

Bill No. 42
2013

By-law No. A.- _____

A By-law to approve the Roof Lease Agreement for the use of Municipal Building roofs as solar photovoltaic generating system hosts and to authorize the Mayor and the City Clerk to execute the agreement with *small FIT* program applicants.

WHEREAS subsection 5(3) of the *Municipal Act, 2001* provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other act;

AND WHEREAS section 10 of the *Municipal Act, 2001* provides that the City may provide any service or thing that the City considers necessary or desirable for the public, and may pass by-laws respecting same, and respecting economic, social and environmental well-being of the City, and the health, safety and well-being of persons;

NOW THEREFORE the municipal Council of The Corporation of the City of London enacts as follows:

1. The Roof Lease Agreement attached as Schedule "A" to this by-law between *small FIT* program applicants and The Corporation of the City of London for the installation of solar PV systems on City of London's Municipal Buildings.
2. The Mayor and City Clerk are authorized to execute the agreement authorized and approved under section 1 of this by-law.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council January 15, 2013.

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First reading – January 15, 2013
Second reading – January 15, 2013
Third reading – January 15, 2013

SOLAR FACILITY LEASE

THE CORPORATION OF THE CITY OF LONDON

(the "Landlord")

and

(the "Tenant")

Date ●, 2013

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SCHEDULES

SCHEDULE "A" - SITES

SCHEDULE "B" - SKETCH OF LEASED PREMISES (FOR EACH SITE IF MORE THAN ONE)

SCHEDULE "C" - PERMITTED ENCUMBRANCES

THIS LEASE made this • day of _____, 201_

BETWEEN:

THE CORPORATION OF THE CITY OF LONDON

(the "Landlord")

OF THE FIRST PART

-and-

(the "Tenant")

OF THE SECOND PART

WHEREAS:

- A. The Landlord is the owner of the properties listed and described in Schedule "A" (each a "Site" and together the "Sites") on which Sites the Landlord operates its business and/or leases space within to tenants.
- B. The Tenant is in the business of designing, installing, operating, maintaining and running photovoltaic power generating facilities.
- C. The Landlord has agreed to lease to the Tenant areas on the rooftops of the Buildings and certain ancillary space in certain Buildings as more particularly described in Schedule "B" at each of the Sites to install photovoltaic power generating facilities at each of the Sites as provided herein.

NOW THEREFORE IN CONSIDERATION of the mutual covenants herein expressed, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Lease, capitalized terms not otherwise defined herein shall have the following meanings:

- (a) "**Affiliate**" has the meaning attributed to that term in the *Securities Act* (Ontario).
- (b) "**Applicable Law**" means all applicable federal, provincial and municipal laws, statutes, regulations, rules, by-laws, policies and guidelines, orders, permits, licenses, authorizations, approvals and all applicable common laws or equitable principles whether now or hereafter in force and effect.
- (c) "**Approvals**" means all permits, licenses, permissions or approvals whether issued or granted by the federal, provincial, state or municipal government or any subdivision or agency thereof required at any time for the Development or required in connection with the Lease; any amendment to the applicable zoning of the Landlord's Land and any other lands required for the Development; approvals or licenses pursuant to environmental law or regulations required for the Development; licenses or approvals to generate, distribute or transmit electricity; building permits, variances, consents and site plan approvals.
- (d) "**Base Rent**" means the rent payable pursuant to Section 4.1(a) for the Leased Premises at each Site calculated on the basis of the FIT Contract capacity in kW. The targeted lease rate is eighty dollars (\$80) per kW per annum of nominal generating capacity installed at each Facility located in such Leased Premises.

