

**SPECIAL USE LEASE AGREEMENT NO. 1946**  
*(Renewable—Solar)*

Fund: SCH & SM

This Special Use Lease Agreement No. 1946 (this “**Lease**”), dated December 1, 2020 (the “**Effective Date**”), is between the State of Utah, acting by and through the School and Institutional Trust Lands Administration, with an address at 675 East 500 South, Suite 500, Salt Lake City, Utah 84102 (“**SITLA**”), and Black Rock Renewable Energy, LLC, a Utah limited liability company, with an address at 11094 South Farnsworth Lane, Sandy, Utah 84070 (“**Lessee**”).

**RECITALS**

- A. SITLA manages lands held by the State of Utah in trust for certain named beneficiaries (“**Trust Lands**”), pursuant to Sections 6, 8, 10, and 12 of the Utah Enabling Act, Article XX, Section 2 of the Utah State Constitution, and Title 53C of the Utah Code.
- B. Lessee has applied for a lease on 1,206.19 acres of certain Trust Lands located in Millard County, Utah (the “**Property**”), as the Property is more specifically described on *Exhibit A* and depicted on *Exhibit B*, for the purpose of constructing, operating, and maintaining a commercial solar power generation project.
- C. SITLA has agreed to issue a lease on the Property to Lessee on the terms and conditions of this Lease.

**AGREEMENT**

SITLA and Lessee agree as follows:

1. **DEFINITIONS**

- 1.1. “**Affiliate**” means any entity that is a subsidiary of Lessee, a parent of Lessee, a subsidiary of any parent of Lessee, or any other entity under common control with Lessee. In this case, “control” means the power to vote or control at least 50% of the voting shares of any class of stock or other interests in the entity.
- 1.2. “**Antiquities**” is defined in Utah Code § 76-6-901(1).
- 1.3. “**Applicable Environmental Law**” means: (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq., the Clean Air Act, 42 U.S.C. §§ 7401 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801 et seq., the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq., and the Safe Drinking Water Act, 42 U.S.C. §§ 300f through 300j-26, as such Acts have been or are hereafter amended; (b) any so called Superfund or Superlien law; and (c) any other federal, state and local statute, law, ordinance, code, rule, regulation, order or decree regulating, relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material as now or any time hereafter in effect.
- 1.4. “**Applicable Law**” means Applicable Environmental Law and any other federal, state, or local statute, regulation, ordinance, rule, order, or judicial decree applicable to the Lease, Property, the Project, Lessee, or Lessee’s activities under this Lease.

- 1.5. “**Audit**” is defined in Section 7.3(b) (*Audit*).
- 1.6. “**Audit Period**” is defined in Section 7.3(a) (*Audit Period; Books and Records*).
- 1.7. “**Books and Records**” is defined in Section 7.3(a) (*Audit Period; Books and Records*).
- 1.8. “**Capacity Fee**” is defined in Section 5.5 (*Capacity Fee; Operations Minimum Rent*).
- 1.9. “**Certificate**” is defined in Section 13.3(n) (*Certificates from SITLA*).
- 1.10. “**CPI Index**” means the Consumer Price Index, published by the U.S. Bureau of Labor Statistics, All Urban Consumers, Western Region Average, All Items (1982-84 = 100), or if the CPI Index is no longer published, a substitute index published by a governmental agency and comparable to the CPI Index.
- 1.11. “**Commencement of Operations**” means the date on which the Project regularly generates and delivers, and Lessee sells, electricity to a power purchaser or other off-taker.
- 1.12. “**Commencement of Reclamation**” means the date on which the Project no longer generates, delivers, and Lessee does not sell electricity to a power purchaser or other off-taker.
- 1.13. “**Condemning Authority**” is defined in Section 19.1 (*Eminent Domain; Cancellation*).
- 1.14. “**Critical Paleontological Resources**” is defined in Utah Code § 79-3-102(4).
- 1.15. “**Cultural Resources**” is defined in Utah Administrative Code R850-1-200(8).
- 1.16. “**Cultural Resource Survey**” is defined in Utah Administrative Code R850-1-200(9).
- 1.17. “**Default Rate**” means the lesser of: (a) 1.5% per month; and (b) the maximum rate of interest permissible under Utah law.
- 1.18. “**Development Phase**” is defined in Section 4.1(a) (*Duration of Development Phase*).
- 1.19. “**Development Phase Rent**” is defined in Section 5.4(a) (*Development Phase Rent*).
- 1.20. “**Effective Date**” is defined in the introductory paragraph.
- 1.21. “**Encumbrance**” is defined in Section 13.1 (*Lessee’s Right to Encumber*).
- 1.22. “**Event of Default**” is defined in Section 17.1 (*Events of Default of Lessee*).
- 1.23. “**Execution Date**” means the date on which the last party signs this Lease.
- 1.24. “**Financial Guaranty**” means a surety bond, letter of credit, or other financial security, as required in Section 4.2(e)(i) (*Financial Guaranty Required*).
- 1.25. “**Force Majeure**” is defined in Section 18.7 (*Force Majeure*).
- 1.26. “**Governmental Approvals**” means certificates, permits, zoning changes or variances, easements, rights of way, and other federal, state, or local authorizations that are required by any Governmental Authorities or under any Applicable Law.

- 1.27. **“Governmental Authorities”** means federal, state, or local government, agencies or other authority having jurisdiction over this Lease, the Property, the Project, Lessee, or Lessee’s activities under this Lease.
- 1.28. **“GRAMA”** means the Government Records Access and Management Act, Utah Code Ann. § 63G-2-1 et seq.
- 1.29. **“Gross Revenues”**:
- (a) means the sum of the following: (i) all revenues received by Lessee for the sale of electricity from the Improvements located on the Property; (ii) any proceeds received as reimbursement or compensation for wheeling costs or other electricity transmission or delivery costs on the Improvements; (iii) proceeds received by Lessee from the sale of any carbon offsets or pollution credits that directly result from the generation of electricity from the Improvements located on the Property; (iv) proceeds received by Lessee as curtailment payments under any power purchase agreement applicable to the Improvements located on the Property; (v) all capacity fees, availability fees, or execution fees received by Lessee for the Improvements located on the Property; (vi) proceeds received to cancel or modify any obligation under any energy or electricity or capacity purchase contract related to the Project or payment of liquidated or other damages under any such contract, or under any other contract related to the Project; and (vii) proceeds received by Lessee in lieu of lost revenues from any business interruption insurance policy or warranty claims redeemed from the manufacturers or suppliers of the solar energy generating Improvements located on the Property.
  - (b) Gross Revenues does not include any of the following: (i) revenues received from the sale, lease, sublease, assignment, transfer, or other disposition of the Improvements for use on lands other than the Property; (ii) any amounts for energy used in the operation of the Project or parasitic losses; (iii) any proceeds from tax benefits, tax credits or other incentives or subsidies provided by any governmental agency to Lessee in connection with the Project; and (iv) any proceeds received as reimbursement or compensation for wheeling costs or other electricity transmission or delivery costs on infrastructure located on lands other than the Property.
- 1.30. **“Groundbreaking”** means the earlier of (a) when earth is moved for the improvement of the Property for the construction of the Project, or (b) when the first Project support structure is installed below grade at the Property. Movement of earth for evaluation of the Property is not Groundbreaking.
- 1.31. **“Hazardous Substance”** means any hazardous or toxic substance, material, or waste that is or becomes regulated by any local governmental authority, the State of Utah, or the United States Government, including, without limitation: (i) any substance, chemical or waste that is or may be listed or defined as hazardous, toxic or dangerous under Applicable Environmental Law; (ii) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any federal, state, or local Governmental Authority pursuant to Applicable Law and which could pose a hazard to the health and safety of occupants or users of the Property or any part of the Property, any adjoining property or cause damage to the environment; (iii) any petroleum products; (iv) PCB’s; (v) leaded paint; and (vi) asbestos.
- 1.32. **“Historic Properties”** is defined in Utah Code § 9-8-302(10).

- 1.33. **“Improvements”** means: (a) PV Arrays, including all necessary and proper anchors, support structures, foundations and concrete pads for such PV Arrays; (b) underground and above-ground electrical transmission and communications lines related to the operation of the Project; and (c) electric inverters, transformers and substations, above-ground storage facilities (subject to Section 2.4, *Limitation on Storage*), telecommunications equipment, meteorological measurement equipment, solar measurement equipment, control buildings, maintenance yards and related facilities and equipment.
- 1.34. **“Indemnified Parties”** means the State of Utah, its affiliates, agencies, directors, officers, employees, agents, consultants, advisors, and other representatives, and their heirs, executors, successors and assignees. For clarity, Indemnified Parties includes SITLA, its Board of Trustees, beneficiaries, directors, officers, employees, agents, consultants, advisors, and other representatives, and their heirs, executors, successors and assignees.
- 1.35. **“Indirect Assignment”** means the sale, issuance, or transfer of: (i) any voting capital stock of Lessee, if Lessee is a corporate entity; (ii) any ownership interests, if Lessee is a non-corporate entity; (iii) any voting capital stock of any corporate entity that directly or indirectly controls Lessee; and (iv) any interests in any non-corporate entity that directly or indirectly controls Lessee, that in each case described in (i) – (iv) results in a change in the direct or indirect voting control (or a change in the identity of any person, persons, entity or entities with the power to vote or control at least 50% of the voting shares of any class of stock or other interests in Lessee) of Lessee or any corporate or non-corporate entity that directly or indirectly controls Lessee.
- 1.36. **“Lease Year”** means each year of this Lease, beginning on the Effective Date or on each subsequent anniversary of the Effective Date, and ending on the day before the next anniversary of the Effective Date.
- 1.37. **“Lender”** is defined in Section 13.2 (*Notice of Encumbrance*).
- 1.38. **“Litigation Expense”** means any reasonable out-of-pocket expense incurred in defending a Third-Party Claim or in any related investigation or negotiation, including court-filing fees, court costs, arbitration fees, witness fees, and attorneys’ and other professionals’ fees and disbursements.
- 1.39. **“Losses”** means any amount suffered as a result of, awarded in, or paid in settlement of, any judicial, administrative, or arbitration action, suit, claim, investigation, or proceeding, including any threatened claim or demand, brought by a non-party.
- 1.40. **“Mineral Estate”** or **“Minerals”** means oil, natural gas, coal, geothermal resources, metalliferous minerals, sand, gravel, and other common varieties, geothermal resources, and any other minerals that are on, in, or under the Property.
- 1.41. **“Notice”** is defined in Section 20.2 (*Notices*).
- 1.42. **“Operations Date”** means the earlier of Commencement of Operations or the start of the Operations Phase.
- 1.43. **“Operations Minimum Rent”** is defined in Section 5.5(c) (*Operations Minimum Rent*).
- 1.44. **“Operations Phase”** is defined in Section 4.2(a) (*Duration of Operations Phase*).

- 1.45. **“Permitted Uses”** is defined in Section 2.2 (*Permitted Uses*).
- 1.46. **“Plan of Development”** is defined in Section 4.1(b)(i) (*Plan of Development*).
- 1.47. **“Preliminary Surface Disturbance”** is defined in Section 4.1(b)(iv) (*Preliminary Surface Disturbance*).
- 1.48. **“Project”** is defined in Section 2.1 (*Grant of Lease*).
- 1.49. **“Project Capacity”** means the amount of direct current power capable of being produced from the Property at the time of measurement.
- 1.50. **“Property Data”** is defined in Section 6 (*Property Data*).
- 1.51. **“PV Arrays”** means photovoltaic solar panel arrays.
- 1.52. **“Reclamation Phase”** is defined in Section 4.3(a) (*Duration of Reclamation Phase*).
- 1.53. **“Reclamation Phase Rent”** is defined in Section 5.4(b) (*Reclamation Phase Rent*).
- 1.54. **“Reclamation Plan”** is defined in Section 4.2(c) (*Reclamation Plan*).
- 1.55. **“Remains”** is defined in Utah Code § 9-9-402(12).
- 1.56. **“Remedial Work”** means any investigation or monitoring of site conditions or any clean up, remediation, response, removal, encapsulation, containment or restoration work required because of the presence of any Hazardous Substance on, in, or under the Property or any release or suspected release or threat of release of any Hazardous Substance in the air, soil, surface water, or ground water.
- 1.57. **“Rent”** means the Development Phase Rent, Reclamation Phase Rent, and Operations Minimum Rent.
- 1.58. **“Royalty”** or **“Royalties”** is defined in Section 5.6 (*Royalties*).
- 1.59. **“Site”** is defined, with respect to archaeology in Utah Code § 9-8-302(17) and Utah Administrative Code R850-1-200(31), and with respect to paleontology in Utah Code § 79-3-102(14) and Utah Administrative Code R850-1-200(20).
- 1.60. **“Site Plan”** means an engineering drawing or design depicting the location of the PV Arrays and all proposed disturbance and Improvements on the Property. A Site Plan is part of the Plan of Development.
- 1.61. **“Specimen”** is defined, with respect to archaeology in Utah Code § 9-8-302(18) and Utah Administrative Code R850-1-200(33), and with respect to paleontology in Utah Code § 79-3-102(15).
- 1.62. **“Subdivided Leasehold”** is defined in Section 12.7 (*Division in Separate Leases*).
- 1.63. **“Term”** is defined in Section 3.1 (*Lease Term*).

