

SUBJECT: AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY APPROVING THE BOROUGH MANAGER TO AMEND THE GROUND LEASE BETWEEN THE MATANUSKA-SUSITNA BOROUGH, LESSOR, AND RENEWABLE IPP, LLC., LESSEE, FOR A SOLAR UTILITY LOCATED WITHIN THE CITY OF HOUSTON ON BOROUGH-OWNED LAND (MSB007551).

AGENDA OF: June 7, 2022

ASSEMBLY ACTION:

Adopted without objection

6-21-22

(BMA)

MANAGER RECOMMENDATION: Introduce and set for public hearing.

APPROVED BY MICHAEL BROWN, BOROUGH MANAGER:

MB

Route To:	Department/Individual	Initials	Remarks
	Originator	<i>HLM</i>	
	Community Development Director	<i>Q</i>	
	Finance Director	<i>Q</i>	
	Borough Attorney	<i>Q</i>	
	Borough Clerk	<i>BMA for JRM</i>	

ATTACHMENT (S): Fiscal Note: YES X NO _____
Renewable IPP, LLC. Extension Request Letter (2 pp)
Ground Lease for a Solar Utility (35 pp)
Memorandum of Lease (3 pp)
Ground Lease for a Solar Utility, Amendment No. 1 (4 pp)
Memorandum of Lease, Amendment No. 1 (3 pp)
Ordinance Serial No. 22-071 (4 pp)

SUMMARY STATEMENT:

On June 16, 2020, the Assembly adopted Ordinance Serial No. 20-057 approving the manager to enter into a 32 year lease agreement with Renewable IPP, LLC., to develop a solar utility on borough-owned land located within the City of Houston. The lease was effective September 1, 2020 and expires August 31, 2052, with two (2) renewal options, five (5) years each.

On April 29, 2022, Renewable IPP, LLC., formally requested a two-year extension of the development stage for the Phase 1 land, as allowed under Section 4.1.1 of the lease document, and a two-year extension as to the lease term from 32 years to 34 years. The Lessee experienced delays for the required approvals with Matanuska Electric Association and the Regulatory Commission of Alaska (RCA) due to the COVID-19 pandemic. Furthermore, solar panel and steel prices have increased due to the War in Ukraine and created a supply disruption in the market with Europe looking for alternative energy solutions, such as solar, to reduce their demand of Russian gas that have increased the development costs for the Houston solar site.

To date, and as part of the lease development stage for the Phase 1 land, Lessee has completed the City of Houston zoning change, signed the Power Purchase Agreement (PPA) with Matanuska Electric Association, and received approval of the PPA with the Regulatory Commission of Alaska (RCA) on March 17, 2022. The approval of the RCA was paramount in the Lessee's ability to secure financing for the construction and development of the property as a solar utility site.

The request is to extend the lease term for two years expiring August 31, 2054 under Section 2.2 of the lease agreement, extend the development stage for an additional two years under Section 4.1 for construction completion by the end of 2024, and rents increase in year five (5) with all other terms and conditions in the lease remain unchanged.

RECOMMENDATION OF ADMINISTRATION:

The Community Development Department, Land and Resource Management Division, respectfully recommends Assembly approval of the Ground Lease Amendment No. 1 to extend the term and development stage for an additional two year period.

MATANUSKA-SUSITNA BOROUGH FISCAL NOTE

Agenda Date: June 7, 2022

SUBJECT: AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY APPROVING THE BOROUGH MANAGER TO AMEND THE GROUND LEASE BETWEEN THE MATANUSKA-SUSITNA BOROUGH, LESSOR, AND RENEWABLE IPP, LLC., LESSEE, FOR A SOLAR UTILITY LOCATED WITHIN THE CITY OF HOUSTON ON BOROUGH-OWNED LAND (MSB007551).

ORIGINATOR: Tracy K. McDaniel, Asset Manager

FISCAL ACTION (TO BE COMPLETED BY FINANCE)	FISCAL IMPACT YES NO
AMOUNT REQUESTED \$ <u>5</u>	FUNDING SOURCE <u>Lease Revenue</u>
FROM ACCOUNT #	PROJECT
TO ACCOUNT: <u>203.00.00 3XX.XXX</u>	PROJECT #
VERIFIED BY: <u>Tracy K. McDaniel</u>	CERTIFIED BY:
DATE: <u>5-11-22</u>	DATE:

EXPENDITURES/REVENUES:

(Thousands of Dollars)

OPERATING	FY2021	FY2022	FY2023	FY2024	FY2025	FY2026
Personnel Services						
Travel						
Contractual						
Supplies						
Equipment						
Land/Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING						

CAPITAL						
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REVENUE		<u>\$</u>				
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FUNDING:

(Thousands of Dollars)

General Fund						
State/Federal Funds						
Other		<u>\$</u>				
TOTAL		<u>\$</u>				

POSITIONS:

Full-Time						
Part-Time						
Temporary						

ANALYSIS: (Attach a separate page if necessary) *per lease agreement lease prnts change by year/phase

PREPARED BY: _____ PHONE: _____
 DEPARTMENT: Chugach DATE: 5/12/2022
 APPROVED BY: _____ DATE: _____

Matanuska-Susitna Borough
Community Development Department
Land and Resource Management Division
350 East Dahlia Avenue, Palmer, AK 99645

Subject: MSB Lease #007551- Development Stage Extension Request

April 29, 2022



Dear Ms. McDaniel,

I am writing to formally request a two-year extension of the "Development Stage" as applied to the Phase 1 land and a two-year extension to the Phase 1 land lease term (32-years extended to 34-years). Section 4.1.1 provides that the "Lessor, at its option, may extend the Phase 1 Development Stage upon Lessee's written request 120 days prior to the end of Year 2." We specifically request the following changes to MSB Lease # 007551:

1. **2.2 Lease Term**- Extend the initial lease term by one-year from 32-years to 34-years.
2. **4.1.1 Year 1 through Year 4**- Development Stage: Change to a four-year period.
3. **4.1.2 Year 5 through Year 6**- Basic rent to increase to start in year five instead of year three.
4. **4.1.3 Year 7 through Year 34**- Extend lease by two additional years to allow for four-years of development work and 30-years of operation.

Renewable IPP, LLC originally estimated that project development work would take approximately two-years. The pace of development work was slower than anticipated due to COVID and we are finding that larger scale solar farms, such as the Houston Solar Farm, take longer to develop than originally anticipated. The project has made significant progress since August 28, 2020, when the lease became in effect. To date, the City of Houston rezoned the land from PLI to Light-Industrial allowing the solar farm to be built on the property, Renewable IPP has a signed letter of intent from a US private investor who intends to fund the project and Matanuska Electric has signed the Power Purchase Agreement the Regulatory Commission of Alaska approved this special contract on March 17th, 2022. Renewable IPP's base plan is to start construction in 2022 however there is a chance this pushes to 2023 given recent material supply market fluctuations. Construction is estimated to take two years. Solar panel pricing recently spiked as a result of the War in Ukraine. Europe now has a strong desire to reduce their demand for Russian gas and this led to a significant increase in solar panel demand. In addition, steel prices have also significantly increased due to the War in Ukraine and supply chain disruptions. This pricing uncertainty has introduced uncertainty to our construction schedule. As our request for a development phase extension needs to be submitted 120 days prior to the end our year two of the lease, we've decided to request a two-year extension at this time to make sure multiple construction schedules are covered and that additional reviews won't be requested of the Assembly.

Extending the Development Stage is a significant help to our small business as it allows for lower rent until the solar farm is commissioned and generating revenue which covers the increased rent amount during its operating phase. We sincerely appreciate the Matanuska-Susitna Borough considering our request and please let me know if there's any additional information I can provide to support your review.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jenn', with a stylized flourish extending from the end.

Jenn Miller, CEO
Renewable IPP, LLC
1570 Garden St., Anchorage, AK 99508
(907) 830-0054
Jenn.miller@renewableipp.com



Matanuska-Susitna Borough

COMMUNITY DEVELOPMENT DEPARTMENT
LAND & RESOURCE MANAGEMENT DIVISION

GROUND LEASE For a Solar Utility

THIS LEASE FOR A UTILITY SCALE SOLAR FACILITY (the "Lease") is entered into this 28th day of August 2020, by and between:

MATANUSKA-SUSITNA BOROUGH (hereinafter "Lessor"), a municipal corporation formed under the laws of the State of Alaska, whose mailing address is 350 E. Dahlia Avenue, Palmer, Alaska 99645; and

RENEWABLE IPP, an Alaska Limited Liability Corporation, (hereinafter "Lessee"), whose mailing address is 1570 Garden Street, Anchorage, Alaska 99508.

The parties recite that:

- A. Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor, a parcel of land more specifically described and depicted on **Exhibit A** as Phase 1, attached to and for all purposes made a part of this Lease (hereinafter "Leased Premises" or "Phase 1 land").
- B. The parties desire to adopt this Lease as a complete and final statement of all of the promises, covenants, terms, and conditions in effect and binding between them.
- C. Lessor is entering into this Lease as landowner, exercising its power to manage its own municipal entitlement lands under Alaska Statute (AS) 29.35.010(8), and the applicable provisions of the Matanuska-Susitna Borough Code (MSB) 1.10.010(A)(9) and MSB Title 23. The Matanuska-Susitna Borough Community Development Department, Land and Resource Management Division, is responsible for management of Borough-owned real property, timber, and gravel resources including lease origination, management, oversight, and enforcement, under MSB Title 23, and as amended.

In so acting, Lessor is not waiving, and Lessor is explicitly reserving unto itself, all of its governmental authority, sovereignty, and power to enact and enforce laws and regulations governing land use and development, or the conduct of any business or activity, anywhere within the Borough. Nothing in this Lease shall waive or otherwise diminish Lessor's governmental authority, sovereignty, and power with respect to leased land or Lessee's use or occupancy of it.

- D. The Lessor cannot, and does not through this Lease, make any representations, warranties, or guarantees as to the future results of any land use permits, applications, or proposals, including those governed by MSB or City of Houston Code requirements. This Lease shall be revoked if the Lessee does not acquire all necessary permits, licenses, and approvals for the intended uses.

NOW, THEREFORE, in consideration of the promises and covenants set out below, the parties agree as follows:

Section 1. Leased Premises.

1.1 Leased Premises. Lessor, for and in consideration of the rents, covenants, and conditions hereinafter specified to be paid, performed, and observed by Lessee, leases to Lessee, and Lessee leases from Lessor, the Leased Premises, which is land and improvements situated within the City of Houston at NHN Hawk Lane, Houston, Alaska 99694, and more particularly described and depicted on Exhibit A as Phase 1 land. The land and improvements, together with all rights, easements, privileges, and appurtenances attaching or belonging to the described Phase 1 land, but subject to the reservation contained in Section 1.2 below, is referred to hereafter as the "Leased Premises."

1.2 Reservation of Minerals and Resources. All oil, gas, coal, other hydrocarbons, geothermal resources, rock, sand, gravel, peat, timber, and minerals of whatever nature on, in, or under the Leased Premises are excluded from the Leased Premises and reserved to Lessor. Lessor may grant Lessee a permit to make use of the timber, rock, sand, or gravel found on the Leased Premises in Lessee's development of the Leased Premises, which may require Lessee to obtain any other required permit. Lessor has not promised or obligated itself to providing any permit to Lessee. If Lessor mines and/or extracts any of the reserved minerals or resources, Lessor agrees that the mining and/or extraction shall not interfere with Lessee's business and activities on the Leased Premises or its access to the Leased Premises.

1.3 Rights-of-Way and Easements. Lessor shall have the right to designate or grant rights of way or utility easements across the premises without compensation to Lessee. In the event of destruction or significant interference of any of the Lessee's improvements, Lessee shall be entitled to compensation, and at its option, may terminate this Lease.

Section 2. Lease Term.

2.1 "Term" Defined. Whenever used in this Lease, the word "Term" shall mean and include both the Initial Term and any Renewal Term(s).

2.2 Lease Term. This Lease shall be and continue in full force and effect for an initial term of Thirty-two (32) years (the "Initial Term") commencing as of September 1, 2020, and expiring at 11:59 p.m. on August 31, 2052, unless earlier terminated as provided in this Lease.

2.3 Option to Renew. Lessee may apply to renew this Lease for up to two (2) additional periods of up to five (5) years each (the "Renewal Term"). To effectively exercise an option to renew, Lessee must not be in default of any of its obligations at the time of the exercise or at the time of

the commencement of any Renewal Term. During the Renewal Term(s), all of the provisions of this Lease shall remain in full force and effect, except that the rent Lessee shall pay to Lessor shall be adjusted as is provided for in Section 4, Rent. During the Renewal Term(s), the Lessor may modify any terms, covenants, and conditions of this Lease.