- (e) "**Base Rent Commencement Date**" means in respect of each Facility, the Commissioning Date of such Facility.
- (f) "**Buildings**" means the Landlord's buildings or other improvements on the Sites.
- (g) "**Business Day**" means any day except a Saturday, Sunday or any statutory holiday in Ontario.
- (h) "**Commencement Date**" means, for each Facility, the date on which the Tenant advises the Landlord that the Tenant requires access to the Site to begin installation of the Facility.
- (i) "**Commissioning Date**" means with reference to a Facility, the date (certified by the Tenant) on which the installation of all Equipment at a Site is completed and the first production of electricity from the Facility is sold to Ontario customers.
- (j) "**Conducting Media**" means:
 - (i) any wire, cable, tube, pipe, conductor or other similar thing (including its casing or coating or protective tile or duct work) placed on above or in the ground for transmitting and/or distributing electricity together with marker tape junction boxes and other ancillary equipment; and
 - (ii) drains, pipes, fibre optic cables, data and communications cabling and other conduits.
- (k) "**Development**" or "**Facility**" means the solar power development which the Tenant proposes to develop, construct and operate, in whole or in part, on the Leased Premises with a view to the commercial generation of electricity by solar power and the distribution or transmission of such electricity.
- (l) "**Easements**" means any easements or rights of way granted to the Tenant, at any time or from time to time pursuant to Section **Error! Reference source not found.**
- (m) "**Encumbrance**" means any security interest, lien, charge, pledge, mortgage, adverse claim, conditional or instalment sale agreement, title retention agreement, activity or use limitation, conservation easement, restrictive covenant, easement, right of first refusal, option to purchase, option to lease, certificate of pending litigation, or encumbrance of any kind.
- (n) "**Equipment**" means all plant, equipment and infrastructure used or to be used by the Tenant in connection with the Permitted Use as are at the date hereof or may during the Term be installed or relocated from time to time on, over, under, through or across the Landlord's Land, including, without limitation, Conducting Media, solar panels, self-supporting steel frames to support solar panels and associated instrumentation, together with all the necessary and requisite monitoring devices, fixtures, appurtenances and facilities, including cables, guys, anchors, fences, and including additions thereto or replacements and relocations thereof.
- (o) "**Environmental Attributes**" means any environmental attributes associated with the Facilities and includes:
 - (i) rights to any fungible or non-fungible attributes;
 - (ii) any and all ownership rights relating to the nature of the energy source as may be defined through applicable legislation or voluntary programs. Specific environmental attributes include ownership to all right, title and interest to emission reduction credits and the right to quantify and register such emission reduction credits with relevant legislative and voluntary authorities;
 - (iii) all emission and/or green house gas allowances or credits arising in any way from the Development; and
 - (iv) all revenues, entitlements, benefits (including all reputational benefits, goodwill and public announcements).
- (p) "**Facility**" means the photovoltaic power generating facility or facilities to be installed at the Leased Premises.

- (q) "**Environmental Laws**" means any Laws (i) relating to pollution or the protection of human health or the environment (including workplace health and safety); (ii) dealing with filings, registrations, emissions, discharges, spills, releases or threatened releases of Hazardous Substances or materials containing Hazardous Substances; and/or (iii) regulating the import, storage, distribution, use, handling, transport or disposal of a Hazardous Substance.
- (r) "**Governmental Authority**" means any domestic or foreign government having jurisdiction over the Development, including, any federal, provincial, territorial or municipal government, and any government court, agency, tribunal, commission or person or other authority exercising executive, legislative, judicial, regulatory or administrative functions of government.
- (s) "**Hazardous Substances**" means any substance which is hazardous to Persons or property and includes, without limiting the generality of the foregoing: radioactive materials; explosives; substances that, if added to any water, land and/or air, would degrade or alter or form part of a process of degradation or alteration of the quality of that water, land and/or air, to the extent that it is detrimental to its use by man or by any animal, fish or plant; any solid, liquid, gas, micro organism, sound, vibration, ray, heat, radiation, odour or combinations of any of them that, is likely to cause an adverse effect on the natural environment (including air, land and water) and that is present in the environment in a quantity or concentration in excess of regulatory standards, or the presence of which in the environment is prohibited by regulation or is likely to affect the life, health, safety, welfare or comfort of human beings or animals or to cause damage to or otherwise impair the quality of the soil, vegetation, wild life or property; toxic substances; substances declared to be hazardous or toxic under any law or regulation now or hereafter enacted or promulgated by any Governmental Authority having jurisdiction; any substance the use or transportation of which or the release of which into the environment is prohibited, regulated, controlled or licensed under environmental legislation.
- (t) "**Landlord's Mortgage**" means any mortgage or charge of the interest of the Landlord or a head landlord in any of the Sites and includes a deed of trust and mortgage securing bonds, as the same may be amended and supplemented from time to time.
- (u) "**Landlord's Mortgagee**" means the holder of a Landlord's Mortgage, and includes a trustee for bondholders under a deed of trust and mortgage securing bonds.
- (v) "**Laydown Area**" means areas of a Site on which the Tenant is permitted to place Equipment temporarily prior to erection.
- (w) "**Lease**" means this lease and all Schedules attached to this lease, in each case as they may be amended or supplemented from time to time, and unless otherwise indicated, references to Articles, Sections, Schedules and Exhibits are to Articles, Sections, Schedules and Exhibits in this Lease.
- (x) "**Leased Premises**" means the portions of the rooftops of the buildings on the Sites and ancillary spaces, approximately as shown in heavy black outline on the sketches of each Site attached hereto as Schedule "B" and the ancillary spaces approximately as shown in heavy black outline on the plans of the Buildings included in Schedule "B".
- (y) "**Leasehold Estate**" means the estate, right and title of the Tenant in the Leased Premises pursuant to the Lease.
- (z) "**Notice**" has the meaning ascribed thereto in Section 11.1.
- (aa) "**Permitted Use**" means:
 - (i) determining the feasibility of conversion of solar energy to generate electricity with photovoltaic panels including, without limitation, studies of sun and shade patterns and other data and carrying out tests and other Studies;