1.64. “**Third-Party Claim**” means any judicial, administrative, or arbitration action, suit, claim, investigation, or proceeding, including any threatened claim or demand, brought by or on behalf of a non-party.

## 2. LEASE OF PROPERTY

2.1. Grant of Lease. SITLA hereby grants Lessee a lease on the Property for the construction, operation, and maintenance of a commercial photovoltaic solar power generation project (the “**Project**”). Lessee takes this Lease subject to: (a) current taxes and assessments, reservations in patents and clear lists, all rights-of-way, easements, covenants, conditions, restrictions, obligations, liens, encumbrances, and liabilities of record (including SITLA’s records) as of the Execution Date; (b) all matters that an accurate survey or physical inspection of the Property would disclose; and (c) all zoning and building requirements and other governmental laws, rules, and regulations now or hereafter in effect, including without limitation all rules and regulations enacted by SITLA now or in the future with respect to use and management of Trust Lands. SITLA shall reasonably cooperate with and grant additional easements, rights-of-way, and similar rights to Lessee that: (x) are reasonably necessary to effectuate the construction, operation and maintenance of the Project; (y) are reasonably necessary to prevent interference with solar irradiance from trust lands adjacent to the Property; and (z) comply with SITLA’s applicable rules, regulations, and fee schedules for such easements and rights-of-way.

2.2. Permitted Uses. Lessee may use the Property for all purposes reasonably necessary and useful for the Project, including without limitation, the construction, development, operation, and reclamation of the PV Arrays and all Improvements that are useful for converting, maintaining, capturing, and storing solar energy (subject to Section 2.4, *Limitation on Storage*), solar energy development, and related solar energy development uses (the “**Permitted Uses**”). Lessee may not conduct any industrial or commercial activities not related to the Project, or any public or private nuisance, on or from the Property. Lessee may not commit any waste of the Property.

2.3. No Warranty of Title. SITLA hereby disclaims all warranties of title and any representations made by SITLA or its agents, employees, directors, officers or other representatives as to zoning, legal or physical access, suitability of the Property for the Project and Improvements, utilities, soil conditions, floodplains and watercourses, the presence or absence of any Hazardous Substances or hazardous conditions, or other physical or legal attributes of the Property. Lessee is not entitled to any refund of any monies paid to SITLA under this Lease in the event of title failure.

2.4. Limitation on storage. Notwithstanding any other provision of this Lease, Lessee may not install any facilities on the Property to store solar energy generated from either the Property or from any other properties until the parties have negotiated a commercially reasonable payment for the storage of solar energy. On SITLA’s request, Lessee shall provide SITLA with all information necessary for SITLA to determine the economic impact of solar energy storage on the Project and the Property so that the parties may negotiate in good faith for a fair and reasonable storage payment.

2.5. Lessee’s Inspection of the Property. Lessee has inspected and investigated the Property to Lessee’s complete satisfaction, observed its physical characteristics and existing conditions, the operations thereon and on adjacent areas, and Lessee hereby waives any and all objections to, complaints about, or claims regarding the valuation or utility of the Property or its suitability for any purpose whatsoever. Lessee hereby assumes the risk that past, present, and future environmental conditions on the Property and changes in applicable laws and regulations relating

to such conditions, may increase the difficulty or cost of, or entirely prevent, Lessee's development of the Project. Lessee expressly acknowledges that it has not relied on any warranties, promises, understandings or representations, express or implied, oral or written, of SITLA or of any agent of SITLA, relating to the Property, except as specifically set forth in this Lease.

2.6. Reservations to SITLA. Subject to the rights and privileges granted to Lessee under this Lease, SITLA hereby excepts and reserves from the operation of this Lease the following rights and privileges:

- (a) Rights-of-Way and Easements. SITLA reserves the right, following consultation with Lessee, to establish rights-of-way and easements upon, through, or over the Property, if such grants will not unreasonably interfere with Lessee's use and operations under this Lease, for roads, pipelines, electric transmission lines, transportation and utility corridors, mineral access, and any other purpose deemed reasonably necessary by SITLA.
- (b) Minerals; Partial Withdrawal; No Surface Occupancy.
  - (i) Reservation of Minerals. SITLA reserves the Mineral Estate, subject to this Section 2.6(b) (*Minerals; Partial Withdrawal; No Surface Occupancy*).
  - (ii) Withdrawal of All Minerals other than Oil, Gas, and Geothermal. SITLA hereby withdraws all Minerals, other than oil, gas, and geothermal, on or in the Property from exploration, development, and extraction. SITLA may not grant any mineral leases, permits, or rights of entry for any Minerals, other than oil, gas, and geothermal.
  - (iii) Limited Withdrawal of Oil, Gas, and Geothermal Resources. SITLA hereby withdraws all oil, gas, and geothermal resources located on the surface and between the surface of the Property and a depth of 500 feet below the surface. SITLA may not grant leases, permits, or rights of entry for oil, gas, or geothermal located between the surface of the Property and 500 feet below the surface. If SITLA leases oil, gas, or geothermal resources below a depth of 500 feet from the surface of the Property, SITLA shall prohibit the oil, gas, or geothermal lessee from accessing the surface of the Property or any portion, including the oil, gas, or geothermal resources, between the surface and 500 feet below the surface of the Property for any reason.
  - (iv) No Surface Occupancy. SITLA hereby waives any rights of access to the surface of the Property, including any rights to explore for, develop, or extract Minerals, that SITLA may enjoy pursuant to any local, state, or federal law or arising under deed, lease, or contract.
  - (v) No Mineral Rights Granted to Lessee. This Section 2.6(b) (*Minerals; Partial Withdrawal; No Surface Occupancy*) constitutes a negative covenant from SITLA to Lessee and nothing in this Agreements grants Lessee rights to explore for, develop, extract, or use any Minerals on or in the Property.

2.7. Non-Disturbance. Except as otherwise provided in this Lease, SITLA may not take action on the Property that would deny Lessee and its permitted sublessees, licensees, successors, and assigns the ability to freely, peaceably, and quietly have, hold, and enjoy full use and enjoyment of the

Property for the Project, including without limitation, interference with insolation and access to sunlight on the Property, as such insolation and access exists as of the Effective Date. Nothing in this Section 2.7 (*Non-Disturbance*) limits SITLA's ability to use and develop adjacent Trust Lands or requires SITLA to prevent third parties from using non-Trust Lands, it being understood and agreed by the parties that the Property includes a sufficient buffer around the perimeter of the PV Arrays to limit interference with insolation and access to sunlight. Lessee acknowledges that SITLA does not warrant title to the Property by this Section or any other provision of this Lease and Lessee has had the opportunity to determine the sufficiency of title to the Property to its satisfaction.

### 3. **LEASE TERM**

#### 3.1. **Lease Term, Extensions, Adjustments, Holding Over.**

- (a) **Lease Term.** This Lease commences on the Effective Date and continues for up to 36 years from the Effective Date (“**Term**”), except as otherwise provided in this Lease. The Term consists of a five-year Development Phase, 30-year Operations Phase, and a 1-year Reclamation Phase.
- (b) **Options to Extend.** If (a) this Lease is in good standing, (b) Lessee is not in default of any provision of the Lease, and (c) Lessee has fully developed the Project in accordance with the Plan of Development, Lessee may extend the Operations Phase for two additional terms of five years each by delivering to SITLA Notice prior to the end of the Operations Phase or the extended Operations Phase, if applicable. The Notice must include a representation that Lessee has met the requirements of this Section 3.1(b).
- (c) **Lease Adjustment.**
  - (i) **SITLA's Right to Adjust Lease at End of Operations Phase.** If Lessee elects to extend the Operations Phase as provided in Section 3.1(b) (*Options to Extend*), then by giving Notice to Lessee within 60 days following SITLA's receipt of Lessee's Notice to extend, SITLA may elect to adjust the terms and conditions of the Lease (including without limitation rentals, capacity fees, royalties, and provisions governing bonding and reclamation) to reflect industry-standard terms and the fair market value of the Property. SITLA will have up to six months after giving Notice that it is exercising its adjustment rights to provide Lessee with a copy of the adjusted terms. If within 30 days after submission of the adjusted lease terms to Lessee, Lessee determines that any or all of the proposed adjusted terms and conditions are unreasonable, then Lessee shall so notify SITLA and the parties, acting reasonably, shall attempt to resolve the objectionable terms or conditions. If the parties are unable to resolve the matter and agree upon the adjusted terms and conditions as submitted by SITLA within 60 days after SITLA provides Lessee with such adjusted terms, Lessee forfeits any right to the continued extension of this Lease, and Lessee shall promptly initiate all remediation required under this Lease. The Reclamation Phase will extend for the amount of time spent by the parties in attempting to reach agreement on the adjusted terms. Nothing in this Agreement precludes Lessee from appealing any adjustment by SITLA to its Board of Trustees.
  - (ii) **Determination of Fair Market Value.** In determining the fair market value of the Property, SITLA may consider the appraised value of the Property (if appraisal is

requested by either party), comparable lease rates of federal, state, and private solar leases, or other suitable uses of the Property. If an appraisal is requested, the appraiser must be acceptable to both parties, MAI qualified, and licensed in Utah. If the parties are unable to agree on an appraiser, then each party shall designate one qualified appraiser by providing Notice of such designation to the other party. The two appraisers shall jointly designate a third appraiser, who shall complete an appraisal of the Property. If one of the parties fails to designate an appraiser, the appraiser designated by the other party will be the sole appraiser. If both parties designate appraisers and the two appraisers fail to designate a third appraiser within 20 days following the date on which the last of the two appraisers was designated, then either party may request the presiding judge of the Third Judicial District Court of Utah to make the designation. The designated appraiser must complete its appraisal and provide a written appraisal report to the parties not later than 30 days following appointment.

- (d) Holding Over. If Lessee remains in possession of the Property after termination of this Lease without an extension or a new lease, then this Lease will convert to a month-to-month tenancy, subject to all of the covenants, terms, provisions, and obligations of this Lease, except for the provisions relating to Rent or Capacity Fee. During any holdover period, Rent or Capacity Fee will be two times the amount of Rent or Capacity Fee due immediately prior to the holdover period. This Lease does not grant Lessee the right to holdover or to limit SITLA's remedies against a holdover Lessee. If Lessee does not surrender the Property at the end of the Term, Lessee shall indemnify SITLA for, from and against any loss or liability resulting from delay by Lessee in so surrendering the Property, including without limitation, any claims made by any succeeding lessee based on such delay. This indemnification is in addition to and does not limit the indemnification in Section 15.4 (*Indemnification and Defense*).

#### 4. LEASE PHASES

##### 4.1. Development Phase.

- (a) Duration of Development Phase. The "**Development Phase**" will commence on the Effective Date and continue until the earlier of (a) five years from the Effective Date, or (b) Commencement of Operations.
- (b) Conditions for Groundbreaking. Except as provided in Section 4.1(b)(iv) (*Preliminary Surface Disturbance*). Lessee may not conduct the Groundbreaking until the following conditions are met:
- (i) Plan of Development. As soon as possible, but no later than the first anniversary of the Effective Date, Lessee shall deliver for SITLA's approval a preliminary Site Plan and any other information that Lessee has at the time to help SITLA evaluate the impact of the Project on the Property. No later than 30 days prior to Groundbreaking, Lessee shall submit for SITLA's approval, which approval SITLA may not unreasonably deny, a plan of development (the "**Plan of Development**"), including a final Site Plan, a construction and phasing plan, a copy of a conditional use permit from the local jurisdiction or evidence that the Project meets the requirements the local jurisdiction would impose as part of a conditional use permit, and all other information reasonably necessary for SITLA to review the Project and its impact to the Property. SITLA shall review the Plan

of Development and approve or request reasonable modifications within 30 days of receipt. SITLA's failure to respond with the 30-day review period will be deemed an approval. If Lessee disagrees with the requested modifications, the parties shall attempt to resolve the dispute in good faith for 30 days. If the parties cannot resolve the dispute within 30 days, the Plan of Development is deemed disapproved. Lessee may not materially modify the Plan of Development without SITLA's consent, which consent SITLA may not unreasonably withhold.