2.4 Option to Terminate. Notwithstanding any other provision in this Lease, Lessee may terminate this Lease at any time, with or without cause, during the Initial Terms or any Renewal Terms upon one (1) year written notice to the Lessor.

Section 3. Use and Occupancy.

3.1 Permitted Use of Leased Premises. Lessee specifically agrees that, for the Term, it shall use the Leased Premises for the sole purpose of monitoring, testing and evaluating the Leased Premises for solar energy generation and the constructing, operating, managing, and maintaining a solar facility, that includes overhead and/or underground electrical transmission and communications lines, energy storage equipment and facilities, all necessary and proper foundations, footings, related improvements and rights of way for a utility scale solar facility that generates solar power and feeds into the grid, supplying a utility with energy, and any associated infrastructure development required. A secondary agricultural use is allowed for the open areas between the solar panel rows. Any changes in the use will require the prior written approval of Lessor.

3.2 Quiet Enjoyment. Upon Lessee's timely payment of all of rents and other sums required to be paid by Lessee under this Lease, and upon Lessee's full and faithful observance and performance of all of its obligations contained in this Lease, and so long as such observance and performance continues, Lessee shall peaceably hold and enjoy the Leased Premises during the Term without hindrance or interruption by Lessor or anyone lawfully claiming by, through, or under Lessor.

3.3 Repair and Maintenance. Lessee shall, at Lessee's expense and without notice from Lessor at all times during the Term, keep the Leased Premises and all Improvements now existing or hereafter built on the Leased Premises (including but not limited to exterior building walls, windows, doors, fences, signs, landscaping and yard areas, refuse disposal equipment and facilities, pavement, curbs, gutters, exterior lighting, and drainage facilities), in good order, condition, maintenance, operability, and repair and of a neat, clean, and pleasing appearance. Lessor shall not be obligated to make any repairs or maintenance whatsoever to the Leased Premises or any Improvements on the Leased Premises.

3.4 Compliance with Laws. At all times during the Term, and with all due diligence, Lessee shall observe and comply with all applicable present and future laws, ordinances, requirements, orders, directives, rules, and regulations that are now in effect, or that may later be adopted by any governmental authority (including Lessor), that are applicable to the Leased Premises or any Improvements, and the uses thereon. Lessee assumes at its sole expense any costs of such compliance including any fines or penalties.

3.5 **Authorized Representative.** Lessee's principal point of contact for Lessee's operations on the Leased Premises is Jenn Miller, Renewable IPP, LLC, CEO, 908-830-0054. Lessor shall be entitled to communicate directly with the named individual for all matters under this Lease. Lessee shall promptly notify Lessor of any change in the person acting as Lessee's Authorized Representative for the Leased Premises.

3.6 **Supervision.** Lessee shall maintain reasonable and adequate on-site supervision of the Leased Premises at all times to insure that the terms, covenants, and conditions of this Lease and all applicable federal, state, and local laws, rules, and regulations governing the Leased Premises are enforced.

3.7 **Signage.** Lessee shall not place on the Leased Premises any signage that is unrelated to any business Lessee is operating on the Leased Premises. No electioneering or campaign signs of any kind shall be placed upon the Leased Premises.

3.8 **Utilities.** Lessee shall pay for all utility services provided to, consumed, or used on the Leased Premises.

3.9 **Waste and Wrongful Use.** Lessee shall not commit or suffer any site excavation, stripping, grading, or waste of the Leased Premises, or engage in any unlawful activity, or engage in any unauthorized activity that is unsafe, results in any public or private nuisance thereon, or adversely affect the value, character, or utility of Lessor's surrounding property.

3.10 **Setbacks.** Lessee shall observe all setback requirements applicable to the Leased Premises and shall not construct or maintain any building or other structure whatsoever within any road or other specified rights-of-way boundary of the Leased Premises and any setback along such boundary, except for fences or walls approved by Lessor. Lessor reserves the right to make use of, and to grant utility easements and other rights to third parties in the setback areas of the Leased Premises.

3.11 **Lessor's Inspection and Notice of Repairs.** As provided under Section 3, Lessee shall repair, maintain, and make good all conditions required under the provisions of this Lease, permit requirements, and applicable laws. If Lessee refuses or neglects to provide reasonable and necessary repairs or maintenance of the Leased Premises as required under the terms of this Lease to the reasonable satisfaction of Lessor after written demand, then Lessor, without prejudice to any other right or remedy it has under this Lease, may perform such reasonable and necessary maintenance work or make such repairs without liability to Lessor for any loss or damage that may accrue to Lessee's merchandise or other property or Lessee's business by reason thereof. Upon completion of any such repair or maintenance, and no later than thirty (30) days after presentation of an invoice therefore, Lessee shall pay Lessor for the reasonable cost for making such necessary repairs or performing such maintenance, plus fifteen percent (15%) of the repair costs to cover Lessor's overhead.

Lessor or its authorized agents may enter and inspect the Leased Premises at any time during regular business hours, with or without the presence of Lessee or its authorized representative, after giving twenty-four (24) hours advance notice to Lessee of such inspection. Lessor is specifically authorized to enter the Leased Premises for the purposes of posting notices of non-

responsibility for any construction work Lessee undertakes. All inspections will be conducted in a manner that does not unreasonably interfere with Lessee's operations. In the event of an emergency, Lessor may enter and inspect the Leased Premises on reasonable notice under the circumstances, including no notice to Lessee if the circumstances warrant.

Section 4. Rent.

4.1 Basic Rent. Lessee shall pay the following rent (the "Basic Rent") schedule to Lessor, without deduction and without prior notice or demand. Although stated as an annual rent, the Basic Rent shall be paid in equal monthly installments. Each monthly installment shall be paid in advance on or before the first day of that calendar month during the Term, with any partial periods prorated on a daily basis. The Basic Rent shall be as follows:

- 4.1.1 Year 1 through Year 2 – Development Stage.** In developing the Leased Premises, Lessee shall comply with Lessee's Development Overview, dated November 24, 2019, for the Phase 1 development plan within a two (2) year period that includes the technical feasibility, detailed design, financial feasibility, construction, and interconnection with the utility grid for the use of 142 acres (Phase 1 land) as a solar utility. Lessee shall pay in advance land rent of \$500 monthly during the Development Stage. If Lessee completes construction and interconnection with the utility grid and operates as a solar utility prior to the end of Year 2, the monthly Basic Rent will increase as outlined in Section 4.1.2. Lessor, at its option, may extend the Phase 1 Development Stage upon Lessee's written request 120 days prior to the end of Year 2.

The Development Stage includes, but is not limited to, Lessee obtaining the City of Houston Zoning Change for the Leased Premises, a signed commitment of the Purchase Power Agreement with Matanuska Electric Association, with subsequent approval of the Regulatory Commission of Alaska (RCA) for the interconnection to the utility grid to operate a solar utility. Lessee shall provide the RCA approval to Lessor within ten (10) days of receipt thereof.

4.1.1.1 Option to Terminate. During the Development Stage, if Lessee is unable to receive any such signed commitments or approvals as required to operate as a utility scale solar facility for any reason whatsoever, Lessee shall have the option to terminate the Lease after giving Lessor a thirty (30) day written notice. If Lessee receives the RCA's approval and notifies Lessor in writing of its commitment to start construction, the option as set forth herein shall terminate and be of no further force or effect.

4.1.1.2 Zoning. The Lessee will be responsible for any needed application and any associated costs to change the zoning with the City of Houston from Public Lands and Institutions to Light Industrial or, if Lessee fails to receive signed comments or approvals to operate a solar facility, from Light Industrial to Public Lands and Institutions.

- 4.1.2 Year 3 through Year 5. In year 3, the Basic Rent will increase to \$9,543.40 annually or \$800.00 (rounded) monthly. The annual Basic Rent is based on 8% of the per-acre 2020 taxable assessed value. Each subsequent year, the Basic Rent will increase by 3% from the year before on September 1st.
- 4.1.3 Year 6 through Year 32. The Basic Rent is determined by a fair market value appraisal for Years 6, 11, and 21 as determined under Section 5, with the Basic Rent to increase each year following the appraisal year by 3% from the year before on the Lease effective date of September 1st.
- 4.1.4 Basic Rent – Option to Renew. At the commencement of any Renewal Term (if Lessee exercises any available option to renew), the Basic Rent shall be adjusted to equal the annual “fair market value rent” as determined under Section 5. However, the annual Basic Rent payable during any Renewal Term shall never be less than the annual Basic Rent payable during the Lease year immediately preceding the commencement of the Renewal Term.
- 4.2 Option to Lease – Phase 2 land. For the sum of \$1,000 paid annually upon the Lease effective date of September 1, 2020, Lessor will grant to Lessee the right and option to lease all or a portion of the 320-acre parcel of land to further evaluate the expansion of the solar facility more specifically described and depicted on Exhibit A as Phase 2 (hereinafter “Phase 2 land”). The option shall be exercisable by Lessee for 10 years from September 1, 2020, of this Lease agreement, no later than 5:00 p.m., July 31, 2030. Lessee will give Lessor written notice if Lessee desires to exercise the Lease Option with a ninety (90) day notice. If Lessee fails to deliver the option notice to Lessor within 10 years, the option set forth herein shall terminate and be of no further force or effect.
- 4.2.1 If Lessee exercises the option to lease all or a portion of the Phase 2 land, MSB Assembly approval is required for an amendment to the Lease Agreement, without additional Public Notice procedures outlined under MSB 23.05.025.
- 4.2.2 If Lessee exercises the option to lease all or a portion of the Phase 2 land, during the Development Stage, the Basic Rent established in Section 4.1 shall be paid in monthly installments in addition to the Additional Rent established for the Phase 2 land that is leased.
- 4.2.3 Upon completion of construction and interconnection with the utility grid, the same per acre rate for Basic Rent of Phase 1 land in effect at the time, as calculated under Section 4.1.2 through 4.1.4, will be used to calculate the monthly Additional Rent for the Phase 2 land that is leased.
- 4.3 Non-Development areas. No development is permitted within any private or public easements, section line easements, or the west 450’ of the Northwest 1/4 Southwest 1/4, Section 3, Township 17 North, Range 3 West, Seward Meridian, Alaska. The area will be reduced for the west 450’ of the Northwest 1/4 Southwest 1/4, Section 3, and any private or public easement from the Rent calculations. Additionally, Lessee will not develop or disturb the natural vegetation within 150’ of the property boundary or the area located north and east of MEA’s transmission

line located within the Northeast 1/4 Southeast 1/4, Section 3, Township 17 North, Range 3 West, Seward Meridian, Alaska.

4.4 Net Rent Intended. The rent provided for under this Lease shall be absolute net to Lessor. This Lease shall yield net to Lessor the rent specified during the Term of this Lease, not reduced in any way by any costs, expenses and obligations relating to Lessee's use or occupancy of the Leased Premises, which may arise or become due during the Lease Term, except as otherwise expressly provided in this Lease.

4.5 Place of Rent Payment. All payments of rent shall be delivered to the following address, accompanied by a reference to the Lease Number MSB007551 shown on the front page of this Lease, unless Lessor gives Lessee written notice of a different address for rent payments:

Matanuska-Susitna Borough
Land and Resource Management Division
350 East Dahlia Avenue
Palmer, Alaska 99645

Payments shall be effective on the date of Lessor's actual receipt.

4.6 Late Payment. Any payment of rent not made within ten (10) days after the date it is due shall be assessed a late fee of \$100 or ten percent (10%) of the amount due, whichever is greater. The late fee is not a penalty but is intended to compensate Lessor for the additional costs Lessor will incur as a result of the late payment, the exact amount of such additional costs being extremely difficult and impracticable to ascertain. In addition, all rent, all late charges, and all additional rent specified under this Lease, shall bear interest from the date due to the date of actual payment at the rate of ten and one-half percent (10.5%) per annum or, if less, the maximum amount permitted by law.

Section 5. Fair Market Rent Determination.

5.1 Fair Market Value Rent. The Basic Rent for Phase 1 land for Years 6, 11, and 21, and if Lessee exercises its right to renew, the annual "fair market value rent" upon which Lessee's obligation to pay Basic Rent under Section 4, shall be determined as follows:

5.1.1 Appraisal of Fee Simple Interest. Lessee shall select an appraiser from a list of qualified appraisers compiled by Lessor that shall be kept available for inspection at Lessor's offices. The appraiser shall determine, as of a date within one hundred twenty (120) days before or after the beginning of the applicable rent period, the fair market value of the fee simple interest in the Leased Premises, unencumbered by this Lease, and including improvements owned by Lessor, but excluding improvements owned by Lessee. The appraiser shall value the Leased Premises as if the land and improvements being appraised is unaffected by any environmental contaminants. The appraisal shall be prepared in accordance with the requirements of Section 23.10.060(B) of the MSB Code, or any successor MSB Code provisions that are then in effect. A copy of the appraisal report shall be provided to both Lessee and Lessor. Lessee shall bear the cost of the appraiser's report prepared at

each renewal period. If Lessee renews this Lease, Lessee shall bear the cost of the appraiser's report prepared upon renewal and thereafter for the duration of the Lease.

