Governmental Authority is required by or with respect to Project Company in connection with the execution and delivery of this Agreement by Project Company or the consummation of the transactions contemplated hereby.

(E) No Proceedings. There are no Proceedings pending or, to Project Company's knowledge, threatened against Project Company before any Governmental Authority, which, if determined adversely to Project Company, could prevent or materially delay Project Company from completing the transactions contemplated by this Agreement.

(F) No Broker. Project Company has not employed any broker, financial adviser or finder or incurred any Liability for any brokerage fees, commissions or finder's fees in connection with the transactions contemplated by this Agreement.

SECTION 9 **CONFIDENTIALITY**

The Parties agree that the terms of this Agreement and any and all other information that a Party (the "Disclosing Party") shares with the other Party (the "Receiving Party") and identifies to the Receiving Party (either prior to such disclosure or promptly thereafter, and in any event before any subsequent disclosure by the Receiving Party) as "confidential" ("Confidential Information") shall be the confidential and proprietary information of the Disclosing Party. All information provided by a Disclosing Party to the Receiving Party shall be kept confidential and, under no circumstances shall the Receiving Party disclose such information to any other Person except only: (a) at the written direction of the Disclosing Party; (b) to those employees and/or representatives of the Receiving Party who are required to have access to or knowledge of the Confidential Information so long as such Persons agree not to disclose the Confidential Information except as provided herein; (c) to the extent required to comply with Law or a valid order of a court of competent jurisdiction, in which event the Receiving Party shall so notify the Disclosing Party as promptly as practicable (and, if possible, prior to making any disclosure; or (d) in order to enforce its rights under this Agreement. Further, the Receiving Party shall not use the Confidential Information provided by the Disclosing Party for any purpose other than with respect to the transactions contemplated herein. Information shall not constitute Confidential Information hereunder if such information (i) is in the public domain or becomes public knowledge other than as a result of breach of this Agreement by the Receiving Party or a breach of confidentiality obligations by any other Person, which breach is known by the Receiving Party; (ii) was known to the Receiving Party at the time of its receipt from the Disclosing Party, *provided* that such information was obtained by the Receiving Party from a third party under no duty of confidentiality; (iii) has been independently developed by the Receiving Party without reference to any Confidential Information, as demonstrated by its business records; or (iv) is obtained by the Receiving Party from a third Person lawfully in possession of such information and having the legal right to transmit the same. Notwithstanding anything to the contrary herein, the Tribe and Project Company shall have the right to disclose the terms of this Agreement to their respective attorneys, accountants, financial and business advisers, and lenders so long as such Persons agree not to disclose the Confidential Information except as provided herein. Notwithstanding anything to the contrary contained herein, the Tribe shall have the right to disclose all terms of this Agreement to the members of the Corporation and the members of the Tribe,

and Project Company acknowledges and agrees that the disclosure of Confidential Information by any such member shall not constitute a breach of the confidentiality provisions contained herein, and Project Company expressly waives any remedy it may have under this Agreement, at law or in equity as a result of such disclosure.

SECTION 10 **ASSIGNMENT; LEASEHOLD MORTGAGE**

10.01 Consent Required. Project Company shall not assign or in any manner transfer, sublease, mortgage, pledge, hypothecate or encumber (collectively, “Transfer”) this Agreement or any right or interest of Project Company herein without the prior written consent of the Tribe (not to be unreasonably withheld); provided that notwithstanding anything herein to the contrary, the Tribe’s consent shall not be required in connection with any Transfer of this Agreement or of any Right of Way to the extent such Transfer is made in connection with a permitted Transfer of an interest in the Lease to an Additional Approved Transferee or a Leasehold Mortgage and foreclosure or assignment as provided in Section 23.05 of the Lease.

10.02 Assumption of Liability. No Transfer shall be effective until receipt by the Tribe of an assignment and assumption agreement, sublease, license or other conveyance document, as applicable, in a form reasonably satisfactory to the Tribe, by which the Additional Approved Transferee assumes all accrued and future liabilities and obligations of Project Company under or with respect to this Agreement, including pursuant to foreclosure under a Leasehold Mortgage as provided in Section 23.05 of the Lease.

10.03 Continuance of Project Company’s Liability; No Waiver. No Transfer of this Agreement by Project Company shall act as, or affect a release of, Project Company from any of the agreements, obligations and covenants of this Agreement to be performed by Project Company hereunder. The acceptance of payments by the Tribe from any other Person shall not be deemed to be a waiver of any provision of this Agreement or consent to the Transfer of this Agreement or Project Company’s interest herein. If the Tribe provides its consent to a Transfer of this Agreement and Project Company’s rights and interest herein on one occasion, such consent shall not be deemed to waive or diminish the requirement for a consent with respect to any subsequent Transfer. Any non-permitted Transfer shall be void.

10.04 No Partial Assignments. Notwithstanding anything herein to the contrary, in no event shall Project Company be permitted to Transfer less than all of this Agreement and Project Company’s rights and interests herein except to the extent such a Transfer is made in connection with a permitted Transfer of the Lease to an Additional Approved Transferee, including pursuant to a Leasehold Mortgage and foreclosure as provided in Section 23.05 of the Lease. If the Tribe refuses to grant consent to a Transfer of less than all of this Agreement and Project Company’s rights or interests herein, such refusal shall be deemed reasonable.

10.05 Leasehold Mortgage. Section 23.05(B)(1) of the Lease and Section 23.05(B)(6)-(10), inclusive, of the Lease are hereby incorporated herein by this reference and made a part hereof as if set out in full herein, provided that for purposes of this Agreement, all references in such sections of the Lease to (i) “Tenant” shall be deemed to refer to Project Company, (ii) “Landlord” shall be deemed to refer to the Tribe, (iii) “Lease” shall be deemed to refer to this Agreement, (iv) “Section 23.05” of the Lease or subsections thereof shall be deemed to refer to the subsections of such section of the Lease as incorporated into this Agreement and (v) “Section 28” of the Lease shall be deemed to refer to Section 11 of this Agreement. The Tribe hereby consents to any Transfer of this Agreement pursuant to a Leasehold Mortgage (including, without limitation, a collateral assignment of this Agreement to a Leasehold Mortgagee or other Financing Party) and foreclosure or assignment as provided in Section 23.05 of the Lease.

SECTION 11 **MISCELLANEOUS**

11.01 Notices. Any notice or other communication required or permitted to be given by a Party hereunder shall be in writing, and shall be deemed to have been given by such Party to the other Party or Parties (a) on the date of personal delivery, (b) on the date delivered by a nationally recognized overnight courier service, (c) on the next Business Day following any facsimile transmission to a Party at its facsimile number set forth below; *provided* that such delivery is concurrent with delivery pursuant to the provisions of clauses (a), (b) or (d) of this Section 10.01, or (d) three (3) Business Days after being placed in the United States mail, as applicable, registered or certified, postage prepaid addressed to the following addresses (each of the Parties shall be entitled to specify a different address and/or contact person by giving notice as described above):

If to Project Company:

325MK 8ME LLC
c/o Capital Dynamics
Attn: Benoit Allehaut
10 E 53rd St., 17th Floor
New York, NY 10022
Phone: (212) 798-3422

With a copy to:

Amis, Patel & Brewer LLP
1399 New York Avenue, NW
Suite 701
Washington, DC 20005
Phone: (202) 601-8503
Email: nikpatel@apbllp.com

And to:

325MK 8me LLC
c/o Arevon Asset Management
8800 N. Gainey Center Dr., Suite 250
Scottsdale, AZ 85258
Phone: (480) 653-8383

If to Tribe:

The Moapa Band of Paiute Indians
1 Lincoln Street
P.O. Box 340
Moapa, NV 89025
Attn: Tribal Chair
Facsimile: (702) 865-2875

With a copy to:

Ziontz Chestnut
2101 Fourth Avenue, Suite 1230
Seattle, WA 98121
Attn: Richard M. Berley and
Brian W. Chestnut
Facsimile: (206) 448-0962
Email: rberley@ziontzchestnut.com;
bchestnut@ziontzchestnut.com

11.02 Effect of Waiver. No waiver of any condition or covenant of this Agreement or of the breach of any condition or covenant shall be taken to constitute a waiver of any subsequent breach of such condition or covenant, or to justify or authorize the nonobservance on any other occasion of the same or any other condition or covenant thereof. The acceptance of a payment by the Tribe at any time when Project Company is in default of any covenant or condition shall not be construed as a waiver of such default or of the Tribe's rights under this Agreement (except if the default alleged is failure by Project Company to pay the payment so accepted).

11.03 Successors and Assigns. This Agreement and the covenants and conditions herein contained shall inure to the benefit of and be binding upon the Tribe, its legal representatives, successors

and assigns, and shall inure to the benefit and be binding upon Project Company and its permitted successors and assigns.

11.04 Severability. In case any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provisions had not been contained herein.

11.05 Entire Agreement. This Agreement contains the entire agreement between the Parties hereto with respect to the subject matter hereof. All understandings and agreements previously made between the Parties are superseded by this Agreement, and neither Party is relying upon any warranty, statement or representation not contained in this Agreement. Any agreement hereafter made shall not operate to change, modify, terminate or discharge this Agreement, in whole or in part, unless such agreement is in writing and signed by each of the Parties hereto.

11.06 Time of Essence. Time is of the essence with respect to this Agreement and each and all of its provisions.

11.07 *[Intentionally omitted.]*

11.08 Interpretation. This Agreement is to be deemed to have been prepared jointly by the Parties hereto, and if any inconsistency or ambiguity exists herein, it shall not be interpreted against either Party but according to the application of rules of the interpretation of contracts, if such an uncertainty or ambiguity exists. Each Party acknowledges that it has had the availability of legal counsel with respect to its negotiation and execution of this Agreement.

11.09 Third Persons. Except as otherwise specifically set forth in this Agreement, nothing in this Agreement is intended to confer upon any Person other than the Parties hereto any rights or remedies under or by reason of this Agreement.

11.10 Attorneys' Fees. In the event any Party incurs legal fees or other costs to enforce any of the terms of this Agreement and the transactions contemplated thereby, to resolve any dispute with respect to its provisions, or to obtain damages for breach thereof, whether by prosecution or defense, each Party to such action shall pay its own expenses, including attorneys' fees, costs and expenses, incurred in such action.

11.11 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

11.12 Survival. All provisions of this Agreement which by their express terms survive termination of this Agreement or which by the operation of their terms are intended to be performed, in whole or in part, after termination of this Agreement, shall survive any termination of this Agreement. Unless this Agreement specifically provides otherwise, all obligations of indemnification contained in this Agreement shall survive the termination or expiration of this Agreement.

11.13 Force Majeure. Neither Party shall be deemed in breach hereunder and neither shall be liable to the other if either fails to perform any of its obligations hereunder by reason of any event of Force Majeure; *provided* that no Party shall be entitled to relief under this Section 11.13 unless such Party shall have given the other Party reasonable notice after the occurrence of such event of Force Majeure.

11.14 Government Savings Clause. Each of the Parties agrees to execute, deliver, and, if

necessary, to record any and all additional instruments, certifications, amendments, modifications and other documents as may be required by the United States Department of the Interior, Bureau of Indian Affairs, Bureau of Land Management, the Office of the Solicitor, or any other Governmental Authority, or any Laws in order to effectuate, complete, perfect, continue or preserve the respective rights, obligations and interests of the Parties hereto to the fullest extent permitted by Laws; *provided*, that any such additional instrument, certification, amendment, modification or other document shall not materially change the respective rights, remedies or obligations of Project Company or the Tribe under this Agreement or any other agreement or document related hereto.

11.15 Governing Law. Except as may be preempted by applicable federal law including 25 C.F.R. Part 162, and specifically noting the existence of a limited waiver of sovereign immunity from the Tribe to Project Company, this Agreement shall be governed by and interpreted under, the internal laws of the State of Nevada, without giving effect to its conflict of law provisions.

11.16 Dispute Resolution; Binding Arbitration; Limited Waiver of Sovereign Immunity.

(A) If a dispute arises regarding interpretation or enforcement of this Agreement, the Disputing Parties (as defined in the Lease) shall diligently work to resolve the issue informally. If informal dispute resolution is unsuccessful, then the dispute shall be resolved by binding arbitration in accordance with this Section. To initiate arbitration, the claiming Disputing Parties shall notify the other Disputing Parties in writing. The claim shall be resolved in accordance with the Commercial Arbitration Rules of the American Arbitration Association. One arbitrator shall preside and shall be selected by the American Arbitration Association. The arbitrator's fee shall be divided equally between the Disputing Parties. The arbitration shall take place in Clark County, Nevada, or such other place as the parties agree. The arbitrator shall render an award within forty-five (45) days from the conclusion of the arbitration. The decision of the arbitrator shall be final and binding and enforced with the same force and effect as a decree of a court having competent jurisdiction.

(B) The Disputing Parties anticipate that recourse to binding arbitration should obviate the need for recourse in any court, except to the extent that a court order may be necessary to compel a Disputing Party to participate in arbitration, or to enforce the arbitration award. However, a Disputing Party may elect to bring a claim authorized under this Agreement in the United States District Court for the District of Nevada to the extent a Disputing Party determines that federal court review is necessary to address the disputed issues.

(C) The Tribe expressly and irrevocably grants a limited waiver of its sovereign immunity solely as to any claim of the Project Company or another Disputing Party pertaining to this Agreement ("Limited Waiver"). The Tribe also expressly and irrevocably grants a limited waiver of its sovereign immunity with respect to proceedings in federal or state courts located in Nevada with territorial jurisdiction over Clark County, but solely to the extent necessary to compel the Tribe to participate in arbitration, or to enforce the arbitration award. This Limited Waiver does not allow recovery from the Tribe of consequential, incidental, special, punitive or exemplary damages or lost profits, nor recovery from any appointed or elected officials, officers or employees of the Tribe for any monetary damages whatsoever. The Tribe further covenants and agrees it shall not move for an exhaustion or tribal court remedies or apply to Tribal Court or any other tribal forum for resolution of any claim or proceeding relating to or arising under this Agreement. In any legal action or proceeding as to which the Tribe has waived its sovereign immunity as set forth in this Section, the Tribe irrevocably agrees that process against it shall be effective if served on the Tribe's chairperson or his or her legally-authorized designee.

(D) The Tribe covenants and agrees that its limited waiver of sovereign immunity and other waivers and agreements contained herein are valid, binding, enforceable and irrevocable, notwithstanding any future changes in the structure or composition of the Tribe's tribal government, and

agrees not to revoke or seek to revoke, repudiate or further limit, in whole or in part, any of such waivers or agreements. These covenants are set forth in the Tribe's duly-executed Tribal Resolution, which is attached as Schedule 15.01(G) to the Lease.

(E) In the event the Tribe (i) revokes, further limits or attempts to revoke or further limit the limited waiver of sovereign immunity contained herein, (ii) takes any action which is inconsistent with the such waivers or (iii) fails to submit to the dispute resolution forums and governing law provided for in this Section, the Parties recognize and agree that (A) there remains no adequate remedy at law available, (B) there will be irreparable injury upon any revocation or further limitation of these waivers and agreements, and (C) the Tribe hereby consents to the entry of appropriate injunctive relief, consistent with the terms of the Agreement, without the need to prove that actual damages or monetary relief would not be an adequate remedy and without having to post a bond. In such event, an affected party may immediately seek judicial injunctive relief in the dispute resolution forums authorized herein.

(F) To the extent necessary, the Parties agree that this Agreement comports with any applicable requirements of the Moapa Commercial Transactions Ordinance, and as such, enjoys any privileges or immunities set forth in said Ordinance.

(G) Specific Agreement to Arbitration Provisions. By initialing below, Tribe and Project Company each grant and confirm their specific authorization to submit disputes arising under this Agreement to arbitration upon, and subject to the terms and conditions of, this Section 11.16. Tribe and Project Company each specifically acknowledge that such Party has thoroughly reviewed this Section 11.16 with counsel of its choosing, and each of Tribe and Project Company voluntarily grant such Party's specific authorization to these arbitration provisions through this paragraph, which serves to confirm that such Party has affirmatively agreed to the arbitration provisions set forth in this Section 11.16. For the purpose of clarity, each Party has affirmatively agreed to the arbitration provisions set forth in this Section 11.16, and each Party intends that this paragraph, and the specific acknowledgements below, satisfy the requirements of NRS 597.995(1).

Tribe's Acknowledgement: _____

Project Company's Acknowledgement: _____

[Signatures and acknowledgements appear on the following pages.]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the Execution Date.

TRIBE:

THE MOAPA BAND OF PAIUTE INDIANS,
an Indian tribe federally recognized under Section 16 of
the Indian Reorganization Act

By: _____
Name: _____
Title: _____

PROJECT COMPANY:

325MK 8ME LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

APPROVED:

The foregoing Second Amended and Restated Tribal Agreement, and all attachments thereto, are hereby approved pursuant to, as applicable, 25 U.S.C. 415, 25 U.S.C. 323, 25 U.S.C. § 81, 25 C.F.R. Part 162 and 25 C.F.R. Part 169 under delegated authority of 209 DM 8, 230 DM I, and 3 IAM 4.

UNITED STATES DEPARTMENT OF THE INTERIOR

Approval Dated: _____20____

By: _____
Name: _____
Title: _____

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on this ____ day of _____, 2020 by _____ as _____ of The Moapa Band of Paiute Indians, an Indian tribe federally recognized under Section 16 of the Indian Reorganization Act.

(Seal, if any)

(Signature of Notarial Officer)

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on this ____ day of _____, 2020 by _____ as _____ of 325MK 8me LLC, a Delaware limited liability company.

(Seal, if any)

(Signature of Notarial Officer)

AFFIDAVIT OF JUSTIN JOHNSON

I, JUSTIN JOHNSON, affirm under penalty of perjury that the assertions contained in this affidavit are true and correct:

1. I am over 18 years old and a resident of Arizona. I make this affidavit based upon personal knowledge, except when stated to be upon information and belief, and as to that information, I believe it to be true. If called as a witness, I could competently testify as to the contents of this affidavit.

2. By way of a tax bill dated October 29, 2025, the Clark County Assessor issued the Eagle Shadow Mountain Solar Project (the "ESM Facility" or "Facility"), a Facility owned by 325MK 8ME, LLC ("Appellant") and located on land owned by the United States and held in trust for the Moapa Band of Paiute Indians (the "Moapa Band") in Clark County, a personal property tax bill for tax year 2025-26.

3. The Clark County Assessor's classification of the ESM Facility as taxable personal property resulted in a \$2,474,700.58 Nevada property tax liability for Appellant. Appellant has paid this property tax liability under protest.

4. On January 15, 2026, Appellant submitted to the Clark County Board of Equalization a Petition for Appeal of the Clark County Assessor's property tax assessment ("Petition").

5. The Petition was received by the Clark County Board of Equalization and assigned Case No. 00031("Appeal").

6. I make this affidavit in support of the Appeal.

7. I am a graduate of the United States Air Force Academy.

8. I earned a Master of Business Administration from Babson College.

9. I possess more than 25-years of energy and operations work experience in procurement, asset management, performance and engineering management, development and construction. During those 25-years, I have held senior or executive level positions with various

renewable energy companies including Capital Dynamics, EDP Renewables and Horizon Wind Energy.

10. Currently, I am the Executive Vice President and Chief Operating Officer of Arevon Energy, Inc. ("Arevon"), which owns the Appellant through an affiliated entity.

11. As Arevon's Executive Vice President and Chief Operating Officer, I am responsible for all construction, engineering, procurement, asset management and operations activities of the ESM Facility.

12. I have held the Executive Vice President and Chief Operating Officer positions with Arevon for approximately eight years.

13. I helped found Arevon in 2017 and led the organization in its role as exclusive asset manager to Capital Dynamics.

14. In 2019, Capital Dynamics partnered with &minute Solar Energy LLC to acquire the rights to develop, construct and deploy the ESM Facility.

15. Shortly thereafter, Arevon acquired the ESM Facility from &minute Solar Energy LLC, the project's original developer, through a competitive process in furtherance of Arevon's business model of owning and operating utility-scale renewable energy facilities long term ("the ESM Facility Acquisition").

16. During the ESM Facility Acquisition, I held an executive level position with Arevon and was responsible for, among other things, development of the ESM Facility.

17. Shortly after the ESM Facility Acquisition, I was promoted to my current positions of Executive Vice President and Chief Operating Officer of Arevon.