- (ii) Power Purchase Agreement. Lessee shall enter into one or more power purchase agreement for the transmission and sale of power generated by the Improvements prior to Groundbreaking and provide SITLA with evidence of such agreement, or in the alternative, provide evidence of secured financing to ensure Project development to the satisfaction and consent of SITLA, which consent SITLA may not unreasonably withhold.
- (iii) Financial Guaranty. If Lessee elects to provide SITLA with evidence of secured financing, pursuant to Section 4.1(b)(ii) (*Power Purchase Agreement*), rather than evidence of a power purchase agreement, SITLA may require Lessee to post a cash bond or other Financial Guaranty that meets the requirements of Section 4.2(e)(ii) (*Financial Guaranty Requirements*) prior to Groundbreaking. If Lessee subsequently enters into a power purchase agreement or other agreement for the purchase of the power from the Project, SITLA shall release the cash bond or Financial Guaranty, subject to the requirements of Section 4.2(e) (*Financial Guaranty*).
- (iv) Notice of Groundbreaking. Lessee shall give SITLA five business days' prior Notice of the Groundbreaking.
- (v) Preliminary Surface Disturbance.
  - (A) To capture federal tax credits available to solar projects that have started construction prior to the end of 2020, Lessee may construct a fence, create a fire break, and install PV Arrays capable of producing up to 2 MW of direct current power ("**Preliminary Surface Disturbance**") on the Property without satisfying Sections 4.1(b)(i) (*Plan of Development*) and 4.1(b)(ii) (*Power Purchase Agreement*) if: (A) Lessee provides SITLA with a plan for and a map depicting the location of the Preliminary Surface Disturbance; (B) SITLA believes the Preliminary Surface Disturbance is reasonably certain to be completed prior to December 31, 2020; (C) Lessee has satisfied Section 9.7 (*Cultural, Archaeological, Paleontological, and Antiquities Resources*) with respect to the portion of the Property subject to the Preliminary Surface Disturbance; and (D) Lessee has submitted to SITLA a cash bond or other Financial Guaranty meeting the requirements of Section 4.2(e)(ii) (*Financial Guaranty Requirements*) in the amount of \$50,000 to ensure full reclamation of the Preliminary Surface Disturbance.
  - (B) If Lessee has not completed construction of the Preliminary Surface Disturbance prior to the end of 2020, Lessee shall complete any outstanding work, such as completing the fence, but may not begin any portion of the Preliminary Surface Disturbance not yet started. Lessee

may not conduct any further surface disturbing work on the Property until all conditions of Groundbreaking are satisfied pursuant to Section 4.1(b) (*Conditions for Groundbreaking*).

- (C) Once Lessee has signed a power purchase agreement and provided SITLA with evidence of such agreement, or evidence that the power from the Project has been acquired, SITLA shall release the initial cash bond or Financial Guaranty.
- (c) Development Phase Rights. During the Development Phase and in accordance with the Plan of Development, Lessee may:
  - (i) conduct studies, tests, geotechnical reviews, environmental assessments, cultural surveys, title examination, site engineering, and other activities necessary to determine the economic and technical feasibility of the Project;
  - (ii) obtain all necessary Governmental Approvals;
  - (iii) construct or improve all rights-of-way reasonably necessary for the Project; and
  - (iv) construct, install, and maintain the Improvements.
- (d) Project Development Reports. Lessee shall provide annual project development reports to SITLA detailing Lessee's major activities on the development of the Project. A project development report is due one year after the Effective Date and on each subsequent anniversary of the Effective Date until the Project is fully constructed and all Improvements are installed on the Property, according to the Plan of Development.
- (e) Termination for Failure to Build. Without regard to the force majeure provisions of Section 18.7 (*Force Majeure*), if Lessee has not commenced construction of the Project, as set forth in the Plan of Development, prior to the fourth anniversary of the Effective Date, SITLA may give Lessee a one-year Notice of termination. If, within the one-year termination period, Lessee commences construction of the Project and diligently pursues construction to substantial completion, this Lease will not terminate. For clarity, this Lease remains in full force and effect if Lessee commences construction of the Project and diligently pursues construction to substantial completion prior to the end of the Development Phase.

#### 4.2. Operations Phase.

- (a) Duration of Operations Phase. The “**Operations Phase**” will begin on the earlier of (a) five years from the Effective Date, or (b) Commencement of Operations and will continue for 30 years thereafter, but not beyond the 35th anniversary of the Effective Date.
- (b) Operations Phase Rights. During the Operations Phase and in accordance with the Plan of Development, Lessee may complete construction, if not completed during the Development Phase, and may operate, maintain, replace, repair, remove, reconstruct, and repower the Project, and take all other actions required or desired to comply with and enjoy the rights granted under this Lease.

- (c) Reclamation Plan. On or before the 15<sup>th</sup> anniversary of Commencement of Operations, Lessee shall deliver to SITLA a plan for reclamation of the Property (the “**Reclamation Plan**”) conducted by an independent qualified engineer with at least 10-years’ experience. The Reclamation Plan must include: (1) a detailed plan to remove all Improvements and reclaim the Property as required by Section 4.3(c) (*Reclamation Obligations*); (2) an estimate of time required to complete all reclamation activities; and (3) an estimate of the costs to remove the Improvements and reclaim the Property, including costs to dispose of or recycle the Improvements. SITLA shall review the Reclamation Plan and approve or request reasonable modifications within 30 days of receipt. SITLA’s failure to respond within the 30-day review period will be deemed an approval. If Lessee disagrees with any requested modifications, the parties shall attempt to resolve the dispute in good faith for 30 days. If the parties cannot resolve the dispute within 30 days, then SITLA may hire an independent qualified engineer with at least 10-years’ experience to create a secondary reclamation plan. If the reclamation cost-estimate in the reclamation plan obtained by SITLA is higher by 10% or greater than the cost-estimate obtained by Lessee, Lessee shall pay SITLA’s reasonable costs in obtaining the second reclamation plan. Lessee shall update the Reclamation Plan five years prior to the end of the Operations Phase or on reasonable request of SITLA. Lessee may not make material modifications to the Reclamation Plan without SITLA’s consent, which consent SITLA may not unreasonably withhold.
- (d) Intermediate Reclamation. On completion of construction of the Improvements, Lessee shall use reasonable efforts to reclaim disturbed areas not required for continuing operations by leveling, reseeding and other reasonably necessary steps to prevent soil erosion, promote the establishment of suitable vegetation, and control noxious weeds and pests.
- (e) Financial Guaranty.
- (i) Financial Guaranty Required. On approval of a Reclamation Plan by SITLA, Lessee shall execute and file with SITLA a good and sufficient cash bond or other Financial Guaranty acceptable to SITLA to: (a) guarantee Lessee’s performance of all covenants and obligations under this Lease, except that SITLA may not require a Financial Guaranty to include Lessee’s obligation to pay rent in excess of the Capacity Fee or Operations Minimum Rent, whichever is greater, for one year; (b) ensure compensation for damage, if any, to the surface estate and any surface improvements; and (c) ensure reclamation of the Property, as set forth in the Reclamation Plan. Lessee shall update the Financial Guarantee when it updates the Reclamation Plan and as otherwise required by SITLA in its reasonable discretion. If Lessee desires to begin construction of the Project prior to obtaining certainty that Lessee will have a purchaser for the power, SITLA may demand Lessee to submit a Financial Guaranty prior to Groundbreaking.
- (ii) Financial Guaranty Requirements. All Financial Guarantees obtained pursuant to Section 4.2(e)(i) (*Financial Guaranty Required*) must meet the following requirements:
- (A) be issued by a company rated “A3” or better by Moody’s or A- or better by S&P (or an equivalent rating from another nationally recognized

statistical rating organization acceptable to SITLA), responsible and authorized to do business in the State of Utah, and approved by SITLA;

- (B) be issued for the benefit of SITLA;
- (C) cover all of Lessee's obligations under this Lease capable of being reduced to a monetary value, including without limitation, Lessee's indemnification and reclamation obligations;
- (D) stipulate that SITLA be notified 90 days prior to termination or modification of the Financial Guaranty; and
- (E) ensure the name of the principal on the Financial Guaranty is the same as the name of Lessee.

(iii) Proof of Coverage; Replacement.

- (A) Proof of Coverage. Within 10 days of SITLA's reasonable request, Lessee shall provide SITLA with evidence that the Financial Guaranty is in good standing.
- (B) Replacement. If the issuer terminates the Financial Guaranty, Lessee shall replace the Financial Guaranty with an equivalent Financial Guaranty within 60 days after receipt of notice of termination. If Lessee fails to provide SITLA with an equivalent Financial Guaranty within the 60-day period, such failure is deemed a material breach of the Lease and SITLA may demand payment of the Financial Guaranty by the issuer. SITLA shall manage the monies received pursuant to this Section 4.2(e)(iii) as a cash bond and shall return any amounts not used by SITLA on full satisfaction of Lessee's obligations under this Lease.

4.3. Reclamation Phase.

- (a) Duration of Reclamation Phase. The "**Reclamation Phase**" will begin on the earlier of: (a) Notice from SITLA to Lessee of termination of this Lease pursuant to Section 18.1 (*SITLA's Right to Terminate*); (b) Notice from Lessee to SITLA of termination pursuant to Sections 18.2(a) (*Termination in Full*) and 18.2(b) (*Termination in Part*); and (c) the end of the Operations Phase or the end of any extended Operations Phase. The Reclamation Phase will continue until the earlier of: (x) one-year following Commencement of Reclamation; (y) completion of the activities under the Reclamation Plan; and (b) the end of the Term. SITLA may extend the one-year Reclamation Phase in its reasonable discretion. If Lessee terminates part of the Lease according to Section 18.2(b) (*Termination in Part*), and if the Lease would not otherwise be in the Reclamation Phase, only the deleted portion of the Property will be considered in the Reclamation Phase.
- (b) SITLA's Right to Reclaim. If reclamation of the Property is not completed within the Reclamation Phase, SITLA may pursue all legal remedies available to it, including seeking specific performance, seizing the Improvements, and/or using the Financial Guaranty to complete reclamation.

- (c) Reclamation Obligations. During the Reclamation Phase, Lessee shall reclaim the Property in accordance with the Reclamation Plan, including without limitation removing the Improvements, structures, equipment and debris, recontouring the Property to its approximate original contour, and reseeding the Property, as necessary in the reasonable judgment of SITLA to prevent soil erosion, promote the establishment of suitable vegetation, and control noxious weeds and pests. Lessee shall further abate any hazardous condition on or associated with the Property and caused or exacerbated by Lessee. SITLA may permit Lessee to leave access roads, driveways, or other Improvements on the Property by giving Lessee Notice of the same.

5. **CONSIDERATION FOR LEASE**

- 5.1. Execution Bonus. On execution of this Lease, Lessee shall pay SITLA a one-time execution bonus of \$35 per acre, payable by cash, check, or wire transfer. Lessee may not credit the execution bonus against Rent, Capacity Fee, Royalties, or other monies due to SITLA under this Lease.
- 5.2. Commencement of Operations Bonus. On or before the Operations Date, Lessee shall pay SITLA a one-time commercial operations bonus of \$100 per acre, payable by cash, check, or wire transfer. Lessee may not credit the operations bonus against Rent, Capacity Fee, Royalties, or other monies due to SITLA under this Lease. If Lessee commences operations of the Project in phases, Lessee shall pay the operations bonus at the Commencement of Operations for each phase of the Project.
- 5.3. Assignment or Sublease Fee. Lessee shall pay SITLA 15% of all revenue received for the assignment, sublease, or Indirect Assignment of this Lease to a third-party purchaser. If Lessee obtains non-monetary revenue, Lessee shall convert such non-monetary revenue to a monetary value and pay SITLA 15% of that converted value.
- 5.4. Development Phase Rent; Reclamation Phase Rent.

- (a) Development Phase Rent. During the Development Phase, Lessee shall pay SITLA, without deduction or offset, as follows:

Development Phase	Development Phase Rent
Lease Year 1	\$5 /acre
Lease Year 2	\$7 /acre
Lease Year 3	\$10 /acre
Lease Year 4	\$12.50 /acre
Lease Year 5	\$15 / acre

(the “**Development Phase Rent**”). The Development Phase Rent is due on or before the Effective Date and on each subsequent anniversary of the Effective Date until the Operations Date. SITLA shall credit Lessee for any Development Phase Rent paid in advance, pro-rated on a daily basis, toward the Operations Minimum Rent, Capacity Fee, or Royalties, whichever is higher, paid during the first year of operations.

- (b) Reclamation Phase Rent. On Commencement of Reclamation, without deduction or offset, Lessee shall pay SITLA \$15 per acre (the “**Reclamation Phase Rent**”), as adjusted by multiplying the Reclamation Phase Rent by a fraction, the numerator of

which is the CPI Index for the most recent month available as of the Commencement of Reclamation, and the denominator of which is the CPI Index for the month in which this Lease was signed. SITLA shall credit the Reclamation Phase Rent with any pre-paid Capacity Fee or Operations Minimum Rent, pro-rated on a daily basis.