- 5.1.2 Fair Market Value Rent. The annual "fair market value rent" shall be the product derived from multiplying the fair market value of the Leased Premises (established in accordance with MSB 23.10.060(B) under Section 5.1.1) by the Lessor established land and improvements lease rate, which is eight percent (8%), with an annual adjustment increase of three percent (3%) from the year before. At no time during the term or any renewal term of the Lease, shall the Basic Rent be based on an appraisal for the fair market value of the land that is less than the assessed value of the land determined by MSB Assessor's office.

Failure on the part of the Lessor to establish a fair market value rent by the adjustment years under Section 5 date does not preclude the Lessor from doing so then or thereafter.

5.2 Rent Adjustment Disputes. In the event either Lessor or Lessee disagrees with the appraisal report of the fee simple value of the Leased Premises made pursuant to Section 5, the disputing party shall give notice of the dispute in writing to the other party within ten (10) days of receiving the appraisal report. Failure to give timely notice of disputing an appraisal report made under Section 5 shall constitute a waiver of the right to dispute such an appraisal. If either Lessor or Lessee gives timely notice of a dispute, the disputing party shall then appoint another appraiser from Lessor's approved list of appraisers to provide a second appraisal report of the fee simple interest in the Leased Premises. The disputing party shall be responsible for the cost of the second appraiser's report.

The second appraisal report shall value the fee simple interest, as outlined in Section 5.1.1. Upon the receipt of the second appraisal report, the Lessor and Lessee shall have twenty days to review the report. If the second appraisal report gives an opinion of fair market value that differs from the value given by the first appraiser, then the two appraisals shall be averaged to determine the fair market value rent.

5.3 Retroactive Adjustments. Until a change in rent is determined, Lessee shall pay the same rent as was in effect in the previous year. When the adjusted rent has been determined and the Lessee notified, the rent will either be a debit or credit to Lessee retroactive to the commencement of the Lease year for which such rent adjustment is applied. Any deficiency resulting from such rent adjustment shall be payable within thirty (30) days after giving of such notice to Lessee.

5.4 Basic Rent Adjustment for Assignment or Subleasing During Year 1 through 5. Lessor reserves the option and right to require an appraisal of the fair market value of the land and adjust the annual Basic Rent established under Section 4, if Lessor assigns or subleases its leasehold interest as outlined in Section 17.

Section 6. Condition of Leased Premises and Delivery of Possession.

6.1 Accepted in Present Condition. Lessee acknowledges that it has had an opportunity to inspect and examine the Leased Premises and conduct any studies or assessments of the Leased Premises that Lessee desired prior to entering into this Lease. Lessee accepts the Leased Premises "AS IS" and "WITH ALL FAULTS." No reliance shall be placed on any opinion, material, or information provided by or through the Lessor, and Lessee does so at its own risk, cost, and expense. Lessor shall have no obligation to install, construct or pay for any improvements of any kind or nature on the Leased Premises for Lessee's benefit at or prior to the commencement of the Term.

6.2 No Representations or Warranties. Lessor is making no representation or warranty, express or implied, regarding the Leased Premises or its suitability for Lessee's purposes. Without limiting the foregoing, Lessee specifically acknowledges that Lessor has not warranted or made any representation regarding the social, economic, or environmental aspects of the Leased Premises, including the acreage, soil conditions, utility services, water drainage, physical access, natural or artificial hazards that may or may not exist, or the merchantability, suitability, or profitability for any use or purpose.

6.3 No Liability. Lessor shall have no liability to Lessee, or to Lessee's employees, agents, or contractors, or to anyone claiming by, under or through Lessee, regarding the physical condition of the Leased Premises any time during the Term. Lessor has no responsibility for any subsurface conditions, whether known or unknown, natural or man-made to Lessee, specifically including any adverse soil conditions, any washout, subsidence, avulsion, reliction, or settling that may occur to the Leased Premises. In consideration for Lessor entering into this Lease, Lessee is expressly assuming the risk of any latent or patent defects or deficiencies in, on or under the Leased Premises, whether the same now exist or arise hereafter. In no event shall Lessee be entitled to any damages whatsoever against Lessor with respect to the physical condition of the Leased Premises, including, but not limited to, actual, special, consequential, lost-profits, or any other category of damages.

Section 7. Governmental Authority Retained.

7.1 No Waiver of Governmental Power. Nothing in this Lease is intended to, or shall have the effect of, waiving or releasing any power or authority that Lessor has as a governmental body. Lessor has not promised or represented that it will exercise or not exercise its governmental power or authority in any way for the benefit of Lessee or Lessee's interests or the Leased Premises. Lessee also specifically acknowledges that, regardless of the title or position that a person holds with Lessor, no person acting or purporting to on Lessor's behalf has the authority to waive or release the Lessor's power or authority to act as a local government of the State of Alaska.

7.2 Lessee and Leased Premises Subject to MSB and City of Houston Code Requirements. Lessee and Lessee's use and occupancy of the Leased Premises shall, at all times be subject to the applicable provisions of the MSB and the City of Houston's Code requirements, as the MSB and the City of Houston's Code requirements may be amended from time to time. Lessor has not promised or represented that no new provisions will be added to the MSB or City of Houston's Code requirements, or that no existing provisions will be revised or repealed in any way. Lessor likewise has not promised or represented that any provisions of the MSB or the City of Houston's

Code requirements will be relaxed or not enforced for Lessee's benefit. Without limiting the foregoing, Lessee specifically acknowledges and agrees that:

- 7.2.1 The Leased Premises are subject to all applicable land use provisions of the federal, state, and local governments, and of all other governmental authorities and any additions to or amendments of those provisions.
- 7.2.2 The Leased Premises and Lessee's use of the Leased Premises are subject to all applicable federal, state, and local zoning, building, fire, health, safety, and environmental provisions, as they presently exist or as may be hereafter adopted,
- 7.2.3 Lessee must obtain all required federal, state, and local permits and licenses, which is a process independent from this Lease. The issuance of permits or licenses has not been promised to Lessee. Nothing in this Lease obligates Lessor to issue, or act on behalf of the Lessee for any permitting, and license processes required.

Section 8. Improvements.

8.1 **Right to Improve.** Lessee, when not in default of its obligations under this Lease, shall have the following rights during the Lease Term, to the extent Lessee deems advisable, subject however to the satisfaction of the other requirements of this Lease and, unless expressly exempted, subject to the condition that Lessor's prior approval be obtained:

- 8.1.1 To construct, place, or install on the Leased Premises, buildings, structures, fill, paving, landscaping, and other improvements (each an "Improvement" and collectively the "Improvements"); and
- 8.1.2 To make such alterations, additions, and repairs to the Leased Premises as Lessee may desire.

All Improvements that Lessee constructs, places, or installs on the Leased Premises shall remain Lessee's separate property for the duration of the Term of this Lease except as provided for in Section 15.4.

8.2 **Site Work.** Prior to the commencement of any site work on the Leased Premises (including any gravel use, timber clearing, and grading or driveway placement), Lessee shall apply to each applicable federal, state, or local government agency for such approvals as required. Lessor shall reasonably cooperate with Lessee in obtaining such approvals as necessary. Lessor assumes no liability by cooperating and Lessee shall indemnify Lessor regarding such cooperation.

8.3 **Site Plan and Technical Drawings.** Lessee will provide Lessor with site plans, engineering designs, and technical drawings for review and approval for each phase of construction and installation of improvements. If approved, Lessor will provide its written approval to proceed within 20 working days of receipt thereof the appropriate documentation required.

8.4 Clearing and Site Materials. With regard to timber, rock, sand, or gravel that is within the Leased Premises, any use of such material for on-site preparation is allowable under this Lease. For any extraction for off-site use, prior to conducting any timber clearing on the Leased Premises, and prior to extraction or making use of any rock, sand or gravel found on the Leased Premises, Lessee shall comply with permitting requirements and purchase requirements of the Land & Resource Management Division. The issuance of these permits is not guaranteed and may require additional approval of the Matanuska-Susitna Borough, including by its Assembly. Lessee's applications for such permits are evaluated on their own merits in accordance with the established procedures for such permits. Lessor has not promised that Lessee will receive such permits and Lessor will have no liability to Lessee if Lessee fails to qualify for the permits.

8.4.1 Gravel. Authorization for use of gravel on-site may be obtained by providing an application to the MSB Resource Specialist, Land and Resource Management Division.

8.4.2 Timber. Lessee will adhere to the Alaska Forest Resource and Practice Act (FRPA, AS 41.17) and make the timber removed for construction that is $\geq$ 4-inch diameter at breast height (DBH) available to the Lessor through notification of the MSB Resource Manager, Land and Resource Management Division. Timber not considered for commercial use is allowed for use on-site.

Lessee will be required to pay fair market value for any and all resources extracted from the Leased Premises, with exception only for those resources used for on-site development of the Leased Premises.

All activities shall be conducted in a manner that will minimize disturbance to the air, land, and water quality within the Leased Premises and surrounding areas.

8.5. Payment and Performance Bonds. Lessee shall maintain a bond, cash deposit, certificate of deposit, or other form of Security acceptable to the Lessor in the amount of \$25,000 to ensure faithful performance of the conditions of this Lease and to cover the costs of site cleanup and restoration and any associated costs. The Security amount agreed upon shall be an absolute and unconditional guaranty of payment and performance and in favor of the Lessor. It shall be enforceable against the Security without the necessity of any suit or proceedings on the Lessor's part against the Lessee. The Lessee shall maintain the Security as long as the Lessor deems necessary, including after this Lease expires or is terminated. Lessor may adjust the Security as additional activities or uses occur on the site.

8.6 Utilities. To the extent Lessee desires to have utility services at the Leased Premises that are not already available on the commencement date of the Term, Lessee shall pay for all the costs of bringing and installing utility services to and on the Leased Premises (including, but not limited to, electric, telephone, gas, cable, water, solid waste and sewage disposal). Additional Public Notice is not required under MSB 23.05.025 for the grant or dedication of new utility services specific to Lessee's use of the Leased Premises.

8.6.1 Grant of Easements. Lessor reserves the right to grant or dedicate all rights for electric, telephone, gas, cable, water, and any other utilities to maintain and operate

lines, cables, poles, and distribution boxes in, over, and upon the Leased Premises. Lessee shall obtain Lessor's prior written approval with respect to the location and grant of easement for any utility services on the Leased Premises.

8.6.2 Lessee will provide Lessor with a recordable, as-built survey stamped by a licensed surveyor within 120 days of installation of any new utility for Lessor to grant or dedicate by document the new easement location.

8.7 Amendments to Plans. In performing any work on the Leased Premises, Lessee shall not deviate from Lessor's approved or issued site plan and timber and gravel permits. Any deviation from the approved or issued plans, permits, or designs shall require Lessor's prior written authorization and, where appropriate, a signed amendment to this Lease or the governing standards or permits.

8.8 Construction Completion. In completing any construction project, or a phase of a construction project on the Leased Premises, Lessee shall provide the removal of all construction materials and debris, and provide the necessary grading and vegetation to stabilize the ground to alleviate any standing water, increase water runoff, erosion, or adverse drainage on or within the immediate area surrounding the Leased Premises. Lessee shall revegetate any disturbed land within the Leased Premises with grass vegetation.

8.9 Liens. Lessee shall not permit any mechanic's lien, laborer's lien, or materialmen's lien against the Leased Premises or any Improvements for any labor, materials, or equipment furnished to Lessee, or claimed to have been furnished to Lessee, or to Lessee's agents or contractors in connection with work of any character performed or claimed to have been performed on the Leased Premises or Improvements, by or at the direction or sufferance of Lessee. Lessee, however, shall have the right to contest the validity or amount of any such lien or claimed lien. In the event of a lien contest, Lessee shall give Lessor such reasonable security, separate of all security deposits or bond requirements, as Lessor may demand to insure payment of the lien or claimed lien and prevent the sale or foreclosure of the Leased Premises or Improvements. The security need not exceed one and one-half times the amount of the lien or Lessee may record the bond contemplated by AS 34.35.072. In any lien contest proceedings, Lessee shall immediately pay any judgment rendered with all proper costs and charges and shall have the lien released or judgment satisfied at Lessee's own expense.

Section 9. Taxes and Assessments.

