­­Site Lease

This Site Lease (“Lease”), dated as of [\_\_\_\_\_\_\_\_\_\_], 2021 (“Effective Date”), is entered into by and between [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], [a corporation, unmarried person, limited liability company, or a married couple], with a mailing address of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Lessor”), and **Pristine Sun Corporation**, a Delaware corporation, with a mailing address of 2625 Alcatraz Avenue, Suite 111, Berkeley CA 94705 (“Lessee”) (each a “Party” and collectively, the (“Parties”).

A. Lessee desires to design, permit, construct, operate and maintain a solar energy and/or renewable energy system that will generate electric power (the “EES”) on a portion of entire property owned or leased by Lessor, more particularly identified on Exhibit A-1 hereto, and commonly known by the address of [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, [City, CALIFORNIA, Zip] (the “Property”).

B. Lessor is willing to lease said portion of the Property (hereinafter defined as the Premises) to Lessee and to grant to Lessee certain appurtenant rights, all on the terms and conditions of this Lease, to enable Lessee to design, permit, construct, operate and maintain the EES on the Premises.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows:

# **Lease of Premises**. Lessor hereby leases exclusively to Lessee, and Lessee hereby leases from Lessor pursuant to the terms of this Lease, [the Property] [that portion of the Property] containing up to [\_\_\_\_\_\_\_\_] total acres and more particularly identified on Exhibit A-2 (the “Premises”), for the purpose of designing, permitting, constructing, operating and maintaining the EES. In addition, Lessor grants to Lessee the appurtenant rights of ingress to and egress from the Premises as provided in Paragraph 6 hereof and the right to use, extract and generate electricity from any underground geothermal resources on and adjacent to the Premises.

# **Term**.

## Initial Term. The initial term of this Lease (the “Initial Term”) shall commence on the date hereof and shall expire (subject to extension as hereinafter provided) on the earlier of (i) the commencement of the PPA Term, and (ii) the termination of the Initial Term in accordance with this Paragraph 2(a). The Initial Term shall be for an initial period expiring one (1) year from the date hereof. **Lessee shall have the unilateral right to extend the Initial Term automatically (without notice) for up to two additional one (1) year terms, provided that with respect to each such extension Lessee demonstrates, prior to the commencement of the extension periods, reasonably significant progress towards development of the EES.** Documentation of demonstrable progress may be requested by Lessor once the extension period has commenced. Lessee shall have the unilateral right to terminate this Lease at any time during the Initial Term (as the same may be extended in accordance with this Paragraph), without penalty, upon written notice to Lessor.

PPA IEDD

## PPA Term. The PPA Term (or equivalent) of this Lease (the “PPA Term”) shall commence sixty (60) days from Initial Energy Delivery Date (“IEDD”) or equivalent and shall expire on the date that is one hundred twenty (120) days after the expiration or termination of the power purchase or similar agreement, (the “PPA”), provided, however, the PPA shall not exceed a term of twenty (20) years without the prior consent of Lessor. Within one hundred twenty (120) days after any such expiration or termination of the PPA, Lessee, at its sole cost and expense, shall remove the EES. In connection with such removal, Lessor shall continue to provide Lessee (and its employees and contractors) with access to the Premises without payment of rent beyond the twenty (20) year period. Lessee shall confirm the PPA Term to Lessor in writing promptly following satisfaction or waiver of the foregoing conditions. As used herein, “Term” shall refer to the Initial Term and the PPA Term.

## Renewal. At the conclusion of the PPA Term, if the energy from the EES can still be sold at a reasonable price as determined by Lessee in its sole discretion, Lessee shall have the right to notify Lessor that Lessee elects to renew this Lease for an additional five (5) year period (the “Extension Period”). If, as of the commencement of the Extension Period, Lessee receives a price for the energy exceeding the rate per kWh in the initial PPA by at least ten percent (10%) (the “Rate”), Lessor shall receive an increase in Rent during the Extension Period calculated by multiplying the percentage increase of the Rate by the Rent provided below [example: a twenty percent (20%) increase in the Rate would increase Rent by twenty percent (20%)].

# **Rent**. Commencing on the date that is sixty (60) days following the commencement of the PPA Term, and continuing until expiration or termination of the PPA, Lessee shall pay Lessor rent equal to a fixed price, with no annual escalation, of one thousand two hundred dollars ($1,200 USD) per installed acre, per year (“Rent”). Lessor hereby acknowledges that the total amount of installed acreage will be determined by the as-built plan set. Rent calculations shall be based on actual installed pro-rata usage and will not be rounded to the nearest whole acre. Rent shall be paid quarterly, in arrears, based on estimated payments of one quarter (¼) of the annual Rent, on the first day of the calendar month following the expiration of the quarterly period. Partial months shall be included for purposes of determining quarterly payments.

# **EES Construction, Installation and Operation**.

## Consent Generally. Lessor hereby consents to the construction of the EES by Lessee on the Premises, including, without limitation, solar panels, solar thermal panels and related equipment (if applicable), geothermal systems and associated equipment, wind turbines and related equipment, support structure(s) (if applicable), solar panel mounting, racking, substrates or supports, wiring and connections, power inverters, service equipment, metering equipment and utility interconnection equipment. The EES shall be constructed in accordance with a plot plan prepared by Lessee and submitted to Lessor that shows the location, lay out and principal ancillary improvements to be constructed by Lessee as part of the EES (said plan, as revised in accordance with this Paragraph 4(a), is referred to as the “Plot Plan Document”). Lessee shall submit the Plot Plan Document to Lessor within the first six (6) months of the Initial Term. Lessee may revise the Plot Plan Document so long as the solar array is maintained within the Premises at any time prior to the commencement of the PPA Term.