5.5. Capacity Fee; Operations Minimum Rent.

- (a) Higher of Capacity Fee or Operations Minimum Rent. During the Operations Phase, Lessee shall pay SITLA, in advance and without deduction, the higher of the Capacity Fee or Operations Minimum Rent.
- (b) Capacity Fee. The “**Capacity Fee**” is \$2,500 per megawatt of Project Capacity, escalating annually and on a compounded basis of 2% per year. The first Capacity Fee payment is due on or before the Operations Date, pro-rated on a daily basis, and on each subsequent anniversary of the Effective Date thereafter until Commencement of Reclamation. The Capacity Fee is due in full in advance of each Lease Year during the Operations Phase even if Lessee has not commenced operations.
- (c) Operations Minimum Rent. The “**Operations Minimum Rent**” is \$350 per acre, escalating on an annual and compounded basis of 2% per year. The first Operations Minimum Rent is due on or before the Operations Date, pro-rated on a daily basis, and on each subsequent anniversary of the Effective Date thereafter until Commencement of Reclamation. The Operations Minimum Rent is due in full in advance of each year during the Operations Phase even if Lessee has not commenced operations.

5.6. Royalties. During the Operations Phase, Lessee shall pay SITLA annually a percent of Gross Revenues (the “**Royalty**” or “**Royalties**”) as follows:

Operating Phase Years	Percentage of Gross Revenues
Years 1 – 5	3%
Years 6 – 10	3.5%
Years 11 – 15	4%
Years 16 to the end	4.5%

The first Royalty payment is due and payable in arrears within 60 days after the first anniversary of the Effective Date following the Operations Date. Subsequent Royalty payments are due and payable in arrears within 60 days after each subsequent anniversary of the Effective Date.

5.7. Capacity Fee/Operations Minimum Rent Credited Against Royalties. Lessee is obligated to Pay SITLA annually during the Operations Phase the higher of the Operations Minimum Rent, Capacity Fee, or Royalties. At the beginning of each Lease Year, Lessee shall pay SITLA the higher of the Operations Minimum Rent or Capacity Fee. At the end of the Lease Year, if the Royalties are higher than the Capacity Fee or Operations Minimum Rent, whichever was paid for that same Lease Year, Lessee shall pay the difference between the Capacity Fee or Operations Minimum Rent and the Royalties. If the Royalties for any year of the Operating Phase is less than the Capacity Fee or Operations Minimum Rent, whichever was paid for that same Lease Year, no Royalties are due for that Lease Year.

5.8. Net Lease. This is a net lease and the parties intend, except as specifically provided in this Lease, that Lessee be responsible for all costs and expenses of the ownership, maintenance, repair and

operation of the Property incurred or accrued during the Term, including without limitation real estate taxes payable on account of Lessee's use of the Property. Any present or future law to the contrary notwithstanding, this Lease will not terminate, and Lessee is not entitled to any abatement, reduction, set-off, counterclaim, defense, or deduction with respect to any rent or other sum payable under this Lease by reason of any damage to or destruction of the Property.

6. **PROPERTY DATA**

- 6.1. **Property Data.** On termination of this Lease for any reason and upon SITLA's request, Lessee shall provide SITLA with copies of all maps, surveys, geologic and technical studies, engineering drawings and materials, and any other information owned or controlled by Lessee that is related to the Property and is not otherwise subject to any confidentiality or disclosure restrictions enforceable against Lessee (the "**Property Data**").

7. **INSPECTION, REPORTS, AND AUDITS**

- 7.1. **SITLA's Access to Property.** SITLA and its agents, at all reasonable times and on reasonable notice to Lessee, may access all or any portion of the Property to: (a) examine or inspect the condition of the Property; (b) determine if Lessee is in compliance with this Lease; and (c) post any notices that SITLA may desire to protect its rights. In exercising its rights under this Section 7.1, SITLA may not materially or adversely interfere with Lessee's use and enjoyment of the Property and shall comply with Lessee's security and safety rules, regulations and protocols.
- 7.2. **Royalty Reports.** Lessee shall include with each Royalty payment a report, in a form acceptable to SITLA, setting forth the basis on which the payment was computed. Lessee, in its sole discretion, may calculate any Royalty payment by averaging, on the basis of the megawatt generating capacity of the Improvements located on the Property, the Gross Revenues received in respect of such Improvements with the revenues received with respect to solar energy generating facilities located on other properties that are part of the same Project. If electricity, energy or capacity related to the Project is sold at the same time under more than one price, Lessee shall calculate and pay SITLA the weighted average of all such prices.
- 7.3. **Lessee Records; Audit.**
- (a) **Audit Period; Books and Records.** Lessee shall keep and maintain, for seven years after any one Royalty payment (each, an "**Audit Period**"), complete books, records, and documents used to compute the Gross Revenues and the Royalties for that payment and each item entered into the computation of such amounts pursuant to generally accepted accounting principles (collectively, the "**Books and Records**").
  - (b) **Audit.** SITLA may inspect the Books and Records to confirm the accuracy of the Royalties made to SITLA (and "**Audit**") at any time prior to the expiration of any applicable Audit Period on prior Notice to Lessee. Lessee shall make the Books and Records available to SITLA at offices located within Utah, unless SITLA agrees to a different location.
  - (c) **Understated Payments.** If the results of the Audit show that Lessee's reporting of Royalty payments for any period have been understated, then, within 10 days of the Audit determination, Lessee shall pay SITLA any applicable deficiency, together with interest accruing at the Default Rate from the date such payment should originally have been made until the date actually paid. If the results of the Audit show the Royalty payments

for any period have been understated by 4% or more, then, within 20 days of the Audit determination, Lessee shall reimburse SITLA for the costs of the Audit.

8. **CONSTRUCTION AND OPERATIONS COVENANTS**

- 8.1. **Construction.** Lessee shall conduct construction activities on the Property in accordance with the approved Plan of Development. Notwithstanding any provision of this Lease to the contrary, Lessee is not obligated to construct any improvements to the Property. However, on Groundbreaking, Lessee shall diligently prosecute all such development in reasonable accordance with the development and construction schedules set forth in the approved Plan of Development. Lessee shall make all improvements at its sole cost and expense, in a good workmanlike manner, and in accordance with the requirements of any and all Applicable Law.
- 8.2. **As-Built Drawings.** On the completion of construction of the Project, Lessee shall provide SITLA with an as-built survey, prepared by a licensed engineer, showing the location of all Improvements. SITLA may require updated as-built drawings in its reasonable discretion.
- 8.3. **Ownership of Project.** SITLA acknowledges and agrees that notwithstanding whether or not the Project is a fixture on the Property, Lessee is and will continue after termination to be the sole and exclusive owner and operator of the Improvements and the energy generated by the Project, except as provided in Section 4.3(b) (*SITLA's Right to Reclaim*).
- 8.4. **Mechanics' Liens.**
- (a) **Lessee is Not SITLA's Agent.** Lessee acknowledges that it is not the agent of SITLA for the construction, alteration, or repair of any Improvements, the same being done at the sole direction and expense of Lessee. All contractors, materialmen, mechanics, and laborers are hereby charged with notice that they must look only to Lessee for the payment of any charge for work done or material furnished on the Property. Lessee has no right, authority or power to bind SITLA or any interest of SITLA for the payment of any claim for labor or material, or for any charge or expense, incurred by Lessee as to improvements, alterations, or repairs on or to the Property, and Lessee shall post notices on the Property during all construction work of any nature whatsoever that SITLA is not responsible for any material and labor used on the Property.
- (b) **Covenant against Mechanic's Liens.** Lessee may not suffer or permit to be enforced against any or all of the Property, and shall indemnify and hold SITLA and the Property harmless for, from, and against any mechanic's, material men's, contractor's or subcontractor's liens arising from and any claim for damage growing out of, the work of, any construction, repair, restoration, replacement, or improvement done by or on behalf of Lessee. Lessee shall pay or cause to be paid all such liens, claims, or demands before any action is brought to enforce the same against the Property. If Lessee in good faith contests the validity of any lien, claim, or demand, then Lessee shall, at its expense, defend itself and SITLA against the same and shall pay and satisfy any adverse judgment that may be rendered. Lessee shall, at the request of SITLA, provide such security and take such steps as may be required by law to release the Property from the effect of such lien.
- 8.5. **Survey Monuments.** Lessee shall take reasonable precautions to protect, in place, all public land survey monuments and private property corners.

- 8.6. Fencing. Lessee may fence any portion of the Property at its own expense. If Lessee erects any fencing, Lessee shall provide gated access at reasonable locations to SITLA and to any lessees or permittees granted rights or access to or across the Property by SITLA pursuant to Section 2.6 (*Reservations to SITLA*), except for fencing necessary to prevent unauthorized access to the Improvements. Lessee shall take reasonably appropriate steps, including fencing, to secure the Improvements from unauthorized access and prevent loss of wildlife.
- 8.7. Prior Improvements. If existing fences, range improvement projects, or other prior improvements currently exist on the Property by authority of SITLA, Lessee shall allow the owner of such improvements to remove them within 90 days of notice to Lessee.

9. **REGULATORY COMPLIANCE**

- 9.1. Observance of Governmental Regulations. In Lessee's use and occupancy of the Property and the performance by Lessee of its rights and obligations under this Lease, Lessee shall comply with all Applicable Law and obtain all necessary Governmental Approvals. Lessee shall pay all costs, expenses, liabilities, losses, fines, penalties, claims and demands including, without limitation, reasonable attorney's fees that may in any way arise out of or be imposed because of the failure of Lessee to comply with any Applicable Law or Governmental Approvals.
- 9.2. Governmental Approvals. Lessee shall obtain all Governmental Approvals required by any Governmental Authorities under Applicable Law. Prior to requesting any Governmental Approvals of Lessee's Plan of Development, Lessee shall first comply with Section 4.1(b)(i) (*Plan of Development*). On Lessee's request, SITLA shall reasonably cooperate with Lessee to obtain any necessary Governmental Approvals. Lessee shall provide SITLA with copies of all Governmental Approvals received with respect to the Project. SITLA is not obligated to incur out-of-pocket expenses in assisting Lessee in obtaining Governmental Approvals.
- 9.3. Right of Contest. Lessee may contest the validity or applicability of any laws, orders, rules, regulations, directives, ordinances and requirements. During such contest, Lessee may refrain from complying with the contested law if: (a) SITLA is not or could not be subjected to criminal prosecution as a result of Lessee's non-compliance; (b) SITLA's title to the Property is not subject to lien or forfeiture as a result of Lessee's non-compliance; and (c) neither the Property nor any rights or interest of SITLA are otherwise prejudiced or jeopardized by Lessee's non-compliance.
- 9.4. SITLA Statute and Regulations. This Lease is issued pursuant to, and is subject to, the provisions of Title 53C, Utah Code Annotated, 1953, as amended, and all current and future rules and regulations adopted by SITLA and its successor agencies. Lessee shall comply with all such statutes and rules as they exist on the Execution Date and as they may be amended or replaced in the future.
- 9.5. Restrictions on Hazardous Substances; Remedial Work.
- (a) Hazardous Substances on the Property. Lessee may not cause or permit any Hazardous Substance to be brought, kept, or used in or about the Property by Lessee except in commercial quantities not in violation of Applicable Law and similar to those quantities usually kept on similar property by others in the same business or profession. Lessee shall store, use, and dispose of such materials in compliance with all Applicable Law.

- (b) Remedial Work. If the presence of any Hazardous Substance on, in or under the Property caused or permitted by Lessee results in any contamination of the Property in violation of Applicable Environmental Law, or any other property, Lessee shall promptly complete all Remedial Work that is necessary to return the affected area to the condition existing prior to the introduction of any such Hazardous Substance. Lessee shall obtain all necessary licenses, manifests, permits and approvals to perform the Remedial Work. Lessee shall promptly perform all Remedial Work and the disposal of all waste generated by the Remedial Work in accordance with Applicable Law.
  - (c) Notice to SITLA of Release. Lessee shall immediately notify SITLA of: (i) all spills or releases of any Hazardous Substance affecting the Property in violation of Applicable Environmental Law; (ii) all failures to comply with Applicable Law; (iii) all inspections of the Property by, or any correspondence, orders, citations, or notifications from any Governmental Authorities; (iv) all regulatory orders or fines or all Remedial Work or other response or interim cleanup actions taken by or proposed to be taken by any Governmental Authorities or third parties concerning the Property; and
  - (d) Copies to SITLA. On request, Lessee shall provide SITLA copies of any and all correspondence, pleadings, and/or reports received by or required of Lessee or issued or written by Lessee or on Lessee's behalf with respect to the use, presence, transportation or generation of Hazardous Substances related to the Property.
- 9.6. Endangered Species; Migratory Birds. In its use of the Property, Lessee shall take all actions reasonably necessary for the protection of endangered, threatened, and sensitive species, as the same may be defined by federal or state law; migratory birds as defined by the Migratory Bird Treaty Act, 16 U.S.C. § 703 et seq; and eagles as defined in the Bald and Golden Eagle Protection Act, 16 U.S.C. § 668a et seq.
- 9.7. Cultural, Archeological, Paleontological, and Antiquities Resources.
- (a) Survey Required. Prior to commencing any surface disturbing activity, Lessee shall, at its own cost and expense, complete a Cultural Resources Survey prepared in accordance with applicable laws and regulations, and obtain SITLA's prior consent.
  - (b) SITLA's Consent to Activities. Lessee shall provide all Cultural Resource compliance materials to SITLA prior to commencing the surface-disturbing activity. SITLA will review all such materials and may withhold or condition its consent to surface-disturbing activities if such activities would result in impacts to Cultural Resources.
  - (c) Discovery of Site. On discovery of a Site, Historic Property, Remains, Antiquities, or Critical Paleontological Resource, Lessee shall immediately cease all activities until such time as the discovery has been evaluated and treated to SITLA's satisfaction.
  - (d) Property of State. All Specimens are and will remain the property of the State of Utah.
- 9.8. Wildfire. Lessee shall at all times take reasonable precautions to prevent wildfires from starting or spreading on the Property and shall comply with Applicable Laws with respect to fire prevention and control. If Lessee or its employees, contractors, or licensees cause a wildfire that necessitates suppression action, Lessee shall reimburse the State of Utah and local fire authorities for the costs of any necessary fire suppression activities incurred as a result of the wildfire.