9.1 Taxes, Assessments, and Charges. Lessee shall pay, not less than ten (10) days before they become delinquent, all real property taxes, assessments, special assessments or other charges of every description for which the Leased Premises, or any Improvement thereon or any use thereof, is now or during the Term is assessed or becomes liable, whether made by governmental authority or by any public utility or community service company, and whether assessed to or payable by Lessor or Lessee, subject to Lessee's option to pay in installments where installment payments are permitted. Upon Lessor's request, Lessee shall promptly provide to Lessor true and complete copies of receipts for such real property taxes and assessments evidencing their timely payment.

9.2 New Taxes, Assessments, and Charges. If at any time during the Lease Term or renewal term, any new or additional taxes, assessments or any other charges not existing on the effective date of this Lease are assessed against the Leased Premises, or any Improvement thereon, Lessee shall pay not less than ten (10) days before they become delinquent, all of such new taxes, assessments, and charges.

9.3 Contesting Taxes. Nothing contained in this Lease shall prevent Lessee from contesting in good faith the validity or the amount of such real property taxes or assessments by appropriate proceedings commenced before such real property taxes or assessments become delinquent. Provided, however, that Lessee shall not commence such proceedings without first giving written notice to Lessor of Lessee's intention to do so not less than ten (10) days before such real property taxes or assessments become delinquent. Lessee shall not be deemed in default under this Lease if such notice is provided to Lessor because of its failure to pay any property taxes or assessments when the taxes or assessments are subject to a pending appeal.

9.4 Installment Payments. If there is an option given to pay assessments or special assessments in installments, Lessee may elect to pay for such installments as shall accrue during the Term of this Lease. As to permitted installment payments for which the first installment falls due before commencement of the Term, Lessee shall pay all installments falling due during the Term.

9.5 Annual Taxes Due at Lease Expiration, Default, or Termination. As of January 1st of each year, real property taxes are levied. Upon the Lease expiration, default, or termination, Lessee shall be responsible to pay the annual taxes in full for the current tax year. If expiration, default, or termination occurs during the time of assembly budget deliberations, the annual tax assessed value due will be based on the previous year's tax assessment value.

Section 10. Hazardous Materials and Environmental Matters.

10.1 Observance of Environmental Laws. Lessee must, at its own expense, comply with all laws, ordinances, regulations, and administrative agency or court orders relating to health, safety, noise, environmental protection, waste disposal, hazardous or toxic materials, and water and air quality. In the event any discharge, leakage, spillage, emission, or pollution of any type occurs upon or from the Leased Premises during the Term or any holdover thereafter, Lessee shall immediately notify Lessor and shall, at Lessee's own expense, clean and restore the Leased Premises to the satisfaction of Lessor and any governmental body or court having jurisdiction of the matter. Under no circumstance shall any hazardous material be improperly disposed of on the Leased Premises.

10.2 "Hazardous Material" Defined. For purposes of this Lease, the term "Hazardous Material" means any hazardous or toxic substances, material, or waste, including but not limited to oil, petroleum products and byproducts, gasoline, diesel fuel, stove oil, kerosene, and other hydrocarbons; those substances, materials and wastes listed in the U.S. Department of Transportation Hazardous Materials Table (49 CFR Part 172.101) or by the U.S. Environmental Protection Agency as hazardous substances (40 CFR Part 302), and amendments thereto; all materials and the release of which must be reported under Title 46 of the Alaska Statutes; and any such other substances, materials and wastes that are or become regulated under any applicable local, state or federal law.

10.3 Hazardous Materials on Leased Premises. Lessee shall not cause or permit any Hazardous Material to be brought upon, kept, or used in or about the Leased Premises by Lessee, its agents, employees, contractors, or invitees without the prior written consent of Lessor, which Lessor shall not unreasonably withhold. Lessee must demonstrate to Lessor's reasonable satisfaction that such Hazardous Material is necessary or useful to Lessee's business. All Hazardous Materials Lessee uses, keeps, and stores on the Leased Premises will be in a manner that complies with all laws regulating any such Hazardous Materials.

10.4 Disclosure. At the beginning of the Initial Term of this Lease, Lessee shall inventory and disclose an inventory list of all hazardous materials to which the Lessor has previously consented. Lessee shall not be required to obtain consent from Lessor to use, keep, or store any Hazardous Material on the Leased Premises where the same was consented to by Lessor prior to the Initial Term. On July 1 of each year, including the year in which this Lease expires or is terminated, Lessee shall inventory and disclose an inventory list to Lessor with the names and amounts of all Hazardous Materials, or any combination thereof that were stored or used on the Leased Premises, or that Lessee intends to store or use on the Leased Premises. Lessee shall keep an updated inventory list at all times and disclose to the Lessor any types of changes to the inventory list throughout the year.

10.5 Environmental Indemnity. Lessee shall indemnify and defend Lessor against all liability, cost, and expense (including, without limitation, any fines, penalties, diminution in value of the Leased Premises, assessment and clean-up costs, judgments, litigation costs and attorneys' fees) incurred by or levied against Lessor as a result of Lessee's breach of this Section 10 or as a result of any discharge, leakage, spillage, emission, or pollution on or discharged from the Leased Premises, without regard to whether such liability, cost, or expense arises during or after the Term of this Lease. Provided, however, that Lessee shall not be required to indemnify Lessor under this Section 10.5 if the parties agree or a court of competent jurisdiction determines that such liability, cost or expense is caused directly and solely by the active negligence or intentional misconduct of Lessor. The foregoing indemnity shall survive the expiration or earlier termination of this Lease.

10.6. Environmental Assessments and Testing. In addition, Lessee shall be solely responsible for all costs and expenses associated with the performance of environmental testing of the Leased Premises, which may be required at Lessor's sole discretion upon the expiration or other termination of this Lease. Such testing shall only be required if Lessor knows or has reasonable cause to believe that environmental impairment caused by Lessee's use and occupancy has occurred. The nature and extent of any required testing shall be commensurate with the nature and extent of the environmental impairment known or reasonably suspected. Such environmental testing, conducted by an engineering firm acceptable to Lessor, shall be the basis for determining the extent of any environmental impairment caused by the Lessee's use and occupancy of the Leased Premises.

Section 11. Insurance.

11.1 Duration and Requirements. During the entire Term, Lessee shall keep in full force and effect a policy or policies of liability insurance, auto liability, and worker's compensation insurance that include coverages acceptable to Lessor as are specified and attached on **Exhibit B** of this Lease with respect to the Leased Premises and the business operated by Lessee. To the

extent the provisions in **Exhibit B** and this section conflict, the terms of **Exhibit B** shall prevail. Required policies shall include, but not be limited to, environmental site liability insurance, workers' compensation insurance, liability insurance, and auto liability.

Lessor will review the Minimum Coverage Requirements every three (3) years and if Lessee exercises any option to renew after the initial lease term expires, Lessor will adjust the insurance requirements for inflation and compliance with the current uses and operations. Furthermore, any new additions, improvements, or Lease amendments require Lessor's review of the Minimum Coverage Requirements prior to construction or amended uses to determine whether an adjustment to the insurance requirements is necessary.

11.2 Workers' Compensation. Lessee shall ensure that, with respect to all personnel performing work on the Leased Premises, Lessee maintains in effect at all times during the term of this Lease, coverage or insurance in accordance with the applicable laws relating to workers' compensation and employer's liability insurance, regardless of whether such coverage or insurance is mandatory or merely elective under the law.

11.3 Liability Insurance. Lessee shall keep in full force and effect a policy or policies of general liability insurance that includes bodily injury, property damage, and personal injury coverages acceptable to Lessor with respect to the Leased Premises and the business operated by Lessee. The policy or policies purchased pursuant to this Section 11 shall name both Lessor and Lessee as insureds, with respect to the Leased Premises and the business operated by Lessee on the Leased Premises.

11.4 Environmental Impairment Liability. Lessee shall provide an Environmental Impairment Liability policy prior to the use of equipment, battery storage, or any containment facilities for what Lessor deems "Hazardous Materials," which are necessary to operate a solar utility facility on the Leased Premises.

11.5 Policy Provisions. Each policy of commercial general liability or property insurance of this Lease shall:

- (1) Provide that the liability of the insurer shall not be affected by, and that the insurer shall not claim, any right of setoff, counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for Lessor, Lessee, or any person claiming by, through or under any of them.
- (2) Contain a waiver by the insurer of any right of subrogation to proceed against Lessor or against any person claiming by, through, or under Lessor.

11.6 Proof of Insurance. Lessee shall deliver to Lessor certificates of insurance on or before the commencement date of the Initial Term of this Lease or at such other date as agreed to in writing by Lessor. Additionally, Lessee shall deliver to Lessor photocopies of the policy or policies of insurance, certificates of insurance, or copies of endorsements as requested by the Lessor from time to time. Lessee shall deliver any proposed cancellation or changes in material terms of any such policies and shall give Lessor not less than thirty (30) days prior written notice thereof.

Section 12. General Indemnification and Recovery of Costs.

12.1 Lessee's Indemnity Obligation. Lessee assumes all responsibility, risk, and liability for its activities and use of or contact with the Leasehold interest. The Lessee shall defend, indemnify, save, and hold harmless the Lessor, its elected and appointed officials and officers, agents, and employees, from and against any and all demands, causes of action (whether in the nature of an action for damages, indemnity, contribution, government cost recovery, hazardous materials or otherwise), fines, judgments, suits, claims, actions, proceedings, losses, costs (including full reasonable attorney's fees and costs), expenses, charges, forfeitures, liens, liabilities, settlements, penalties, and damages of any kind or nature whatsoever, including, but not limited, to those alleging personal injury, wrongful death, nuisance property damage, economic loss, damages, violation of statutes, ordinances, constitutions, or other laws, rules, or regulations, contractual claims, environmental contamination (including any disposal, release, spill or discharge or any threatened disposal, release, spill, or discharge of, or contamination by hazardous materials), and environmental noncompliance (including the Lessee's failure to provide all information, make all submissions, and take all steps required by the authority under the environmental laws or any other law concerning any spill, discharge, or contamination), or any other kind of loss, tangible or intangible, sustained by any person, or property arising out of, in connection with, directly or indirectly from, or otherwise incident to Lessee's, Lessee's officers, agents, employees, guests, invitees, licensees, partners, attorneys, suppliers, and subcontractors' Leasehold activities or performance related to this Lease in any way whatsoever or use of or contact with the Leasehold, except to the extent the sole legal cause of injury or damage is the negligence or willful misconduct of the Lessor or anyone acting on the Lessor's behalf. This defense and indemnification responsibility includes claims alleging acts or omission by the Lessor or its agents, which are said to have contributed to the losses, failure, violations, or damage. However, the Lessee shall not be responsible for any damages or claim arising from the sole negligence or willful misconduct of the Lessor, its agents, or employees.

12.2 Costs and Expenses of Lessor. Lessee shall pay to Lessor all costs and expenses, including reasonable attorneys' fees, which are (1) paid or incurred by Lessor but are required to be paid by Lessee under any provision of this Lease; (2) paid or incurred by Lessor in enforcing any covenant of Lessee contained in this Lease, in protecting itself against or remedying any breach thereof, in recovering possession of the Leased Premises or any part thereof, or in collecting or causing to be paid any delinquent rents, real property taxes, assessments, or rates; (3) incurred by Lessor in reviewing any matter for which Lessor's approval is sought and in processing such approval; or (4) incurred by Lessor in connection with any action in any respect related to this Lease, the Leased Premises, or Lessee's actions or omissions on the Leased Premises, other than a condemnation action filed by or against Lessee, to and in which Lessor is made a party but not adjudicated to be at fault. The term "costs and expenses" as used in this Lease shall include, but not be limited to, all of Lessor's out-of-pocket expenditures attributable to the matter involved and reasonable attorneys' fees. Except as otherwise expressly provided in this Lease, all costs and expenses of Lessor shall be payable by Lessee to Lessor within ten (10) days after mailing or personal delivery of invoices therefore to Lessee and shall bear interest from the date which is ten (10) days after the date of such mailing or personal delivery at the rate of ten and one-half percent (10.5%) per annum. Such obligations and interest shall constitute additional rent due and payable under this Lease.

12.3 Other Indemnity and Cost Provisions Not Affected. The provisions of Section 12.1 regarding indemnity and the provisions of Section 12.2 regarding costs and expenses are intended to supplement, not supersede, the other provisions of this Lease that concern Lessee's indemnity obligations and Lessee's obligations to pay for Lessor's costs. Lessee shall fulfill all the indemnity and cost payment obligations owed to Lessor under any of the provisions of this Lease.

12.4 The obligations of the Lessee to indemnify, defend, and hold harmless the Lessor under the terms of this Lease shall survive transfer, assignment, or other disposition of an interest in this Lease as well as the expiration, forfeiture, relinquishment, abandonment, or other termination of this Lease.

Section 13. Damage or Destruction to Improvements.