## Consent to Appurtenant Rights. Lessee also shall also have the right from time to time during the term hereof: (i) to install and operate the EES on the Premises; (ii) to maintain, clean, repair, replace and dispose of part or all of the EES; (iii) to add or remove the EES or any part thereof; (iv) to access the Premises and Property with guests for promotional purposes during customary business hours and at other times as are acceptable to the Lessor in its reasonable business judgment; and (v) to perform all tasks necessary or appropriate, as reasonably determined by Lessee, to carry out the activities permitted in this Lease or to carry out Lessee’s obligations under the PPA. During the course of construction and installation of the EES, and during any period of maintenance and repair, Lessee and its contractors shall have the right to utilize electrical power generators on-site and fuel to operate the same.

# **Insurance and Indemnification**.

## Insurance. Lessee shall, at Lessee’s expense, obtain and keep in force during the term of this Lease a policy of Commercial General Liability insurance utilizing an Insurance Services Office standard form with Broad Form General Liability Endorsement (CL00011188), or equivalent, on an occurrence basis, in an amount not less than one million dollars ($1,000,000 USD) combined single limit per occurrence/aggregate of bodily injury and property damage, and shall insure Lessee and Lessor against liability arising out of the use and occupancy of the Premises and the operation of the EES. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an “insured contract” for the performance of Lessee’s indemnity obligations under this Lease. In addition, during the course of construction and installation of the EES, Lessee and/or its general contractor shall maintain builder’s risk insurance and worker compensation and employer liability insurance (with such coverages as may be required by applicable law) as to all employees working at the Property. Lessee, at its sole cost and expense, shall insure the EES against loss from casualty. Lessor is not required to buy any insurance coverage with respect to the EES. At the time of EES construction commencement Lessee shall cause a bond to be placed to cover decommissioning or EES removal in the event of Lessee’s non-ability to decommission.

## Indemnification. Lessee shall indemnify and hold harmless Lessor against and from any and all liability, loss, damage, claims, demands, costs and expenses of whatsoever nature, including court costs and attorneys’ fees, arising from or growing out of any injury or death of persons whomsoever (including officers, agents and employees of the Lessor, of the Lessee and of any subcontractor as well as other persons) or loss of or damage to any tangible personal property (including property of or in the custody of Lessor) when such injury, death, loss or damage arises from: the construction or installation of the EES; the negligence of Lessee, its agents and employees; or a breach of any covenant or obligation of Lessee under this; provided, however, that:

### Lessee shall not indemnify Lessor when the loss is caused by the negligence of Lessor and in cases of joint or concurrent negligence, each party shall be responsible to the extent of its respective negligence.

### Lessee shall have no liability for any claim, loss, damage or injury arising out of acts or omissions taken at the request or direction of authorized personnel employed by Lessor.

### Lessee shall not be responsible for any claim that may give rise to an indemnification requirement unless it receives notice of such claim within thirty (30) days from first notice of claim received by the Lessor.

### Lessee shall not be responsible for any consequential, indirect, special or punitive damages, whether arising out of any injury or damage to, or interference with, Lessor’s business, loss of goodwill or loss of use of the Property.

## Waiver of Subrogation. Lessee and Lessor each hereby agree to cause the insurance companies issuing their respective first party insurance to waive any subrogation rights that such insurers may have against Lessor and Lessee, respectively, as long as the insurance is not invalidated by such waiver. If such waivers of subrogation are contained in their respective insurance policies, Lessor and Lessee each waive, release and relieve the other, and waive their entire right to recover damages (whether in contract or in tort) against the other, for loss of or damage to the waiving party’s property situated on the Property (including the Premises) arising out of or incident to the perils insured against under their respective first party insurance policies.

# **Access to Property**.

## General Access. Lessor shall provide Lessee with access to the Property and the Premises as reasonably necessary to allow Lessee to design, construct, operate and maintain the EES as contemplated in the PPA and the IA, including ingress and egress rights to the Premises for Lessee and its employees, contractors and sub-contractors and access to solar panels and conduits to interconnect the EES with the Property’s electrical wiring. Lessor shall use commercially reasonable efforts to provide sufficient space for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities as reasonably necessary. Lessor shall provide Lessee a reasonable area for construction laydown. Lessor and its authorized representatives shall at all times have access to and the right to observe the installation work, subject to compliance with Lessee’s safety rules, but shall not interfere with such installation work or handle any Lessee equipment or the EES without written authorization from Lessee.

## Ingress and Egress Easement.  If and to the extent the Premises does not have direct access to an existing public right of way, Lessor grants to Lessee an easement for ingress and egress over a portion of the Property which may generally be shown on the Plot Plan Document for ingress and egress to the public right of way identified thereon, together, with the right to install above and underground pipes and conduits to interconnect the EES to the Public Utility’s closest interconnection point along said right of way. The Common Roadway is any private gravel or paved roadways on Property that are used primarily by the Lessor and occasionally by the Lessee for ingress and egress to and from EES (hereinafter the “Common Roadway”).  Where access to the EES via a public right of way and an existing Common Roadway both exist on Property, Lessee shall have the option to utilize the most feasible route to the EES.  Lessor shall be responsible for maintaining the Common Roadway, at its sole cost and expense.  Lessee, at its sole cost and expense, shall be responsible for building and maintaining any gravel or paved roadway from a public right of way to the EES when a Common Roadway does not exist or between the Common Roadway and the EES.