9.9. Fill Materials and Waste. Lessee may not allow any deposit of ballast, refuse, garbage, waste matter, chemical, biological or other wastes, hydrocarbons, any other pollutants, or other matter within or on the Property, except as approved in writing by SITLA. If Lessee fails to remove all non-approved fill material, wastes or materials described above from the Property, SITLA may at its option remove such materials and charge Lessee for the cost of removal and disposal.

## 10. REPRESENTATIONS OF THE PARTIES

### 10.1. Lessee's Representations.

- (a) Good Standing. Lessee is an entity in good standing in the State of Utah.
- (b) Authority. Lessee has authority and has obtained all necessary approvals to enter into this Lease. Lessee is not prevented from entering in this Lease by any laws, executive, administrative, or judicial orders, and Lessee is not subject to pending or threatened litigation that could threatened Lessee's authority to enter into this Lease. This Lease is a legal, valid, and binding obligation of Lessee.
- (c) No Broker's Commission. Lessee represents that there are no claims for brokerage commissions or finder's fees in connection with this Lease.

### 10.2. SITLA's Representations.

- (a) Authority. SITLA has the authority to lease the Property, subject to Section 2.3 (*No Warranty of Title*). The execution and delivery by SITLA of this Lease has been duly authorized by all necessary persons or governmental entities and is consistent with all laws (statutory or otherwise), ordinances, rules, regulations, and codes of all applicable Governmental Authorities. This Lease is a legal, valid, and binding obligation of SITLA.
- (b) Hazardous Substances. To the knowledge of the Lease administrator, SITLA has complied with all Applicable Environmental Laws relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation or presence of any Hazardous Substances on or under the Property.
- (c) No Broker's Commission. SITLA represents that there are no claims for brokerage commissions or finder's fees in connection with this Lease.

## 11. CONFIDENTIALITY

11.1. Confidentiality. Lessee may be required to submit proprietary information to SITLA in connection with this Lease. The parties agree that pursuant to Utah Code § 53C-2-102, SITLA will keep such proprietary information confidential and may not disclose such information to third parties. Lessee may seek protection under GRAMA against disclosure of trade secrets and commercial or financial information, as defined in Utah Code § 63G-2-305(2), by (i) submitting a request for business confidentiality at the same time as and as an attachment to the records for which confidentiality is sought; and (ii) complying with all requirements of GRAMA or other applicable privacy statute. In this event, SITLA, to the extent permitted by law, shall keep such information confidential and may not disclose the same to any third party without the written consent of Lessee, or if ordered by a court of competent jurisdiction.

## 12. ASSIGNMENT AND SUBLETTING

- 12.1. Prohibition against Assignment and Subleases. Lessee may not assign or sublease all or part of this Lease without SITLA's prior consent, which consent SITLA may not unreasonably withhold or delay. Any attempted assignment or sublease without SITLA's consent will be voidable and constitute a default under this Lease. An Indirect Assignment that results in the change of operational control of Lessee or the Project will be deemed an assignment for purposes of this Section 12 (*Assignment and Subletting*) and require SITLA's prior consent, which consent SITLA may not unreasonably withhold or condition.
- 12.2. Assignments/Subleases to Affiliates. Notwithstanding Section 12.1 (*Prohibition against Assignment and Subleases*), Lessee may assign or sublease this Lease to an Affiliate if the assignment or sublease does not result in a change of operational control by giving SITLA 30 days' prior Notice and complying with Section 12.3 (*Assignments and Subleases Subject to this Lease*).
- 12.3. Assignments and Subleases Subject to this Lease. Other than for Indirect Assignments, Lessee shall require any approved assignee or sublessee of this Lease, whether in whole or part, to execute a written agreement assuming all of Lessee's obligations under this Lease. The assumption agreement must name SITLA as a third-party beneficiary with all rights to enforce the assumption agreement against Lessee and assignee or sublessee. Failure to include these requirements in an assumption agreement renders the assignment or sublease void. On request by SITLA, Lessee shall provide SITLA with a copy of the assignment, assumption, and/or sublease agreement to confirm compliance with the provisions of this Section 12.
- 12.4. SITLA May Consider Financial Capacity. SITLA, in determining whether to consent to any proposed assignment or sublease, may reasonably consider the proposed assignee's or sublessee's financial capacity, or ability to complete the Project, and may refuse to consent to such assignment or sublease if, in SITLA's reasonable opinion, the proposed assignee or sublessee lacks the necessary financial or technical capacity to complete the Project in a manner comparable to Lessee.
- 12.5. No Release. An assignment or sublease does not release Lessee from any of Lessee's obligations arising prior to the assignment or sublease under this Lease.
- 12.6. No Waiver of Future Right to Approve. Consent of SITLA to an assignment or sublease does not constitute a waiver of SITLA's right to approve subsequent assignments or subleases. The acceptance by SITLA of payment or performance following an assignment or sublease does not constitute consent to any assignment or sublease. SITLA's consent is only effective if it is in a writing and signed by SITLA.
- 12.7. Division in Separate Leases.
- (a) Creation of Subdivided Leasehold Estates. Subject to Sections 12.1 (*Prohibition Against Assignment and Subleases*) and 12.3 (*Assignments and Subleases Subject to this Lease*) and so long as: (i) the economic benefit to SITLA is not diminished; (ii) the administrative burdens to SITLA are not significantly increased; or (iii) unusable remnants of the Property are not created, Lessee may:
- (i) subdivide the leasehold estate and all rights and obligations of Lessee granted by this Lease into separate leasehold estates (including granting separate easements,

subleases, co-easements, and subeasements) (each a “**Subdivided Leasehold**”), referencing specific portions of the Property to be included in each Subdivided Leasehold; and

- (ii) assign each Subdivided Leasehold to an Affiliate that is a single purpose limited liability company or legal entity that will own the Improvements located within the portion of the Property under the Subdivided Leasehold.
- (b) Effect of Creation of Subdivided Leasehold Estates. On consent of the assignment or sublease by SITLA pursuant to Section 12.1 (*Prohibition Against Assignment and Subleases*), SITLA shall issue a new lease in the name of the assignee or sublessee, which lease must: (a) contain substantially the same terms and conditions (including compensation) as this Lease (except for any requirements that have been fulfilled by the Lessee before the effective date of such new leases or easements), (b) be enforceable for a period equal to the unexpired Term, and (c) enjoy the same priority as this Lease over any lien, encumbrance or other interest created by SITLA. If there is an uncured default by the lessee of any new Subdivided Leasehold, such default will not constitute a cross-default, or otherwise affect, or cause a termination of, any such other Subdivided Leasehold. SITLA may only look to the assignee or sublessee of each Subdivided Leasehold for payment of rents and other amounts and performance of all obligations under the Subdivided Leasehold and with respect to the portions of the Property under the Subdivided Leasehold.

### 13. LESSEE FINANCING

- 13.1. Lessee’s Right to Encumber. Lessee may encumber its leasehold interest by one or more mortgages, deeds of trust, bond indentures, or other security agreements (an “**Encumbrance**”), subject to the limitations in this Section 13 (*Lessee Financing*).
- 13.2. Notice of Encumbrance. Lessee shall provide Notice to SITLA of any Encumbrance, which Notice must include the name, address, and contact information of the holder of the Encumbrance (a “**Lender**”), the date, and the amount of the Encumbrance. A Lender has no rights under this Lease until SITLA receives Notice of the Encumbrance.
- 13.3. Leasehold Mortgage Protection. Once SITLA has received Notice of an Encumbrance and so long as the Encumbrance remains unsatisfied, the following provisions apply:
  - (a) Notice of Default. SITLA shall send Lender a copy of any Notice of default to Lender’s address provided in the Notice of Encumbrance and at the same time that SITLA sends the Notice of default to Lessee.
  - (b) Right to Cure. Lender may remedy the default described in the Notice within the time periods provided in Section 17.1 (*Events of Default of Lessee*), plus an additional 60 days following Lender’s receipt of any Notice of default. If Lender cures the default within the prescribed time period, this Lease will not be in default and SITLA will consider Lender’s remedy as if it were performed by Lessee. If Lender is prohibited by law from curing the default or from commencing or prosecuting such proceedings, the foregoing time periods will be extended by the period of such prohibition.
  - (c) Leasehold Interest Foreclosure. Notwithstanding anything to the contrary in this Lease, on the occurrence of an Event of Default and so long as Lender pays all monies due and

cures all other Events of Default reasonably susceptible of being cured, SITLA may not terminate this Lease without first giving Lender a reasonable time to: (i) obtain possession of the Property from Lessee (including possession by a receiver); or (ii) to institute, prosecute, and complete foreclosure proceedings or otherwise acquire Lessee's leasehold interest. SITLA may not require Lender to continue to possess or foreclose on the leasehold interest after all Events of Default have been cured. Nothing in this Section precludes SITLA from exercising any rights or remedies it may have with respect to any other default by Lessee during the pendency of such foreclosure proceedings.

- (d) Termination of Lease/New Lease to Lender. If SITLA terminates this Lease because of an Event of Default or this Lease terminates in any proceeding under the United States Bankruptcy Code, then SITLA shall give Notice to Lender that the Lease has terminated, together with a statement of all sums that would be due and owing under this Lease but for such termination, and of all other defaults, if any, under this Lease then known to SITLA.
- (i) Within 30 days after SITLA's Notice of termination, Lender may elect to enter into a new lease with SITLA on the following conditions:
- (A) the term of the new lease cannot be longer than the remaining term under this Lease;
  - (B) the effective date of the new lease must be as of the date of termination of this Lease;
  - (C) the new lease must be on the same terms, covenants, and conditions, including without limitation rents, royalties, capacity fees, extensions, and rights of adjustment;
  - (D) Lender must perform any unfulfilled obligations of Lessee under this Lease that are reasonably susceptible of being performed by such new lessee; and
  - (E) Lender shall pay any and all sums that would be due and owing under this Lease but for termination, pay expenses, including reasonable attorney's fees, court costs, and disbursements incurred by SITLA in connection with Lessee's defaults and termination, the recovery of possession of the Property, and the preparation, execution and delivery of the new lease.
- (e) Lender Liability.
- (i) Lender is not liable as lessee under this Lease unless and until Lender succeeds to the interest of Lessee in and to the Lease or enters a new lease. If Lender succeeds to the interest of Lessee or enters into a new lease, Lender will not be liable under this Lease, or any new lease, or for any acts or omissions of any subsequent tenant, after the conveyance of Lender's interest as lessee to another person or entity that expressly assumes such Lender's obligations as lessee.
- (ii) Lender will be deemed to have succeeded to the interest of Lessee under this Lease on: (I) the transfer of Lessee's leasehold interest to Lender, whether by

means of foreclosure or transfer in lieu of foreclosure, or pursuant to the exercise of its rights and remedies under the Encumbrance, or otherwise; or (II) the occurrence of any other event the result of which Lender acquires the right, title and interest of Lessee in and to the Lease.