13.1 Responsibility upon Damage to or Destruction of Property. In the event a building or any other Improvement situated on the Leased Premises is destroyed or damaged by fire or other casualty, Lessee shall comply in full with one of the following conditions within ninety (90) days of such destruction or damage (or within such other time period as is mutually agreed to in writing):

13.1.1 Restore to Same Condition. Lessee may repair, rebuild, or otherwise reinstate the damaged Improvement(s) in a good and substantial manner and in substantially the same form as it previously existed. In such event, the Lease shall continue in full force and effect without abatement of rents.

13.1.2 Rebuild to Different Condition. Lessee may repair, rebuild, or otherwise reinstate the damaged Improvement(s) in a manner and style different from the previously existing Improvement(s), so long as the plans therefore are approved by Lessor as required under this Lease. In such event, the Lease shall continue in full force and effect without abatement of rents.

13.1.3 Clear Property. Lessee may remove the damaged Improvement(s), in which event Lessee must also place the Leased Premises in the condition specified in Section 15.2 and Section 15.3 of this Lease. In that event, the Lease shall continue in full force and effect without abatement of rents.

13.1.4 Last of Term. If the casualty occurs to the main building(s) or principal structure(s) on the Leased Premises and the casualty occurs within the last five years of the Initial Term, or during any Renewal Term, Lessee may elect to terminate the Lease by the following:

- (a) giving written notice to Lessor of its intention to terminate,
- (b) removing the damaged Improvement(s) and placing the Leased Premises in the condition specified in Section 15.2 and Section 15.3, and
- (c) paying to Lessor the total amount of rents to come due during the remaining Term of the Lease, applying the rental rate then in effect to the remainder of the Lease Term.

Section 14. Eminent Domain.

14.1 Definition. The terms "taking" and "to take" (in any of their forms) as used in this Section 14 refer to any competent authority acquiring by the power of eminent domain, including inverse condemnation, all or any part of the Leased Premises or an interest in the Leased Premises, at any time during the Term. The transfer of title effectuating the taking may be either a transfer resulting from the recording of a final order in condemnation or a voluntary transfer or conveyance to the condemning agency or entity under threat of condemnation in avoidance of an exercise of eminent domain, whether made before or while condemnation proceedings are pending. The time of taking shall be determined by application of Alaska law.

14.2 Complete Taking. In the event of a taking of all or materially all of the Leased Premises, this Lease shall terminate on the earlier of the vesting of title in, or the taking of possession by, the condemner.

14.3 Partial Taking. Subject to the exception set out in Section 14.4 below, if less than materially all of the Leased Premises are taken (a "partial taking"), this Lease shall continue in effect except as to the portion so taken or condemned, but the rent to be paid by Lessee shall thereafter be reduced by the same ratio as the value of the portion of the Leased Premises so taken bears to the value of the Leased Premises before the taking. If no portion of the net usable area of the Leased Premises is taken, or if the portion thereof so taken is subterranean or aerial and does not interfere with the use of the surface, then Lessee shall not be entitled to any adjustment of rent under this Section 14.3.

14.4 Partial Taking in Last of Term. If a partial taking renders the remaining Leased Premises unsuitable for the purposes for which Lessee's Improvements were designed or occurs during the last five (5) years of the Initial Term of this Lease or any Renewal Term, then Lessee, upon sixty (60) days written notice to Lessor and compliance with Section 15 of this Lease, and subject to the rights of any Qualified Mortgagee, may terminate this Lease after vesting of title in the condemner or taking of possession by the condemner. If Lessee does so, the rent and other charges under this Lease shall be apportioned as of the date of termination.

14.5 Disposition of Proceeds on Total Taking. In the event of a total taking, the rights of Lessor and Lessee to share in the net proceeds of any and all awards for land, buildings, or other Improvements and damages shall be in the following order of priority:

- (1st)** To Lessor, a sum equal to the fair market value of the fee simple interest in the Leased Premises unencumbered by this Lease or any sublease, and including Lessor's Improvements and excluding Lessee's Improvements.
- (2nd)** To Lessee, a sum representing the fair market value of Lessee's Improvements. In no event shall Lessee be entitled to any claim for its leasehold interest, and any compensation therefore is hereby assigned to Lessor.
- (3rd)** To Lessor, the balance of the award, excluding interest. Interest shall be allocated between the parties in proportion to their respective shares of the total award provided above. If the value of such respective interests of Lessor and Lessee have

been separately determined in such condemnation proceeding, the values so determined shall be conclusive upon Lessor and Lessee. If such values have not been so determined, they may be fixed by agreement between Lessor and Lessee, or if the parties cannot agree, then by the Superior Court for the State of Alaska, Third Judicial District at Palmer.

- (4th) Nothing in this Section 14 shall prohibit the Lessee from seeking and retaining from the condemning authority a separate award for Lessee's own damages to its business and relocation expenses to the extent permitted by law.

14.6 Disposition of Proceeds on Partial Taking. In the event of a partial taking, rents shall be abated as provided in Section 14.3 and the net proceeds of the award shall be divided between Lessor and Lessee as follows:

- (a) To Lessor, a sum representing the fair market value of the fee simple interest of the part or parts of the Leased Premises so taken, unencumbered by this Lease, including Lessor's Improvements and excluding Lessee's Improvements; plus an amount representing consequential damages to the part or parts of the land remaining after such taking, considered as if vacant and unimproved.
- (b) To Lessee, the balance of the award, which shall be applied by Lessee first to restoration of Lessee's Improvements as nearly as reasonably possible to their condition before such taking, unless Lessee terminates this Lease as provided in Section 14.4.

14.7 Rights on Termination. Notwithstanding anything in this Lease to the contrary, if Lessee exercises its right to terminate the Lease under Section 14.4, the award balance that is attributable to Lessee's Improvements, other than the principal balance (if any) and other proper charges due a Qualified Mortgagee, shall belong to Lessor, free of any claim of Lessee. In no event shall Lessee be entitled to any compensation for its Improvements if the taking occurs after expiration of the Term or termination of this Lease.

14.8 Temporary Taking. If the whole or any part of the Leased Premises, or of Lessee's interest under this Lease, is taken by any competent authority (including Lessor) for its temporary use or occupancy, this Lease shall not terminate by reason thereof and Lessee shall continue to pay all rental payments and other charges payable by Lessee hereunder, and to perform all other terms, covenants, and conditions contained in this Lease, except to the extent Lessee is prevented from so doing by the terms of the order of the taking authority. In the event of a temporary taking, Lessee shall be entitled to receive the entire amount of the award and shall be obligated, at its sole expense, to restore the Leased Premises as nearly as may be reasonably possible to the condition in which they existed immediately prior to such taking. Provided, however, that if the period of temporary use or occupancy extends beyond the expiration of the Lease Term, the award shall be apportioned between Lessor and Lessee as of said date of expiration, after Lessor shall have received the entire portion of the award attributable to physical damage to the Leased Premises (excluding Lessee's Improvements) and to the restoration thereof to the condition existing immediately prior to the taking or condemnation. Upon expiration of the temporary taking, Lessee

shall have the rights and obligations provided in Section 15, including, but not limited to, removal of Lessee's Improvements within a reasonable time to be negotiated by Lessor and Lessee.

Section 15. Duties at Termination or Expiration

15.1 Surrender of Leased Premises. Upon expiration or early termination of this Lease, Lessee shall surrender to Lessor the possession of the Leased Premises. Lessee shall leave the surrendered Leased Premises and any Improvements in a clean and leasable condition. If Lessee fails to surrender the Leased Premises at expiration or termination, Lessee shall defend and indemnify Lessor from all liability and expense resulting from the delay or failure to surrender, including, but not limited to claims made by any succeeding tenant founded on or resulting from Lessee's failure to surrender. In the event of failure or refusal of Lessee to surrender possession of the Leased Premises, Lessor shall have the right to reenter the Leased Premises and remove therefrom Lessee or any person, firm, or corporation claiming by, through or under Lessee and to obtain damages for trespass from Lessee.

15.2 Removal of Improvements upon Termination or Expiration. Upon the expiration or termination of this Lease or any extension thereof, including termination resulting from Lessee's breach ("termination"), Lessee shall leave the Leased Premises in a clean and leasable condition, which shall include removal of all of Lessee's Improvements and the foundations and footings to any Improvements, personal property, trash, vehicles, and equipment, except as noted in Section 15.4 below. Any excavation on the property, including excavation to remove Lessee's Improvements, shall be filled and compacted with material approved by Lessor.

15.3 Lessee's Removal of Solar Panels and Foundations. Lessee shall remove all its solar panels and foundations, to a depth of three (3) feet below grade, within twelve (12) months from the date the Term expires or the Lease terminates.

15.3.1 Restoration Security for Removal of Solar Panels, Foundations, and Improvements. Commencing on the Lease Year 22 of the lease Term or upon notice of termination by Lessee or Lessor, Lessee will establish a Restoration Security amount payable to Lessor to cover Lessee's obligations under Sections 15.2 and 15.3 through one of the following means to be selected by Lessor at its sole discretion: (i) by establishing an escrow account with a bank selected by Lessor, or (ii) by delivering to Lessor a letter of credit, bond, corporate guarantee from an investment grade company or equivalent security. The amount of the Restoration Security will be equal to the Net Removal Cost (as defined below), which will be determined by the Lessor and Lessee in good faith; provided, however, if the Lessor and Lessee cannot agree upon the Net Removal Cost within sixty (60) days, then the Net Removal Cost will be determined by an independent engineer mutually selected by the Lessor and Lessee at Lessee's expense.

The terms of any escrow fund, letter of credit, corporate guarantee, or bond will expressly provide that Lessor will be entitled to use amounts received from the Restoration Security to remedy any damage to the Leased Premises if Lessee fails to comply with any of its obligations under Section 15, after notice and opportunity to cure as provided herein. Interest earnings, if any, on any escrow fund will be the

property of Lessee, and any amounts remaining in any escrow fund after Lessee has complied with its obligations pursuant to Section 15 will belong to Lessee. As used herein, the "Net Removal Cost" means (1) the cost of performing Lessee's obligations under Section 15, minus (2) the salvage value of the Solar Facilities located on the Leased Premises at the time such calculation is made.

15.3.2 Lessee shall provide Lessor with a site plan prepared and stamped by a licensed surveyor within sixty (60) days after completion of site restoration showing the locations of all foundations and footings, or other such materials that are below ground, and provide the surveyor's field notes with a description identifying each foundation, footings, or material buried below ground.

15.4 Lessor's Option. Lessor may, at its option, allow Lessee to leave some or all of Lessee's Improvements on the Leased Premises upon termination. If Lessor so elects, such Improvements shall become the property of Lessor upon termination and Lessor shall have no obligation to compensate Lessee for the same.

15.5 Lessor's Improvements. Any improvements owned by Lessor at the commencement of this Lease, or added to the Leased Premises by Lessor after execution of this Lease, shall not be removed by Lessee.

15.6 Abandonment of Lessee's Property. All property that Lessee is not required or allowed to leave on the Leased Premises shall, on the tenth (10th) day following termination, be conclusively deemed abandoned. Abandoned property shall, at the election of Lessor, become the property of Lessor or be destroyed or removed by Lessor.

15.7 Liability for Cleanup Expenses. Lessee shall be liable for all costs and expenses incurred by Lessor to remove or destroy abandoned property and Improvements not required or allowed to be left on the Leased Premises, and for the removal of trash or other debris left thereon. In addition, nothing in this Lease shall relieve Lessee of any obligation or liability for removal of Hazardous Materials or inappropriate fill material placed on the Leased Premises during the term of this Lease, regardless of when such Hazardous Materials or inappropriate fill material is discovered.

15.8 Holdover Tenancy. Unless otherwise amended by Lessor, this Lease does not provide for any hold-over tenancy rights by Lessee. If Lessee remains in possession of the Leased Premises after expiration of the Term without the execution of a new lease or an extension of this Lease, or an amendment of this Lease, and if no notice of termination has been delivered by Lessor to Lessee, Lessee shall be deemed to occupy the Leased Premises only as a tenant at will, from month-to-month, upon and subject to all of the provisions of this Lease which may be applicable to a month-to-month tenancy. Provided, however, that the rent payable during any holdover tenancy shall be one hundred and fifty percent (150%) of the rental rate in effect immediately prior to expiration of the Term.

Section 16. Default and Remedies.

16.1 Events of Default. Each of the following events shall be a default by Lessee and breach of this Lease:

16.1.1 Failure to Perform Lease Obligations. Lessee's abandonment or surrender of the Leased Premises or of the leasehold estate, or failure or refusal to pay when due any installment of rent or additional rent or any other sum required by this Lease to be paid by Lessee, or to perform as required by any other obligation, covenant, or condition of this Lease.

16.1.2 Appointment of Receiver. The appointment of a receiver or trustee to take possession of the Leased Premises or improvements or of the Lessee's interest in the leasehold estate or of Lessee's operations on the Leased Premises for any reason.