18. As Arevon's Chief Operating Officer since ESM Facility Acquisition, and an executive with Arevon during the ESM Facility Acquisition, I am familiar with every aspect of the Facility's early-stage development. I am therefore intimately familiar with early-stage development planning, efforts and costs, as well as long-term plans and contractual obligations of Appellant and the ESM Facility including agreements with the Moapa Band and Nevada Power Company d/b/a NV Energy ("NV Energy").

19. As part of the ESM Facility Acquisition, Appellant's Renewable Energy Tax Abatement ("RETA") Application to the State of Nevada was reviewed, including the Findings of Fact, Conclusions of Law and Order (the "RETA Order") dated November 4, 2020, which is attached to the Letter as **Exhibit J**.

20. The RETA Order indicated that the State of Nevada had determined no property tax would result from the ESM Facility.

21. The RETA Order's determination on property tax was consistent with my understanding at the time of the ESM Facility Acquisition that no property tax would result from the ESM Facility because it was located on federally owned land held in trust for the Moapa Band.

22. Appellant relied on that determination in the RETA Order in going forward with the ESM Facility Acquisition.

23. As Arevon's Chief Operating Officer since the ESM Facility Acquisition, I am familiar with the construction of the ESM Facility as well as Appellant's contractual agreements with the Moapa Band and NV Energy.

24. The ESM Facility is located entirely on 2,300 acres of the Moapa River Indian Reservation land which Appellant leases from the Moapa Band.

25. The ESM Facility was intended by Appellant and the Moapa Band to be a permanent improvement of the Moapa River Indian Reservation land.

26. The ESM Facility's intended permanence is memorialized in the Solar Energy Ground Lease Agreement ("Lease") entered into by Appellant and the Moapa Band.

27. A true and accurate copy of the Lease between Appellant and the Moapa Band is attached to the Letter as **Exhibit A**.

28. The Lease defines the ESM Facility as a "permanent improvement."

29. The Lease mandates that the ESM Facility "shall be treated" as a "permanent improvement" at all times.

30. Under the Lease, the Moapa Band dedicated the 2,300 acres of the Moapa River Indian Reservation land to be used for the development, construction and operation of a solar

power facility.

31. Appellant's ESM Facility fulfills the dedicated purpose of the 2,300 acres of the Moapa River Indian Reservation land.

32. Under the Lease, Appellant must operate the ESM Facility for a term of up to 50-years.

33. During those 50-years, Appellant has no other rights concerning the 2,300 acres of the Moapa River Indian Reservation land.

34. The Lease grants the Moapa Band an express option to terminate the Lease but "not remove" the ESM Facility because the ESM Facility was intended to remain on the Moapa River Indian Reservation land even after the Lease terminates.

35. The ESM Facility's intended permanence is also memorialized in the project's "Conceptual Decommissioning Plan."

36. The ESM Facility's Decommissioning Plan was submitted by the Moapa Band to the Environmental Protection Agency and Bureau of Indian Affairs ("BIA") as part of the project's Environmental Impact Study.

37. A true and accurate copy of the Conceptual Decommissioning Plan is attached to the Letter as **Exhibit K**.

38. As described by the Moapa Band in the Conceptual Decommissioning Plan, the Facility was intended to permanently be "used to generate solar energy even beyond the term of the initial lease and energy purchase agreements, remaining in solar energy production for the foreseeable future."

39. The ESM Facility's intended permanence is also memorialized in the Long Term Renewable Power Purchase Agreement ("PPA") entered into by Appellant and NV Energy.

40. A true and accurate copy of the PPA between Appellant and NV Energy is attached to the Letter as **Exhibit L**.

41. Under the PPA, Appellant agreed to supply NV Energy with all renewable energy "Product" generated at the ESM Facility for a period of 25-years.

42. The 25-year term is reflective of Appellant and NV Energy's intent that the ESM Facility was meant to be a long-term permanent improvement to the Moapa River Indian Reservation land as opposed to a short-term and temporary project.

43. In addition to Appellant and the Moapa Band intending the ESM Facility to be a permanent improvement, the parties also intended the ESM Facility to be treated uniquely for purposes of taxation as memorialized in the Tribal Agreement ("Tribal Agreement") entered into by Appellant and the Moapa Band.

44. A true and accurate copy of the Tribal Agreement between Appellant and the Moapa Band is attached to the Letter as **Exhibit C**.

45. The Tribal Agreement states that under federal and state law, the ESM Facility would not be subject to "real estate taxation by either the State of Nevada or any local governmental authority, or division, department, agency, court, arbitrator, tribunal, commission, board, official, organization, body or other instrumentality thereof."

46. The Tribal Agreement also states that Appellant would remit PILOT fees to the Moapa Band "in lieu of all taxes, tax levies or other tax assessments (other than sales and use tax as provided for in Section 3 above) that could be levied by the [Moapa Band] against [Appellant] or its contractors, against the Project, the Premises, the Improvements, the Infrastructure, the Rights of Way, the Solar Power Facilities, Tenant Improvements, Tenant Operations or any other property or activities of Project Company authorized under the Lease."

47. In exchange for Appellant's remitting PILOT fees to the Moapa Band, the Moapa Band provides certain services to the ESM Facility. The Moapa Band has provided these services to the ESM Facility since Appellant began remitting PILOT fees to the Moapa Band.

48. One example of such service is the Moapa Band's maintenance of the access and on-site roads at the ESM Facility which Appellant uses to access, maintain and operate the Facility.

49. To the best of my knowledge, Clark County does not currently provide, nor has it ever provided, services to the ESM Facility that could be considered services funded by the Nevada property tax.

50. To my understanding, Clark County does not provide services to the ESM Facility because the project is located entirely on the Moapa River Indian Reservation land. The disparity in services rendered to the ESM Facility is depicted by the Moapa Band's maintenance of the access and on-site roads at the ESM Facility-as compared to Clark County's maintenance of access roads. The County's maintenance abruptly ends when the roads cross onto the Moapa River Indian Reservation. True and accurate photos of Clark County- maintained roads leading to the Moapa River Indian Reservation and Moapa Band-maintained roads once they cross onto the Moapa River Indian Reservation are attached to the Letter as **Exhibit M**.

51. The Lease, the PPA and the Tribal Agreement demonstrate that the ESM Facility was intended to be permanently affixed to the Moapa River Indian Reservation land for an indefinite time.

52. None of the key parties who developed the ESM Facility-Appellant, the Moapa Band and NV Energy-intended the ESM Facility to be a short-term or temporary project.

53. The ESM Facility's intended permanence is also observed in the construction and physical affixation of the Facility to the Moapa River Indian Reservation land.

54. As Arevon's Chief Operating Officer since the ESM Facility Acquisition, I am familiar with every aspect of the ESM Facility's construction. I am therefore intimately familiar with the specifics of why, when and how the ESM Facility was constructed.

55. Preparatory construction work of the ESM Facility started in or around August 2020. The necessary grading and sitework for the solar array construction completed in or around December 2020 but the bulk of grading and sitework completed later, in or around March 2021. Because the grading and sitework for the solar array finished early, construction of the solar array commenced in or around December 2020 and concluded in or around April 2023. Construction of the high voltage side of the ESM Facility was completed in or around May 2021.

56. Because construction of the high voltage side of the ESM Facility was completed in or around May 2021, the ESM Facility first produced test energy in or around October 2021.

By the end of 2021, approximately 70% of the Facility was operational and producing energy. Full commercial operation and production of energy at the ESM Facility was realized in or around May 2023 after construction of the entire solar array concluded.

57. Overall, the ESM Facility cost \$460,300,001 to construct. I can provide a more detailed cost breakdown of the project and its components upon request.

58. Overall construction of the ESM Facility took around 34 months. I can provide a more detailed timeline of construction of the project upon request.

59. Clark County did not require any permits for construction of the ESM Facility on the Moapa River Indian Reservation. The only permits required from and issued by Clark County were: (1) a Special Use Permit related to the portion of the gen-tie line on Bureau of Land Management ("BLM") and NV Energy properties, and (2) a Dust Control Permit for construction activities. Clark County did not issue or require any building permits for the primary components of the ESM Facility itself.

60. Both of the permits issued by Clark County pertained to construction and work on the gen-tie portion of the project located on non-tribal land.

61. True and accurate copies of the Special Use Permit and Dust Control Operating Permit for Construction Activities issued by Clark County are attached to the Letter as **Exhibit T**.

62. The ESM Facility was constructed pursuant to Structural Design Plans which took over 8 months to develop. One of the reasons why the project's Structural Design Plans took so

long to develop was that construction of the Facility had to adequately address the unique and inimitable geographic characteristics of the Moapa River Indian Reservation land.

63. True and accurate copies of the ESM Project's Structural Design Plans, which detail how the Facility is physically connected and affixed to the Moapa River Indian Reservation land, are attached to the Letter as **Exhibit G**.

64. The ESM Facility consists of two primary components that are connected to the Moapa River Indian Reservation real property: (1) module-tracker structures, and (2) a substation.

65. At a very high level, a collection of 72-solar panels make up a "module"; a "module" is physically connected to a 200 foot long "tracker" which runs parallel to the ground and is permanently connected thereto via "earth trusses" or "driven piles"; through the solar panels, a module collects solar energy that is transmitted through a series of steps including an inverter to a "substation" permanently connected to the real property via robust cement foundations and steel framing; at the "substation", the solar energy is transmitted to a transformer for subsequent transmission.

66. Every module at the ESM Facility is physically connected to a tracker.

67. There are 10,618 tracker units at the ESM Project. Each tracker is physically affixed to the ground by "earth trusses" or "driven piles." 60% of the ESM Facility module-tracker structures are permanently connected to the ground via earth trusses. 40% of the ESM Project module-tracker structures are permanently connected to the ground via driven piles.

68. In total, 83,304 earth trusses were used to permanently connect module-tracker structures to the ground at the ESM Facility while 38,061 driven piles were used.

69. True and accurate photos of the ESM Project, module-tracker structures, earth trusses and driven piles are attached to the Letter as **Exhibit H**.

70. Earth trusses are manufactured solar tracker foundations that include five parts and are assembled in an "A" frame configuration. These parts consist of two earth screws that anchor the truss into the ground. The earth screws have an outside diameter of approximately 3 inches (with an approximate wall thickness of 0.1 inches) and they measure between 5 and 7 feet long and weigh approximately 60 pounds each. The earth screws have continuous flights (or threads) and are hot-dipped galvanized. The earth screws are installed into the ground using a proprietary installation rig that simultaneously drills a hole and advances the earth screws into the bedrock to the proper depth and angle. Two supporting pipe legs and an earth truss cap are then all permanently affixed to the earth screw in the field with a custom hydraulic crimper.

71. The earth truss is firmly stabilized and immovable when the body of the earth screws are embedded nearly 4 feet deep into the bedrock. The tracker is then bolted to the completed A-Frame earth truss using industrial grade bolts.

72. Driven piles are between 8.5 feet and 15.5 feet long, the section of the pile (looking down from the top) is approximately 6 inches tall, and weigh between 60 and 186 pounds. As with earth trusses, to install driven piles a slightly undersized pilot hole is cut deep into the bedrock using a down-hole drill. After that, a mechanical pile driver is used to hammer the driven pile into the pilot hole until it reaches a stable layer of bedrock. This typically requires hammering the driven piles anywhere from 6 to 8 feet into the ground. At that point, the bedrock securely locks the driven pile into a vertically-fixed position, leaving about three to five feet of exposed driven pile above ground. The exposed portion of the driven pile is then bolted to the tracker using the same large-format bolts discussed above.

73. Before constructing the ESM Facility, Appellant commissioned a "Geotechnical Exploration Report."

74. A true and accurate copy of the Geotechnical Exploration Report is attached to the Letter as **Exhibit O**.

75. The Geotechnical Exploration Report explores the unique geological conditions and compositions of the Moapa River Indian Reservation land which was necessary to learn in order to adequately design and construct the project in a permanent manner.

76. Under the Geotechnical Exploration Report, the Moapa River Indian Reservation land displayed "large volume changes in the subsurface" and "widespread occurrence of thick, resistant layers of cemented sand and gravel" which required "specialized excavation equipment" to prepare the "cemented soils" for module-tracker installation.

77. Because of the Geotechnical Exploration Report's findings, Appellant specifically selected earth truss and driven pile connection methodologies to ensure the module-tracker structures were permanently connected to the ground.

78. The earth truss screws and driven piles supporting the module-tracker structures

are securely held in place by the counter-force the ground exerts against the screws and piles which increases as they are twisted and hammered deeper into the earth. The amount of counter-force required to support the weight of the modules and trackers can only be achieved by pounding the screws and piles so deep into the bedrock that they become an extension of the ground itself.

79. The majority of module-tracker structures at the ESM Facility being connected to the ground through earth trusses is unique.

80. The ESM Project was one of the first solar projects in Nevada to utilize earth truss technology to permanently affix the module-tracker structures to the ground.

81. In addition to the Geotechnical Exploration Report's findings, earth trusses were intentionally selected as part of the ESM Facility's module-tracker structure design to address the Moapa River Indian Reservation land's unique geological composition of caliche in certain areas.

82. Although it can take different forms, caliche is most commonly a geological composition of soil in which calcium carbonate deposits are cemented together over time. This renders the soil rock-hard and exponentially more difficult to cut through than most soil types. Because caliche makes-up the majority ground composition on Moapa River Indian Reservation land, the use of earth trusses and screws was required to "break through" and "grip" the caliche-rich soil in a manner that could permanently connect the module-tracker structures to the ground and support their weight.

83. Driven piles are the most common affixation technique used for module-tracker structures throughout solar projects inside and outside Nevada.

84. Driven piles alone would not have sufficiently addressed the problems posed by caliche-rich soil.

85. The predominant use of earth trusses at the ESM Project is a unique construction method intentionally employed by Appellant to construct the module-tracker structures and

connect them to the Moapa River Indian Reservation land in a permanent manner.

86. The module-tracker structures took over 10 months to construct because the process to install earth trusses and driven piles is labor-intensive and difficult.

87. The module-tracker structures cost \$139,610,823 to construct and install at the ESM Facility which does not include \$28,306,906 in grading and earth work, much of which was required to excavate and prepare the Moapa River Indian Reservation land for construction and installation of the module-tracker structures.

88. True and accurate photos of the ESM Facility 's substation are attached to the Letter as **Exhibit I**.

89. The ESM Facility substation is connected to the real property through a variety of classic cement foundations. The first variant, a drilled caisson, encompasses drilling 82 concrete caisson foundations that range between 30 inches and 48 inches in diameter and between 8 and 13 feet deep directly into the bedrock. Reinforcing steel is placed and then the hole is filled with concrete. There are seventeen concrete slab foundations to support the substation's additional equipment.

90. Of all the foundations at the ESM Facility, the concrete foundations to which the substation equipment is affixed are the most robust.

91. The substation equipment includes two main power transformers (each weighing in excess of 50,000 pounds); a control enclosure structure which houses all of the monitoring and controls devices; various high voltage and medium voltage breakers (among other electrical protection devices) and/or switching; a capacitor bank; a backup generator; and a series of steel structures which support the overhead medium and high voltage cables. All of these structures and equipment are affixed to individual foundations via anchor bolts which were either set into the concrete before it hardens or drilled and epoxied into already hardened concrete.

92. On average, it takes 3 to 6 months to properly construct and install a solar facility substation.

93. The ESM Facility 's substation took nearly 6 months to construct.

94. The ESM Facility 's substation cost \$14,705,689 to construct and install which does not include the substation's proportional share of the \$28,306,906 grading and earth work costs.

95. The projected lifespans of the constructed ESM Facility and its components are also indicative of its intended permanence.

96. The module-tracker, earth truss and driven pile components of the ESM Facility are designed and constructed to last in perpetuity.

97. The substation is designed and constructed to last indefinitely, although certain components such as transformers may need to be replaced from time to time.

98. The transformer housed in the substation is expected to last anywhere from 35 to 50 years.

99. The ESM Facility was intentionally designed and constructed to include more solar panels than necessary. This was done so that, as individual panel power production slightly decreases over time, additional panels make-up for the production loss and the Facility continues to produce its intended generation outputs. This is also indicative of the ESM Facility's intended permanence.

100. As Arevon's Chief Operating Officer since the ESM Facility Acquisition, I was and am directly involved in every aspect of the Facility 's operations which includes any theoretical moving or removal of the project. I am therefore intimately familiar with how the Facility would be moved or removed.

101. The ESM Facility has never been moved or removed from the Moapa River Indian Reservation land.

102. There are no current or future plans to move or remove the ESM Facility from the Moapa River Indian Reservation land.

103. In general, moving or removing the ESM Facility would be a substantial, complex, laborious, time-consuming and expensive undertaking, subject to significant federal and Tribal regulatory requirements and scrutiny.

104. Moving or removing the module-tracker structures in a way that allows them to

remain operable is impossible. This is because of the earth truss and driven pile connection techniques. Once screws have been twisted that deep into the ground, it is impossible to "unscrew," move or remove them without substantially damaging them as well as the module-tracker structures attached. Once piles have been driven that deep into the ground, it is similarly impractical to move or remove them without substantially damaging them.

105. To move or remove the screws and piles, one must "cut them at grade" or physically sever them at ground level so the exposed, above-ground portion of the screw and pile is removed and below-ground portions remain embedded in the bedrock.

106. "Cutting at grade" requires the use of a plasma torch and is similar to the removal of a building or a bridge.

107. "Cutting at grade" completely destroys each screw and pile and renders them unusable because it leaves a substantial portion of each screw and pile embedded in the earth and a portion above the "cut" which remains attached to the module-tracker structure.

108. The screws and piles still connected to the module-tracker structures would no longer be of adequate length to re-install into the ground deep enough to obtain the amount of ground-exerted counter-force required to support the weight of structures.

109. There is no way to remove the screws and piles still embedded in the ground without intensive excavation processes which would disturb and damage the surrounding real property. Even if the screws and piles still embedded in the ground were removed, they would no longer be the correct length to permanently connect an above ground module-tracker structure to the ground.

110. Moving or removing the substation would require substantial industrial grade-work and destroy the substation structure itself.

111. Removal of the substation would involve a two-step process. First, the ancillary equipment connected to the cement foundations would need to be removed. Once removed, the steel structures bolted to cement foundations would remain. There is no way to remove the cement foundations from the ground without a commercial excavation processes that substantially damages the cement foundations and surrounding real property.

112. Thus, there is no real way to move or remove the substation without completely destroying it and substantially damaging the real property to which it is permanently attached.

113. Damage to the ESM Facility and the Moapa River Indian Reservation land upon moving or removing the Facility was an actual consideration of Appellant and the Moapa Band when they negotiated and signed the Lease.

114. Under the Lease, Appellant and the Moapa Band intentionally included Section 12.01 which defines and differentiates "Subject Property" as property "that is physically separable from the to-be-removed Tenant's Property without material cost or damage[.]"

115. Like its two primary components-the module-tracker structures and the substation-the ESM Facility as a whole is not readily movable or removable in a way that allows the Facility to remain operational.

116. The only parts of the ESM Facility theoretically capable of being moved or removed in a way that permits them to retain operability are smaller components that, in and of themselves and without connection to the ESM Facility as a whole, are incapable of producing solar energy.

117. In any event, there is no guarantee that such smaller components could be used at another solar facility. This is because even the smaller components were specifically designed for use at the ESM Facility.

118. As an example of this, the panels attached to the ESM Facility module-tracker structures were specially designed with certain voltage and wattage outputs. Even though panels are theoretically movable and interchangeable, the specific voltage and wattage specs of the ESM Facility panels means they are potentially unusable at another solar facility if that facility does not share the ESM Facility's voltage and wattage needs.

119. The only way to move or remove the ESM Facility is pursuant to the project's Conceptual Decommissioning Plan.

120. Decommissioning the ESM Facility is a mammoth process which requires removal of the Facility's structures and electrical equipment.

121. Decommissioning the ESM Facility would likely take a year or longer.

122. Decommissioning the ESM Facility would require Appellant to provide "performance and reclamation bonding in an amount sufficient to ensure the implementation of the approved Decommission Plan."

123. Per the Conceptual Decommissioning Plan, the bond amount required would be based on a decommissioning cost "estimate" provided by Appellant.