- (ii) the generation, transmission, distribution and supply of electricity and the construction, installation, connection, testing, operation, maintenance, repair, disconnection, replacement, relocation and removal on the Leased Premises of the Equipment reasonably necessary for the purpose of the generation, distribution, transmission, and supply of electricity and uses ancillary or preparatory thereto; and
 - (iii) for any other activities reasonably related, incidental to or necessary for the operation of a solar energy facility.
- (bb) "**Person**" means any individual, sole proprietorship, partnership, corporation or company, with or without share capital, trust, foundation, joint venture, Governmental Authority or any other incorporated or unincorporated entity or association of any nature.
- (cc) "**PPA**" means any power purchase agreement entered in to by the Tenant as seller and a third Person as purchaser of electricity generated by the Development, and includes the Ontario Feed-in Tariff Agreement.
- (dd) "**Prime Rate**" means, for any day, the annual rate of interest equal to the rate which Royal Bank of Canada establishes at its principal office in Toronto as the reference rate of interest to determine interest rates it will charge on such day for commercial loans in Canadian dollars made to its customers in Canada and which it refers to as its "prime rate of interest".
- (ee) "**Proceedings**" means the application for or pursuit of:
 - (i) any Approvals, including any appeal of a decision to grant or not to grant any Approvals;
 - (ii) grants or other financial benefits for the Development;
 - (iii) financing of the Development; or
 - (iv) other activities needed to be accomplished to develop the Development, or construct, operate and maintain the Equipment and the Facilities by the Tenant.
- (ff) "**Rent**" means the rents and other amounts payable by the Tenant to the Landlord under this Lease.
- (gg) "**Restricted Zone**" means that portion of a Site above the height of the rooftop or rooftops on which Equipment is installed by the Tenant.
- (hh) "**Sales Tax**" means any goods and services tax, multi-staged or multi-tiered sales tax, or value added tax required to be paid by the Tenant and collected by the Landlord, in respect of the Rent and any other services supplied by the Landlord or others to the Tenant under this Lease, including the goods and services tax exigible pursuant to Part IX of the *Excise Tax Act* (Canada), whether imposed by the federal government or otherwise.
- (ii) "**Sites**" means the lands and premises more particularly described in Schedule "A".
- (jj) "**Studies**" means all studies and investigations deemed necessary by the Tenant to assess the initial and ongoing suitability, of the Sites, including, without limitation, sun and shade pattern studies, tests to determine the load bearing capacity of existing buildings, tests to determine the environmental condition of land, ecological studies (including, but not limited to, birds, flora and other wildlife) and preparation of plans of survey and all field work performed and samples taken in connection with any of the foregoing.
- (kk) "**Target Cost**" has the meaning ascribed thereto in Section 2.7.
- (ll) "**Taxes**" means all taxes, rates, duties, levies and assessments whatsoever (imposed by any and all taxing authorities having jurisdiction) levied, charged or assessed upon the Sites, including but not limited to local improvement charges.
- (mm) "**Tenant's Mortgage**" means a mortgage or charge of the Leasehold Estate, and includes a deed of trust and mortgage securing the bonds and a mortgage by

way of sublease or assignment of lease, as the same may be amended and supplemented from time to time.