16.1.3 Insolvency, Bankruptcy. An assignment by Lessee for the benefit of creditors or the filing of a voluntary or involuntary petition by or against Lessee under any provision of the U. S. Bankruptcy Code.

16.1.4 Material Misrepresentation. A material misrepresentation made to Lessor by Lessee regarding the Agreement, including, but not limited to, a material misrepresentation by Lessee with respect to the intended use of the premises.

16.2 Notice. As a precondition to pursuing any remedy for an alleged default by Lessee, and before pursuing any remedy, Lessor shall give notice of the default to Lessee. Each notice of default shall state the alleged event of default and the intended remedy, but the identification of the intended remedy shall not limit Lessor's right to seek or use any other available remedy not identified in the notice. Lessor shall give notice of default to Lessee at its address for notices specified in this Lease. Notice shall be by personal delivery or by mailing by certified mail (return receipt requested) to Lessee.

16.3 Lessee's Right to Cure Defaults. Lessee shall have the right to cure any default as provided below:

16.3.1 Payment Default. If the alleged default is nonpayment of rent, taxes, or other sums to be paid by Lessee under this Lease, Lessee shall have thirty (30) days after the notice is given to cure the default.

16.3.2 Immediate Correction. If, in the reasonable opinion of Lessor, the alleged default substantially endangers either the person or property of Lessor or a third party, or human health, or the environment, Lessee shall commence curing the default immediately upon notice and complete the cure within such reasonable time period as is imposed by Lessor or any governmental body having jurisdiction in the matter.

16.3.3 Other Default. For the cure of any other default, Lessee shall promptly and diligently commence curing the default and shall have sixty (60) days after notice is given to complete the cure.

16.4 Nonwaiver. Lessor's acceptance of any rents, whether Basic Rent or additional rent, shall not be deemed to be a waiver of any breach by Lessee of any of its covenants or obligations contained in this Lease or of the right of Lessor to reenter the Leased Premises or to declare a forfeiture for any such breach. Waiver by Lessor of any breach by Lessee shall not operate to

extinguish the covenant the breach of which is so waived, nor be deemed to be a waiver of the right of Lessor to declare a forfeiture for any other breach thereof or of any other covenant.

16.5 Right of Lessor to Protect Against Default. If Lessee fails to observe or perform any of its obligations contained in this Lease, Lessor, at any time thereafter and without notice, shall have the right, but not the obligation, to observe or perform the same for the account and at the expense of Lessee, and shall not be liable to Lessee or anyone claiming by, through, or under it for any loss or damage by reason thereof to the occupancy, business, or property of any of them. All costs and expenses paid or incurred by Lessor in observing or performing such covenant shall constitute additional rent that Lessee shall pay to Lessor with ten (10) days of Lessee's receipt of an invoice therefore.

16.6 Lessor's Remedies. If any default by Lessee shall continue uncured following a notice of default as required by this Lease, for the period applicable to the default under Section 16.3 of this Lease, Lessor shall have the following remedies in addition to all other rights and remedies provided by law or equity or other provisions of this Lease, to which Lessor may resort cumulatively or in the alternative. The election of one remedy for any one default shall not foreclose an election of any other remedy for another default or for the same default at a later time.

16.6.1 Termination. Lessor may, at Lessor's election, terminate this Lease by giving Lessee notice of termination. On the giving of the notice, all Lessees' rights in the Leased Premises and in all Improvements thereon shall terminate, unless Lessor expressly and in writing requires Lessee to remove specified Improvements, in which event Lessee's rights shall continue in the Improvements required to be removed. Promptly after notice of termination, Lessee shall surrender and vacate the Leased Premises and all Improvements not required to be removed in a clean and leasable condition, and Lessor may reenter and take possession of the Leased Premises and all remaining Improvements and eject all parties in possession, or eject some and not others, or eject none. Termination under this Section 16 shall not relieve Lessee, or any of its guarantors, insurers, or sureties, from the obligation to make payment of any sum then due to Lessor or from any claim for damages previously accrued or then accruing against Lessee.

16.6.2 Reentry Without Termination. Lessor may, at Lessor's election, reenter the Leased Premises, and, without terminating this Lease, at any time and from time to time relet the Leased Premises and Improvements, or any part or parts of them, for the account and in the name of Lessee or otherwise. Lessor may, at Lessor's election, eject all persons, or eject some and not others or eject none. Any reletting may be for the remainder of the Term or for a longer or shorter term. Lessor may execute any leases made under this provision either in Lessor's name or in Lessee's name, and Lessor shall be entitled to all rents from the use, operation, or occupancy of the Leased Premises or Improvements or both. Lessor shall apply all rents from reletting as provided in Section 16.7 of this Lease. Lessee shall nevertheless pay to Lessor on the due dates specified in this Lease, the equivalent of all sums required of Lessee under this Lease, plus Lessor's expenses, less the proceeds of any reletting. No act by or on behalf of Lessor under this provision shall constitute an

acceptance of a surrender or a termination of this Lease unless Lessor gives Lessee specific notice of acceptance of a surrender or termination.

16.6.3 Recovery of Rent. Lessor shall be entitled, at Lessor's election, to each installment of rent or to any combination of installments for any period before termination, plus late charges and interest at the rate of ten and one-half percent (10.5%) per annum from the due date of each installment. If Lessor elects to relet the Leased Premises without terminating this Lease, the proceeds of such reletting shall be applied, when received, as provided in Section 16.7 of this Lease.

16.6.4 Lessee's Personal Property. Lessor may, at Lessor's election, use Lessee's personal property and improvement on the Leased Premises, or any of such property and improvements, without compensation and without liability for use or damage, or store them for the account and at the cost of Lessee.

16.6.5 Damages. Lessor shall also be entitled, at Lessor's election, to damages as follows:

- (1) All amounts that would have fallen due as rent between the time of termination and the time the property is relet, if it is relet; provided that Lessor shall exert reasonable efforts to relet the property at prevailing market value.
- (2) The amount, if any, by which the rent under this Lease exceeds the rents under any subsequent lease upon reletting calculated over the Term.
- (3) All administrative, marketing, brokerage, repairs, cleaning, and similar costs incurred by Lessor necessary or useful to reletting the Leased Premises, or placing it in good and marketable condition.

16.7 Application of Sums Collected by Lessor. Lessor shall apply all proceeds of reletting in the order as outlined below:

- (1st) To the payment of reasonable expenses (including attorneys' costs and fees, brokers' commissions, or both) paid or incurred by, or on behalf of Lessor in recovering possession, placing the Leased Premises and Improvements in good condition, and preparing or altering the Leased Premises or Improvements for reletting;
- (2nd) to the reasonable expense of securing new tenants;
- (3rd) to the fulfillment of Lessee's covenants and obligations to the end of the Lease Term; and
- (4th) to Lessee's uses and purposes.

Section 17. Assignments, Subleasing, and Mortgages.

17.1 Limitations on Transfer. Lessee shall not voluntarily or by operation of law assign, transfer, mortgage, sublet, or otherwise transfer or encumber all or any part of Lessee's interest in

this Lease or in the Leased Premises, except in strict compliance with this Section 17. Any attempted assignment, transfer, mortgage, encumbrance or subletting without such compliance shall be void, and shall constitute a breach of this Lease.

17.2 Lessee's Right to Assign or Sublease. Lessee shall have the right to assign, sublease or otherwise transfer Lessee's interest in this Lease and the estate created by this Lease only upon receiving prior written consent of the Lessor. Lessor shall not unreasonably withhold its consent.

17.3 Request for Consent to Assignment or Sublease. To request Lessor's approval of any assignment, sublease, or other transfer, Lessee shall give Lessor a reasonable notice of the proposed transfer of at least sixty (60) days, which may require MSB Assembly approval, with appropriate documentation regarding the proposed assignee or subtenant, including:

- (a) A certified financial statement prepared independently and in accordance with generally accepted accounting principles fairly representing the existing financial condition of the proposed assignee or subtenant;
- (b) The proposed assignee's or subtenant's prior years' income tax returns;
- (c) The proposed assignee's or subtenant's business or operations plan for the Leased Premises; and
- (d) Any other or further information Lessor requests.

17.4 Liability on Assignment or Sublease. No assignment or sublease, even if the assignment or sublease is made with Lessor's consent, shall operate to relieve Lessee of any obligations under this Lease, whether the same arise before or after the effective date of the assignment or subleasing. Upon assignment, the assignee shall assume all rights and obligations of Lessee under this Lease, including unsatisfied obligations to cure any delinquency in rent or other charges under this Lease or to perform any repairs or other work or action required by Lessor before the assignment.

17.5 Mortgage of Leasehold Interest. Lessee shall have the right at any time and from time to time, to subject the leasehold estate and any or all of Lessee's Improvements situated on the Leased Premises to one or more mortgages, deeds of trust, or assignments as security for a loan or loans or other obligation of Lessee (each of which is a "Leasehold Mortgage"), provided that:

17.5.1 Subordination. Any Leasehold Mortgage and all rights acquired under it shall be subject and subordinate to each and all the covenants, conditions, and restrictions stated in this Lease, and to all rights and interests of Lessor. Under no circumstances will Lessor's fee simple interest in the Leased Premises or Lessor's rights under this Lease or its reversionary interest, ever be subject to, or subordinate to the lien or encumbrance of any Leasehold Mortgage. With respect to Lessor's interests, this Lease is specifically intended to be only an unsubordinated ground lease.

17.5.2 Notice to Lessor. Lessee shall give Lessor prior notice of any such Leasehold Mortgage, and shall accompany the notice with a true copy of the note and the

Leasehold Mortgage as proposed for execution. Upon Lessor's written consent to the Leasehold Mortgage and upon execution of the Leasehold Mortgage by all parties, the mortgagee shall become a Qualified Mortgagee as that term is used in this Lease.

17.6 Notice of Default and Opportunity to Cure. Upon any default on any of the terms of the Lease by Lessee, Lessor, in addition to notifying Lessee pursuant to Section 16.2, shall also notify each Qualified Mortgagee of the default. Upon receipt of a written notice of default, any such Qualified Mortgagee shall have the length of time set forth in Section 16.3 of this Lease to cure the default. Lessor shall accept any cure provided by a Qualified Mortgagee whether the cure is tendered in the name of or on behalf of Lessee or the Qualified Mortgagee.

17.7 Possession by Mortgagee. A Qualified Mortgagee may take possession of the Leased Premises and vest in the interest of Lessee in the Lease upon the performance of the following conditions:

17.7.1 The payment to Lessor of any and all sums due to Lessor under the Lease, including, but not limited to, accrued unpaid Basic Rent and additional rent.

17.7.2 The sending of a written notice to Lessor and Lessee of the Qualified Mortgagee's intent to take possession of the Leased Premises and assume the Lease.

17.7.3 The curing of all defaults not remediable by the payment of money within an additional thirty (30) days of the date upon which such default was required to be cured by the Lessee under the terms of this Lease.

17.8 No Liability of Mortgagee Without Possession. A Qualified Mortgagee shall have no liability or obligation under the Lease unless, and until it sends to Lessor the written notice described in Section 17.7.2 above. Nothing in this Lease nor in the taking of possession of the Leased Premises and assumption of the Lease by a Qualified Mortgagee or a subsequent assignee shall relieve Lessee of any duty or liability to Lessor under the Lease.

17.9 Subsequent Transfer. In the event a Qualified Mortgagee forecloses the Leasehold Mortgage, any subsequent assignee or transferee of the leasehold estate proposed by the Qualified Mortgagee must be approved by Lessor, whose discretion in the matter shall be complete.

Section 18. General Provisions.

18.1 Notices. Except as otherwise provided in this Lease, any notice to Lessor or Lessee required or permitted under this Lease shall be given in writing, mailed by registered or certified mail, return receipt requested, and addressed to such party at its mailing address specified on the first page of this Lease, or at such other address as may be specified by the party in writing. In the alternative, any notice may be delivered personally within the State of Alaska to the party. Except as otherwise expressly provided in this Lease, any notice shall be conclusively deemed to have been given on the date of mailing or personal delivery. If at any time during the Term, Lessee is more than one person or entity, any notice given by Lessor to any one person shall constitute notice

to all of them, and any agreement or approval with or in favor of Lessor made or given by any of them shall bind all of them.

18.2 Disputes; Forum Selection; Attorney's Fees. In the event of any dispute, the reconsideration procedure of MSB 23.05.090 shall be available. Lessor and Lessee shall attempt to resolve any dispute through non-binding mediation prior to litigation. Any litigation arising out of this Lease or related to it shall only be brought in the Superior Court for the State of Alaska, Third Judicial District at Palmer, and not elsewhere. Lessor and Lessee consent to the jurisdiction of such court. In any litigation, the prevailing party shall be entitled to an award of its full, reasonable attorney's fees in addition to any other relief the court grants.