- (f) SITLA's Consent to Transfer. Lender's right to transfer this Lease or Lessee's leasehold interest to a third party is subject to SITLA's consent, as provided in Section 12.1 (*Prohibition against Assignment and Subleases*).
- (g) Priority of Lenders. If more than one Lender requests a new lease pursuant to Section 13.3(d) (*Termination of Lease/New Lease to Lender*), SITLA shall issue the new lease to the highest priority Lender requesting a new lease. The parties do not intend by this Lease or any new lease issued pursuant to this Section 13.3(g), to extinguish or otherwise diminish the security interests of any Lender in Lessee's leasehold estate.
- (h) Delivery of Notice. Lender and SITLA shall send all Notices to the other in writing, by certified mail, and addressed, with respect to SITLA, as specified in Section 20.2 (*Notices*), and with respect to Lender, as specified in the Notice of Encumbrance.
- (i) Consent of Lender. SITLA and Lessee may not amend this Lease without consent from the first-priority Lender.
- (j) No Merger. This Lease will not merge with SITLA's interest in the fee estate.
- (k) Waiver of Landlord's Liens. SITLA hereby waives any lien it may have, by operation of law or otherwise, in and to the Improvements and the Project.
- (l) Waiver of Right of Levy for Rent. SITLA hereby waives all right of levy for rent and all claims and demands of every kind against the Project, such waiver to continue so long as an Encumbrance remains outstanding.
- (m) Lender's Access to the Property. During the term of this Lease and of any successor lease entered into pursuant to Section 13.3(d) (*Termination of Lease/New Lease to Lender*), SITLA hereby consents to Lender's access to and use of the Property for the purpose of inspecting the Project.
- (n) Certificates from SITLA. SITLA shall, within 15 days after Notice from Lessee, execute and deliver to Lessee a consent and estoppel certificate (a "**Certificate**") in the form attached as *Exhibit C*. If Lender or Lessee require a different form of Certificate, SITLA shall review such different form, subject to Lessee reimbursing SITLA up to \$1,000 to cover attorney's fees for such review.

#### 14. WATER RIGHTS

- 14.1. Water Rights in Name of SITLA. If Lessee applies for a new appropriation of water for use on the Property, Lessee shall apply for such rights in SITLA's name and the right will be considered an appurtenance to the Property. Lessee may use the water right at no cost during the Term. Upon termination of this Lease, Lessee shall make all necessary filings to confirm SITLA's ownership of the water rights.

14.2. Option to Purchase. Lessee hereby grants SITLA an option, exercisable on termination of the Lease, to acquire any water rights that Lessee purchases or acquires for use on the Property (other than for short term uses related to construction). At termination of this Lease, Lessee shall send Notice to SITLA of all water rights purchased or acquired by Lessee for operations on the Property and its estimate of the fair market value of those water rights. SITLA may exercise its option to acquire the water rights by giving Lessee Notice of its election within 30 days after it receives the Notice describing the water rights from. If SITLA disagrees with Lessee's fair market value estimate, SITLA shall notify Lessee of its disagreement within the same 30-day notice period. The parties shall then select a mutually agreeable appraiser for the water rights; the appraisal will be final and not subject to review or appeal. If the parties cannot agree on the choice of an appraiser, either party may seek a fair market value determination from the Third District Judicial Court of Utah. The parties shall consummate the transfer of the water rights to SITLA within 30 days of SITLA's Notice of exercise or within 30 days after the appraisal or a court's determination of fair market value. Lessee shall transfer the water rights by a water rights deed. SITLA is not obligated to exercise the option to purchase water rights if SITLA determines in its sole discretion that the price of the water rights is too high.

14.3. Proration in the Event of Unitization. If Lessee files to appropriate or acquires water rights as part of a unit, cooperative, or other plan of development, Lessee's obligation to initiate water filings in SITLA's name and its grant of the option to acquire to SITLA will be limited to a pro rata portion of such rights proportionate to SITLA's ownership of lands within the approved unit area or the area of such other cooperative development arrangement.

15. **INSURANCE**

15.1. Liability Insurance. Lessee, at its sole cost and expense, shall at all times during the Term, maintain in force an insurance policy or policies that name SITLA and Lessee as insureds against all liability resulting from property damage, injury or death occurring to persons in or about the Property, with limits for each occurrence of not less than \$2,500,000, combined single limit, with respect to personal injury, death, and property damage. Lessee shall provide SITLA, without necessity of demand, a current, authenticated certificate of insurance evidencing the policy or policies required under this Lease.

15.2. Other Insurance. Lessee shall, at all times during the Term and at the sole cost and expense of Lessee, maintain and keep in force:

- (a) workmen's compensation insurance on its employees, if any, required under the applicable workmen's compensation laws of the State of Utah;
- (b) such other and additional insurance policies as a prudent lessee in the position of Lessee would maintain consistent with industry standards for Lessee's business, or as required by law. Lessee shall name SITLA as an additional insured on all insurance policies.

15.3. Policy Requirements. All insurance policies held by Lessee must:

- (a) be issued by a company rated "A" or better by the then most current edition of Best's Insurance Guide (or if such guide is no longer published, then having a comparable rating as specified by SITLA), responsible and authorized to do business in the State of Utah, and approved by SITLA;
- (b) waive the insurance company's rights of subrogation against the State of Utah;

- (c) name the State of Utah as an additional insured;
  - (d) provide for specific coverage of Lessee's assumed obligation to indemnify the State of Utah; and
  - (e) ensure the name of the insured on the insurance policy is the same as the name of Lessee.
- 15.4. Notice of Change. Lessee shall give SITLA 30 days' Notice of the termination or modification of any policies.

16. **INDEMNIFICATION AND DEFENSE**

16.1. Indemnification. The Indemnified Parties have no responsibility for and Lessee shall indemnify the Indemnified Parties from and against all Losses arising out of:

- (a) Lessee's acts or omissions resulting in death, bodily injury, or damage to real property;
- (b) Lessee's breach of the representations and warranties or other covenants set forth in this Lease;
- (c) the condition of the Property, excluding any condition existing prior to the date of this Lease;
- (d) Lessee's unauthorized use of the Property; and
- (e) any use, generation, storage, disposal, release or threatened release of Hazardous Substances by Lessee into the air, soil, surface water or ground water on the Property or other property in connection with the Project during the Term of this Lease, including without limitation: (i) all foreseeable and unforeseeable consequential damages; and (ii) the cost of any investigation, repair, cleanup, remediation or detoxification of the Property and other affected property and the preparations of any corrective action, closure or other required plans or reports.
- (f) Lessee is not responsible to indemnify an Indemnified Party to the extent that the Indemnified Party caused the Losses.

16.2. Defense.

- (a) Lessee to Defend. Lessee shall defend an Indemnified Party against any Third-Party Claim arising out of or related to the indemnification obligations set forth in Section 16.1 (*Indemnification*). To be entitled to defense from Lessee, an Indemnified Party must notify Lessee within a reasonable time of a Third-Party Claim and deliver to Lessee a copy of all documents and information related to the Third-Party Claim. The Indemnified Parties' failure to notify Lessee of a Third-Party Claim within a reasonable time does not relieve Lessee of its defense obligations unless Lessee is materially prejudiced by the Indemnified Party's failure to give reasonable notice. An Indemnified Party may elect to defend itself against a Third-Party Claim with counsel of its own choosing and without Lessee's participation.

- (b) Independent Counsel. On Notice of a Third-Party Claim from an Indemnified Party, Lessee shall promptly retain independent legal counsel that is reasonably acceptable to the Indemnified Party requesting defense.
- (c) Litigation Expenses. Lessee shall pay any Litigation Expenses that an Indemnified Party incurs in connection with defense of a Third-Party Claim: (i) before Lessee assumes the defense of that Third-Party Claim, except with respect to any period during which the Indemnified Party fails to timely notify Lessee of that Third-Party Claim; and (ii) if Lessee refuses to defend the Indemnified Parties against a Third-Party Claim or does not timely retain independent counsel. Lessee is not responsible for Litigation Expenses incurred by an Indemnified Party in defense of a Third-Party Claim if the Indemnified Party elects to defend itself against such claim after Lessee has retained independent counsel reasonably acceptable to the Indemnified Party. Lessee shall promptly pay all Litigation Expenses as they are incurred.
- (d) Settlement. After Lessee assumes the defense of a Third-Party Claim, Lessee may contest, pay, or settle the Third-Party Claim without the consent of the Indemnified Party only if that settlement: (i) does not entail any admission on the part of the Indemnified Party that it violated any law or infringed the rights of any person; (ii) has no effect on any other claim against the Indemnified Party; (iii) provides as the claimant's sole relief monetary damages that are paid in full by Lessee; and (iv) requires that the claimant release the Indemnified Party from all liability alleged in the Third-Party Claim.

17. **DEFAULT**

17.1. Events of Default of Lessee. Any of the following occurrences or acts constitute an “**Event of Default**” under this Lease:

- (a) Lessee fails to pay any Rent, Capacity Fee, Royalties, or any other monies due to SITLA within 30 days of Notice from SITLA of Lessee's failure to pay;
- (b) Lessee fails to maintain insurance as required under Section 15 (*Insurance*) or to provide evidence of insurance coverage within 30 days of SITLA's request for such evidence ;
- (c) Lessee fails to maintain an adequate Financial Guaranty as required under Section 4.2(e) (*Financial Guaranty*) or provide evidence of such Financial Guaranty within 30 days of SITLA's request;
- (d) Lessee fails to commence reclamation of the Property at least three months prior to the end of the Reclamation Phase, unless the parties are negotiating a renewal of the Lease, or Lessee fails to complete reclamation of the Property by the end of the Reclamation Phase without executing a renewed lease;
- (e) Lessee fails to observe or perform any other material provision of this Lease if such failure continues for 30 days after SITLA provides Lessee with Notice of default, or if the cure requires a period longer than 30 days to complete, if Lessee fails to commence to effect the cure within such 30-day period and diligently pursue such cure thereafter;
- (f) (i) Lessee files a petition for bankruptcy, reorganization, or an arrangement pursuant to any federal or state bankruptcy law or any similar federal or state law, (ii) a creditor files any such petition against Lessee, (iii) Lessee makes an assignment for the benefit of

creditors (except as specifically permitted under Section 13.1 (*Lessee's Right to Encumber*)), (iv) Lessee admits in writing to its inability to pay its debts generally as they become due, (v) a petition or answer proposing the adjudication of Lessee as bankrupt or its reorganization pursuant to any federal or state bankruptcy law or any similar federal or state law is filed in any court and Lessee consents to or acquiesces in the filing thereof or such petition or answer is not discharged or denied within 60 days after the occurrence of any of the foregoing;

- (g) a receiver, trustee or liquidator of Lessee or of all or substantially all of the assets of Lessee or of Lessee's leasehold interest in the Property is appointed in any proceeding brought by Lessee, or if any such receiver, trustee or liquidator is appointed in any proceeding brought against Lessee and is not discharged within 60 days after the occurrence thereof, or if Lessee consents to or acquiesces in such appointment; or
- (h) following the Groundbreaking, Lessee ceases construction or operations for a period of 360 consecutive days.

17.2. Remedies. On occurrence of an Event of Default, SITLA has the following rights and remedies (subject to Lender's rights under Section 13 (*Lessee Financing*)):

- (a) Right to Terminate. SITLA may terminate this Lease on Notice to Lessee. If SITLA terminates pursuant to this Section, it may require Lessee to conduct all reclamation required under Section 4.3(c) (*Reclamation Obligations*) or if Lessee fails to commence reclamation within a reasonable time following termination, SITLA may undertake the reclamation obligations, use the Financial Guaranty to cover the reclamation expenses, and charge Lessee for costs and expenses incurred by SITLA and not otherwise covered by the Financial Guaranty.
- (b) Performance by SITLA. SITLA may, in its discretion, perform any necessary actions required to cure an Event of Default and charge Lessee all of its incurred costs and expenses (including an administration fee equal to 5% of such costs and expenses).
- (c) Right to Re-enter. SITLA may immediately re-enter and repossess the Property by summary proceedings, ejectment, or any other legal action or in any lawful manner SITLA determines necessary or desirable and remove all persons, Improvements, and other personal property from the Property.
- (d) Remedies Not Exclusive. The rights and remedies provided for in this Section 17.2 (*Remedies*) or otherwise in this Lease are not exclusive of any other rights or remedies, and each and every right and remedy is cumulative and in addition to any other right or remedy available under this Lease, by law, equity, or statute.

17.3. Damages. If SITLA exercises the remedies available to it pursuant to Section 17.2 (*Remedies*), Lessee shall:

- (a) Pay SITLA all Rents, Capacity Fees, Royalties, and other monies due under the Lease up to the date of termination;
- (b) Pay all SITLA's costs incurred to exercise the remedies available to it under Section 17.2 (*Remedies*); and

- (c) If SITLA terminates the Lease pursuant to Section 17.2(a) (*Right to Terminate*), pay two times the Rent.
- (d) Lessee shall pay the damages due under Section 17.3 (*Damages*) within 30 days of receipt of the statement. The costs and expenses incurred by SITLA pursuant to this Section 17.3 will bear interest at the Default Rate from the date they are incurred until paid in full.