124. Appellant estimates the cost of decommissioning the ESM Facility to be significant and would cost millions of dollars and take significant time and effort.

125. Per the Conceptual Decommissioning Plan, decommissioning of the ESM Facility would have to "be conducted in compliance with all applicable Federal and Tribal regulations in place at the time" and with constant "[c]onsultation with the [Moapa Band], BIA, BLM, and any other involved entities would be conducted to ensure that all Federal and Tribal requirements are addressed."

126. Per the Conceptual Decommissioning Plan, decommissioning of the ESM Facility would require Appellant to fund, develop and adhere to an Environmental Site Assessment, a Final Decommissioning Plan and a Restoration Plan to remove the Facility from the Moapa River Indian Reservation land.

127. Per the Conceptual Decommissioning Plan, decommissioning of the ESM Facility would require all structures and facilities erected at the ESM Facility to be dismantled through only "approved methods."

128. Per the Conceptual Decommissioning Plan, decommissioning of the ESM Facility would require Appellant to remove access and on-site roads used at the ESM Facility. This process entails physical removal of any aggregate and/or other base material used to construct the roads, recycling or disposal of such material and restoration of the roads to approximate pre-project conditions.

129. Per the Conceptual Decommissioning Plan, decommissioning of the ESM Facility would require Appellant to undertake "Post-Demolition Site Stabilization" efforts which include

the restoration of any "disturbed areas" to "promote pre-project drainage patterns, with the goal of reducing the potential for erosion." Once the disturbed sites are stabilized, "restoration activities required to return the disturbed areas to a pre-construction function" are required in accordance with a Site Restoration Plan and Integrated Weed Management Plan.

130. Even if the ESM Facility could theoretically be moved or removed in a manner that allowed the Facility to remain operational, moving or removing the Facility would cause Appellant to breach the PPA.

131. Under the PPA, Appellant must supply NV Energy with all renewable energy "Product" generated at the ESM Facility for a period of 25 years.

132. Moving or removing the ESM Facility from the Moapa River Indian Reservation would cause Appellant to commit several "Events of Default" under the PPA because Appellant is obligated to provide NV Energy with generated renewable energy "Product" at the "Facility" and "Generating Facility" on the Moapa River Indian Reservation.

133. The PPA makes clear that Appellant cannot sell or transfer the ESM Facility without first notifying NV Energy and that NV Energy shall have a "Right of First Offer" to purchase the Facility upon notice of proposed sale or transfer.

134. Under the PPA, NV Energy also has an express "Early Purchase Option" to purchase the ESM Facility from Appellant "on a date chosen by [NV Energy] during the six (6) months after the Facility's 10th, 15th, and 20th anniversaries of the Commercial Operation Date[.]"

135. Appellant is not "permitted to make any modification" to the ESM Facility "[w]ithout the prior written consent of NV Energy and must notify NV Energy of "any temporary or permanent change to the performance, operating characteristics, or major generation components (such as turbines, generators, inverters, solar panels or similar equipment, as applicable)[.]"

136. Even if the ESM Project could theoretically be moved or removed in a manner that allowed the Facility to remain operational, NV Energy could potentially block such

From: [Laura Wickham](#)
To: [Joshua J. Hicks](#)
Cc: [Lezlie J. Helget](#)
Subject: RE: Eagle Shadow Mountain Abatement Application
Date: Tuesday, July 21, 2020 4:31:35 PM
Attachments: [image001.png](#)
[image002.png](#)

Good Afternoon Josh,

Our attorney has reviewed this application as well as our team and we are having difficulty reconciling some things to verify that the project is eligible.

- Would you please specify how much money will be invested as capital investment on non-Tribal Land? We need to ensure the capital investment on non-tribal land will meet the \$10 million mark found in NRS 701A.365 (d)(2). This statute requires capital investment occur in the State of Nevada. Since Tribal Lands are sovereign, the portion of investment occurring on Tribal land is separate.
- According to the information we have reviewed provided in the application, it does not seem any of the project will really be on non-Tribal Land. Therefore, the company would not be able to benefit from either property or sales and use taxes since sales and use tax would not apply to equipment purchased and delivered to Tribal Land.

It would be helpful to have additional information from your team on this matter. If there is a portion of the facility that will be built outside of tribal land, please send us percentage of the project and other helpful specs to assist us in making our determination. Department of Taxation cannot prepare fiscal notes for a project that will be located on Tribal Land since Clark County or the State will not be assessing the project.

In addition, if your team can provide authority on the interpretation for the capital investment requirement in 'this State' we would be happy to review it with our legal team. Please feel free to call or email me with questions or additional information.

Best Regards,

Laura Wickham, LEED Green Associate

Energy Program Manager

Governor's Office of Energy

600 E William Street, Ste. 200

Carson City, NV 89701

C 775.434.4046 | lwickham@energy.nv.gov | <http://energy.nv.gov>



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From: Laura Wickham

Sent: Wednesday, July 08, 2020 12:07 PM

To: Joshua Hicks

Cc: Lezlie J. Helget

Subject: RE: Eagle Shadow Mountain Abatement Application

Good Afternoon Josh,

In reviewing the Eagle Shadow Mountain application we need some clarification. Please provide the following documents/responses at your earliest convenience:

- Full unredacted application (Excel) – the Department of Taxation requires this
- Please provide the Contractors/Sub-Contractors list at your earliest convenience (as soon as it is completed) – Taxation will need this in order to process
 - Please provide calculation, method, formula etc for total numbers provided on the Construction Employee Schedule and 2nd Quarter Construction Employee Schedule – our numbers do not match those provided in the application
 - Please provide a copy of the PPA with NVE demonstrating the number of years this PPA will be in effect
 - What percentage of the project is on non-tribal land?
 - Matters to be deemed Confidential – Please note the following items cannot be kept confidential as they are needed in order to demonstrate eligibility of the facility:
 - Construction Period – the number of months is required to demonstrate the total amount of payroll benefits
 - Schedule 1 – Estimated total acquisition cost are necessary in order to ensure compliance with the capital investment requirement
 - Schedule 6 – All information is public relating to this schedule as it is utilized both to prepare the fiscal notes and to establish a greater benefit to state over its loss
 - Schedule 7 – Same as Schedule 6

Thank you for your assistance in this matter.

Best Regards,

Laura Wickham, LEED Green Associate

Energy Program Manager

Governor's Office of Energy

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Carson City, NV 89701

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From: Joshua Hicks <jhicks@mcdonaldcarano.com>

Sent: Tuesday, June 16, 2020 5:21 PM

To: Laura Wickham <lwickham@energy.nv.gov>

Subject: Eagle Shadow Mountain Abatement Application

Laura,

Please find attached redacted and unredacted applications for Nevada's renewable energy tax abatement program. A check for the filing fee will follow via fed ex. The applications are e-signed, please let me know and I will make arrangements. The contractors and subcontractors tab is blank for now as contracts are being finalized. That information will be updated when contractors are selected.

Thank you,

Josh

Joshua J. Hicks | Partner

McDONALD CARANO

100 West Liberty Street | Tenth Floor

Reno, NV 89501

P: 775.788.2000

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DEPARTMENT OF TAXATION

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Fax: (702) 486-3377

Guidance Letter 14-001

Date: September 17, 2014

To: Centrally-assessed Section, Division of Assessment Standards; County Assessors

From: Terry E. Rubald, Deputy Executive Director, Department of Taxation 

CC: Christopher G. Nielsen, Executive Director, Department of Taxation

Subject: Taxability of real property located on tribal lands held in trust by the U.S. Government

SUMMARY:

This Guidance Letter is intended to clarify that real property located on lands held in trust by the U.S. Government on behalf of Indian tribes, is not taxable for purposes of property tax. This includes property owned by third parties unrelated to an Indian tribe. In the past, real and personal property owned by third parties, but located on trust lands, had been considered subject to property taxation in Nevada pursuant to NRS 361.045. Due to recent decisions by Federal courts, however, any permanent improvements owned by any person or company and located on trust lands, are not taxable property by the State of Nevada and its subdivisions. Personal property owned by unrelated third parties and located on trust lands, however, may continue to be considered taxable property by the State and its subdivisions. Possessory interests in property of any Indian tribe, band or community held in trust by the United States, continue to be exempt pursuant to NRS 361.157(2)(e).

AUTHORITY:

NRS 360.215(6): The Department shall continually supervise assessment procedures which are carried on in the several counties of the State and advise county assessors in the application of such procedures.

NRS 360.215(7) The Department shall carry on a continuing program to maintain and study the assessment of public utilities and all other property assessed by the Department to the end that the assessment is equalized with the property assessable by county assessors.

DISCUSSION:

NRS 361.045 provides that, except as otherwise provided by law, all property of every kind and nature whatever within this state shall be subject to taxation. Recently however, the 9th Circuit, U.S. Court of Appeals, ruled in *Confederated Tribes of the Chehalis Reservation v. Thurston County Board of Equalization et al* (July 30, 2013) that state and local governments lack the power to tax permanent improvements built on non-reservation land owned by the United States and held in trust for an Indian

tribe pursuant to 25 U.S.C. §465.¹ 25 U.S.C. §465 authorizes the Secretary of the Interior to acquire “any interest in lands, water rights, or surface rights to lands, within or without existing reservations,” and to hold title to such lands and rights “in the name of the United States in trust for the Indian tribe or individual Indian for which the land is acquired.” The statute also provides that “such lands or rights shall be exempt from State and local taxation.” The Court held that the exemption of trust lands from state and local taxation under §465 extends to permanent improvements on such lands. The Court concluded that the fact that the improvements were owned by a limited liability company, rather than by the tribe itself, was irrelevant.

The Bureau of Indian Affairs has also adopted 25 C.F.R. §162.017(a) which clarifies and confirms 25 U.S.C. §465:

Subject only to applicable Federal law, permanent improvements on the leased land, *without regard to ownership of those improvements*, are not subject to any fee, tax, assessment, levy, or other charge imposed by any State or political subdivision of a State. Improvements may be subject to taxation by the Indian tribe with jurisdiction.

Based on the rulings of the Federal courts and Federal regulation, real property such as buildings and improvements located on lands held in trust by the United States Government for an Indian tribe is not taxable property, even when owned by a person or entity other than the tribe. Such property owned by third parties is not exempt per se, because exemption implies that a property is subject to tax which later qualifies for exemption. It is simply not subject to taxation. However, calling such property “non-taxable” as opposed to “exempt” may be a distinction without much of a difference.

There is not a specific exemption in state law for property owned by third parties but located on trust lands. For example, NRS 361.050 specifically exempts all lands and other property *owned by the United States* “not taxable because of the Constitution or laws of the United States.” NRS 361.157(2)(e) exempts otherwise taxable possessory interests in the property of any Indian or of any Indian tribe, band or community which is held in trust by the United States or subject to a restriction against alienation by the United States. Neither of these exemptions cover the property at issue.

APPLICATION:

1.) In order for the Department or assessors to determine whether the real property is non-taxable, it must be established that the property is located on lands owned by the United States held in trust for an Indian tribe. Title records must be checked to confirm said ownership of the land. In addition, the Taxpayer must provide a copy of the lease showing that the subject property is on property owned by the United States and held in trust for the Indian tribe.

2.) For centrally-assessed properties which use unitary valuation methods, the Taxpayer must provide sufficient information for the Department to determine what portion of the unitary assessment represents non-taxable property. The information must include a metes and bounds description of the location of the non-taxable property and a map in sufficient detail to show location in each section, township and range in which the property is located. The information must also include a list of the real property improvements located on trust lands, the date the improvement or structure was built or placed on tribal trust lands, and the portion of original book cost and current book cost less depreciation which represents non-taxable property located on trust lands.

3.) For centrally-assessed properties, the wire-miles or pipeline miles associated with non-taxable property must be separately indicated on wire-mile reports.

¹ See also *United States v. Rickert*, 188 U.S. 432 (1903); and *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973).

4.) For purposes of tracking property for various reports, including the Statistical Analysis of the Roll and the AB 466 Tax Expenditure Report, assessors and the Department should categorize non-taxable property owned by third parties and located on Indian trust lands as "non-taxable" property. If the software used by the assessor is not currently capable of identifying property as "non-taxable," classification as "exempt" will be acceptable. For purposes of AB 466, the legal reference to use for classifying the property will be 25 CFR §162.017(a).

If you have any questions about this guidance letter, please call the Local Government Finance Section of the Division of Local Government Services, Department of Taxation at (775) 684-2100.

WEBSITE LOCATIONS:

Nevada Revised Statutes (NRS): <http://www.leg.state.nv.us/NRS/>
Nevada Administrative Code: <http://www.leg.state.nv.us/NAC/CHAPTERS.html>

Department of Taxation Guidance letters: <http://www.tax.state.nv.us>; then select "Publications;" then select Assessment Standards Publications and "Guidance letters."



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Guidance Letter 14-001

Date: September 17, 2014

To: Centrally-assessed Section, Division of Assessment Standards; County Assessors

From: Terry E. Rubald, Deputy Executive Director, Department of Taxation 

CC: Christopher G. Nielsen, Executive Director, Department of Taxation

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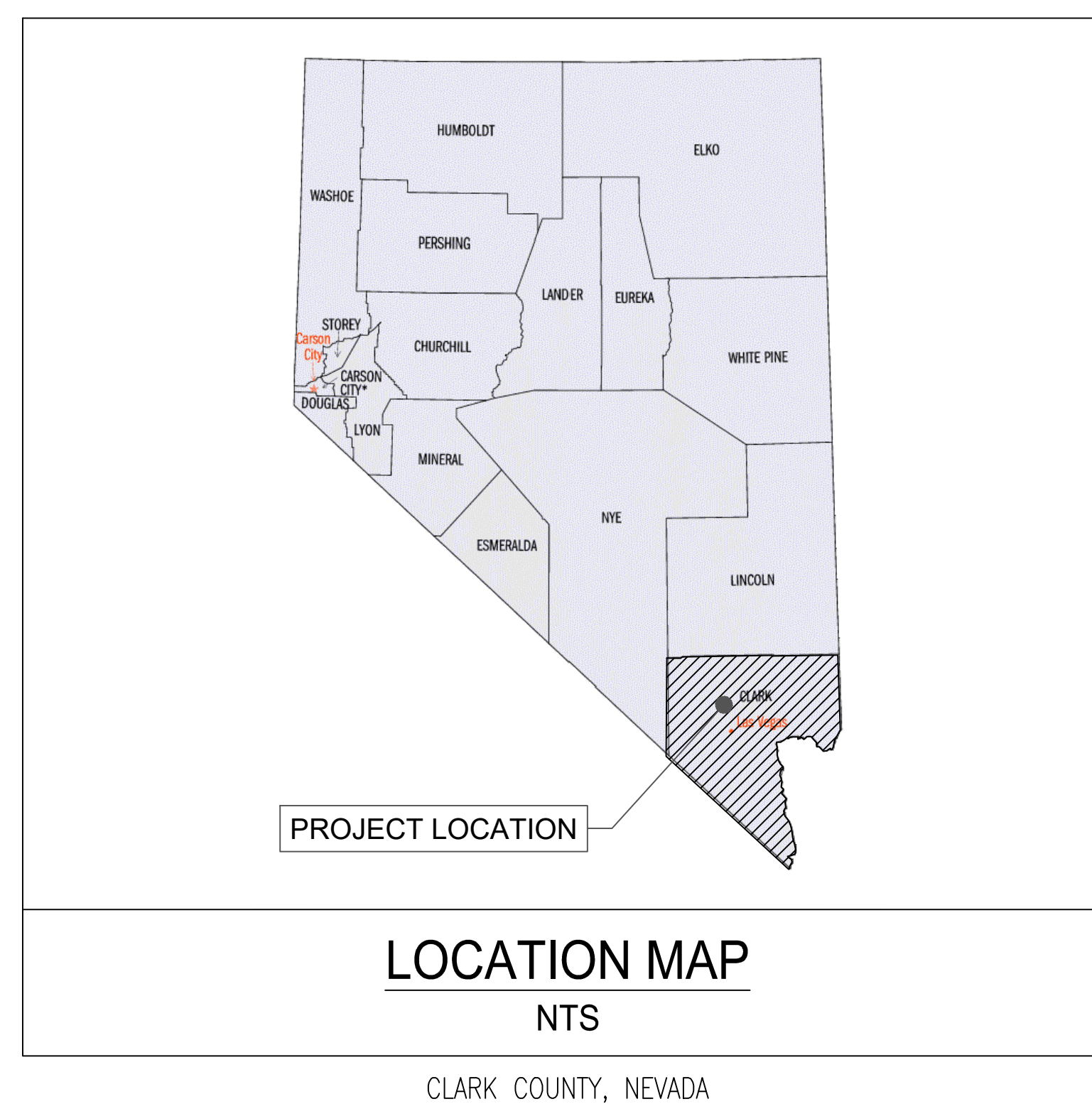
WEBSITE LOCATIONS:

Nevada Revised Statutes (NRS): <http://www.leg.state.nv.us/NRS/>
Nevada Administrative Code: <http://www.leg.state.nv.us/NAC/CHAPTERS.html>

Department of Taxation Guidance letters: <http://www.tax.state.nv.us>; then select "Publications;" then select Assessment Standards Publications and "Guidance letters."

Exhibit A

SITE ENTRANCE COORDINATES: 36.542521, -114.800796



DRAWING INDEX			
SHEET NUMBER	SHEET TITLE	REV	REV DATE
S-000	TITLE SHEET	1	6/14/2023
S-001	CS BLOCK 203 & TRINA GENERAL NOTES	1	6/14/2023
S-002	TRINA WIDE FLANGE TRACKER AND LOAD BREAK DISCONNECT FOUNDATION	1	6/14/2023
S-003	TRINA CAB DETAILS AND FOUNDATIONS	1	6/14/2023
S-004	PCS AND PILE CAP CONNECTION	1	6/14/2023
S-005	PCS, MET, AUXILIARY RACK FOUNDATION	1	6/14/2023
S-006	CS AND JINKO TRACKER GENERAL NOTES AND FOUNDATION	1	6/14/2023
S-007	CS & JINKO CAB DETAILS AND FOUNDATIONS	1	6/14/2023

PREPARED BY:



707 17th Street, Suite 3000
Denver, CO 80202
Phone: 303-237-6601
www.kleinfelder.com

[illegible]

ORIGINAL DRAWING SIZE IS 24 x 36

EAGLE SHADOW MOUNTAIN SOLAR

MOAPA RIVER INDIAN RESERVATION
CLARK COUNTY, NEVADA



PRIMORIS RENEWABLE ENERGY
4880 HAVANA STREET, SUITE 500
DENVER, COLORADO 80239

TITLE SHEET

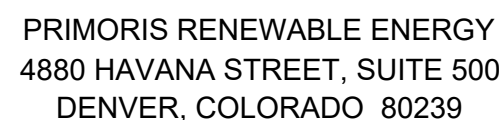
PROJECT NO. 20203753.003A	S-000
ISSUE DATE 6/14/2023	
CURRENT REVISION 1	
DESIGNED BY AD/JAC	
DRAWN BY AD/JAC	
CHECKED BY ADT	SHEET 1 of 8
APPROVED BY ADT	

PROJECT NO. 20203753.003A	S-001
ISSUE DATE 6/14/2023	
CURRENT REVISION 1	
DESIGNED BY AD/JAC	
DRAWN BY AD/JAC	
CHECKED BY ADT	
APPROVED BY ADT	SHEET 2 of 8