- (nn) "**Tenant's Mortgagee**" means the holder of the Tenant's Mortgage, and includes a trustee for bondholders under a deed of trust and mortgage securing bonds.
- (oo) "**Tenant's Property**" means the interest of the Tenant in and to the Leasehold Estate and the Lease and to all Equipment (regardless of its degree of affixation to the Leased Premises), trade fixtures, tangible personal property (including supplies and inventories), goods (including all accessions, attachments and accessories thereto), furniture, machinery, equipment (including computer hardware and communications equipment and computer process control equipment), tools, spare parts and furnishings not in the nature of fixtures relating to or used by the Tenant, whether as owner, lessee, licensee or otherwise, in its operations conducted from the Leased Premises and situated on the Leased Premises, all Environmental Attributes, all data from any Studies and all Approvals.
- (pp) "**Term**" has the meaning ascribed thereto in Section 2.2.
- (qq) "**Transfer**" has the meaning ascribed thereto in Section 10.1.
- (rr) "**Works**" means:
 - (i) installation of supporting structures for solar panels and solar panels on rooftops, including strengthening rooftop structures, attaching structures through roof membranes, repair and sealing of roof penetrations;
 - (ii) the laying of overhead and/or underground Conducting Media within the Sites necessary for the Permitted Use;
 - (iii) construction, installation, commissioning, repair, maintenance, replacement and renewal of solar panels on the Leased Premises including their foundations;
 - (iv) at any time and from time to time any other works on the Sites which are reasonably necessary or desirable for the Development and the Permitted Use as determined by the Tenant; and
 - (v) construction and use for its intended purpose of the Laydown Area during construction, maintenance, commissioning and decommissioning of any of the Facilities in the Development.

1.2 Schedules

The following Schedules form part of this Lease:

Schedule "A" -	Sites
Schedule "B" -	Leased Premises
Schedule "C" -	Permitted Encumbrances

1.3 Interpretation

In this Lease:

- (a) words importing the singular include the plural and vice versa and words importing gender include all genders;
- (b) the title pages, captions, headings and any table of contents contained herein are for reference only and in no way affect this Lease or its interpretation;
- (c) unless otherwise indicated, references to Articles, Sections and Schedules are to Articles, Sections and Schedules in this Lease;
- (d) except where otherwise expressly provided, all amounts in this Lease are stated and shall be paid in Canadian currency;
- (e) the word "including", means "including without limitation" whether or not any non-limiting language (such as "without limitation") is used with reference thereto;
- (f) any reference in this Lease to a statute or to a regulation or rule promulgated under a statute or to any provision of a statute, regulation or rule shall be a reference to the statute, regulation, rule or provision, as amended, re-enacted or replaced from time to time; and
- (g) any words or phrases not specifically defined in the Lease that have a commonly understood meaning in the solar power business shall have such meaning in this Lease.

ARTICLE II LICENSE, LEASE AND TERM

2.1 License of Sites

- (a) The Landlord hereby grants an exclusive license to the Tenant to access each of the Sites at reasonable times to inspect the rooftops of the Buildings and the mechanical spaces available at each Site and to access to those portions of the Buildings as may be necessary to assess the structural integrity of the Buildings for the purposes of the design of the racks and other supporting structures for the Equipment to suit the Buildings but at all times subject to the ongoing operations at the Sites and the requirements of the Landlord's users.
- (b) The Landlord shall provide to the Tenant access to all architectural and engineering drawings and specifications and maintenance records available to the Landlord for each Building. The Tenant shall design the Tenant's Equipment for installation on the rooftops of the Buildings and in interior spaces approved by the Landlord, acting reasonably. The Tenant will provide the completed design to the Landlord and its roofing consultant for their approval, such approval not to unreasonably withheld or delayed.
- (c) All design and engineering work undertaken by the Tenant will be certified by appropriately qualified professional engineers in accordance with Applicable Law. All certifications and approvals required with respect to design and engineering work (including approvals required by the Landlord from its roofing consultant) shall be undertaken at the expense of the Tenant. Following completion of the design of the Tenant's Equipment the Tenant shall provide updated sketches delineating the Leased Premises for inclusion in Schedule "B".

2.2 Demise of Leased Premises and Term

The Landlord hereby demises and leases to the Tenant, each of the Leased Premises at each Site to have and to hold for a term (the "**Term**") commencing on the Commencement Date for such Site and to be fully completed and ended twenty (20) years and eleven (11) months thereafter.