18. **TERMINATION**

- 18.1. **SITLA's Right to Terminate.** SITLA may terminate the entirety this Lease (subject to Lessee's right to cure and rights granted to Lender under Section 13.3 (*Leasehold Mortgage Protection*)), pursuant to Sections 4.1(e) (*Termination for Failure to Build*) and 17.2(a) (*Right to Terminate*) by giving Notice of termination to Lessee.
- 18.2. **Lessee's Right to Terminate.**
- (a) **Termination in Full.** Lessee may terminate the entirety of this Lease: (i) at any time prior to Groundbreaking by giving 30 days' Notice to SITLA; and (ii) after the Groundbreaking and at any time prior to Commencement of Reclamation, by giving SITLA one years' prior Notice of termination.
  - (b) **Termination in Part.** So long as partial termination does not create unusual remnants of the Property, Lessee may terminate this Lease in part: (a) at any time prior to Groundbreaking by giving 30 days' Notice to SITLA; and (b) after Groundbreaking and at any time prior to Commencement of Reclamation, by giving SITLA one years' prior Notice of partial termination and obtaining SITLA's consent, which consent SITLA may not unreasonably withhold. Upon partial termination, Lessee shall comply with all provisions of this Lease that apply to reclamation of the Property as to the deleted lands. If SITLA determines in its sole discretion that the deleted portions of the Property have been properly reclaimed, this Lease will terminate as to the deleted lands, subject to Lessee's continuing obligations under those Sections that survive termination, as set forth in Section 20.4 (*Survival*). Partial termination will reduce Rent proportionately.
- 18.3. **Effect of Termination Notice.** If either party gives the other party a termination Notice prior to Commencement of Reclamation, unless otherwise specifically provided for in this Lease, then such Notice triggers Commencement of Reclamation and this Lease will be in the Reclamation Phase and will not terminate until the end of the Reclamation Phase or as otherwise approved by SITLA.
- 18.4. **Lessee's Obligations on Termination.** On termination of the Lease, Lessee has the following obligations:
- (a) if termination occurs on an Event of Default, comply with paragraph 17.3 (*Damages*);
  - (b) within 30 days of termination for reasons other than an Event of Default, pay SITLA all Rent, Capacity Fee, Royalties, and other monies due under the Lease up to the date of expiration or termination;

- (c) on termination of this Lease for any reason, Lessee shall reclaim the Property pursuant to Section 4.3(c) (*Reclamation Obligations*) and immediately surrender peaceable possession of the Property in a good, clean and usable condition; and
  - (d) within 30 days of termination for any reason or within five days after demand, Lessee shall execute, acknowledge and deliver to SITLA a quitclaim deed from Lessee to SITLA, or other document deemed necessary or desirable by SITLA to remove the cloud of this Lease from title to the Property.
- 18.5. Effect of Termination. On termination of this Lease, Lessee will have no more rights under this Lease. Lessee will remain liable for all outstanding obligations and liabilities until such obligations and liabilities are complete.
- 18.6. Waste Certification. Lessee shall provide upon any transfer of operation, assignment of rights, permanent cessation of operations, or lease termination, certification to SITLA that, based upon a complete search of all the operator's records for this Lease, and upon its knowledge of past operations, there have been no reportable quantities of hazardous substances as defined in 40 Code of Federal Regulations § 302.4, or used oil as defined in Utah Administrative Code R315-15, discharged (as defined at 33 U.S.C. §1321(a)(2)), deposited or released within the Property, either on the surface or underground, and that all remedial actions necessary have been taken to protect human health and the environment with respect to such substances. Lessee shall additionally provide to SITLA a complete list of all hazardous substances, hazardous materials, and their respective Chemical Abstracts Service Registry Numbers, used or stored on, or delivered to, the Property. Such disclosure will be in addition to any other disclosure required by law or agreement.
- 18.7. Force Majeure. The term "**Force Majeure**" means causes or events such as an act of God, act of civil or military authority, fire, epidemic, flood, earthquake, riot, war, terrorism, sabotage, or other similar cause or event not within such party's reasonable control, but not including generalized economic conditions, recession, or depression. If either party, without fault or negligence by such party, is unable due to an event of Force Majeure, to perform any obligation under this Lease, other than Lessee's obligation to pay Rent, Capacity Fee, Royalties, or other monies due under this Lease, including late fees, then such party shall promptly give Notice to the other party of the Force Majeure event. The Notice of Force Majeure must set forth the particular nature and circumstances of the Force Majeure, the expected effect of the Force Majeure on the party's performance under the Lease, and the expected date the party will resume performance. As of the date of the event of Force Majeure, the party asserting Force Majeure is excused from performing any obligation that the party is unable to perform due to the Force Majeure event for as long as the event of Force Majeure continues, and such party is relieved of liability for its failure to perform the excused obligations during the Force Majeure period. The party asserting an inability to perform shall use best efforts to correct such inability and to resume promptly its performance as required under this Lease. The party asserting Force Majeure shall send the other party Notice when the event of Force Majeure has ended.
19. **CONDEMNATION**
- 19.1. Eminent Domain. If the Property is taken in whole by any entity with the power of eminent domain, excluding SITLA, (a "**Condemning Authority**") or if the Property is conveyed to a Condemning Authority by a negotiated sale in lieu of condemnation, Lessee may terminate this Lease by giving SITLA Notice of termination. If Lessee terminates this Lease pursuant to this

Section 19.1, SITLA shall refund to Lessee, on a pro rata basis, any Rent or Capacity Fee prepaid beyond the date of termination.

19.2. Partial Taking.

- (a) If part of the Property or Improvements are taken by or conveyed to a Condemning Authority and the partial taking or conveyance does not substantially interfere with Lessee's use of the Property, this Lease does not terminate and SITLA shall adjust rents and other monies owed, as appropriate, to reflect the remaining leased portion of the Property.
- (b) If part of the Property or Improvements are taken by or conveyed to a Condemning Authority and the partial taking or conveyance substantially interferes with Lessee's use of the Property, Lessee may terminate this Lease as of the date of condemnation or sale by giving SITLA Notice of termination. If Lessee terminates this Lease pursuant to this Section 19.2(b), SITLA shall refund to Lessee, on a pro rata basis, any rent prepaid beyond the date of termination.

19.3. Basis of Awards. Lessee hereby disclaims and waives all interest it may have in any award by the Condemning Authority for condemnation or conveyance of all or part of the Property. Lessee may seek recovery from the Condemning Authority for condemnation by or conveyance to the Condemning Authority of its leasehold interest and all Improvements located on the Property.

20. GENERAL PROVISIONS

20.1. Memorandum of Agreement. On request from Lessee, SITLA shall execute and acknowledge a memorandum of this Lease, substantially in the form attached as *Exhibit D*, which Lessee may record in the county recorder's office for the county in which the Property is located.

20.2. Notices. The parties shall send all notices, communications, and payments ("Notices") in writing and addressed as follows:

If to SITLA:

School and Institutional Trust Lands Administration  
Attn: Assistant Director  
Surface 675 East 500 South, Suite 500  
Salt Lake City UT 84102

If to Lessee:

Black Rock Renewable Energy, LLC  
Attn: Brent Cook  
P.O. Box 987  
American Fork, Utah 84003

The parties shall give all Notices by (a) personal delivery, (b) deposit in the United States mail, certified mail, return receipt requested, postage prepaid, or (c) overnight express delivery service, addressed or transmitted to SITLA and Lessee at the above addresses, or to such other addresses as either party may designate to the other in a writing delivered in accordance with the provisions of this Section. All Notices will be deemed delivered and effective on the date the Notice is

actually received, if Notice is given by personal delivery or overnight express delivery service, or on the third day after mailing if Notice is sent through the United States mail.

- 20.3. Lessee Liable for Actions of Representatives. Whenever this Lease imposes obligations or liabilities on Lessee, those obligations and liabilities apply to actions or inactions of Lessee's officers, directors, owners, agents, employees, sublessees, assignees, contractors, subcontractors, invitees, and concessionaires. Lessee hereby assumes all liability arising from the actions or inactions of Lessee's officers, directors, owners, agents, employees, sublessees, assignees, contractors, subcontractors, invitees, and concessionaires on the Property or pursuant to this Lease.
- 20.4. Survival. The following Sections survive termination of this Lease: Sections 3.1(d) (*Holding Over*), 4.3(c) (*Reclamation Obligations*), 6 (*Inspection, Reports, and Audits*), 14 (*Water Rights*), 15 (*Insurance*), 15.4 (*Indemnification and Defense*), 17.2 (*Remedies*), 17.3 (*Damages*), 18 (*Termination*), 20.1 (*Notices*), 20.12 (*Governing Law*).
- 20.5. Waiver of Breach. A party's waiver of a breach of any provisions of this Lease does not construed a waiver of any preceding or succeeding breach of the same or any other provision of this Lease. SITLA's acceptance of any money from Lessee during any period in which Lessee is in default in any respect other than payment of such money, does not constitute a waiver of such default.
- 20.6. Interest. Interest accrues and is payable on all obligations arising under this Lease at the Prime Rate, as set by the Wall Street Journal or other similar institution, plus 2%. Interest accrues and is payable, without necessity of demand, from the date each such obligation arises.
- 20.7. Interest and Penalty on Past Due Obligations. Any amount due to SITLA that is not paid when due and within any applicable notice and cure period bears interest at the Default Rate from the due date until paid in full, together with penalties as provided by Utah Administrative Code R850-5-200 or by any replacement rule then in effect.
- 20.8. No Third-Party Beneficiary. Other than a Lender pursuant to Section 13.3 (*Leasehold Mortgage Protection*), there are no third-party beneficiaries to this Lease.
- 20.9. Severability. If a court of competent jurisdiction finds any provision of this Lease invalid, such determination will not affect the validity of any other provision of this Lease.
- 20.10. Construction. The titles following the number of each Section are used for convenience only and do not affect the interpretation or construction of such provisions. The parties acknowledge that each party and its counsel have reviewed and revised this Lease. This Lease must not be construed for or against SITLA or Lessee.
- 20.11. Successors. Subject to the restrictions in Section 12 (*Assignment and Subletting*), this Lease constitutes a covenant running with the land and is binding on and inures to the benefit of the successors and assigns of SITLA and Lessee.
- 20.12. Governing Law; Venue. This Lease is governed by the laws of the State of Utah without regard to its choice or conflicts of laws principles that may refer the interpretation of this Lease to the laws of another jurisdiction. SITLA and Lessee agree that all disputes arising out of this Lease may only be litigated in the Third Judicial District Court for Salt Lake County, Utah, and Lessee hereby consents to the jurisdiction of such court. Lessee may not bring any action against SITLA

without exhaustion of available administrative remedies and compliance with applicable requirements of the Utah Governmental Immunity Act. SITLA does not waive, limit, or modify any sovereign immunity from suit except as specifically provided herein.

- 20.13. Broker's Commission. Lessee and SITLA represent and warrant to each other that there are no claims for brokerage commissions or finder's fees in connection with this Lease and each agrees to indemnify the other for, from and against all liabilities arising from any claims, including any attorney's fees connected therewith, relating to claims arising out of the other's actions.
- 20.14. Time is of the Essence. Time is of the essence of this Lease and in the performance of all the covenants and conditions.
- 20.15. Relationship of the Parties. The relationship of the parties is that of lessor and lessee, and SITLA is not in any way, or for any purpose, an agent, partner or joint venturer of Lessee in the conduct of Lessee's business and neither party owe fiduciary duties to the other.
- 20.16. Time Periods. If the time for the performance of any obligation or the taking of any action under this Agreements expires on a Saturday, Sunday or legal holiday, the time for performance or taking such action shall be extended to the next succeeding day that is not a Saturday, Sunday or legal holiday.
- 20.17. Entire Agreement. This Lease sets forth all the promises, inducements, agreements, conditions, and understandings between SITLA and Lessee relative to the Property, and there are no promises, agreements, conditions, or understandings, either oral or written, express or implied, between them other than are set forth therein. No subsequent alteration, amendment, change, or addition to this Lease are binding upon SITLA or Lessee unless in writing and signed by each of them.
- 20.18. Counterparts and Electronic Signatures. The parties may execute this Lease in counterparts, each of which when taken together will be deemed one and the same document. The parties may execute this Lease by exchange of electronic signatures and such electronic signatures are enforceable against the signing party. The parties agree that an electronic version of this Lease, as amended, has the same legal effect and/or enforceability as a paper version as per Utah Code § 46-4-201.

[Signature page follows]

The parties have executed this Lease on the dates indicated below.