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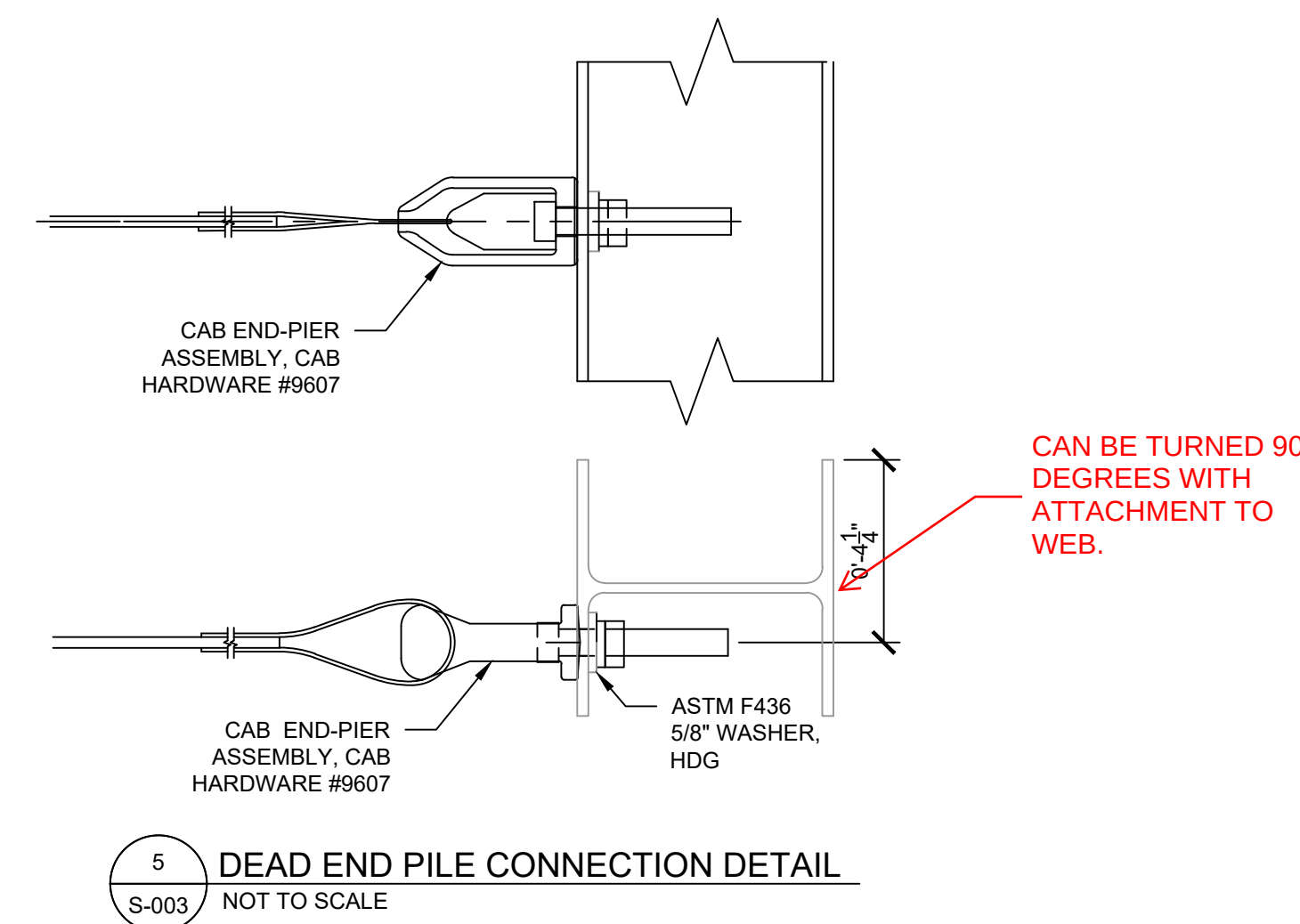
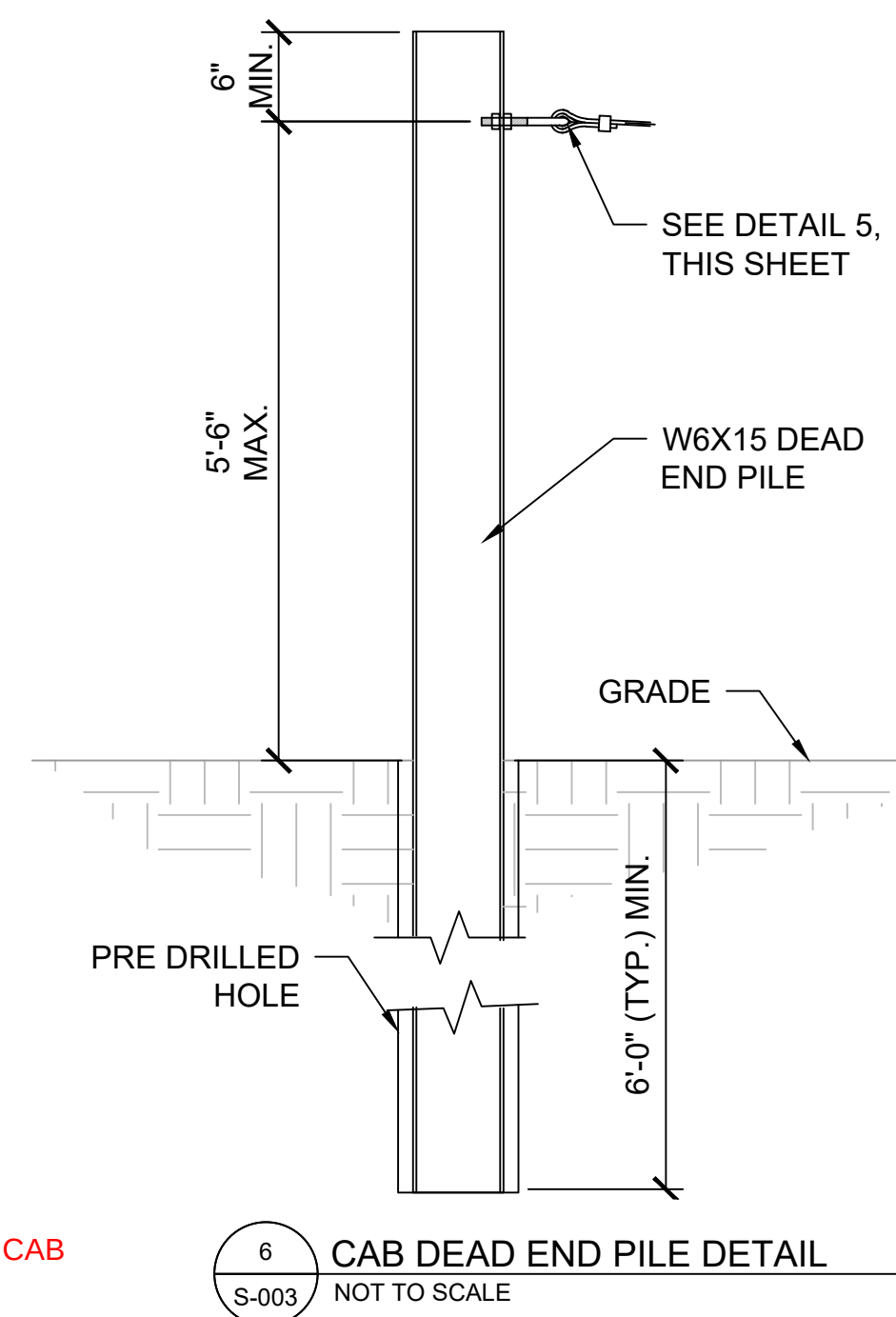
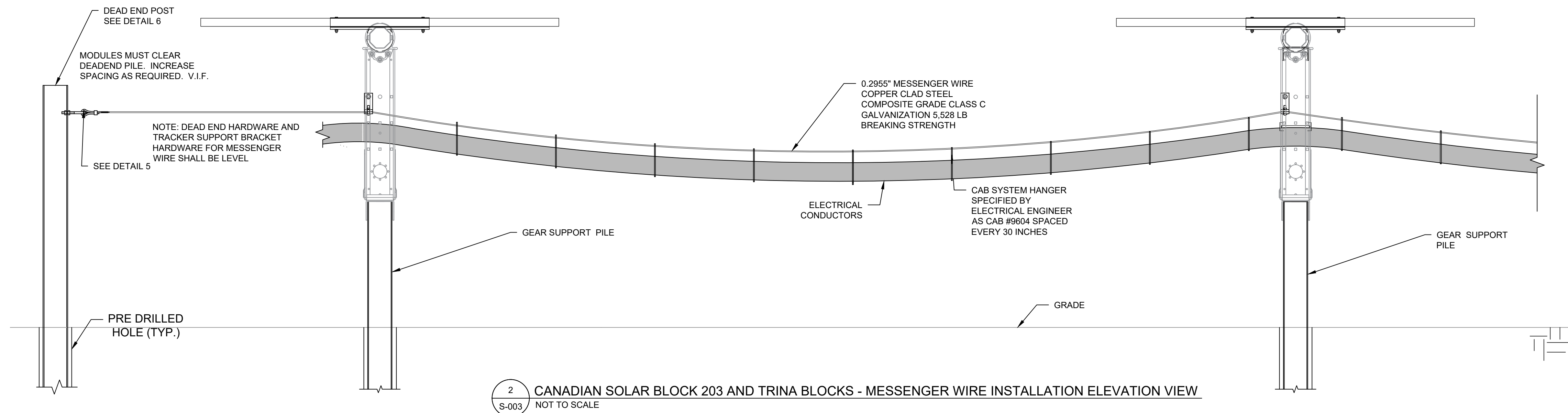
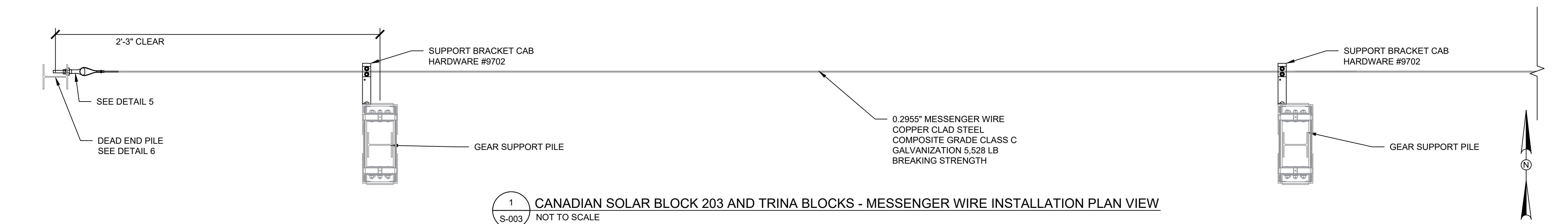
EAGLE SHADOW MOUNTAIN SOLAR

MOAPA RIVER INDIAN RESERVATION
CLARK COUNTY, NEVADA



CAB DETAILS & FOUNDATION

PROJECT NO. 20203753.003A	S-003
ISSUE DATE 6/14/2023	
CURRENT REVISION 1	
DESIGNED BY AD/JAC	
DRAWN BY AD/JAC	
CHECKED BY ADT	
APPROVED BY ADT	SHEET 4 of 8



MESSENGER CABLE INSTALLATION SEQUENCE:

1. SECURE MESSENGER WIRE TO ONE DEAD END FOUNDATION (DETAIL 5).
2. LAY MESSENGER WIRE THROUGH ALL MID-SPAN BRACKETS. DO **NOT** SECURE. TENSION THE MESSENGER WIRE AND ATTACH TO SECOND DEAD END PER THE INSTALLATION SAG IN TABLE 1 AT MIDSPAN BETWEEN L-BRACKETS.
3. TIGHTEN THE RETAINER PLATES OF THE MID-SPAN BRACKETS.
4. STRING ON THE CAB HANGERS ALONG ALL SPANS. STRING ALL CONDUCTORS THROUGH THE CAB HANGERS AND RECHECK THE SAG AT ALL MIDSPANS. FINAL SAG SHOULD BE ESTIMATED PER TABLE 2.
5. DEAD LOAD SPECIFIED BY ELECTRICAL ENGINEER AS 4.7 PLF.

TABLE 1: MESSENGER WIRE STRINGING SAG CHART

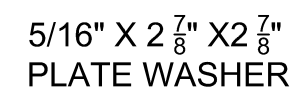
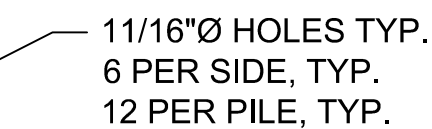
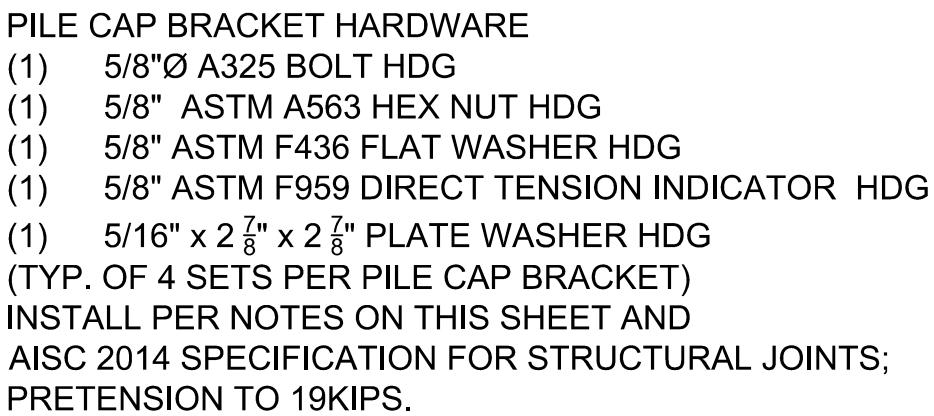
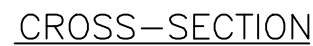
		TEMPERATURE (°F)											
SAG (INCHES)	ROW-TO-ROW SPAN	10	20	30	40	50	60	70	80	90	100	110	120
	20'-0" TO 25'-0" (CCS)	1.68	2.16	2.64	3.00	3.36	3.72	4.08	4.32	4.68	4.92	5.16	5.40
	20'-0" TO 25'-0" (EHS)	2.16	2.52	2.88	3.24	3.48	3.72	4.08	4.32	4.56	4.80	5.04	5.16

NOTE: MID-SPAN SAG OF THE MESSENGER WIRE LISTED ABOVE OCCURS BEFORE ANY ELECTRICAL CABLES OR SUPPORTS ARE HUNG FROM THE MESSENGER CABLE (I.E. ONLY THE BARE EHS MESSENGER WIRE).

TABLE 2: MESSENGER WIRE MAXIMUM FINAL SAG CHART

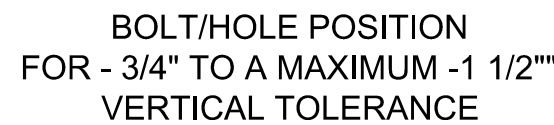
		TEMPERATURE (°F)				
SAG (INCHES)	ROW-TO-ROW SPAN	0	30	60	90	120
	20'-0" TO 25'-0" (CCS)	7.30	7.70	8.00	8.40	8.80
	20'-0" TO 25'-0" (EHS)	7.40	7.70	8.00	8.30	8.60

NOTE: MAXIMUM SAG VALUES SHOWN ABOVE INCLUDE THE INITIAL SAG PLUS THE SAG DUE TO MAXIMUM VERTICAL FACTORED LOAD CONDITION OF 4.7 LB/FT FOR MESSENGER WIRE.



ROUND WASHER.

SLIP CRITICAL CONNECTION CLASS A



BOLT/HOLE POSITION
FOR INSTALLATION TO LESS THAN $\pm 3/4"$
VERTICAL TOLERANCE

BOLT/HOLE POSITION
FOR + 3/4" TO MAX + 2 1/4"
VERTICAL TOLERANCE



PILE CAP BRACKET AND FOUNDATION NOTES:

1. BOLTS TO MEET ASTM F3125, GRADE A325, WITH MATCHING NUT.
2. ALL HARDWARE TO BE HOT DIP GALVANIZED.
3. STEEL PLATES TO BE HOT DIP GALVANIZED PER ASTM A123.
4. PILES TO BE COATED PER GENERAL NOTE: FOUNDATION, ITEM 3d.
5. BOLTS TO BE INSTALLED PER SPECIAL INSPECTION TABLE, DWG. S-001.

INSTALLATION OF PILE CAP:

1. DETAILED INSTALLATION INSTRUCTIONS SHALL BE PREPARED BY THE DIRECT TENSION INDICATOR (DTI) MANUFACTURER AND SUBMITTED TO THE ENGINEER OF RECORD WHICH SHALL PROVIDE FOR:
 - A) THE REQUIRED CHARACTER AND FREQUENCY OF PREINSTALLATION VERIFICATION;
 - B) THE ALIGNMENT OF BOLT HOLES TO PERMIT INSERTION OF THE BOLT WITHOUT UNDUE DAMAGE TO THE THREADS;
 - C) THE PLACEMENT OF FASTENER ASSEMBLIES IN ALL TYPES AND SIZES OF HOLES, INCLUDING PLACEMENT AND ORIENTATION OF THE WASHERS;
 - D) THE SYSTEMATIC ASSEMBLY OF THE JOINT, PROGRESSING FROM THE MOST RIGID PART OF THE JOINT UNTIL THE CONNECTED PLIES ARE IN FIRM CONTACT;
 - E) THE SUBSEQUENT SYSTEMATIC PRETENSIONING OF ALL BOLTS IN THE JOINT PROGRESSING FROM THE MOST RIGID PART OF THE JOINT IN A MANNER THAT WILL MINIMIZE RELAXATION OF PREVIOUSLY PRETENSIONED BOLTS;
 - F) OBSERVATION OF THE REQUIRED PRE-INSTALLATION VERIFICATION TESTING;
 - G) SUBSEQUENT ROUTINE OBSERVATION TO ENSURE THE PROPER USE OF THE DTI.

1. PRE-INSTALLATION VERIFICATION SHALL BE PERFORMED WITH INSPECTOR PRESENT ON NOT FEWER THAN THREE COMPLETE FASTENER ASSEMBLIES OF EACH COMBINATION OF DIAMETER, LENGTH, GRADE AND LOT TO BE USED IN THE WORK. LOT TO VERIFY THAT THE MINIMUM PRETENSION OF 20K (FOR 5/8" BOLTS) CAN BE DEVELOPED.
2. UPON SATISFACTORY PREINSTALLATION TESTING, PRODUCTION PLIES OF THE SAME LOT MAY BE INSTALLED WITH A PRETENSION OF 19K. THIS IS TO BE PERFORMED BY HOLDING THE NUT STEADY AND TIGHTENING THE BOLT.
3. ALL FLYING SURFACES MUST BE PREPARED BY BRUSHING WITH A WIRE BRUSH OR Grit Blasting.
4. ALL 4 BOLTS MUST BE INSTALLED WITH WASHERS & DT'S AS SHOWN.
5. COMPACT THE JOINT BY STARTING WITH THE STIFFEST BOLT SET, TIGHTEN UNTIL ALL PLIES ARE IN FIRM CONTACT, AND THEN PROCEEDING TO THE NEXT STIFFEST BOLT SET, UNTIL ALL ARE IN FIRM CONTACT. THIS IS TO BE PERFORMED BY HOLDING THE NUT STEADY AND TIGHTENING THE BOLT.
6. ONCE A PRETENSION OF 19K, THE GAP SHALL NOT BE LESS THAN THE JOB INSPECTION GAP IN ACCORDANCE WITH ASTM F559 AND THE MANUFACTURER INSTRUCTIONS, OR THE DTI SHALL BE REMOVED AND REPLACED.
7. THE INSPECTOR SHALL OBSERVE THE PREINSTALLATION VERIFICATION TESTING REQUIRED, SUBSEQUENTLY, BUT PRIOR TO PRETENSIONING, IT SHALL BE ENSURED BY ROUTINE OBSERVATION THAT THE APPROPRIATE FEELER GAGE IS ACCEPTED IN AT LEAST HALF OF THE SPACES BETWEEN THE PROTRUSIONS OF THE DTI AND THAT THE PROTRUSIONS ARE PROPERLY ORIENTED AWAY FROM THE WORK. IF THE APPROPRIATE FEELER GAGE IS ACCEPTED IN FEWER THAN HALF THE SPACES, THE DTI SHALL BE REMOVED AND REPLACED. AFTER PRETENSIONING, IT SHALL BE ENSURED BY ROUTINE OBSERVATION THAT THE APPROPRIATE FEELER GAGE IS REFUSED ENTRY INTO AT LEAST HALF OF THE SPACES BETWEEN PROTRUSIONS. NO FURTHER EVIDENCE OF CONFORMITY IS REQUIRED.

9. 1/16X5.5X5.5 GALVANIZED FLAT STOCK MAY BE USED TO LEVEL THE INVERTERS.