# **Ownership of EES and Renewable Energy Benefits**.

## Lessor acknowledges and agrees that, as between Lessor and Lessee, (i) Lessee or one of its affiliates is the exclusive owner and operator of the EES, (ii) the EES and any and all Renewable Energy Benefits and Renewable Energy Incentives associated therewith shall remain the personal property of Lessee, (iii) no component of the EES shall become a fixture, notwithstanding the manner in which the EES is or may be attached to any real property of Lessor, and (iv) Lessor shall have no right, title or interest in any EES or any component thereof or any Renewable Energy Benefits. As used herein, “Renewable Energy Benefits” means any and all international, federal, state, local, voluntary or other credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the EES, electricity generation from the EES, and/or its displacement of conventional energy generation. Renewable Energy Benefits include but are not limited to renewable energy credits as defined in California Public Utilities Code Section 399.12 (or any similar definition under the state in which the Premises is located if the Premises is located in a state other than the State of California), as well as: (i) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (ii) any avoided emissions of carbon dioxide (CO2), methane (CH4) nitrous oxide, hydrofluoro carbons, perfluoro carbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by applicable law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions such as Green Tag Reporting Rights. “Green Tag Reporting Rights” are the right of a purchaser of a Green Tag to report the ownership of accumulated Green Tags in compliance with applicable law, if applicable, and to a federal or state agency or any other party at the Green Tag purchaser’s discretion, and include without limitation those Green Tag reporting rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local applicable law, regulation or bill, and international or foreign emissions trading program. “Green Tags” are accumulated on MWh basis and one Green Tag represents the Renewable Energy Benefits associated with one (1) MWh of energy. “Renewable Energy Incentives” means (a) federal, state, or local tax credits associated with the construction, ownership, or production of electricity from the EES (including credits under Sections 45 and 48 of the Internal Revenue Code of 1986, as amended), or any governmental payments made in lieu of such tax credits (such as those described in Section 1603 of division B of the American Recovery and Reinvestment Act of 2009); (b) any federal, state or local grants, rebates, feed-in tariffs, subsidized financing or any other subsidy relating to the EES or the output thereof; and (c) any other form of incentive that is not a Renewable Energy Benefit that is available with respect to the EES.

# **Representations, Warranties and Covenants of Lessor**.

## Authorization. Lessor represents, warrants and covenants that (i) Lessor has been duly authorized to enter into this Lease by all necessary action and has received all necessary third party consents to enter into this Lease, and (ii) the execution, delivery and performance by Lessor under this Lease shall not result in or constitute a default by Lessor under any agreement to which it is a party (including any lease in respect of the Premises or Property as to which Lessor is the tenant).

## Title to Property and Protection of Lessee’s Rights in Lease and EES.

### Quiet and Peaceful Possession. Lessor represents, warrants and covenants that Lessor has lawful title to (or a valid leasehold interest in) the Property free and clear of all liens and other interests except for those liens and other interests (if any) identified on Exhibit A to this Lease, and that Lessee’s quiet and peaceful possession of the Premises shall be free and without hindrance or interference from any claim of any entity or person of superior title thereto, throughout the Term of this Lease.

### Agreements from Lessor’s Landlord(s). To the extent Lessor’s interest in the Property or any portion thereof is a leasehold interest, Lessor shall within fifteen (15) days of Lessee’s written request, cause each landlord (each, a “Lessor’s Landlord”) of each such portion of the Property to execute and deliver documentation in form and substance reasonably acceptable to Lessee pursuant to which such Lessor’s Landlord acknowledges and agrees that (A) Lessor’s Landlord consents to this Lease and the rights and benefits of Lessee under this Lease, (B) this Lease and the rights and benefits of Lessee under this Lease run with the land comprising the Premises throughout the Term, notwithstanding any sale, lease, transfer, assignment, mortgage, pledge or other alienation or encumbrance by such Lessor’s Landlord of the Premises or Property, and (C) in the event Lessor’s leasehold interest with Lessor’s Landlord expires or is terminated prior to the date this Lease expires or is terminated, this Lease shall remain in full force and effect and Lessor’s Landlord shall recognize Lessee and its successors and assigns (including, without limitation, any of Lessee’s Lender’s) as Lessor’s Landlord’s direct tenant under the terms of this Lease. Lessee shall not be required to pay Rent to Lessor (and the same shall be held as accrued but unpaid) until such time as the foregoing agreements are delivered to Lessee.

### Agreements from Current Holders of Security Interests or Liens. Lessor shall give written authorization for Lessee to obtain a Subordination, Attornment and Non-Disturbance Agreement (“SNDA”). Lessor shall also duly assist Lessee in obtaining such SNDA by providing necessary documents and other requirements in a timely manner. SNDA’s shall be obtained in recordable form from any third party who now has a security interest or lien on the Premises or Property, including, without limitation, any lenders to Lessor or Lessor’s Landlord (individually and collectively, a “Property Lender”), pursuant to which each Property Lender (A) acknowledges and consents to this Lease and the rights and benefits of Lessee under this Lease, (B) acknowledges and agrees that this Lease and the rights and benefits of Lessee under this Lease shall not terminate or be disturbed by virtue of a foreclosure (or assignment in lieu thereof) of any security interest or lien of said Property Lender encumbering the Premises or Property, and (C) acknowledges and agrees that the EES, the Renewable Energy Benefits and the Renewable Energy Incentives are the personal property of Lessee and that the third party has no lien or other interest in the EES, the Renewable Energy Benefits or the Renewable Energy Incentives.

## No Interference with EES. Lessor shall not conduct any activities on, in or about the Premises (including, without limitation, making alterations, additions or improvements) without Lessee’s prior written consent. In addition, Lessor shall not conduct any activities (including, without limitation, making alterations, additions or improvements) on, in or about any portions of the Property outside the Premises that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the EES. Lessor shall take all reasonable steps to limit access to the Premises to Lessee and Lessee’s employees, invitees, agents and representatives. Lessee may, at its sole cost and expense, construct a fence around ground mounted EES equipment and provide and maintain video surveillance to increase security around the EES.