2.3 Easements and Right of Way

- (a) Required by the Tenant. The Landlord covenants and agrees to provide to the Tenant from time to time, at no additional cost but at no cost to the Landlord, such other easements and rights of way required by the Tenant for the development,

construction and operation of the Facilities at each Site and all related facilities and access to Equipment, including, without limitation, those required for the Laydown Area and for purposes of installing and maintaining Conducting Media on, over, under, through or across the Sites to and from the Leased Premises and an open public street, provided that the location of such easements shall require the prior written consent of the Landlord, which consent shall not be unreasonably withheld or delayed, and provided further that the location and use of such easements does not interfere with the proper conduct of the Sites nor the use and operation of the Buildings by the Landlord and its other tenants.

- (b) Relocation of Equipment. Either party may request that any Easement be temporarily or permanently relocated from time to time. Provided such relocation, in the reasonable opinion of the requested party, would not be materially detrimental to its business, nor interfere with the proper conduct of the Sites or the use of the Buildings by the Landlord, such Easement shall be relocated. Provided further that the requesting party shall be solely responsible for all costs of itself and the other party arising out of or in any way connected with the relocation and the requesting party shall obtain all required Approvals at its expense.

2.4 Overholding after Term

If the Landlord permits the Tenant to remain in occupation of the Leased Premises after the expiration of the Term, the Tenant shall be deemed to be a tenant from year to year (the tenancy being terminable by either the Landlord or the Tenant upon the day preceding any anniversary date of the commencement of the yearly tenancy by Notice given to the other party not less than six (6) months prior to the termination date) on the terms and conditions including payment of Rent set out therein.

2.5 Permitted Use

The Tenant shall not use the Leased Premises for any purpose other than the Permitted Use without first obtaining the consent of the Landlord to such other use. The Tenant may from time to time during the Term expand any Facility (including by the addition of additional solar panels) or relocate Equipment (including without limitation, solar panels) within the Leased Premises.

2.6 Access

In its use of the Leased Premises, the Tenant shall have access to the Leased Premises twenty-four (24) hours a day, seven (7) days a week, three hundred sixty-five (365) days a year, subject however to the operational and security requirements of the Landlord.

2.7 Installation of Equipment

Beginning on the Commencement Date, the Tenant shall provide and install all of the Equipment and Conducting Media necessary for the operation of each Facility. .

ARTICLE III EARLY TERMINATION

3.1 By the Tenant

The Tenant may terminate this Lease in respect of the Leased Premises at any one or more of the Sites prior to the expiration of the Term at any time during the Term for such Site, upon giving one (1) month's prior Notice to the Landlord.

3.2 By the Landlord

The Landlord may terminate this Lease in respect of the Leased Premises at any one or more of the Sites on Notice to the Tenant if:

- (a) the Tenant fails to pay Rent or any other sums the Tenant is required to pay to the Landlord pursuant to this Lease and such failure continues for sixty (60) days after Notice specifying the failure has been given by the Landlord to the Tenant;
- (b) commencement of the construction and installation of any Facility at a Site has not occurred by the first anniversary of the Commencement Date;
- (c) the Tenant becomes insolvent or bankrupt or makes an assignment for the benefit of creditors or takes the benefit of any statute that may be in force for bankrupt or insolvent debtors, or if the Term herein granted or the goods or chattels of the

Tenant, at any time, are seized or taken in execution or attachment by a creditor of the Tenant and any such proceedings commenced by a third Person are not being diligently contested by the Tenant;

- (d) any insurance policy on the Buildings or the Facility is actually cancelled or not renewed or threatened to be cancelled or not renewed by any insurer by reason of any particular use or occupation of the Leased Premises by the Tenant and the Tenant has failed to remedy the situation giving rise to such actual or threatened cancellation within two days following receipt by the Tenant of written notice from Landlord;
- (e) In the event that any construction lien including a claim for lien by a lien claimant and any certificate of action, all within the meaning of the Construction Lien Act, R.S.O. 1990, shall be registered against the title to any Site in respect of any activity of the Tenant and shall remain outstanding for more than thirty (30) calendar days after the Tenant has been given notice by any person or of the Tenant becoming aware of the existence of any such preserved or perfected construction lien, or
- (f) the Landlord decides to close operations at a Site or Sites and such closure adversely affects the use of the Equipment in whole or in part at such Site(s) (the "**Affected Site(s)**") then Landlord may terminate this Lease in respect of the Leased Premises at any one or more of the Sites, at any time upon sixty (60) days' prior written notice to the Tenant and, upon such termination, the Landlord shall pay to the Tenant the Tenant's actual costs (as hereinafter described):