707 17th Street, Suite 3000
Denver, CO 80202
Phone: 303-237-6601
www.kleinfelder.com

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ORIGINAL DRAWING SIZE IS 24 x 36

EAGLE SHADOW MOUNTAIN SOLAR

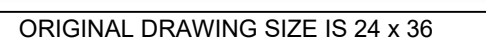
MOAPA RIVER INDIAN RESERVATION
CLARK COUNTY, NEVADA



PRIMORIS RENEWABLE ENERGY
4880 HAVANA STREET, SUITE 500
DENVER, COLORADO 80239

PCS & PILE CAP CONNECTION

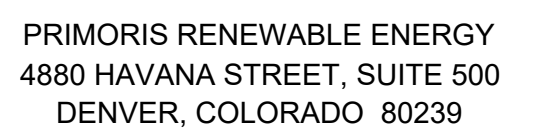
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ISSUE DATE 6/14/2023	
CURRENT REVISION 1	
DESIGNED BY AD/JAC	
DRAWN BY AD/JAC	
CHECKED BY ADT	
APPROVED BY ADT	
SHEET 5 of 8	

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EAGLE SHADOW MOUNTAIN SOLAR

EAGLE SHADOW MOUNTAIN SOLAR

MOAPA RIVER INDIAN RESERVATION
CLARK COUNTY, NEVADA

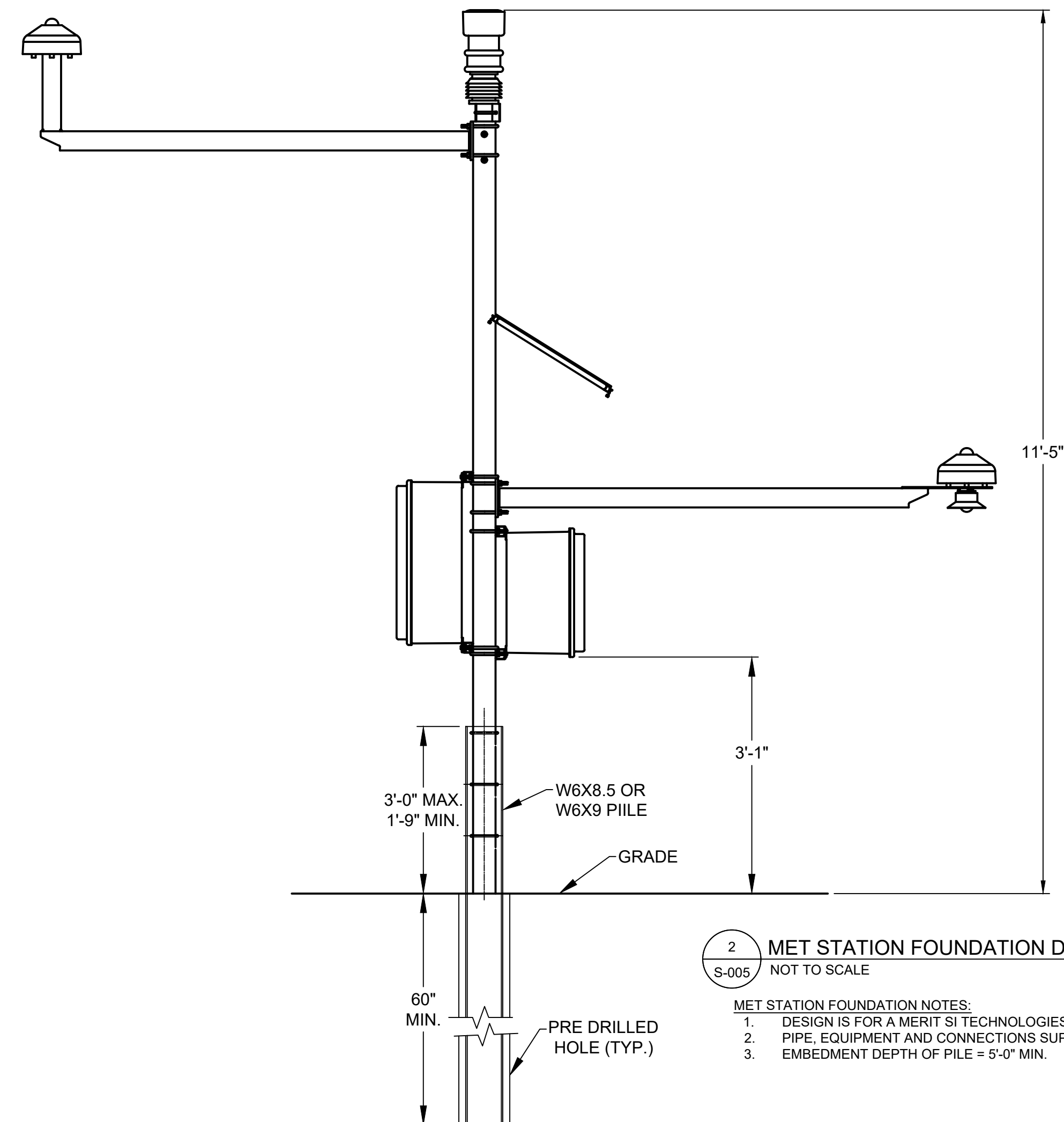


PCS AND MET FOUNDATION, & AUXILIARY RACK

PROJECT NO.	20203753.003A
ISSUE DATE	6/14/2023
CURRENT REVISION	1
DESIGNED BY	AD/JAC
DRAWN BY	AD/JAC
CHECKED BY	ADT
APPROVED BY	ADT

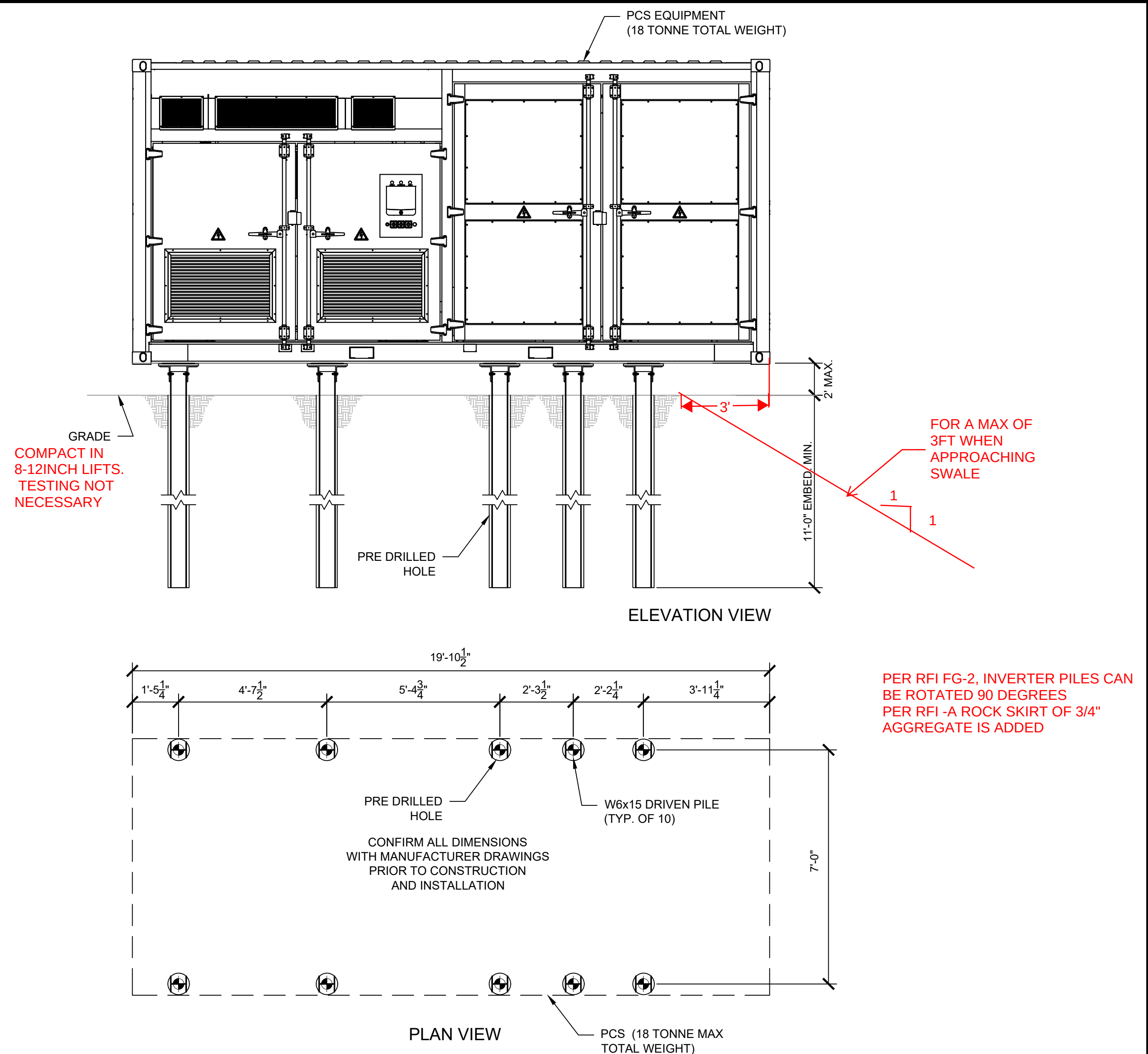
S-005

SHEET 6 of 8

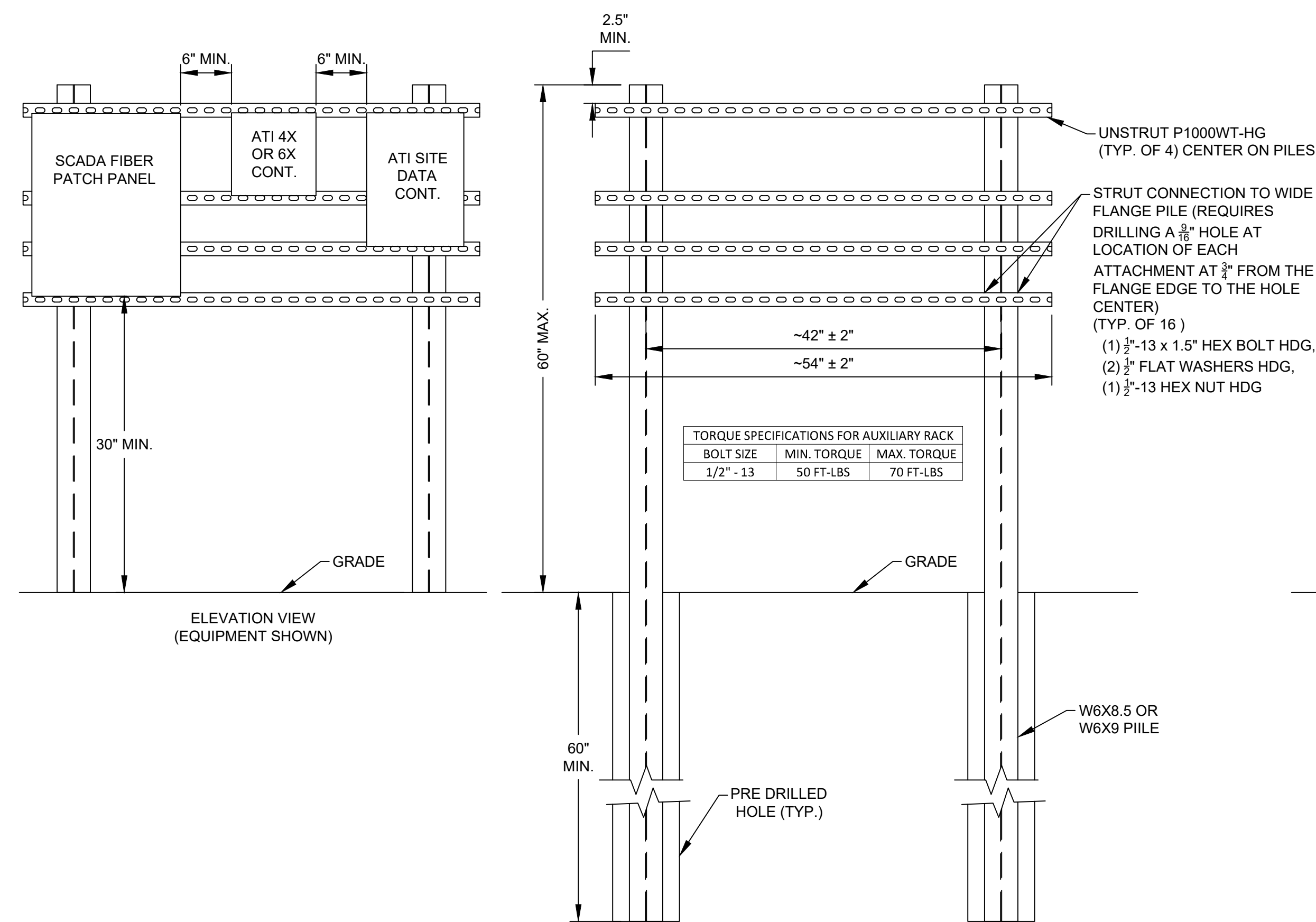


2 MET STATION FOUNDATION DETAIL - WEST ELEVATION VIEW
S-005 NOT TO SCALE

- MET STATION FOUNDATION NOTES:
1. DESIGN IS FOR A MERIT SI TECHNOLOGIES, LLC, METEOROLOGICAL STATION ASSEMBLY.
 2. PIPE, EQUIPMENT AND CONNECTIONS SUPPLIED BY MANUFACTURER
 3. EMBEDMENT DEPTH OF PILE = 5'-0" MIN.

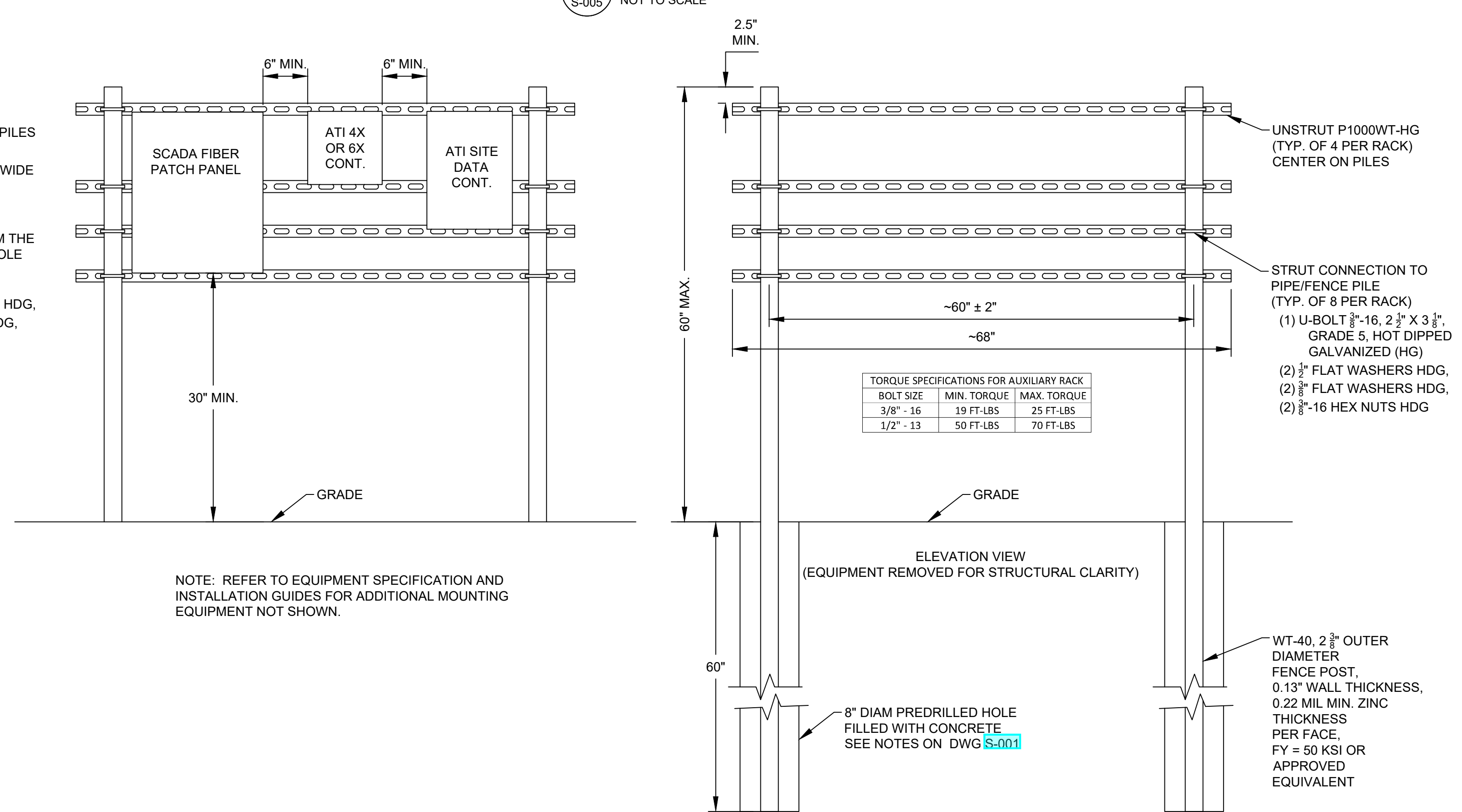


1 SUNGROW SG3150V-MV PCS FOUNDATION
S-005 NOT TO SCALE



3
S-005

AUXILIARY RACK - WIDE FLANGE PILE OPTION
NOT TO SCALE



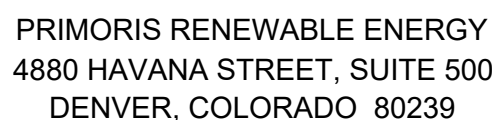
4 AUXILIARY RACK - PIPE COLUMN OPTION
S-005 NOT TO SCALE

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MOAPA RIVER INDIAN RESERVATION
CLARK COUNTY, NEVADA



PROJECT NO. 20203753.003A	S-006
ISSUE DATE 6/14/2023	
CURRENT REVISION 1	
DESIGNED BY JAC	
DRAWN BY JAC	
CHECKED BY ADT	
APPROVED BY ADT	SHEET 7 of 8

1. THE NOTES ON THIS SHEET APPLY TO THE CANADIAN SOLAR (LESS BLOCK 203) AND JINKO ARRAY QJJO EARTH TRUSS FOUNDATIONS AND THE QJJO DEADEND FOR THE MESSENGER WIRE (CAB) SYSTEM. IF THERE ARE QUESTIONS, THEY SHALL BE SUBMITTED TO THE OWNER'S REPRESENTATIVE AND ANSWERED IN WRITING PRIOR TO CONSTRUCTION.

1. ACCURATELY LOCATE AND INSTALL EARTH TRUSS SUPPORTS. EARTH TRUSS FOUNDATIONS SHALL BE INSTALLED PER THE "OJJO EARTH TRUSS FOUNDATION SYSTEM WITH ATI DURATRACK HZ V3, INSTALLATION MANUAL, V 2020.2, SEPTEMBER 2020.

1. ACCURATELY LOCATE AND INSTALL EARTH TRUSS SUPPORTS. EARTH TRUSS FOUNDATIONS SHALL BE INSTALLED PER THE "OJJO EARTH TRUSS FOUNDATION SYSTEM WITH ATI DURATRAC HZ V3, INSTALLATION MANUAL, V 2020.2, SEPTEMBER 2020.
2. DO NOT BEGIN EARTH TRUSS INSTALLATION UNTIL THE EARTHWORK IN THE AREA WHERE EARTH TRUSSES ARE TO BE INSTALLED HAS BEEN COMPLETED.
3. MATERIALS
 - a. SIZE PER OJJO SPECIFICATIONS
 - b. MINIMUM YIELD STRENGTH OF 50 ksi, MINIMUM ULTIMATE STRENGTH OF 62 ksi (OJJO EARTH TRUSS)
 - c. GALVANIZE PER ASTM A123, MINIMUM 2.5 MIL GALVANIZATION THICKNESS
4. TOLERANCES:
 - a. TOP OF TRUSS CAP E-W POSITION: $\pm 1/2"$
 - b. TOP OF TRUSS CAP N-S POSITION: $\pm 3/8"$
 - b. TRUSS CAP VERTICAL: $\pm 1/2"$
 - c. TRUSS CAP TWIST: $\pm 3.0^\circ$
 - d. TRUSS CAP PLUMB E-W: $\pm 3.0^\circ$
 - e. TRUSS CAP PERPENDICULAR TO TORQUE TUBE N-S: $\pm 3.0^\circ$

5. EACH PART OF THE EARTH TRUSS TO BE FREE FROM DEFECTS AND DAMAGE DUE TO CONSTRUCTION, FABRICATION, DELIVERY, INSTALLATION OR OTHER CAUSES.
- a. REPLACE DAMAGED EARTH TRUSS. DAMAGE INCLUDES BUT NOT NECESSARILY LIMITED TO BENT, BUCKLED, AND CRACKED PARTS, IMPERFECTION OR DAMAGE TO CORROSION PROTECTIVE COATING, OR WITH ANY OTHER DEFECT AS DETERMINED BY ENGINEER. REPAIRS TO BE MADE UNDER THE "OJO EARTH TRUSS CORROSION MATRIX" AND "OJO TESTING AND INSPECTION PROCEDURES, QA-2020".
- b. CORRECT ANY FOUNDATION OR OTHER CONSTRUCTION THAT HAS BEEN DAMAGED BY FOUNDATION INSTALLATION.