## Maintenance of Premises and Property. Lessor shall keep the areas of the Property surrounding the Premises in neat, clean and good order and condition to the extent necessary for Lessee to operate and maintain the EES in accordance with the PPA, and shall comply with all laws and ordinances applicable to the Property. Nothing herein shall require Lessor to maintain the EES. Lessor shall give Lessee prompt notice of any damage to or defective condition in any part or appurtenance of the Property that may affect the EES, including the means of ingress to and egress from the Premises.

## Vegetation and Grazing. Without limiting the generality of the foregoing, Lessor, at its sole cost and expense, will maintain any vegetation in areas surrounding the Premises in a condition that reduces the danger of fire, wind, soil erosion and damage from the elements to the extent the failure to take reasonable appropriate action might be expected to result in damage to the EES on the Premises. In addition, provided Lessor obtains the prior approval of Lessee to a farming plan (which approval Lessee shall not unreasonably withhold, condition or delay), Lessor may continue farming operations on the Premises during the Initial Term as long as the crop harvest is completed thirty (30) days prior to the construction start date. Lessor agrees to cooperate with Lessee in implementing commercially reasonable maintenance and farming operations requested by Lessee to implement the foregoing safety practices.

## Taxes. Lessor shall pay all real property taxes levied on the Property (including the Premises) during the Term of this Lease, prior to delinquency.

## Insolation. Lessor acknowledges and agrees that access to sunlight (“insolation”) is essential to the value to Lessee of the leasehold interest granted hereunder and is a material inducement to Lessee in entering into this Lease. Accordingly, Lessor shall not permit any interference with insolation on and at the Premises. Without limiting the foregoing, Lessor shall not construct or permit to be constructed any structure on the Property that could adversely affect insolation levels, wind flows or underground geothermal resources, permit the growth of foliage that could adversely affect insolation levels, or emit or permit the emission of suspended particulate matter, smoke, fog or steam or other air-borne impediments to insolation or wind flows. If Lessor becomes aware of any potential development or other activity on adjacent or nearby properties that could diminish the insolation to the Premises, Lessor shall advise Lessee of such information and reasonably cooperate with Lessee to preserve existing levels of insolation at the Premises. Notwithstanding any other provision of this Lease, the Parties agree that (i) Lessee would be irreparably harmed by a breach of the provisions of this Paragraph 8(g), (ii) an award of damages would be inadequate to remedy such a breach, and (iii) Lessee shall be entitled to equitable relief, including specific performance, to compel compliance with the provisions of this Paragraph 8(g).

## Property Conditions. Lessor represents and warrants that Lessor is unaware of any site conditions or construction requirements (i) that would materially increase the cost of installing the EES at the planned locations on the Premises or would materially increase the cost of maintaining the EES at the Premises over the cost that would be typical or customary for solar photovoltaic systems substantially similar to the EES or (ii) that would adversely affect the ability of the EES as designed to produce electricity once installed. Lessee will provide light/general grading of the Premises to facilitate construction of the EES.

## Interconnection Point. Lessor hereby grants Lessee full access to any utility interconnection point on the Property for the purposes of constructing, operating and maintaining the EES. Lessee shall pay for all costs associated with interconnecting the EES to the interconnection point, including any upgrades required by the electric utility.

## Water. In the event that running water is available on or adjacent to the Premises, Lessor shall provide access to this water to Lessee, as needed, and Lessor shall charge Lessee for the actual use of the water by Lessee, including but not limited to cleaning the solar modules or watering Lessee’s vegetation within the Premises, at the actual rate for water usage by Lessor.

## Right of First Refusal. Lessor hereby grants Lessee a right of first refusal to purchase the property, for the term of the Site Lease agreement, or until termination of the right of occupancy. Should Lessor decide to sell the property during the term of the Lessee’s right of first refusal, Lessor shall notify Lessee of any bona fide third party offer. Lessee shall have the option for a period of fifteen (15) days after receipt of written notice to provide notice of intent to purchase at a price not less than the offer received by Lessor. Should Lessee fail to close on the purchase of the property within three (3) months from the time of Lessee’s notice of intent to purchase, Lessor shall have the right to sell the property to a third party on the same terms stated in the notice to Lessee. If Lessor does not close a sale of the property within three (3) months after Lessee’s first receipt of a bona fide third party offer, the Lessee’s right of first refusal shall be reinstated.

# **Representations, Warranties and Covenants of Lessee**.

## Authorization. Lessee represents, warrants and covenants that (i) Lessee has been duly authorized to enter into this Lease by all necessary action and has received all necessary third party consents to enter into this Lease, and (ii) the execution, delivery and performance by Lessee under this Lease shall not result in or constitute a default by Lessee under any agreement to which it is a party.

## Maintenance and Repair. Lessee shall, at its sole cost and expense, maintain the EES in accordance with the PPA, and shall repair any damage to the Premises and Property which is caused by the EES or the acts of Lessee’s employees, agents or contractors, ordinary wear and tear excepted. Lessee shall comply with all rules, regulations, ordinances and other laws applicable to the Premises; provided, however, in no event shall Lessee be required to construct, install or make any capital improvements to the Premises.

## Vegetation and Grazing. Lessee, at its sole cost and expense, shall be responsible for the maintenance of any vegetation planted by Lessee on the Premises. Any such vegetation shall be subject to the prior approval of Lessor, not to be unreasonably withheld.