As used in this Section above, the phrase "Tenant's actual costs" means, with respect to the Affected Site(s), the sum of:

- (i) if the closing occurs within the first ten (10) years of the Term, an early termination premium of 10% of the costs for the Equipment and labor expended at or allocated to the Affected Site(s) as calculated by Tenant and presented to Landlord in a costing report, PLUS
- (ii) all amounts representing the loan indebtedness incurred to finance the installation of the Equipment at the Affected Site(s) which are required by Tenant's lender to be repaid, including, without limitation, the Tenant's Mortgagee, as a result of such closure, together with any termination premiums, costs, charges, fees, make-whole payments or breakage costs for such prepayment of Tenant's financing, PLUS
- (iii) the cost of the removal of the Equipment and any fees associated with termination of any PPA for power generated at the Site(s). PLUS

In addition, the phrase "removal of the Equipment" means, with respect to the Affected Site(s), all costs, including internal labor costs, for removal and storage of the Equipment

3.3 By Either the Landlord or the Tenant

Except for the matters referred to in Section 3.2, either party may terminate this Lease on Notice to the other if the other party fails in a material way to perform or observe any covenants, terms or conditions of this Lease on its part to be observed (in this Section 3.3 "**Default**") and such Default is not cured within or remains uncorrected sixty (60) days following receipt of Notice detailing the Default provided that if the Default cannot reasonably be cured within such sixty (60) day period and the notified party is proceeding diligently to remedy such Default such sixty (60) day period shall be extended by such period as is reasonably required by the notified party to remedy the default.

3.4 Re-Entry

Subject to any applicable Notice or cure period, the Landlord shall have the right to re-enter and repossess the Leased Premises or any part of it if any of the events described in Section 3.2 or Section 3.3 occur which permit the Landlord to terminate this Lease.

3.5 Tenant's Right to Cure Landlord's Defaults

If and whenever the Landlord fails to perform any of its obligations under the Lease and fails to begin to remedy such failure within the period of time after Notice thereof provided in Section 3.3 or, having begun to remedy such failure within such time, does not thereafter proceed diligently and continuously to remedy it, and such failure adversely affects the Tenant's use and enjoyment of the Leased Premises or the conduct of the Tenant's business operations in any part of the Leased Premises, the Tenant may, at its option, perform such obligations. and for such purposes the Landlord grants the Tenant a licence to enter upon the Sites. The Tenant shall do any such work at reasonable and competitive rates and in a good and workmanlike manner, in accordance with all Applicable Laws. If the Tenant performs any work in accordance with the foregoing, the Landlord shall pay to the Tenant, within five (5) Business Days after demand and receipt by the Landlord of all documentation the Landlord reasonably requires to establish such costs, the costs reasonably incurred by the Tenant in performing such work. Any Tenant Mortgagee shall have the same rights as the Tenant in this Section 3.5.

3.6 Landlord's Rights to Cure Defaults

If and whenever the Tenant fails to perform any of its obligations under the Lease and fails to begin to remedy such failure within the period of time after Notice thereof provided in Section 3.2 or Section 3.3 or, having begun to remedy such failure within such time, does not thereafter proceed diligently and continuously to remedy it, the Landlord may perform any such obligation for the account of the Tenant, and may enter upon the Leased Premises or any part thereof for such purpose. No Notice of the Landlord's intention to perform such covenant need be given to the Tenant except if and to the extent any provision of the Lease expressly requires that Notice be given in the circumstances. The Landlord shall not be liable to the Tenant for any loss, damage or inconvenience to the Tenant or to the Tenant's business caused by acts of the Landlord carried out in good faith and with reasonable skill and diligence in remedying or attempting to remedy such default, and the Tenant shall promptly pay to the Landlord on demand the amount of all costs, charges and expenses incurred by the Landlord in connection with such default or in curing or attempting to cure such default together with interest thereon, calculated and payable in accordance with Section 4.3, from the date such costs, charges and expenses were so incurred. Because of the risk of electrocution, the foregoing will not authorize the Landlord or anyone on its behalf to perform any work or perform any Tenant obligation on or near any of the Equipment that generates or conducts electricity.