6. FOUNDATION INSTALLATION LOGS SHALL BE MAINTAINED CONSTANTLY DURING INSTALLATION. THAT INCLUDES INSTALLATION DATE, ANCHOR, INSTALLATION TIMES, TRUSS CAP HEIGHT, HYDRAULIC PRESSURE, ETC.

1. MATERIAL STANDARDS: (UNLESS NOTED OTHERWISE)

- a. SIZE PER OJJO SPECIFICATIONS
 - b. MINIMUM YIELD STRENGTH OF 50 KSI, MINIMUM ULTIMATE STRENGTH OF 62 KSI (OJJO EARTH TRUSS)
 - c. GALVANIZE, MINIMUM 2.5 MIL GALVANIZATION THICKNESS
2. TOUCH-UP PAINT: ZINC RICH, CONTAINING A MINIMUM 93% METALLIC ZINC CONTENT.

2. TOUCH-UP PAINT: ZINC RICH, CONTAINING A MINIMUM 93% METALLIC ZINC CONTENT

1. THE FOLLOWING INSPECTIONS AND TESTS SHALL BE COMPLETED. REPORTS BY THE INSPECTOR SHALL BE PROVIDED TO THE OWNER AND ENGINEER.

- a. OJJO EARTH TRUSS FOUNDATION
 - a.1. OJJO EARTH TRUSS FOUNDATION INSTALLATION TO BE DOCUMENTED ON INSTALLATION LOG AS DETAILED UNDER **OJJO EARTH TRUSS FOUNDATIONS** SECTION, ITEM 6 AND "OJJO TESTING AND INSPECTION PROCEDURES, QA-2020".
2. PROOF LOAD TESTING
 - a. PROOF LOAD TESTING SHALL BE CONDUCTED IN CONFORMANCE WITH ASTM D3966 AND ASTM D3889, MODIFIED AS BE APPROPRIATE FOR OJJO EARTH TRUSS FOUNDATIONS.
 - b. PROOF LOAD TESTING SHALL BE PERFORMED AS REQUIRED IN THIS SECTION AND THE REMEDIAL ACTIONS SECTION. PROOF LOAD TESTS WILL BE PROVIDED TO ENGINEER OF RECORD FOR REVIEW.
 - c. PROOF LOAD TESTING SHALL INCLUDE RECORDING DEFLECTIONS FOR LATERAL LOADS AND VERTICAL MOVEMENT FOR VERTICAL LOADS AT 25%, 50%, 75%, 100% AND 125% OF THE LOADS PROVIDED BELOW FOR EACH OF THE FOUNDATION TYPES. LATERAL DEFLECTIONS SHALL BE RECORDED PER "OJJO TESTING AND INSPECTION PROCEDURES, QA-2020".
 - d. EQUIPMENT: LOAD CELL (DYNAMOMETER) RATED FOR A MINIMUM RANGE OF 5,000 LBS. CALIBRATION CERTIFICATE WITHIN 1 YEAR. MOVEMENTS IN A DIRECTION COLLINEAR TO THE LINE OF LOADING SHALL BE RECORDED BY DIAL GAUGES WITH A MINIMUM RESOLUTION OF 0.01 INCHES.
 - e. PROCEDURE: PERFORMANCE TESTING SHALL BE CONDUCTED BY LOADING THE EARTH TRUSS FIRST Laterally AND THEN IN VERTICAL TENSION AS INDICATED BELOW AND PER "OJJO TESTING AND INSPECTION PROCEDURES, QA-2020". ONCE A LOAD INCREMENT HAS BEEN OBTAINED, THE LOAD SHALL BE HELD FOR THE MINIMUM OF ONE MINUTE OR LONG ENOUGH TO GET A STABLE READING, WHICHEVER IS LONGER.

3. LATERAL LOAD TEST:
- a. PRODUCTION PIERS SHALL BE RANDOMLY SELECTED AND TESTED FOR LATERAL CAPACITY TESTING UNDER DIRECTION OF RESPONSIBLE ENGINEER. APPLICATION OF LOAD AND RECORDED READINGS SHALL BE PER "OJJO TESTING AND INSPECTION PROCEDURES, QA-2020".
 - b. LATERAL TESTS SHALL BE PERFORMED IN ACCORDANCE WITH ASTM D3966, AS MODIFIED HERE:
 - b.1. TEST PIERS SHALL BE LOADED TO 100% OF THE DESIGN LOAD AND UNLOADED AT 0%, IN 25% INCREMENTS. LOAD INCREMENTS SHALL BE AS FOLLOWS:
 - b.1.1. LOAD TO BE 1,400 LBS FOR EXTERIOR ARRAY PV EARTH TRUSS
 - b.1.2. LOAD TO BE 1,200 LBS FOR INTERIOR ARRAY PV EARTH TRUSS
 - b.2. EACH LOAD INCREMENT SHALL BE HELD FOR 1 MINUTE OR UNTIL MOVEMENT STABILIZES, WHICH IS LONGER.
 - c. LOAD SHALL BE APPLIED USING CUSTOM PULL FIXTURE FROM OJJO, WHICH PROVIDES A PULL POINT EQUIVALENT TO THE CENTER OF ROTATION OF ARRAY TECHNOLOGIES TORQUE TUBE.
 - d. ACCEPTANCE CRITERIA SHALL BE AT THE DETERMINATION OF THE RESPONSIBLE ENGINEER. DEFLECTION UNDER LOAD = 3.5 INCHES AT TOP OF FOUNDATION. MAX DEFLECTION AFTER UNLOADING 0.25 INCHES AT BOTTOM OF FOUNDATION.
 - e. A PIER LOAD TEST REPORT SHALL BE PRODUCED WITH PIER ID, PIER CHARACTERISTICS, MECHANICAL PERFORMANCE DATA, AND A MAP OF PIER TEST LOCATIONS.
4. PULLOUT (TENSION) LOAD TEST:
- a. PRODUCTION PIERS SHALL BE RANDOMLY SELECTED AND TESTED FOR AXIAL CAPACITY TESTING UNDER DIRECTION OF RESPONSIBLE ENGINEER. APPLICATION OF LOAD AND RECORDED READINGS SHALL BE PER "OJJO TESTING AND INSPECTION PROCEDURES, QA-2020"
 - b. AXIAL TESTS SHALL BE PERFORMED IN ACCORDANCE WITH ASTM D3689, AS MODIFIED HERE.
 - b.1. TEST PIERS SHALL BE LOADED TO 125% OF THE DESIGN LOAD AND UNLOADED TO 0% LOAD INCREMENTS SHALL BE AS FOLLOWS:
 - b.1.1. LOAD TO BE 700 LBS FOR EXTERIOR ARRAY PV EARTH TRUSS
 - b.1.2. LOAD TO BE 600 LBS FOR INTERIOR ARRAY PV EARTH TRUSS
 - b.2. EACH LOAD INCREMENT SHALL BE HELD FOR 1 MINUTE OR UNTIL MOVEMENT STABILIZES, WHICH IS LONGER.
 - c. LOAD SHALL BE APPLIED USING CUSTOM PULL FIXTURE FROM OJJO, WHICH PROVIDES A PULL POINT EQUIVALENT TO THE CETNER OF ROTATION OF ARRAY TECHNOLOGIES TORQUE TUBE.
 - d. ACCEPTANCE CRITERIA SHALL BE AT THE DETERMINATION OF THE RESPONSIBLE ENGINEER. ACCEPTANCE: MAX. VERTICAL MOVEMENT UNDER LOAD SHALL BE LESS THAN = 1.0 INCHES.
 - e. A PIER LOAD TEST REPORT SHALL BE PRODUCED WITH PIER ID, PIER CHARACTERISTICS, MECHANICAL PERFORMANCE DATA, AND A MAP OF PIER TEST LOCATIONS.

1. THE INSPECTOR SHALL FURNISH INSPECTION REPORTS TO THE ENGINEER

2. DISCREPANCIES SHALL BE BROUGHT TO THE IMMEDIATE ATTENTION OF THE CONTRACTOR AND ENGINEER FOR CORRECTION.
3. A FINAL REPORT DOCUMENTING THE REQUIRED INSPECTIONS AND CORRECTION OF ANY DISCREPANCIES NOTED IN THE INSPECTIONS SHALL BE SUBMITTED AT A POINT IN TIME AGREED UPON BY THE PERMIT APPLICANT AND THE BUILDING OFFICIAL PRIOR TO THE START OF WORK.

1. FOUNDATIONS DRIVEN OUTSIDE OF LOCATION, TWIST OR PLUMBNESS TOLERANCE:
 - a. REFER TO THE "OJJO TESTING AND INSPECTION PROCEDURES, QA-2020" AND "OJJO EARTH TRUSS CORRECTION MATRIX" FOR MITIGATION.
 - b. CONSULT ENGINEER, AS REQUIRED.

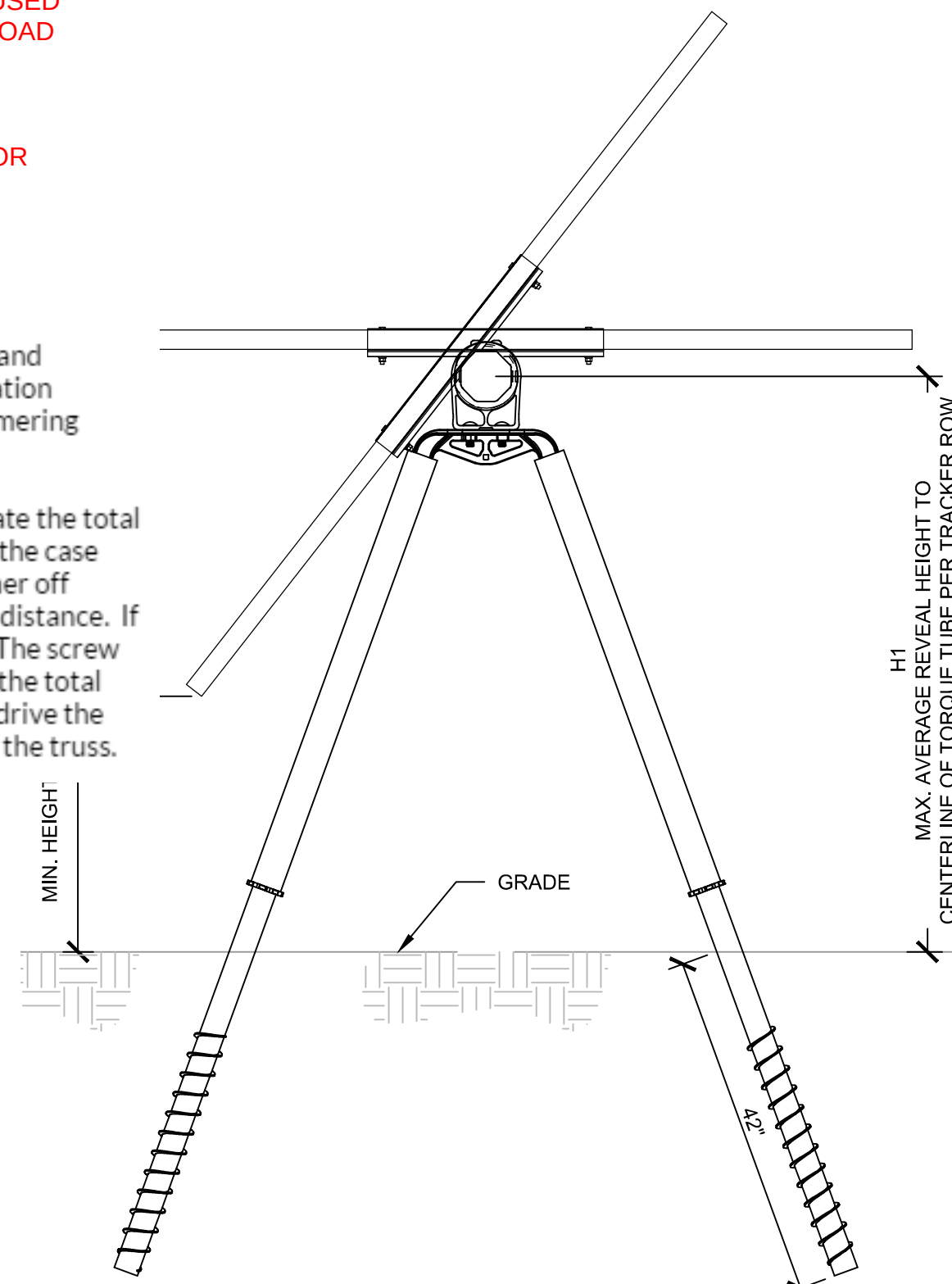
IN CEMENTED MATERIALS, A MINIMUM EMBEDMENT 24" MAY BE USED WITH A MINIMUM OF 20' INTO CEMENTED MATERIAL, PROVIDED LOAD TESTING PROVES STRUCTURAL VIABILITY.

ADDITIONAL HOLES MAY BE PUNCHED IN THE TRUSS CAP TO ACCOMMODATE THE OUT OF TOLERANCE TRUSS AND ALLOW FOR PROPER TORQUE TUBE ALIGNMENT

THE FOLLOWING PROCEDURE IS ALLOWED:

Reviewing the Screw Anchor embedment data collected by Ojjo and Primoris at the Eagle Shadow Mountain jobsite, there is a correlation between Screw Anchor Capacity and Truss Driver Machine hammering length (as seen in Figure 1 below).

Ojjo's solution to it is the following: The controls will accumulate the total distance during screw drive for which the hammer is running. In the case where the hammer turns on, then off, then on again, if the "hammer off distance" is less than 1", it will be *included* in the total hammering distance. If this "hammer off distance" is greater than 1", it will be *excluded*. The screw will be driven until either the total hammering distance is 18", or the total embedment is 42", whichever comes first - then will continue to drive the screw past those values in order that a pre-cut leg can be used in the truss.



4 BEARING OJJO EARTH TRUSS FOUNDATION ELEVATION VIEW
S-006 NOT TO SCALE

Ojjo Earth Truss Correction Matrix		
	Correction Procedure	Description
1	Remove and redrive Earth Screw	Earth Screw is unscrewed from the ground and redriven
2	Realign Earth Screw	Earth Screw is gently repositioned in the soil with skidsteer or similar equipment
3	Install longer Earth Screw	An Earth Screw is replaced with a longer Earth Screw
4	Install new Crimp Collar	Crimp Collar of a screw is replaced with a replacement Crimp Collar
5	Install new Truss Cap	Truss cap is replaced with a replacement Truss Cap
6	Install new Leg	Leg(s) are replaced with replacement Leg
7	Bump Truss	Truss is gently pushed at grade, below the Crimps, in the NS direction with skidsteer or similar equipment
8	Slurry plug	Anchor location is predrilled with 3.5" hole or larger, filled with 500psi slurry, and Screw Anchor is redriven or placed in the slurry
9	Pour in place	Dig pit around Earth Screw or in appropriate location for Earth Screw (dimensions to be communicated by EOR), fill with 500psi slurry, secure Earth Truss in place during slurry curing period.
10	Replace Earth Truss (above ground components only)	Earth Screws remain in place. Cut and remove Legs and Truss Cap. Position Truss Driver. Recrimp Legs and Truss Cap into final position.
11	Replace Earth Truss (above and below ground components)	Position Truss Driver. Select appropriate Earth Screw and/or prepare soil substrate per Engineer. Drive Earth Screw(s), Crimp Legs and Truss Cap into final position.
12	Cut legs	Cut leg tube with circular or portable band saw, spray with cold galvanization spray
13	Recrimp	Leg tube is recrimped around Screw Collar or Truss Cap Collar
14	Contact Ojjo and EOR	Obtain written guidance from EOR and Ojjo.

TRACKER ROW CONDITION WITH 3 INCHES OR LESS OF MAXIMUM
SCOUR PER FOUNDATION
CANADIAN SOLAR MODULE (LESS BLOCK 203) AND JINKO MODULE
- ATI DURATRACK HZ WITH OJJO EARTH TRUSS FOUNDATIONS

TRACKER ROW/ CONDITION	PILE TYPE	FOUNDATION AVERAGE REVEAL HEIGHT TO CENTER OF TORQUE TUBE (H11)	MAXIMUM FOUNDATION NORTH-SOUTH TILT (DEGREES)
EXTERIOR	JINKO	6'-0"	9
		7'-0"	9
		8'-0"	6
	CANADIAN SOLAR	6'-0"	9
		7'-0"	9
		8'-0"	6
INTERIOR	JINKO	6'-0"	9
		7'-0"	9
		8'-0"	6
	CANADIAN SOLAR	6'-0"	9
		7'-0"	9
		8'-0"	6

NOTE: CONFIRM WITH CURRENT ATI REQUIREMENTS. SET SCREWS REQUIRED TO TRANSFER WEAK AXIS LOAD ON ALL BEARING COLUMNS.

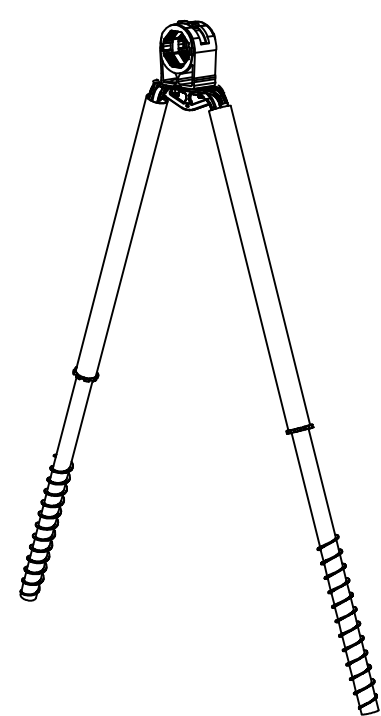
***"AVERAGE REVEAL HEIGHT" IS THE ARITHMETIC AVERAGE OF THE DESIGN HEIGHTS ABOVE GRADE FOR ALL PILES SUPPORTING AN INDIVIDUAL TRACKER.

TRACKER ROW CONDITION WITH 18 INCHES OR LESS OF
MAXIMUM SCOUR PER FOUNDATION
CANADIAN SOLAR MODULE (LESS BLOCK 203) AND JINKO
MODULE - ATI DURATRACK HZ WITH OJJO EARTH TRUSS
FOUNDATIONS

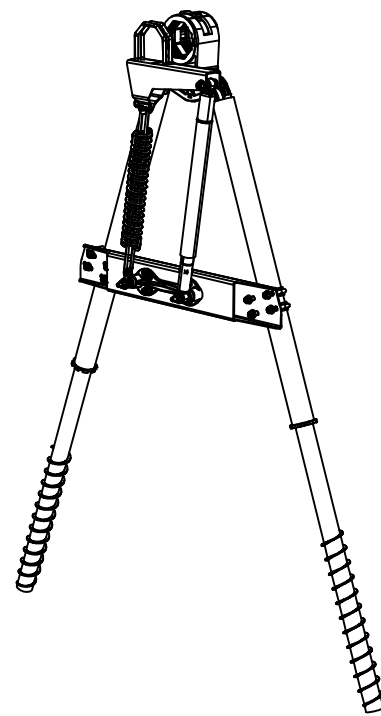
TRACKER ROW CONDITION	PILE TYPE	FOUNDATION AVERAGE REVEAL HEIGHT TO CENTER OF TORQUE TUBE (H1)'	MAXIMUM FOUNDATION NORTH-SOUTH TILT (DEGREES)
EXTERIOR	JINKO	6'-0"	9
		7'-0"	4
		8'-0"	2
	CANADIAN SOLAR	5'-0"	9
		6'-0"	4
		7'-0"	2
		8'-0"	1
INTERIOR	JINKO	6'-0"	9
		7'-0"	4
		8'-0"	2
	CANADIAN SOLAR	5'-0"	9
		6'-0"	7
		7'-0"	4
		8'-0"	2

NOTE: CONFIRM WITH CURRENT ATI REQUIREMENTS. SET SCREWS REQUIRED TO TRANSFER WEAK AXIS LOAD ON ALL BEARING COLUMNS.