18.3 Lessor's Approvals. Except as otherwise provided for in this Lease and except for any amendment to the terms of this Lease, Lessor shall not unreasonably, capriciously, or arbitrarily withhold its consent or approval when its consent or approval is required under this Lease.

18.4 Lessee's Right of First Offer to Purchase. If the Lessor decides to market the property in part or in whole, the Lessor will notify Lessee in writing, prior to placing the property on the market, and giving Lessee the Right of First Offer to Purchase and is contingent upon MSB Assembly approval. After MSB Assembly approval, Lessee shall have sixty (60) days to exercise its Right of First Offer to Purchase the property by providing written notice to Lessor. If Lessee fails to timely exercise its Right of First Offer to Purchase, or waives its option, Lessor will be under no obligation to further provide Lessee the Right of First Offer to Purchase.

If Lessee timely notifies the Lessor that it is exercising its Right of First Offer to Purchase, Lessee at its sole expense shall pay all appraisal costs associated with determining the fair market value of the land in accordance with Section 4.1.1 of the Lease. Lessee acknowledges that the negotiated purchase agreement is contingent upon MSB Assembly approval prior to conveyance of the property.

18.5 Integration and Amendments. This Lease, the exhibits attached hereto, and the provisions of the permits and licenses incorporated herein, contain and state the complete and final understanding of every agreement and representation made by or on behalf of Lessor and Lessee with respect to the Leased Premises. No implied covenant or prior oral or written agreement shall be held to vary or supplement the provisions of this Lease. Any modification of any provision of this Lease shall only be effective when it is made in a writing that specifically states it is an amendment of this Lease and that is signed by authorized representatives of both parties. Lessee acknowledges that no representative of Lessor is authorized to modify this Lease unless the provisions of the MSB Code are satisfied, including, where necessary, the approval of the MSB Assembly.

18.6 Severability. If any provision of this Lease is held to be void or otherwise unenforceable, the remaining provisions of this Lease shall remain in full force and effect.

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

18.8 Memorandum of Lease. A Memorandum of Lease for providing constructive notice of the Lease shall be recorded in the Palmer Recording District and which recording expense shall be borne by Lessee.

18.9 Discriminatory Acts Prohibited. Lessee, in its use and occupancy of the Leased Premises, shall not discriminate against any person or class of persons by reason of sex, race, color, creed, or national origin and shall comply with all federal regulations and laws in regard to discrimination.

18.10 Section Headings. The section headings in this Lease are for convenience only and have no other significance.

18.11 Authority. For purposes of the terms and conditions of this Lease, the Matanuska-Susitna Borough Manager or designee shall act on behalf of the Borough.

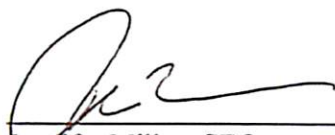
18.12 Binding Effect. This Lease shall be binding upon and shall inure to the benefit of Lessor and Lessee and their respective successors and assigns.

18.13 Force Majeure. Any failure to perform by either party due to force majeure shall not be deemed a violation or breach hereof. Forces majeure include interruption, suspension, or interference with the lease caused by acts of God, acts of the public enemy, wars, blockades, insurrections, riots, and similar occurrences.

IN WITNESS, WHEREOF, the Lessee and Lessor hereto have executed and acknowledge this Utility Scale Solar Facility Lease agreement and attachments/exhibits.

LESSEE

Renewable Independent Power Producers, LLC.



Jennifer Miller, CEO
Renewable IPP, LLC.

ACKNOWLEDGEMENT OF LESSEE

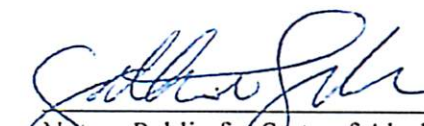
State of Alaska)
) ss.
Third Judicial District)

THIS IS TO CERTIFY that on this 24th day of Aug, 2020, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared, Jennifer Miller, Chief Executive Officer, of Renewable IPP, LLC., a company, known to me to be the identical individual who executed the foregoing instrument, and they acknowledged before me that they executed the Ground Lease for a solar utility as the free and voluntary act of said company, with full authority to do so and with full knowledge of its contents, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

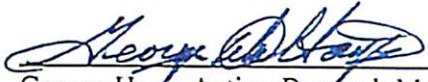
[SEAL]





Notary Public for State of Alaska
My commission expires: March 1-2021

LESSOR
MATANUSKA-SUSITNA BOROUGH


George Hays, Acting Borough Manager

ACKNOWLEDGEMENT OF LESSOR

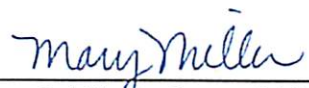
State of Alaska)
) ss.
Third Judicial District)

THIS IS TO CERTIFY that on this 28th day of August 2020, before me, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared George Hays, Acting Borough Manager of the Matanuska-Susitna Borough, a municipal corporation, who is personally known to me, appeared and acknowledged before me that he signed the Ground Lease for a solar utility for and on behalf of the municipal corporation, and acknowledge to me that he signed the same freely and voluntarily for the uses and purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

[SEAL]





Notary Public for State of Alaska
My commission expires: 10/26/2020

EXHIBIT A

The Leased Premises are described as follows:

Phase 1 Land: The Southeast 1/4

Phase 2 Land: The West 1/2

Located within Section 3, Township 17 North, Range 3 West, Seward Meridian, located in the Palmer Recording District, Third Judicial District, State of Alaska.

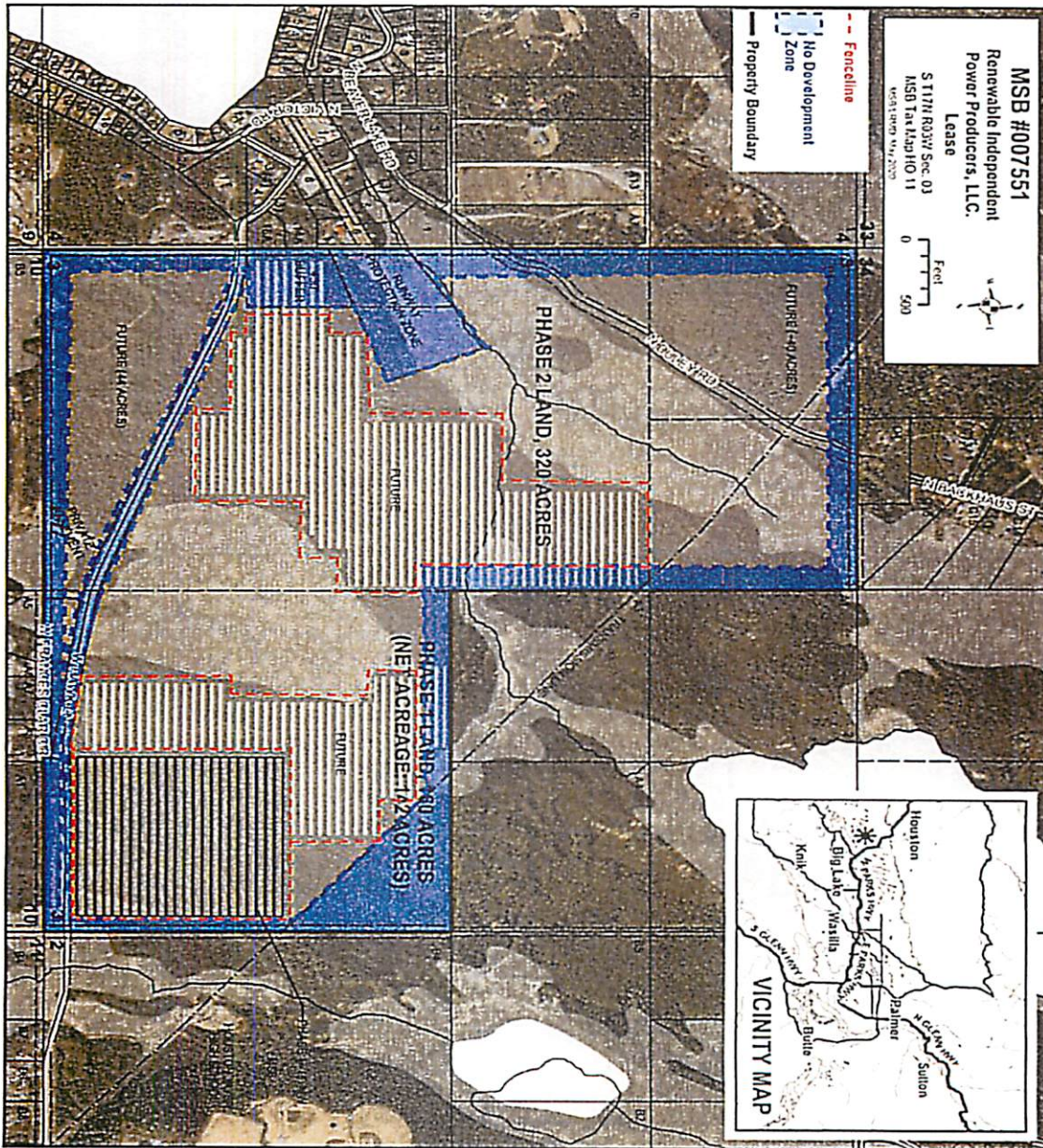


EXHIBIT B

INSURANCE REQUIREMENTS

The parties herein to this Agreement specifically agree that the provisions of this Agreement does not create in the public or any member thereof, a third party benefit hereunder, or authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms and provision of this Agreement. It is highly recommended that LESSEE confer with their respective insurance companies or brokers to determine if their insurance program complies with the Borough's Insurance requirements.

LESSEE shall procure and maintain the following insurance:

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. Insurance Services office form number CG 0001 (Edition 04/13) covering Commercial General Liability.
2. Insurance Services office form number CA 0001 (Edition 04/13) covering Automobile Liability, symbol 8 & 9 "hired and non-owned vehicles."
3. Workers' Compensation insurance as required by the State of Alaska and Employer's Liability Insurance.
4. Environmental Impairment Liability (EIL) policy prior to the use of equipment, battery storage, or any containment facilities for what Lessor deems "Hazardous Materials" that are necessary to operate, maintain, and store generated power on the Leased Premises. The EIL shall be on a coverage form agreeable to the Lessor covering claims related to breach or release of any "Hazardous Material," pollutants, or contaminates arising out of the activities of the LESSEE. EIL coverage shall include third party liability for bodily injury, property damage, environmental trespass, and costs of environmental testing, cleanup, and monitoring.

B. Minimum Limits of Insurance

LESSEE shall maintain limits no less than:

1. General Liability:

\$1,000,000 combined single limit per occurrence for bodily injury, property damage, personal injury, and advertising injury. The general aggregate limit shall be \$1,000,000.

General liability insurance shall be maintained in effect throughout the term of the Agreement.

2. **Auto Liability:**
Symbol 1 "Any Auto - \$500,000 combined single limit per accident for bodily injury and property damage.
3. **Workers' Compensation and Employer's Liability:**
Workers' Compensation shall be statutory as required by the State of Alaska.
4. **Excess Liability:**
In order to meet the required minimum limits of insurance it is permissible for LESSEE to combine an excess liability or umbrella policy with the general liability, auto liability, or employer's liability. In the instance where LESSEE purchases an excess liability or umbrella policy, the occurrence limit and the aggregate limit may be of the same amount.
5. **Environmental Impairment Liability (EIL):**
Environmental Site Impairment Liability policy with a minimum of \$1,000,000 single limit per claim, dependent upon the activity, use, and duration of "Hazardous Materials" on the Leased Premises with the minimum limit determined to be acceptable to Lessor. The EIS policy shall contain (a) coverage for losses resulting from pollution, harmful emissions, dispersion of pollutants and ecological damage of impacts to air, water, and soil on and off-site; (b) coverage for bodily injury and property damage on and off-site; and (c) coverage for cleanup costs, monitoring, and remediation expenses on and off-site, which arise out of LESSEE's activities and uses under this lease. Where coverage is a claims-made coverage form, the retroactive date will be the date the activity begins.

LESSEE shall provide a long-tail coverage policy providing for discovery and reporting of claims will be required for a three (3) year term after activities on the Leased Premises cease or upon Lease termination or expiration, whichever is later.