## Taxes. Lessee shall pay all taxes and assessments levied or assessed against its personal property located on the Premises, including, without limitation the EES, and all other, taxes, assessments or other public charges assessed or imposed by reason of the PPA or the conduct of Lessee’s business, including, but not limited to, sales and income taxes.

# **Hazardous Materials**. To the best of Lessor’s knowledge (after due inquiry and investigation), Lessor represents and warrants there are no substances, chemicals or wastes, identified as hazardous, toxic or dangerous materials under any applicable law or regulation, present on, in or under the Property in violation of any applicable law or regulation. Lessor shall not introduce or use any hazardous, toxic or dangerous materials on, in or under the Property in violation of any applicable law or regulation. If Lessor becomes aware of any such hazardous, toxic or dangerous materials, Lessor shall promptly notify Lessee of the type and location of such materials in writing. Lessor agrees to assume full responsibility for (and protect, indemnify and defend Lessee against) any liability or cleanup obligations for any contamination or pollution or breach of environmental laws related to the Property, unless directly attributable to the actions of Lessee. Lessee shall not use, generate store, dispose of or cause to be released any hazardous materials from the Premises (or in connection with the operation or maintenance of the EES) in violation of applicable law or regulation. If, due to the actions of Lessee, hazardous materials are released, generated, stored, or disposed of in violation of applicable law or regulation, Lessee shall be solely responsible for any remediation required as a result thereof, unless directly attributable to the negligent actions of Lessor.

# **Casualty or Condemnation**. In the event the Premises or Property is so damaged or destroyed so as to make the use of the Premises impractical as determined by Lessee, then, provided that Lessee is also terminating the PPA in connection with such damage or destruction, Lessee may elect to terminate this Lease on not less than twenty (20) days’ prior notice to Lessor effective as of a date specified in such notice, and on the date so specified, this Lease shall expire as fully as if such date were the date set forth above for the expiration this Lease. If Lessee does not elect to terminate this Lease pursuant to the previous sentence, Lessor shall exercise commercially reasonable efforts to repair the damage to the Premises and return the Premises to its condition prior to such damage or destruction, and except that Lessor shall in no event be required to repair, replace or restore any property of Lessee comprising part of the EES, which replacement or restoration shall be Lessee’s responsibility pursuant to the terms of the PPA. In the event of an award related to eminent domain or condemnation of all or part of the Premises, each Party shall be entitled to take from such an award that portion as allowed by law for its respective property interest appropriated as well as any damages suffered thereby.

# **Assignment**.

## Consent Required Generally. Except as provided in Paragraph 12(b), neither Party shall have the right to assign any of its rights, duties or obligations under this Lease without the prior written consent of the other Party. Such consent shall not be unreasonably withheld or delayed. Except as hereinafter provided, any assignee of a Party under this Lease shall be deemed to assume the obligations of the assignor, and therefore shall be bound by the terms of this Lease as if said Party was an initial party hereto, provided that any third party receiving a collateral assignment of this Lease for security shall not be required to assume the obligations of a Party under this Lease unless and until such third party succeeds to the interest of said Party under this Lease, in which case such party shall only be deemed to assume and be responsible for the obligations of a Party under this Lease for the period of its ownership of the interest so acquired.

## Transfers without Consent. Lessor may, in its sole discretion and without the consent of Lessee, assign any of its rights, duties or obligations under this Lease to a party to whom Lessor’s fee simple interest or leasehold interest in the Property is being transferred; provided that Lessor shall give Lessee at least fifteen (15) days’ prior written notice of such transfer. Lessee may in its sole discretion and without the consent of Lessor, assign any of its rights, duties or obligations under this Lease (i) to one or more of its affiliates, including, without limitation, any special purpose entity formed to hold the EES, (ii) to one or more Financing Parties in connection with an assignment (collateral or otherwise), encumbrance, hypothecation, mortgage or pledge (including by mortgage, deed of trust or personal property security instrument) of all or any portion of its right, title or interest under this Lease and/or in the EES, (iii) to any person or entity succeeding to all or substantially all of the assets of Lessee at the Premises or Property, or (iv) to a successor entity in a merger or acquisition transaction.

## Financing Party. As used in this Lease, “Financing Party” shall mean any person or entity (a) providing senior or subordinated construction, interim or long-term debt or equity financing or refinancing to Lessee and/or its permitted assignees or affiliates for or in connection with the development, construction, purchase, installation or operation of the EES, whether that financing or refinancing takes the form of private debt, public debt or any other form (including debt financing or refinancing), including any equity and tax investor directly or indirectly providing financing or refinancing for the EES or purchasing equity ownership interests of Lessee and/or its permitted assignees or affiliates, and any trustee or agent acting on their behalf, (b) providing interest rate protection agreements to hedge any of the foregoing obligations and/or (c) participating in a leasing structure (including any sale leaseback or leveraged leasing structure) with respect to the EES.

# **Defaults and Remedies**.

## Default by Lessor. If Lessor fails to perform Lessor obligations as defined in this Site Lease Agreement (and any failure to pay third-party obligations which result in mortgage defaults and/or property liens), an event of default has occurred (an “Event of Default”). Lessor shall give Notice to Lessee within five (5) business days of any Event of Default. If Lessor fails to perform its obligations hereunder, Lessor shall not be in default unless Lessor fails to perform such obligation within thirty (30) days after the receipt of notice from Lessee specifying in detail Lessor’s failure to perform. Upon the occurrence of an Event of Default, Lessee shall be entitled to exercise any and all remedies available to it at law or in equity, including the right to terminate this Lease. Such remedies shall include the right to specific performance by Lessor of obligations that have not been paid or performed as required hereunder, and to obtain (i) subrogation rights therefore and (ii) immediate reimbursement or rental payment deductions from Lessor for the actual, reasonable and verifiable out-of-pocket costs of such payment or performance.