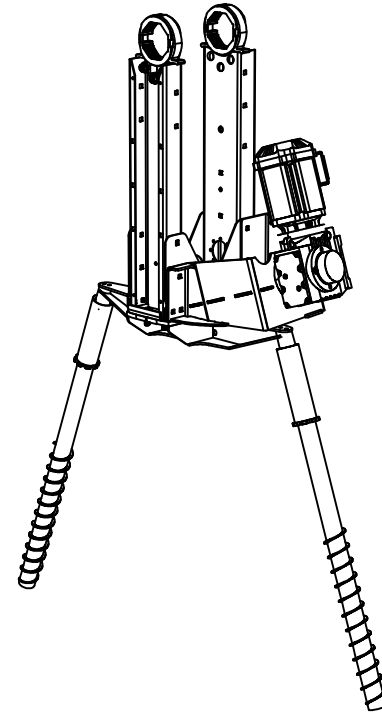
NOTE: CONFIRM WITH CURRENT ATI REQUIREMENTS. SET SCREWS REQUIRED TO TRANSFER WEAK AXIS LOAD ON ALL BEARING COLUMNS.



1 BEARING EARTH TRUSS - OBLIQUE VIEW
S-006 NOT TO SCALE

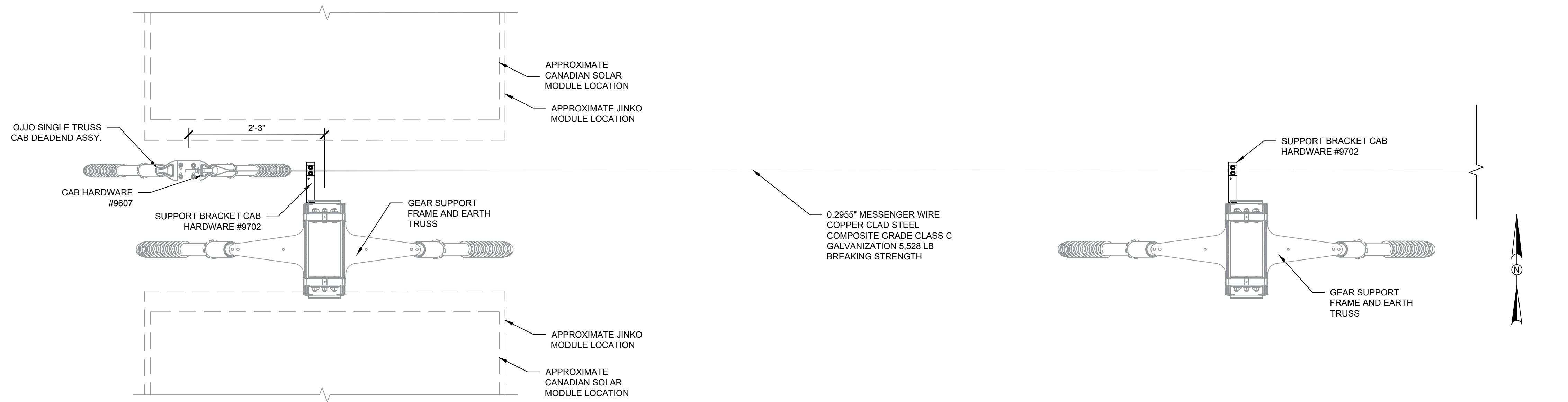


2 BEARING EARTH TRUSS W/DAMPER - OBLIQUE VIEW
S-006 NOT TO SCALE



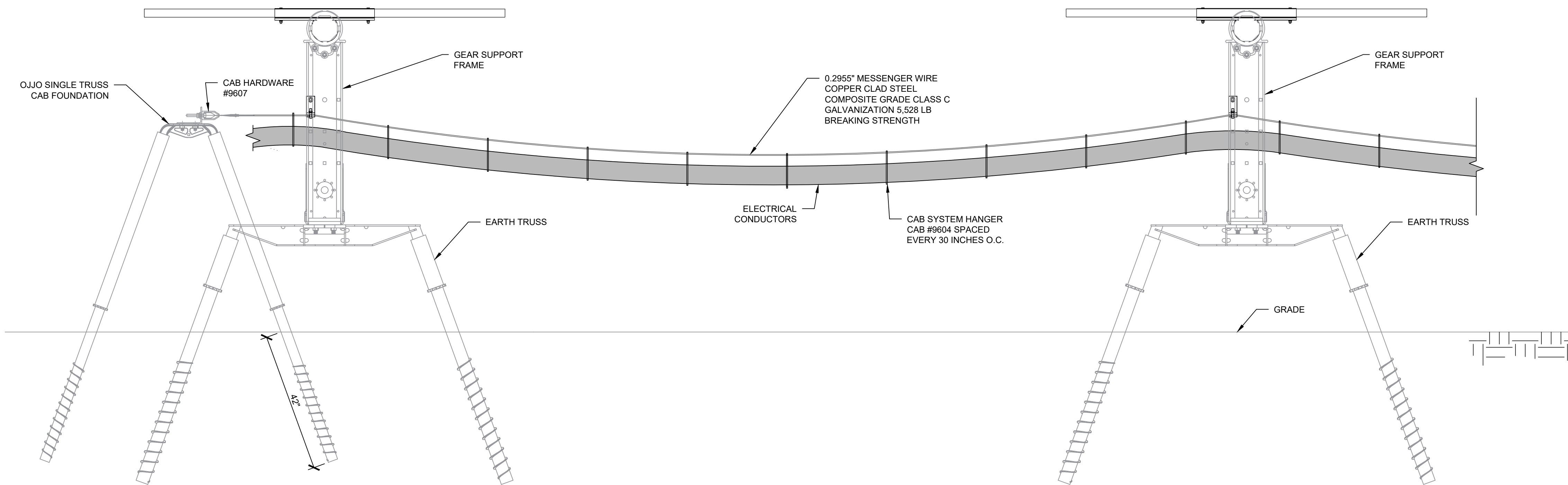
3 GEAR EARTH TRUSS - OBLIQUE VIEW
S-006 NOT TO SCALE

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[illegible][illegible]

2 CANADIAN SOLAR (LESS BLOCK 203) AND JINKO MODULES - MESSENGER WIRE INSTALLATION PLAN VIEW
S-007 NOT TO SCALE

NOTE: CAB MAY RUN ACROSS ONE BLOCK OR MANY BLOCKS



1 S-007	CANADIAN SOLAR (LESS BLOCK 203) AND JINKO MODULES - MESSENGER WIRE INSTALLATION ELEVATION VIEW NOT TO SCALE
------------	--

MESSENGER CABLE INSTALLATION SEQUENCE:

1. SECURE MESSENGER WIRE TO ONE DEAD END FOUNDATION.
2. LAY MESSENGER WIRE THROUGH ALL MID-SPAN BRACKETS.
DO NOT SECURE. TENSION THE MESSENGER WIRE AND
ATTACH TO SECOND DEAD END PER THE INSTALLATION SAG IN
TABLE 1 AT MIDSPAN BETWEEN L-BRACKETS.
3. TIGHTEN THE RETAINER PLATES OF THE MID-SPAN BRACKETS.
STRING ON THE CAB HANGERS ALONG ALL SPANS. STRING ALL
CONDUCTORS THROUGH THE CAB HANGERS AND RECHECK
THE SAG AT ALL MIDSPANS. FINAL SAG SHOULD BE ESTIMATED
PER TABLE 2.
5. DEAD LOAD SPECIFIED BY ELECTRICAL ENGINEER AS 4.7 PLF.

TABLE 1: MESSENGER WIRE STRINGING SAG CHART													
SAG (INCHES)	ROW-TO-ROW SPAN 20'-0" TO 25'-0" (CCS)	TEMPERATURE (°F)											
		10	20	30	40	50	60	70	80	90	100	110	120
		1.68	2.16	2.64	3.00	3.36	3.72	4.08	4.32	4.68	4.92	5.16	5.40

NOTE: MID-SPAN SAG OF THE MESSENGER WIRE LISTED ABOVE OCCURS BEFORE ANY ELECTRICAL CABLES OR SUPPORTS ARE HUNG FROM THE MESSENGER CABLE.

TABLE 2: MESSENGER WIRE MAXIMUM FINAL SAG CHART						
		TEMPERATURE (°F)				
SAG (INCHES)	ROW-TO-ROW SPAN	0	30	60	90	120
	20'-0" TO 25'-0" (CCS)	7.30	7.70	8.00	8.40	8.80

NOTE: MAXIMUM SAG VALUES SHOWN ABOVE INCLUDE THE INITIAL SAG PLUS THE SAG DUE TO MAXIMUM VERTICAL FACTORED LOAD CONDITION.



ORIGINAL DRAWING SIZE IS 24 x 36

EAGLE SHADOW MOUNTAIN SOLAR

MOAPA RIVER INDIAN RESERVATION
CLARK COUNTY, NEVADA



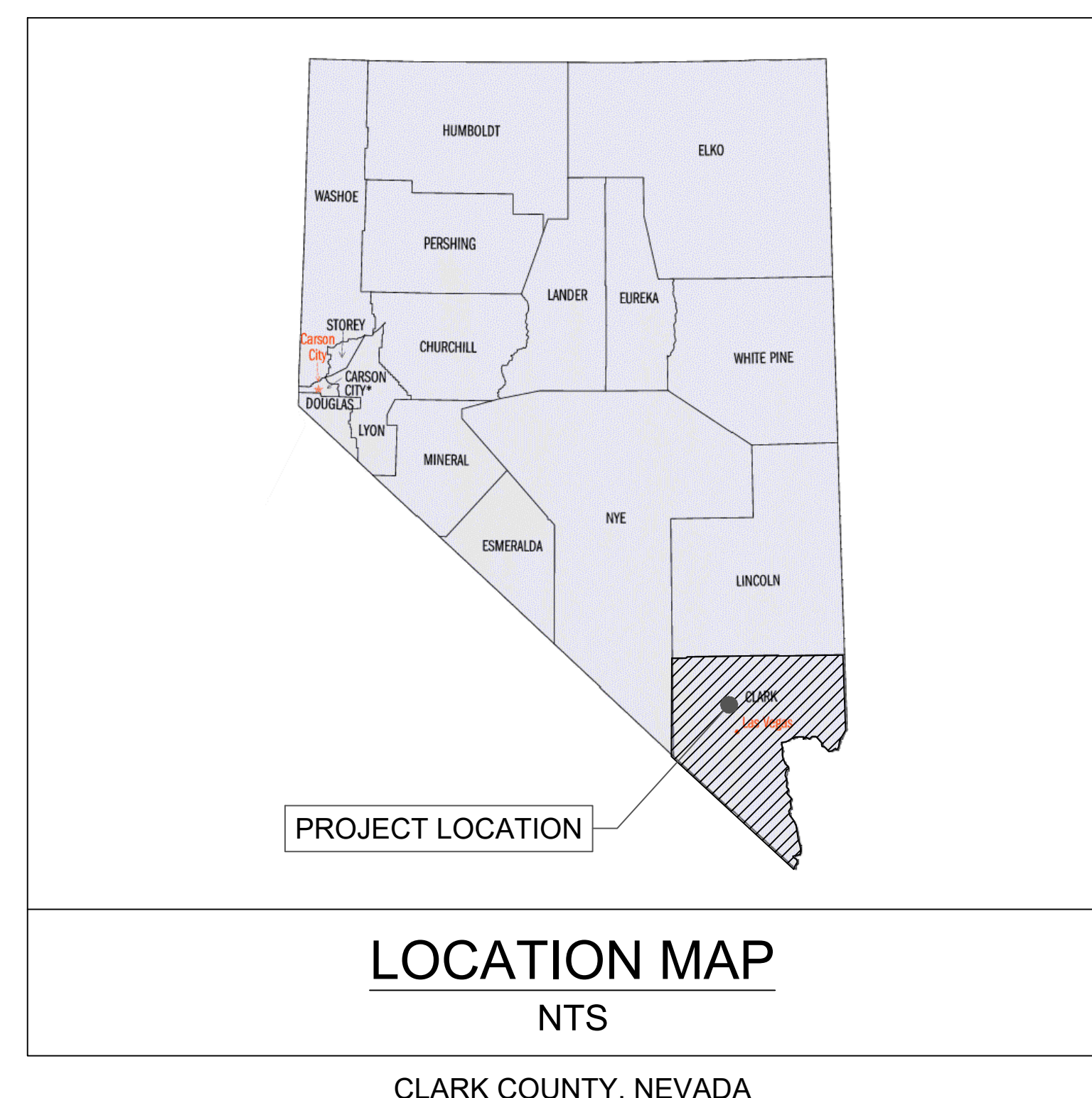
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4880 HAVANA STREET, SUITE 500
DENVER, COLORADO 80239

CANADIAN SOLAR AND JINKO OJJO CAB DETAILS & FOUNDATION

PROJECT NO. 20203753.003A	S-007
ISSUE DATE 6/14/2023	
CURRENT REVISION 1	
DESIGNED BY JAC	
DRAWN BY JAC	
CHECKED BY ADT	
APPROVED BY ADT	SHEET 8 of 8

RECORD DRAWINGS
FOR
EAGLE SHADOW MOUNTAIN SOLAR
IN CLARK COUNTY, NEVADA

SITE ENTRANCE COORDINATES: 36.542373°, -114.816789°



DRAWING INDEX			
SHEET NUMBER	SHEET TITLE	REV	REV DATE
C000	COVER	3	06/30/2023
C001 - C002	GENERAL NOTES	2	06/30/2023
C003	OVERALL KEY MAP	3	06/30/2023
C101 - C108	DEMOLITION & SITE PREPARATION PLAN	2	06/30/2023
C201 - C208	SITE PLAN	2	06/30/2023
C301 - C307	GRADING & DRAINAGE PLAN	3	06/30/2023
C308	GRADING & DRAINAGE PLAN	2	06/30/2023
C309	TYPICAL ROADSIDE SWALE INSET	2	06/30/2023
C401	ACCESS DETAILS	2	06/30/2023
C402	EQUIPMENT DETAILS	3	06/30/2023
C403	EROSION CONTROL DETAILS	2	06/30/2023

PERMANENT FEATURES INCLUDING SOLAR ARRAYS, ROADS, FENCE, AND UTILITIES SHOWN ON THESE RECORD DRAWINGS ARE LOCATED BASED ON THE ORIGINAL CONSTRUCTION DRAWINGS DATED 02-19-2021, AS WELL AS THE AS-BUILT DATA PROVIDED ON 01-14-2022. THE AS-BUILT TOPOGRAPHY DEPICTED IN THESE RECORD DRAWINGS WAS PROVIDED BY PRIMORIS ON 06-22-2023. APPROXIMATE EXTENTS OF CIVIL REPAIRS HAVE BEEN ADDED TO THESE RECORD DRAWINGS BASED ON THE "CIVIL REPAIRS" DOCUMENT PROVIDED BY PRIMORIS ON 06-22-2023. PROPOSED FEATURES HAVE NOT BEEN LOCATED BY A PROFESSIONAL LAND SURVEYOR.

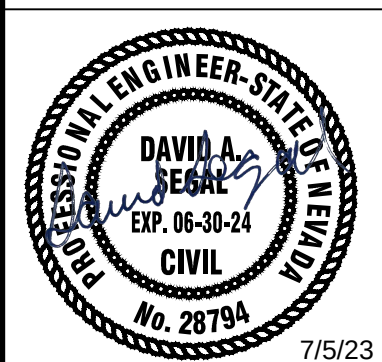
PREPARED BY:



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MORRISVILLE, NC 27560
PHONE: 919-755-5011
NV LICENSE # C4310-1980

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SCALE VERIFICATION

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ON ORIGINAL DRAWING



IF IT'S NOT 1 INCH ON THIS
SHEET ADJUST YOUR
SCALES ACCORDINGLY

ORIGINAL DRAWING SIZE IS 24 x 36

COVER

EAGLE SHADOW MOUNTAIN SOLAR
CLARK COUNTY, NEVADA



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CONSTRUCTION PLANS

PROJECT NO. 20203753.003A	C000 SHEET NUMBER
ISSUE DATE 06/30/2023	
CURRENT REVISION 3	
DESIGNED BY MCB	
DRAWN BY MCB	
CHECKED BY AML	
APPROVED BY DS	

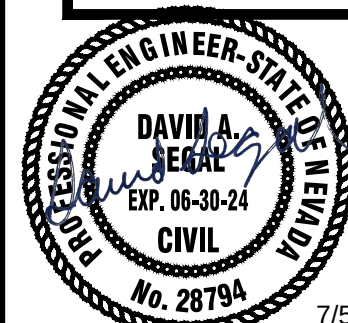


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REVISIONS				
REV	DESCRIPTION	DSN DWN	CHK APP	DATE
0	CONSTRUCTION PLANS	MCB	CGO	10/16/2020
1	REVISED GRADING BOUNDARIES	MCB	MDI	02/19/2021
2	CONFORMED TO RECORD DRAWINGS	MCB	AML	01/20/2022
3	REVISED RECORD DRAWINGS	MCB	AML	06/30/2023

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7/5/23



0 800 1600 2400
SCALE: 1" = 800'
ORIGINAL DRAWING SIZE IS 24 x 36

SCALE VERIFICATION

THIS BAR IS 1 INCH IN LENGTH ON ORIGINAL DRAWING

0 1"