C. Deductibles and Self-Insured Retention

Prior to work commencing, any deductible or self-insured retention must be declared and approved by the Borough. LESSEE may be requested to demonstrate how the deductible or self-insured retention will be funded in the event of a claim. At the option of the Borough, LESSEE shall reduce or eliminate such deductibles or self-insured retention as respects the Borough, its officers, officials, employees, and volunteers; or the LESSEE shall procure a bond guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

D. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

1. General Liability, Automobile Liability

- a. The Borough, its Administrator, officers, officials, employees and volunteers shall be covered as additional insured as respects: liability arising out of activities performed by or on behalf of LESSEE; products and completed operations of LESSEE premises owned, occupied, or used by LESSEE or automobiles owned, leased, hired, or borrowed by LESSEE. The coverage shall contain no special limitation on the scope of protection afforded to the Borough, its Administrator, officers, officials, employees, and volunteers.
- b. LESSEE's insurance coverage shall be primary insurance and non-contributory as respects the Borough, its Administrator, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Borough, its Administrator, officers, officials, employees, and volunteers shall be in excess of LESSEE's insurance and shall not contribute to it.
- c. LESSEE's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Workers' Compensation and Employer's Liability

The insurer shall agree to waive all rights of subrogation against the Borough, its Administrator, officers, officials, employees, and volunteers for losses arising from work performed by LESSEE or any subcontractor of LESSEE in relation to this Agreement.

E. Acceptability of Insurers

Insurance is to be placed with insurers with a Best's rating of no less than A-VII.

F. Verification of Coverage

LESSEE shall furnish the Borough with certificates of insurance and with certified copies of all endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be on forms acceptable to the Borough. All certificates are to be received and approved by the Borough before work commences. The Borough reserves the

rights to require complete, certified copies of all required insurance policies, at any time.

G. Subcontractors, Vendors and Sublessees

All subcontractors, vendors and sublessees shall provide their own insurance. LESSEE must maintain a list of all vendors and current certificates of insurance for each meeting limits approved by Lessor and name the Borough, its Administrator, officers, officials, employees, and volunteers as additional insureds. All coverage for subcontractors and sublessees shall be subject to all requirements stated herein.

H. Lapse in Insurance Coverage

A lapse in insurance coverage, any change that restricts, reduces insurance provided, or changes name of insured without Borough approval is a material breach of this Agreement, which can result in immediate termination of the Agreement.



MEMORANDUM OF LEASE
(MSB007551)

THIS MEMORANDUM OF LEASE gives notice of that certain Ground Lease dated August 28th, 2020, between the Matanuska-Susitna Borough, (hereinafter "Lessor"), a municipal corporation formed under the laws of the State of Alaska, whose address of record is 350 E. Dahlia Avenue, Palmer, Alaska 99645, and Renewable IPP (hereinafter "Lessee"), an Alaska Limited Liability Corporation, whose address of record is 1570 Garden Street, Anchorage, Alaska 99508.

The Lease commences on September 1, 2020, for a term of thirty-two (32) years and expires at 11:59 p.m. on August 31, 2052. Lessee may exercise its option to renew for two (2) additional five (5) year periods, providing the Lessee is not in default on any terms, covenants, or conditions of the leasehold interest of the real property described as:

Phase 1 land: The Southwest 1/4 of Section 3, Township 17 North, Range 3 West, Seward Meridian, within the Palmer Recording District, Third Judicial District, State of Alaska.

Furthermore, the lease contains an option to lease all or a portion of an additional 320 acres, referred to as the Phase 2 land in the Lease, for a term of ten (10) years and expires at 11:59 p.m. on July 31, 2030, for the real property described as:

Phase 2 land: The West 1/2 of Section 3, Township 17 North, Range 3 West, Seward Meridian, within the Palmer Recording District, Third Judicial District, State of Alaska.

Said real property is located within the City of Houston and commonly known as the Houston Solar Farm.

This Memorandum of Lease in no way modifies the terms and conditions of the Lease. The Lease is available for inspection at the Matanuska-Susitna Borough Community Development Department, Land and Resource Management Division office during regular business hours.

Return to: MSB/L&RM
350 E. Dahlia, Avenue
Palmer, Alaska 99645

Memorandum of Lease (MSB007551)

Page 1 of 3

 8/24/20
Jennifer Miller, CEO Date

STATE OF ALASKA)
)ss.
Third Judicial District)

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

A circular notary seal for SATHIANE SIKEO, a Notary Public in the State of Alaska. The seal features the text "SATHIANE SIKEO" at the top, "NOTARY PUBLIC" in the center, and "STATE OF ALASKA" at the bottom. A handwritten date "12-01-2021" is written on the right side, and "My Commission Expires:" is written at the bottom right.


Notary Public for State of Alaska
My commission expires: March-1-2021

LESSOR:
Matanuska-Susitna Borough

George Hays 8/28/2020
George Hays, Manager Date

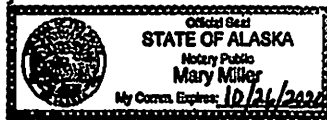
ACKNOWLEDGEMENT OF LESSOR

STATE OF ALASKA)
) ss.
Third Judicial District)

THIS IS TO CERTIFY that on this 28th day of August 2020, before me, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared George Hays, Acting Borough Manager of the Matanuska-Susitna Borough, a municipal corporation, who is personally known to me, appeared and acknowledged before me that he signed the Memorandum of Lease for and on behalf of the municipal corporation, and acknowledge to me that he signed the same freely and voluntarily for the uses and purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

[SEAL]



Mary Miller
Notary Public for State of Alaska
My commission expires: 10/26/2020

Memorandum of Lease (MSB007551)

AB
Page 3 of 3



GROUND LEASE
FOR A SOLAR UTILITY
AMENDMENT NO. 1

This Amendment of Lease ("Amendment No. 1") is made as of the _____ day of _____, 2022 (the "Amendment Effective Date"), by and between MATANUSKA-SUSITNA BOROUGH ("Lessor"), a municipal corporation formed under the laws of the State of Alaska, whose mailing address is 350 E. Dahlia Avenue, Palmer, Alaska 99645, and Renewable IPP, an Alaska Limited Liability Corporation (hereinafter "Lessee"), whose mailing address is 1570 Garden Street, Anchorage, Alaska 99508.

WHEREAS, Lessor and Lessee are parties to that certain Ground Lease for a Solar Utility ("Lease"), dated August 28, 2020, and a Memorandum of Lease recorded as Serial No. 2020-021561-0 on September 2, 2020, in the Palmer Recording District, Seward Meridian, State of Alaska, covering real property (the "Leased Premises"); and

WHEREAS, Lessor and Lessee desire to amend the Lease only with respect to the specific terms as stated below, with all other terms and conditions in the Lease to remain unchanged as approved under Matanuska-Susitna Borough Assembly Ordinance Serial No. 20-057, on June 16, 2020.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, Lessor and Lessee agree as follows:

Specific sections of the Lease below are changed to reflect the additional two-year extension for the lease term and two-year extension for the development stage in **bold font** below.

Section 2.2 Lease Term. This Lease shall be and continue in full force and effect for an initial term of **Thirty-four (34)** years (the "Initial Term") commencing as of September 1, 2020, and expiring at 11:59 p.m. on August 31, **2054**, unless earlier terminated as provided in this Lease.

Section 4. Rent.

Section 4.1.1 Year 1 through Year 4 – Development Stage. In developing the Leased Premises, Lessee shall comply with Lessee's Development Overview, dated November 24, 2019, for the Phase 1 development plan within a **four (4)** year period that includes the technical feasibility, detailed design, financial feasibility, construction, and interconnection with the utility grid for the use of 142 acres (Phase 1 land) as a solar utility. Lessee shall pay in advance land rent of \$500 monthly during the Development Stage. If Lessee completes construction and interconnection with the utility grid and operates as a solar utility prior to the end of Year 4, the monthly Basic Rent

will increase as outlined in Section 4.1.2. Lessor, at its option, may extend the Phase 1 Development Stage upon Lessee's written request 120 days prior to the end of Year 2.

4.1.2 Year 5. In year 5, the Basic Rent will increase to \$9,543.40 annually or \$800.00 (rounded) monthly. The annual Basic Rent is based on 8% of the per-acre 2020 taxable assessed value. Each subsequent year, the Basic Rent will increase by 3% from the year before on September 1st.

4.1.3 Year 6 through Year 34. The Basic Rent is determined by a fair market value appraisal for Years 6, 11, and 21 as determined under Section 5, with the Basic Rent to increase each year following the appraisal year by 3% from the year before on the Lease effective date of September 1st.

This agreement binds the Lessor and Lessee to the terms and conditions of the Ground Lease for a Solar Utility and Amendment No. 1 with all other terms and conditions in the Lease to remain unchanged and in full force and effect.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, Lessor and Lessee have duly executed and acknowledged this Lease Amendment No. 1 for the Ground Lease for a solar utility on the dates indicated.

Matanuska-Susitna Borough,
A municipal corporation
("Lessor")

Michael Brown,
Borough Manager

Date

ACKNOWLEDGEMENT OF LESSOR

STATE OF ALASKA)
)ss.
Third Judicial District)

THIS IS TO CERTIFY that on the _____ day of _____, 2022, before me, the undersigned Notary Public, personally appeared Michael Brown, known to me and known by me to be the Borough Manager of the Matanuska-Susitna Borough, and acknowledged to me that he executed the foregoing Ground Lease for a solar facility, Lease Amendment No. 1, for and on behalf of the municipal corporation freely and voluntarily, and for the use and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[NOTARY SEAL]

Notary Public in and for Alaska
My Commission Expires: _____

LESSEE

MSB007551 Renewable IPP Ground Site Lease, Amendment No. 1 (DRAFT)

Page 3 of 4

Renewable Independent Power Producers, LLC.

Jennifer Miller, CEO
Renewable IPP, LLC.

ACKNOWLEDGEMENT OF LESSEE

State of Alaska)
) ss.
Third Judicial District)

THIS IS TO CERTIFY that on this _____ day of _____, 2022, before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared, Jennifer Miller, Chief Executive Officer, Renewable IPP, LLC., a company, known to me to be the identical individual who executed the foregoing instrument, and they acknowledged before me that they executed the Ground Lease for a solar utility, Amendment No. 1, as the free and voluntary act of said company, with full authority to do so and with full knowledge of its contents, for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

[SEAL]

Notary Public for State of Alaska
My commission expires: _____

MEMORANDUM OF GROUND LEASE
AMENDMENT NO. 1
(MSB007551)

THIS MEMORANDUM OF LEASE AMENDMENT NO. 1, is made for the purpose of notice of that certain Ground Lease dated August 28, 2020, between the Matanuska-Susitna Borough, (hereinafter “Lessor”), a municipal corporation formed under the laws of the State of Alaska, whose address of record is 350 E. Dahlia Avenue, Palmer, Alaska 99645, and Renewable IPP (hereinafter “Lessee”), an Alaska Limited Liability Corporation, whose address of record is 1570 Garden Street, Anchorage, Alaska 99508, in and to the Lease previously set forth in Memorandum of Lease recorded September 2, 2020, at Serial No. 2020-021561-0, in the Palmer Recording District, Seward Meridian, Alaska, affecting the lease premises described as follows:

Phase 1 land: The Southwest 1/4 of Section 3, Township 17 North, Range 3 West, Seward Meridian, within the Palmer Recording District, Seward Meridian, Third Judicial District, State of Alaska;

Notice of Lease Amendment No. 1 is hereby given as follows specifically to sections of the Lease and the amendments.

Section 2.2 Lease Term. The lease term was extended for an additional two years expiring at 11:59 p.m. on August 31, 2054, unless earlier terminated as provided in the Lease.

Section 4. Rent.

Section 4.1.1 Year 1 through Year 4 – Development Stage. The Phase 1 Development Stage is amended from a two-year period to a four-year period to develop the land, interconnect to the utility grid, and operating as a solar utility by September 1, 2024.

Section 4.1.2 Year 5. This section is amended for the rent increase to occur in Year 5.

Section 4.1.3 Year 6 through Year 34. This section is amended to recognize the additional two years added to the lease term for a 34-year lease expiring at 11:59 p.m. on August 31, 2054.

This Memorandum of Lease, Amendment No. 1 is an incomplete document, including all terms and conditions as contained in the unrecorded Lease and amendment thereto. The Lease and amendment is available for inspection at the Matanuska-Susitna Borough Community

LESSOR:
Matanuska-Susitna Borough

Michael Brown, Manager Date

ACKNOWLEDGEMENT OF LESSOR

STATE OF ALASKA)
) ss.
Third Judicial District)

THIS IS TO CERTIFY that on this _____ day of _____ 2022, before me, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared Michael Brown, Borough Manager of the Matanuska-Susitna Borough, a municipal corporation, who is personally known to me, appeared and acknowledged before me that he signed the Memorandum of Lease, Amendment No. 1, for and on behalf of the municipal corporation, and acknowledge to me that he signed the same freely and voluntarily for the uses and purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

[SEAL]

Notary Public for State of Alaska
My commission expires: _____

Return to: MSB/L&RM
350 E. Dahlia, Avenue
Palmer, Alaska 99645