## Default by Lessee. If Lessee fails to perform its obligations hereunder, Lessee shall not be in default unless Lessee fails to perform such obligation within thirty (30) days after the receipt of notice from Lessor specifying in detail Lessee’s failure to perform. However, if the nature of Lessee’s obligation is such that more than thirty (30) days are reasonably required for its performance, Lessee shall not be in default hereunder if it shall commence such performance within such thirty (30) day period and thereafter diligently pursue the same to completion. The obligations of Lessee under this agreement shall not constitute the personal obligations of the partners, directors, members, officers or shareholders of Lessee. Any recovery by Lessor shall be limited to Lessee’s interest in the EES to the exclusion of any other assets of Lessee for satisfaction of any liability arising out of this agreement.

# **Notices**. Any notice required or permitted to be given under this Lease shall be given in writing and shall be sent to the address of the Party as listed herein on page one, as may be updated by either Party upon written notice to the other Party within five (5) days of any change. Notices shall be delivered by hand delivery, express courier, facsimile or electronic mail (so long as a copy of such electronic mail notice is provided thereafter by hand delivery or express courier). Except as may otherwise be specified in this Lease, all notices, requests, statements, and other communications shall be deemed to have been duly given on (i) the date of delivery if delivered by hand or by express courier, (ii) the time stamp upon delivery if sent by electronic mail (provided, however, any notice time stamped after 5:00 p.m., Pacific time, shall be deemed received on the next day), (iii) date of receipt of a time-stamped, legible copy thereof if sent by facsimile (provided, however, any notice time stamped after 5:00 p.m., Pacific time, shall be deemed received on the next day), or (iv) the earlier of the dates set forth in the above-referenced options (i), (ii) and (iii) if delivery is made by more than one of such means.

# **Waiver**. The waiver by either Party of any breach of any term, condition, or provision herein contained shall not be deemed a waiver of such term, condition, or provision, or any subsequent breach of the same, or any other term, condition, or provision contained herein.

# **No Third Party Beneficiaries**. This Lease is solely for the benefit of the Parties hereto and no right or cause of action shall accrue by reason hereof for the benefit of any third party not a party hereto, other than Lessee’s Lenders.

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

# **Choice of Law**. This Lease shall be construed in accordance with the laws of the State of California (without regard to its conflict of laws principles).

# **Binding Effect**. This Lease and its rights, privileges, duties and obligations shall inure to the benefit of and be binding upon each of the parties hereto, together with their respective successors and permitted assigns.

# **Counterparts**. This Lease may be executed in counterparts, which shall together constitute one and the same agreement. Facsimile or “pdf” signatures shall have the same effect as original signatures and each Party consents to the admission in evidence of a facsimile or photocopy of this Lease in any court or arbitration proceedings between the parties.

# **Entire Agreement**. This Lease represents the full and complete agreement between the Parties with respect to the subject matter contained herein and supersedes all prior written or oral agreements between said parties with respect to said subject matter. In the event of any conflict between the provisions of this Lease and the provisions of the PPA, the provisions of the PPA shall govern and control. All exhibits attached to this Lease are incorporated into this Lease by this reference.

# **Further Assurances**. Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary to carry out the terms and intent expressed herein. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Paragraph. After the mutual execution of this Lease by Lessor and Lessee, and before commencement of any construction, Lessor shall execute and deliver a memorandum of this Lease in the form attached hereto as Exhibit B for recording in the title records of the county where the Premises are located or other applicable government office.

# **Provisions Benefiting Lessee’s Lenders**. Each financing-transaction assignee of Lessee (a “Lessee’s Lender”) shall have the express benefit of the provisions set forth on Exhibit C attached hereto.

# **Estoppel**. Either Party hereto, without charge, within ten (10) business days after receipt of a written request by the other Party hereto, shall deliver a written instrument, duly executed, certifying to such requesting Party, or any other person, firm or corporation specified by such requesting Party: (i) that this Lease is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification; (ii) whether or to the knowledge of any such Party, there are any offsets or defenses in favor of such Party against enforcement of any of the terms, covenants and conditions of this Lease and, if so, specifying the same and also whether or not to the knowledge of such Party the other Party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same; and (iii) such other information as may be reasonably requested by a Party hereto. The recipient of such instrument may reasonably rely upon any written instrument given hereunder, except to the extent the recipient has actual knowledge of facts contained in the certificate.

# **Mediation and Arbitration.**

# *This contract contains a binding arbitration provision (after exhausting mediation efforts), which affects your legal rights and may be enforced by the parties. Lessor and Lessee agree that, by entering into this Agreement, both are waiving the right to a trial by jury or to participate in a class action. This provision is to be interpreted broadly and applies to claims that may arise after the termination or expiration of this agreement.*

 (a) Mediation. Any claim, controversy or dispute between the parties arising out of or relating to this agreement, or to the interpretation or breach thereof, or to the existence, scope, or validity of this agreement, shall first be resolved through mediation. Mediation shall be in accordance with the then effective rules of (and by filing a claim with) the Judicial Arbitration and Mediation Services, Inc. (JAMS). Parties agree that the forum for mediation will be the state of California to the exclusion of all others.