IF IT'S NOT 1 INCH ON THIS SHEET ADJUST YOUR SCALES ACCORDINGLY

OVERALL KEY MAP

EAGLE SHADOW MOUNTAIN SOLAR
CLARK COUNTY, NEVADA

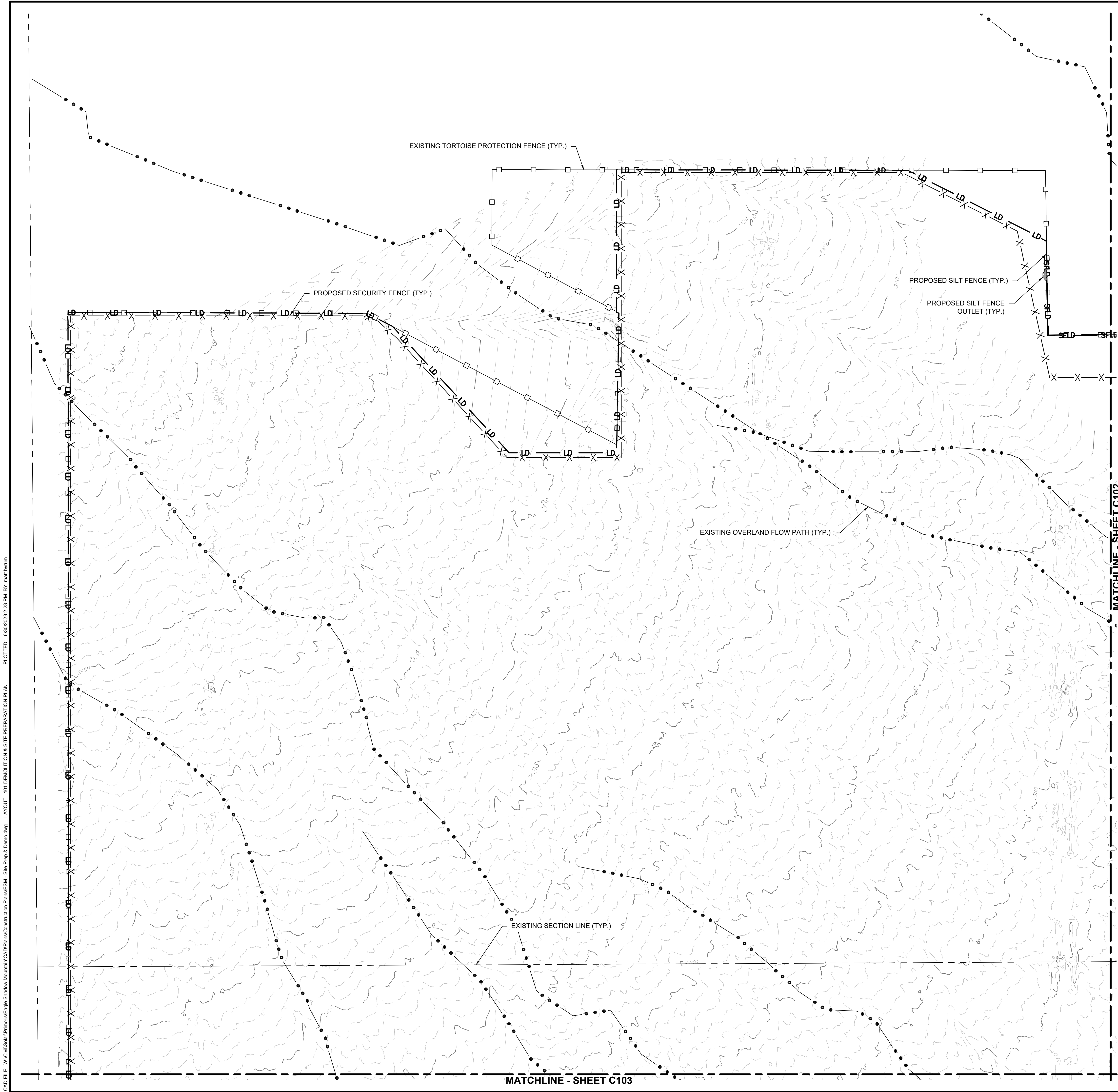


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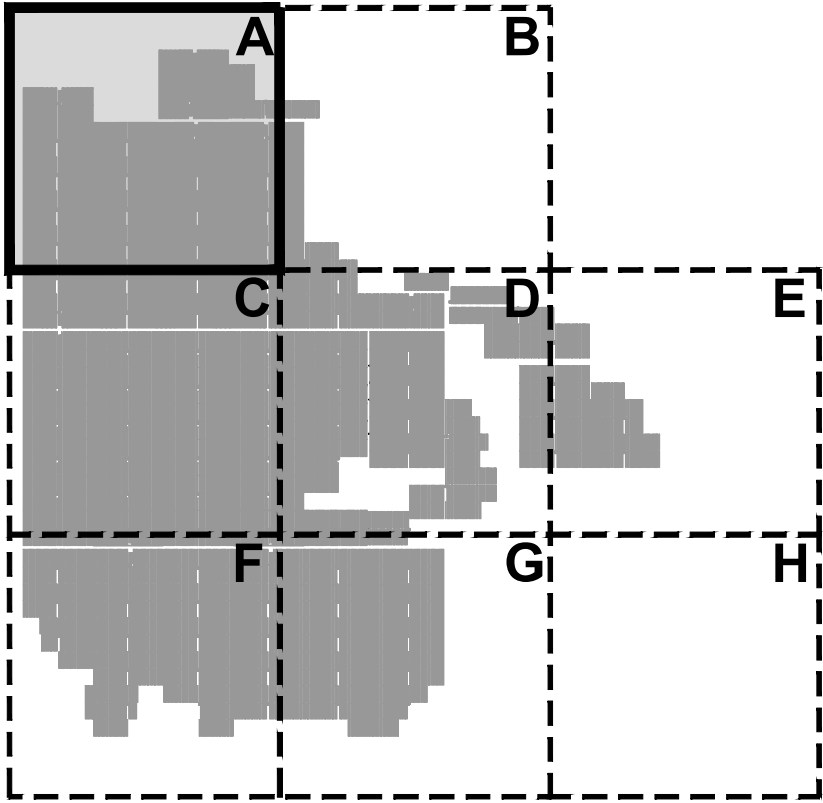
CONSTRUCTION PLANS		
PROJECT NO. 20203753.003A	C003	SHEET NUMBER
ISSUE DATE 06/30/2023		
CURRENT REVISION 3		
DESIGNED BY MCB		
DRAWN BY MCB		
CHECKED BY AML		
APPROVED BY DS		

CAD FILE: W:\Civil\Solar\Primoris\Eagle Shadow Mountain\CAD\PrimeConstruction Plans\ESM - Overall Key Map.dwg LAYOUT: 003 OVERALL KEY MAP PLOTTED: 6/30/2023 3:38 PM BY: matt byrum

CAD FILE: W:\Civil\Solar\Primoris\Eagle Shadow Mountain\CAD\Plans\Construction Plans\ESM - Site Prep & Demol.dwg LAYOUT: 10 DEMOLITION & SITE PREPARATION PLAN PLOTTED: 6/30/2023 2:23 PM BY: mnt bym



KEY MAP



LEGEND

- 2445 EXISTING MAJOR CONTOUR LINE
- 2444 EXISTING MINOR CONTOUR LINE
- EXISTING PROPERTY LINE
- EXISTING ABUTTING PROPERTY LINE
- EXISTING SECTION LINE
- EXISTING ROAD BOUNDARY
- EXISTING TORTOISE PROTECTION FENCE
- EXISTING EASEMENT BOUNDARY
- OHE EXISTING OVERHEAD WIRE
- GAS EXISTING GAS LINE
- FG-PERMA-1 EXISTING FIBER OPTIC LINE
- W EXISTING WATER LINE
- EXISTING WATER LINE TO BE REMOVED
- EXISTING OVERLAND FLOW PATH
- EXISTING CULTURAL AVOIDANCE AREA
- PROPOSED 130' CULTURAL AVOIDANCE AREA BUFFER
- EXISTING CULTURAL AVOIDANCE AREA TO BE MITIGATED
- LD PROPOSED LIMITS OF DISTURBANCE
- X-X-X-X-X-X PROPOSED SECURITY FENCE
- SF SF PROPOSED SILT FENCE
- W W W PROPOSED WATER LINE

NOTES

- THERE SHALL BE NO DEMOLITION OUTSIDE THE MARKED LIMITS OF DISTURBANCE UNLESS SPECIFICALLY CALLED FOR IN THE PLANS.
- COORDINATE REMOVAL OF EXISTING ITEMS WITH APPLICABLE FEDERAL, STATE, COUNTY, AND/OR LOCAL AGENCIES, UTILITY COMPANIES, AND/OR LANDOWNERS.
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0	CONSTRUCTION PLANS	MCB	CGO	10/16/2020
1	CONFORMED TO RECORD DRAWINGS	MCB	AML	01/20/2022
2	REVISED RECORD DRAWINGS	MCB	AML DS	06/30/2023

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7/5/23

SCALE VERIFICATION

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0 1"

IF IT'S NOT 1 INCH ON THIS SHEET ADJUST YOUR SCALES ACCORDINGLY

0 200 400 600

SCALE: 1" = 200'

SCALE IN FEET

ORIGINAL DRAWING SIZE IS 24 x 36

DEMOLITION & SITE PREPARATION PLAN

EAGLE SHADOW MOUNTAIN SOLAR
CLARK COUNTY, NEVADA

Primoris RENEWABLE ENERGY

4880 HAVANA STREET
SUITE 500
DENVER, CO 80239

CONSTRUCTION PLANS	
PROJECT NO. 20203753.003A	C101
ISSUE DATE 06/30/2023	
CURRENT REVISION 3	
DESIGNED BY MCB	
DRAWN BY MCB	
CHECKED BY AML	SHEET NUMBER
APPROVED BY DS	

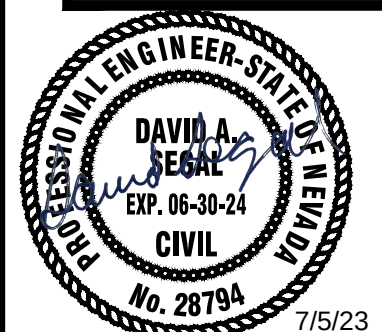




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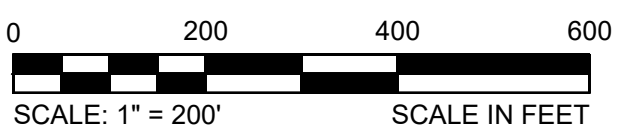
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ON ORIGINAL DRAWING

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ORIGINAL DRAWING SIZE IS 24 x 36

DEMOLITION & SITE PREPARATION PLAN

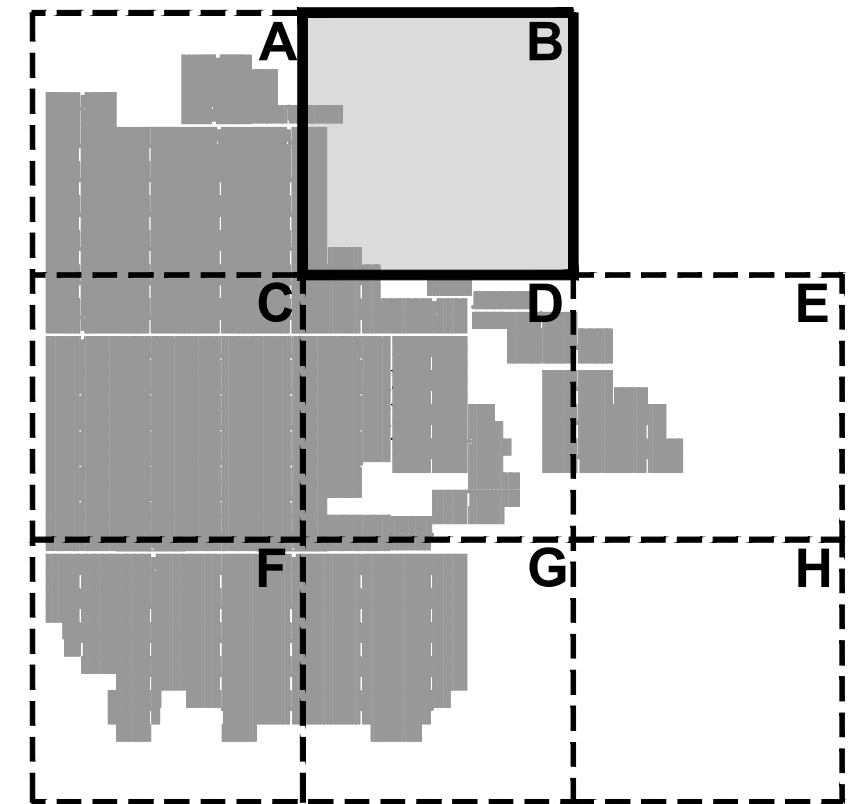
EAGLE SHADOW MOUNTAIN SOLAR
CLARK COUNTY, NEVADA



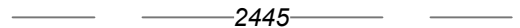
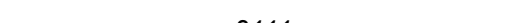
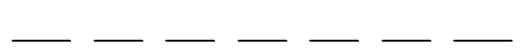
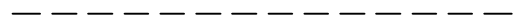
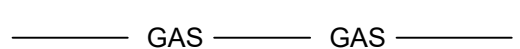
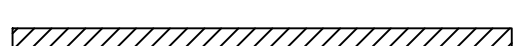
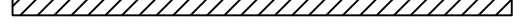
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CONSTRUCTION PLANS

PROJECT NO. 20203753.003A	C102
ISSUE DATE 06/30/2023	
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DESIGNED BY MCB	
DRAWN BY MCB	
CHECKED BY AML	
APPROVED BY DS	SHEET NUMBER



LEGEND

	EXISTING MAJOR CONTOUR LINE
	EXISTING MINOR CONTOUR LINE
	EXISTING PROPERTY LINE
	EXISTING ABUTTING PROPERTY LINE
	EXISTING SECTION LINE
	EXISTING ROAD BOUNDARY
	EXISTING TORTOISE PROTECTION FENCE
	EXISTING EASEMENT BOUNDARY
	EXISTING OVERHEAD WIRE
	EXISTING GAS LINE
	EXISTING FIBER OPTIC LINE
	EXISTING WATER LINE
	EXISTING WATER LINE TO BE REMOVED
	EXISTING OVERLAND FLOW PATH
	EXISTING CULTURAL AVOIDANCE AREA
	PROPOSED 130' CULTURAL AVOIDANCE AREA BUFFER
	EXISTING CULTURAL AVOIDANCE AREA TO BE MITIGATED
	PROPOSED LIMITS OF DISTURBANCE
	PROPOSED SECURITY FENCE
	PROPOSED SILT FENCE
	PROPOSED WATER LINE

NOTES

1. THERE SHALL BE NO DEMOLITION OUTSIDE THE MARKED LIMITS OF DISTURBANCE UNLESS SPECIFICALLY CALLED FOR IN THE PLANS.
2. COORDINATE REMOVAL OF EXISTING ITEMS WITH APPLICABLE FEDERAL, STATE, COUNTY, AND/OR LOCAL AGENCIES, UTILITY COMPANIES, AND/OR LANDOWNERS.
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PLOTTED: 6/30/2023 2:31 PM BY: matt byrum

LAYOUT: 102 DEMOLITION & SITE PREPARATION PLAN

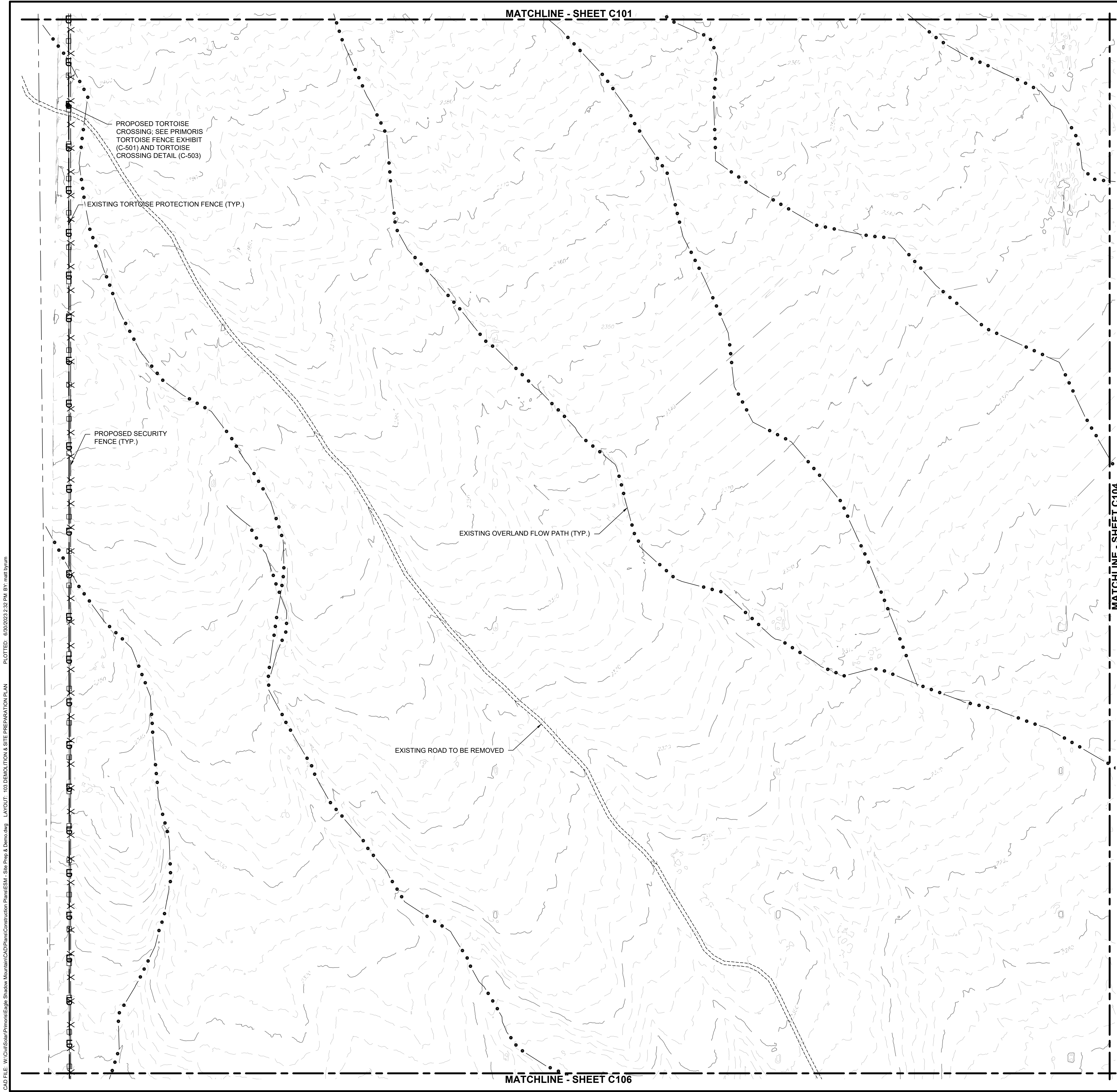
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3:31 PM BY: matt byrum

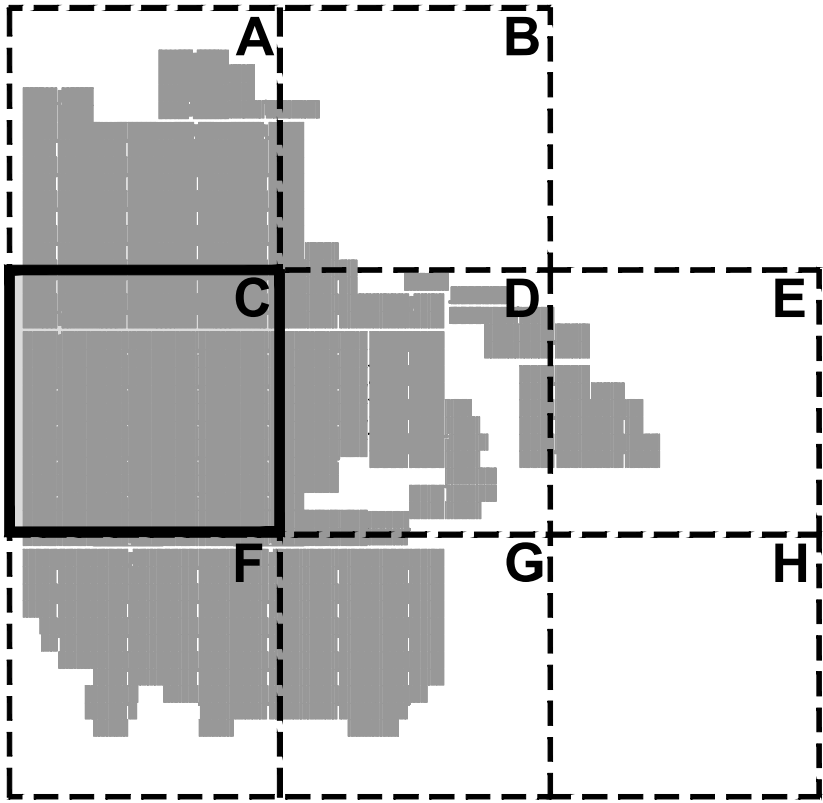
MATCHLINE - SHEET C101

MATCHLINE - SHEET C104





KEY MAP



LEGEND

- 2445 EXISTING MAJOR CONTOUR LINE
- 2444 EXISTING MINOR CONTOUR LINE
- EXISTING PROPERTY LINE
- EXISTING ABUTTING PROPERTY LINE
- EXISTING SECTION LINE
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- SF SF PROPOSED SILT FENCE
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REVISIONS				
REV	DESCRIPTION	DSN DWN	CHK APP	DATE
0	CONSTRUCTION PLANS	MCB	CGO	10/16/2020
1	CONFORMED TO RECORD DRAWINGS	MCB	AML	01/20/2022
2	REVISED RECORD DRAWINGS	MCB	AML	06/30/2023

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SCALE VERIFICATION
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0 200 400 600
SCALE: 1" = 200'
SCALE IN FEET
ORIGINAL DRAWING SIZE IS 24 x 36

DEMOLITION & SITE PREPARATION PLAN

EAGLE SHADOW MOUNTAIN SOLAR
CLARK COUNTY, NEVADA

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CONSTRUCTION PLANS

PROJECT NO. 20203753.003A	C103
ISSUE DATE 06/30/2023	
CURRENT REVISION 3	
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APPROVED BY DS	

CAD FILE: W:\Civil\Solar\Primoris\Eagle Shadow Mountain\CAD\Plan\Construction Plans\ESM - Site Prep & Demol.dwg LAYOUT: US DEMOLITION & SITE PREPARATION PLAN PLOTTED: 6/30/2023 2:32 PM BY: matt byrum