**STATE OF UTAH, SCHOOL AND INSTITUTIONAL  
TRUST LANDS ADMINISTRATION**

By: David Wu

Its: Director

Date: 12/4/20, 2020

Approved as to Form:  
Sean D. Reyes, Attorney General

*Kel. Beard*

Special Assistant Attorney General

**BLACK ROCK RENEWABLE ENERGY, LLC**

*Black Rock Renewable Energy, LLC*

*Brent M. Cook*

By: *Brent M. Cook*

Its: *Manager*

Date: *2 December*, 2020

**EXHIBIT A  
TO  
SPECIAL USE LEASE AGREEMENT NO. 1946  
LEGAL DESCRIPTION OF THE PROPERTY**

---

The Property is located in Millard County, Utah and described as follows:

T19S, R8W, SLB&M

Section 20: W2SE4

Section 29: NE4NW4, NW4NE4, SW4NW4, NW4NW4

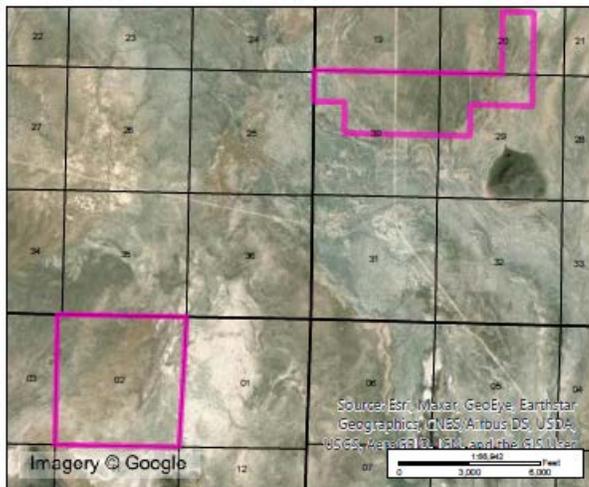
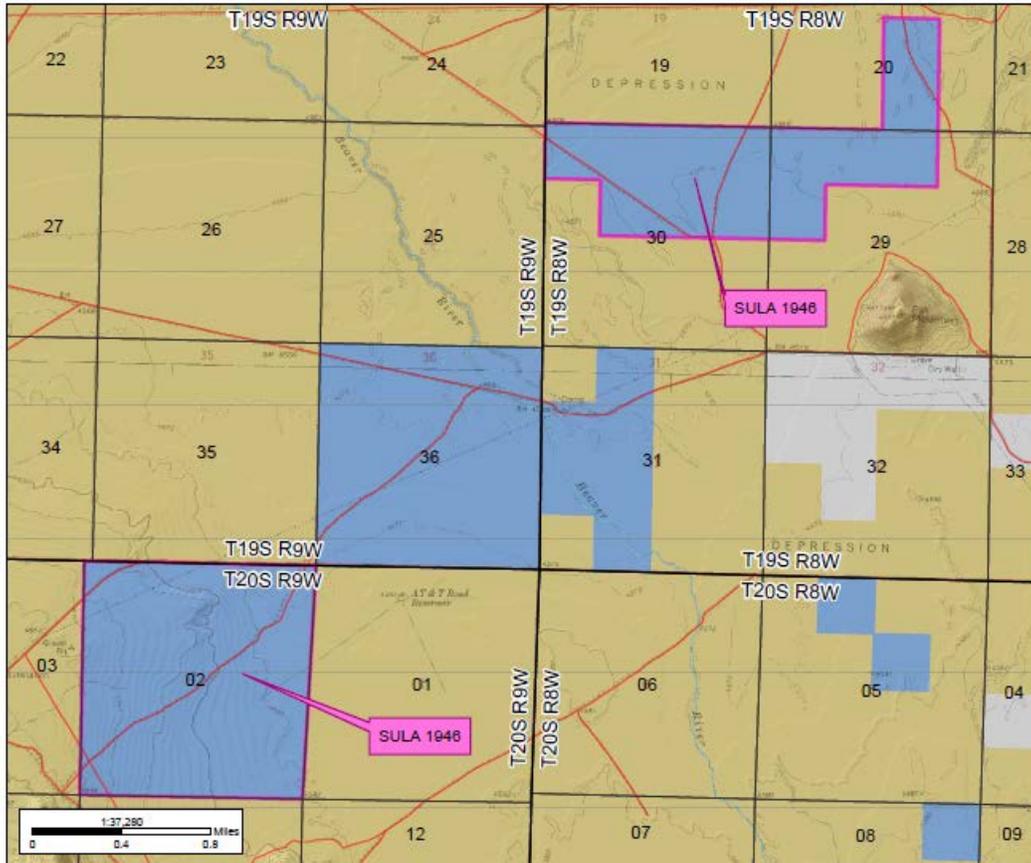
Section 30: S2NE4, SE4NW4, LOT 1 (NW4NW4), NE4NE4, NE4NW4, NW4NE4

T20S, R9W, SLB&M

Section 2: LOTS 1-7, SW4, S2NW4, W2SE4, SW4NE4 (ALL)

1,206.19 acres, more or less

**EXHIBIT B  
TO  
SPECIAL USE LEASE AGREEMENT NO. 1946  
MAP OF THE PROPERTY**



**Special Use Lease Agreement 1946**

T19S, R8W, R9W  
Section 20, 29, 30, 31, 32, 33

T20S, R8W, R9W  
Section 01, 02, 05, 06

Midland County  
October 20, 2020 SULA

**Land Ownership and Administration**

- Yellow: Bureau of Land Management
- Light Green: Bureau of Reclamation
- Dark Green: Bureaus of Land Use
- Blue: National Fire Plan Area
- Light Blue: National Parks & Monuments
- Dark Blue: National Monument
- Light Purple: National Forest
- Dark Purple: National Wilderness Area
- Light Green: National Wildlife Refuge
- Light Green: Other Federal
- Light Green: Military Reservations and Corps of Engineers
- Light Green: Private
- Light Green: State Trust Lands
- Light Green: State Knowledge Land
- Light Green: State Parks and Recreation
- Light Green: State Wildlife Reserve/Management Area
- Light Green: Other State
- Light Green: Tribal Lands

**Legend**

- Blue outline: SULA

User: 10/20/20  
Spatial Reference: NAD 1983 UTM Zone 12N  
GCS: GCS North American 1983  
Projection: Transverse Mercator  
Units: Meter  
Photo: V:\020000\_0\_mupines\PH\_1946\0001.JPG

Data represented on this map is for INFORMATIONAL USE ONLY and is not suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the validity of the information. SULA provides this data in good faith and shall not be liable for any inaction, results, or any special, indirect or consequential damages to any party, arising out of or in connection with the use or the inability to use the data herein.

Land parcels, lease boundaries and associated SULA data layers may have been adjusted to allow for visual "fit and finish". The Surface Ownership Land Status data (if present) are obtained by SULA to reflect current trust and state and surface ownership. Lines, rivers, streams, highways, roads, county and state boundaries are distributed by the USGS Automated Geographic Reference Center and/or other sources as specified. Contour lines (if present) were generated from USGS 10 meter DEM.

Please Note: While SULA seeks to verify data for accuracy and content, discrepancies may exist within the data. Reporting the most updated SULA ownership data may require contacting the GIS staff directly (915-538-5100) or TIA-01@midland.gov. The SULA GIS department welcomes your comments and concerns regarding the data and will attempt to resolve issues as they are brought to our attention. Color Aerial Photo (Google Imagery) - 8/10/17 High Resolution.

**EXHIBIT C  
TO  
SPECIAL USE LEASE AGREEMENT NO. 1946  
FORM OF CONSENT AND ESTOPPEL CERTIFICATE**

---

[Lender]  
[Lender Address  
Attention:

Re: Special Use Lease Agreement No. \_\_\_ dated \_\_\_\_\_, between the State of Utah, School and Institutional Trust Lands Administration (“**SITLA**”), and Black Rock Renewable Energy, LLC (“**Lessee**”) for Real Property Located in \_\_\_\_\_ County, Utah (the “**Property**”), attached to this certificate (the “**Lease**”).

Ladies and Gentlemen:

SITLA understands that: (a) \_\_\_\_\_ (the “**Lender**”) will be making loans and other financial accommodations to Lessee and certain of Lessee’s subsidiaries and affiliates (collectively with Lessee, the “**Credit Parties**”), the repayment of which will be secured by, among other things, the Encumbrance (as defined below) and a pledge of the equity or ownership interests of Lessee (the “**Equity Pledge**”); and (b) Lender will be relying upon this Consent and Certificate (the “**Certificate**”) in connection with Lender’s making such loans and financial accommodations. Capitalized terms not otherwise defined in this Certificate have the meaning given to them in the Lease.

With respect to the Lease, SITLA hereby certifies to and agrees with Lessee and Lender, as follows:

1. A true, correct, and complete copy of the Lease and all amendments or modifications is attached to this Certificate as Exhibit A.
2. The Lease is in good standing and in full force and effect and has not been amended or modified except as described on Exhibit B.
3. The term of this Lease commenced on \_\_\_\_\_ and will expire on \_\_\_\_\_. Lessee has \_\_\_ options to extend or renew the term of the Lease of \_\_\_ years each.
4. Lessee has paid SITLA the following funds in satisfaction of the following payment obligations:

<u>Amount</u>	<u>Payment Obligation</u>
\$250	application fee

5. This Lease is in the \_\_\_\_\_ Phase.
6. The current Rent is \$\_\_\_\_\_ and the current Capacity Fee is \$\_\_\_\_\_. Except as provided on Exhibit C, Lessee has paid all Rent and Capacity Fees due and owing up to the date of this Certificate. The current Royalties under this Lease is \_\_%. Lessee has paid all Royalties

due and owing up to the date of this Certificate, subject to SITLA's right to audit and collect unpaid Royalties after an audit determination.

7. To SITLA's knowledge, and except as provided on Exhibit D, (i) there are no defaults of Lessee under the Lease or any existing conditions that, upon the giving of notice or lapse of time or both, would constitute a default under the Lease, and (ii) Lessee has fulfilled all of its obligations that are required to be performed by the date of this Certificate under the Lease (including satisfaction of conditions precedent to SITLA's obligations required to have been satisfied by the date of this Certificate).
8. Section 13 of the Lease is incorporated into this Certificate.
9. SITLA acknowledges that it has received a Notice of Encumbrance from Lender.
10. SITLA hereby consents to Lender's Encumbrance of Lessee's leasehold estate, provided that the Encumbrance does not encumber SITLA's fee title to the Property.
11. SITLA consents to Lender recording the Encumbrance in the land records of the counties in which the property is located.
12. The parties may execute this Certificate by facsimile or e-mail of .pdf copies of the signature page and a facsimile or .pdf signature will be deemed an original and be binding on the parties. The terms of this Certificate inure to the benefit of and are binding on the parties, and their respective successors and assigns, including, without limitation, any successor Lender. This certificate does not amend or modify any terms and conditions of the Lease. In the event of a conflict between this Certificate and the terms and conditions of the Lease, the terms and conditions of the Lease prevail.

Dated: \_\_\_\_\_

STATE OF UTAH  
SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION

[Do Not Sign—Exhibit Only]

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

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

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

**EXHIBIT D**  
**TO**  
**SPECIAL USE LEASE AGREEMENT NO. 1946**  
**FORM OF MEMORANDUM OF AGREEMENT**

This Memorandum of Agreement (this “**MOA**”) is between the State of Utah, through the School and Institutional Trust Lands Administration (“**SITLA**”), with an address at 675 E. 500 S., Suite 500, Salt Lake City, Utah 84102, and Black Rock Renewable Energy, LLC, a Utah limited liability company (“**Lessee**”), with an address at 11094 South Farnsworth Lane, Sandy, Utah 84070.

1. SITLA and Surface Lessee are parties to that certain Special Use Lease Agreement No. 1946, effective as of [ ] (the “**Agreement**”), applicable to real property located in Millard County, Utah (the “**Property**”), which Property is described on *Exhibit A*.
2. Pursuant to the Agreement:
  - a. SITLA has granted Lessee a lease on the Property for the construction, operation, maintenance, and reclamation of a solar power generating facility (the “**Project**”). Lessee may use the Property for all purposes reasonable and necessary for the Project, as more fully set forth in the Lease.
  - b. The term of the Lease is 36 years from the effective date of the Lease. Lessee has the option to extend the Lease for two terms of five years each.
  - c. SITLA has the option to purchase any water rights acquired for use on the Property.
  - d. Lessee may not assign the Agreement without the prior written consent of SITLA, which consent SITLA may not unreasonably withhold, subject to certain exceptions.
3. The terms and conditions of the Agreement are hereby incorporated in this MOA. If there are any inconsistencies between the Agreement and this MOA, the terms of the Agreement control.
4. The parties may execute this MOA in counterparts, each of which when taken together will be deemed one and the same document. The parties may execute this MOA by exchange of electronic signatures and such electronic signatures are enforceable against the signing party. The parties agree that an electronic version of this MOA has the same legal effect and/or enforceability as a paper version as per Utah Code § 46-4-201.



**BLACK ROCK RENEWABLE ENERGY, LLC**

[Do Not Sign—Exhibit Only]

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

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

Date: \_\_\_\_\_, 20\_\_

STATE OF \_\_\_\_\_)

: ss.

COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_,  
by \_\_\_\_\_, the \_\_\_\_\_ of Black Rock  
Renewable Energy, LLC.

My Commission Expires:

\_\_\_\_\_  
(seal)

\_\_\_\_\_  
Residing at:  
\_\_\_\_\_