# (b) Arbitration. If mediation does not conclude with a settlement agreement within fifteen (15) days of the initial mediation hearing, either Party may initiate the arbitration process. Arbitration shall be in accordance with the then effective arbitration rules of (and by filing a claim with) the Judicial Arbitration and Mediation Services, Inc. (JAMS), and any judgment upon the award rendered pursuant to such arbitration may be entered in any court having jurisdiction thereof. Parties agree that the forum for arbitration will be the state of California to the exclusion of all others. The arbitrator may award declaratory or injunctive relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. Lessor and lessee agree that each may bring claims against the other only in their individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding. Further, unless both lessor and Lessee agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. Parties agree the ruling of the arbitrator shall be final and binding. Each party shall be responsible for its respective share of the arbitration fees in accordance with the applicable Rules of Arbitration.  In the event a party fails to proceed with arbitration, unsuccessfully challenges the arbitrator's award, or fails to comply with the arbitrator's award, the other party is entitled to costs of suit, including a reasonable attorney's fee for having to compel arbitration or defend or enforce the award.

**26. Legal Fees.** Subject to the terms of Paragraph 25, the prevailing party in any litigation or arbitration arising out of, or relating to, this Lease shall be entitled to an award of its reasonable attorneys’ fees and costs.

[Signatures Appear on Next Numbered Page]

IN WITNESS WHEREOF, the Parties have executed this Lease on the day and year first above written.

“Lessor”

[ ,

a ]

By:

Name:

Title:

Email:

Date:

[ ,

a ]

By:

Name:

Title:

Email:

Date:

“Lessee”

PRISTINE SUN CORP,

a Delaware corporation

By:

Name:

Title:

Email: info@pristinesun.com

Date:

**EXHIBIT A**

**Encumbrance Disclosure**

**Mortgage Disclosure:**

Mortgage Lender’s Name ­ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_ \_

Loan/Account # \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_ \_

Borrower Name(s)  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

Mortgage Balance \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_

**Other Lien Disclosure:**

Lien Holder’s Name ­ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_ \_

Account/Ref # \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_ \_

Lien Balance \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_

**EXHIBIT A-1**

**Description of Property**

The Property of which the Premises is a part is described as follows:

 **Physical address**

**Street:**

**City / State / Zip:**

The legal description of the Property and a copy of the Grant Deed evidencing Lessor’s fee interest in the Property is attached to this Exhibit.

**Legal Description of the Property:**

**EXHIBIT A-2**

**Description of Premises**

The EES shall be located on that portion of the Property described below.

 **Physical address**

**Street:**

**City / State / Zip:**

**Latitude:** **Longitude:**

**Description of the Premises:**

**EXHIBIT A-3**

**SNDA Letter**

[Date]

[Mortgage Lender]

Attn: Legal Department

**RE: SNDA for Loan #: [Mortgage Loan]**

To Whom It May Concern,

I/We, [Borrower Name], authorize [Mortgage Lender] to speak with representatives from Pristine Sun Corporation (“Solar Array Owner”), their subsidiaries, and/or legal counsel, in order to obtain a Subordination, Non-Disturbance, and Attornment Agreement (“SNDA”) for my property located at [Street Address, City, State Zip],

Sincerely,

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

Signature

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

Name

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

Signature

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

Name

**EXHIBIT B**

**Memorandum of Lease**

**RECORDING REQUESTED BY**

|  |  |
| --- | --- |
| **AND WHEN RECORDED MAIL TO:**Pristine Sun Corporation2625 Alcatraz Ave, Suite 111Berkeley, California 94705 |  |

 Space above this line for Recorder’s use

**MEMORANDUM OF LEASE**

**THE UNDERSIGNED DECLARES THAT DOCUMENTARY TRANSFER TAX IS $ -0-  RECORDATION EXEMPTION PER R&T CODE 11911- LEASE TERM LESS THAN 35 YEARS**

THIS MEMORANDUM OF LEASE (“Memorandum”) is dated as of [\_\_\_\_\_\_\_\_\_\_, 20\_\_] and is entered into by and between Pristine Sun Corporation, a Delaware corporation (“Lessee”), and [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_], a [individual, corporation, limited liability company (select one)] (“Lessor”).

RECITALS

A. Lessor is the owner of certain real property located at [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] (“Property”).

B. On [\_\_\_\_\_\_\_\_\_\_\_\_], Lessor and Lessee executed a certain Site Lease (“Lease”) pertaining to certain premises (“Premises”) that are a portion of the Property, more particularly described on Exhibit A attached hereto and incorporated herein by this reference.

NOW, THEREFORE, Lessor and Lessee hereby agree as follows:

1. Lease of Premises. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises upon all of the terms, covenants and conditions set forth in the Lease. The Lease contains certain appurtenant rights, including easements across adjacent property.

2. Term. The unrecorded Lease commenced on [ ] and shall continue until expiration on [ ] or earlier termination of the term as provided in the Lease. The Lease has a Twenty year Term with one Five year Term extension option.

3. Incorporation by Reference. The purpose of this Memorandum is solely to provide notice of the existence of the Lease. The Lease is incorporated herein by this reference, and words and phrases used in this Memorandum which are not defined herein shall have the meanings given to them in the Lease. In the event, and to the extent, that any of the terms or provisions of this Memorandum are inconsistent with the terms or provisions of the Lease, the terms and provisions of the Lease shall govern and prevail.

[Signatures Appear on Next Page]

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum.

“Lessor” [ ,

a

By:

Name:

Title:

Date:

By:

Name:

Title:

Date:

“Lessee” PRISTINE SUN CORP, a Delaware corporation

By:

Name:

Title:

Date:

STATE OF CALIFORNIA }

 } S.S.

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ }

On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, before me, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a notary public personally

appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_who proved to me on the basis of satisfactory evidence to be the person(s) whose name is / are subscribed to the within instrument and acknowledged to me that he / she / they executed the same in his / her / their authorized capacity(ies), and that by his / her / their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the following is true and correct.

WITNESS my hand and official seal.

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

 Signature of Notary Public (Notary Seal)

STATE OF CALIFORNIA }

 } S.S.

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_}

On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, before me, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a notary public personally

appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_who proved to me on the basis of satisfactory evidence to be the person(s) whose name is / are subscribed to the within instrument and acknowledged to me that he / she / they executed the same in his / her / their authorized capacity(ies), and that by his / her / their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the following is true and correct.

WITNESS my hand and official seal.

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

 Signature of Notary Public (Notary Seal)

STATE OF CALIFORNIA }

 } S.S.

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_}

On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, before me, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a notary public personally

appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_who proved to me on the basis of satisfactory evidence to be the person(s) whose name is / are subscribed to the within instrument and acknowledged to me that he / she / they executed the same in his / her / their authorized capacity(ies), and that by his / her / their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the following is true and correct.

WITNESS my hand and official seal.

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

 Signature of Notary Public (Notary Seal)

EXHIBIT A to MEMORANDUM OF LEASE

PROPERTY

That certain land situated in the County of \_\_\_\_\_, State of California, and legally described as follows:

[INSERT LEGAL DESCRIPTION]

**EXHIBIT C**

**Provisions Benefiting Lessee’s Lenders**

**1.** Notice of Default and Cure. As a precondition to exercising any rights or remedies as a result of any default or alleged default by Lessee, Lessor shall deliver a duplicate copy of the applicable notice of default to each Lessee’s Lender concurrently with delivery of such notice to Lessee, specifying in detail the alleged Event of Default and the required remedy, provided Lessor was given notice of such Lessee’s Lender. Each Lessee’s Lender shall have the same period after receipt of a notice of default to remedy an Event of Default, or cause the same to be remedied, as is given to Lessee after Lessee’s receipt of a notice of default under the Lease, plus, in each instance, the following additional time periods: (i) ten (10) business days in the event of any monetary Event of Default; and (ii) sixty (60) days in the event of any non-monetary Event of Default; provided, however, that (A) such sixty (60)-day period shall be extended for the time reasonably required by such Lessee’s Lender to complete such cure, including the time required for such Lessee’s Lender to obtain possession of the EES (including possession by a receiver), institute foreclosure proceedings or otherwise perfect its right to effect such cure and (B) such Lessee’s Lender shall not be required to cure those Events of Default which are not reasonably susceptible of being cured or performed (“Non-Curable Defaults”).

**2.** Deemed Cure; Extension. If any Event of Default by Lessee cannot be cured without obtaining possession of all or part of the EES and/or the leasehold estate created by the Lease (the “Leasehold Estate”), then any such Event of Default shall nonetheless be deemed remedied if: (i) within sixty (60) days after receiving the notice of default, a Lessee’s Lender acquires possession thereof, or commences appropriate judicial or nonjudicial proceedings to obtain the same; (ii) such Lessee’s Lender is prosecuting any such proceedings to completion with commercially reasonable diligence; and (iii) after gaining possession thereof, such Lessee’s Lender performs all other obligations as and when the same are due in accordance with the terms of the Lease. If a Lessee’s Lender is prohibited by any process or injunction issued by any court or by reason of any action of any court having jurisdiction over any bankruptcy or insolvency proceeding involving Lessee from commencing or prosecuting the proceedings described above, then the sixty (60)-day period specified above for commencing such proceedings shall be extended for the period of such prohibition.

**3.** Right to Possession, Right to Acquire; Right to Assign and Recognition. Each Lessee’s Lender shall have the absolute right to do one, some or all of the following things: (i) assign its Lessee’s Lender’s Lien; (ii) enforce its Lessee’s Lender’s Lien; (iii) acquire title (whether by foreclosure, assignment in lieu of foreclosure or other means) to the Leasehold Estate; (iv) take possession of and operate the EES or any portion thereof and perform any obligations to be performed by Lessee under the Lease, or cause a receiver to be appointed to do so; (v) assign or transfer the Leasehold Estate to a third party; or (vi) exercise any rights of Lessee under the Lease. Lessor’s consent shall not be required for any of the foregoing; and, upon acquisition of the Leasehold Estate by a Lessee’s Lender or any other third party who acquires the same from or on behalf of the Lessee’s Lender or any purchaser who purchases at a foreclosure sale, Lessor shall recognize the Lessee’s Lender or such other party (as the case may be) as Lessee’s proper successor, and the Lease shall remain in full force and effect.

**4.** Lessee’s Lender’s Consent; Further Amendments. Notwithstanding any provision of the Lease to the contrary, (i) Lessor shall not agree to a modification or amendment of the Lease if the same could reasonably be expected to materially reduce the rights or remedies of a Lessee’s Lender or impair or reduce the security for its Lessee’s Lender’s Lien and (ii) Lessor shall not accept a surrender of the EES or any part thereof or a termination of the Lease without the prior written consent of each Lessee’s Lender. At Lessee’s request, Lessor shall amend the Lease to include any provision that may reasonably be requested by an existing or proposed Lessee’s Lender, and shall execute such additional documents as may reasonably be required to evidence such Lessee’s Lender’s rights hereunder; provided, however, that such amendment shall not materially impair the rights or materially increase the burdens or obligations of Lessor under the Lease, or extend the term of the Lease.

**5.** No Lien. Lessor consents to each Lessee’s Lender’s security interest, if any, in the EES and waives all right of levy for rent and all claims and demands of every kind against the EES, such waiver to continue so long as any sum remains owing from Lessee to any Lessee’s Lender. Lessor agrees that the EES shall not be subject to distraint or execution by, or to any claim of, Lessor.