3.7 End of Lease Obligations

At the end or upon earlier termination of the Term or any period of permitted overholding, the Tenant shall yield up the Leased Premises to the Landlord and within sixty (60) days thereafter shall remove from the Sites (unless otherwise directed by Notice from Landlord given prior to or forthwith after expiry or termination of the Term or any period of permitted overholding) such Equipment as is above ground level, and leave any Equipment which is not removed in a safe condition, free from hazardous structures and materials (if any) introduced by the Tenant during the Term and electrically safe and, in respect of such hazardous structures and material (if any), in compliance with Applicable Law relating thereto, and to reinstate the Sites, all to the satisfaction of the Landlord acting reasonably. Any damage to the Buildings shall be repaired by the Tenant to its original state, wear and tear excepted, to the satisfaction of the Landlord acting reasonably.

ARTICLE IV

RENT

4.1 Rent

- (a) For each Site, commencing on the Base Rent Commencement Date, the Tenant shall pay Base Rent of eighty dollars (\$80) per kW per annum of nominal generating capacity installed at the Facility located in such Leased Premises.
- (b) Base Rent shall be payable to the Landlord, at its address for notice set forth in Section 11.1, or at such other address as the Landlord may from time to time direct.
- (c) Base Rent shall be payable in two (2) half-yearly instalments on the first day of each of February and August in each year of the Term for the half-year period

ending on the last day of December and June, respectively. The Tenant shall provide to the Landlord not less than five (5) Business Days before the Base Rent is due a statement of the power generated at each Facility during the half year period most recently ended and a calculation of the Base Rent payable for each Facility for the most recently completed half year period.

- (d) It is intended that this Lease be an absolutely net lease for Landlord and that Rent be received by Landlord free of any cost or obligation concerning the Leased Premises and the Development unless specified in this Lease. The Tenant covenants to pay Rent when due without deduction, abatement, set-off, or delay. The Tenant's covenants to pay Rent shall survive the expiration or earlier termination of this Lease.

4.2 Sales Tax

All payments of Rent shall be exclusive of applicable Sales Tax which shall be paid in addition to any Rent payment at the time and in the manner required by Applicable Law relating to such Sales Tax.

4.3 Interest on Overdue Amounts

All sums, for Rent or otherwise payable to the Landlord under the terms of this Lease, will bear interest at the Prime Rate in effect from time to time from their respective due dates until the actual date of payment plus two percent (2%) per annum.

ARTICLE V **COVENANTS**

5.1 Covenants of the Tenant

The Tenant covenants with the Landlord:

- (a) Rent. To pay Rent.
- (b) Taxes Personal to the Tenant. To pay as and when they become due, all taxes, rates, charges, license fees, duties and assessments whatsoever, assessed by any Governmental Authority, now or hereafter charged upon, levied or imposed in respect of any personal property, fixtures, improvements, business or income of the Tenant or any activity carried on, upon or in connection with the Leased Premises or the Development by the Tenant.
- (c) Repair. The Tenant shall keep the Development in a good and substantial state of repair and shall permit the Landlord to enter and view the state of repair, and will repair according to notice in writing as required. If part of the Building or the Leased Premises becomes in disrepair, is damaged or destroyed through the operation of the Equipment or the negligence or willful misconduct of the Tenant or its officers, employees, customers or other invitee, the Tenant shall reimburse the Landlord the cost of repairs or replacements promptly upon demand.
- (d) Observance of Applicable Law. To comply promptly in all material respects with and conform to the requirements of all Applicable Laws, Approvals, Environmental Laws and the reasonable rules and regulations of the Landlord at any time or from time to time in force during the Term affecting in any way the Leased Premises, the Tenant's operations thereon or the Equipment.
- (e) Installation and Maintenance of Equipment. The Tenant may attach the Tenant's Equipment to the structural fabric of the Building provided such attachment does not reduce or impair the structural integrity of the Building and all penetrations of roof membranes are resealed in accordance with roof membrane manufacturers' recommendations. All penetrations of the roof membrane shall be approved by the Landlord's roofing consultant and shall be effected in such a manner as not to adversely affect any roof warranty. Tenant shall repair any damage to the Buildings and to the Leased Premises to the satisfaction of the Landlord, acting reasonably. The Tenant shall consult with the Landlord, and to the extent feasible, schedule Works during periods when the Buildings are not in use by the Landlord. Any and all repairs to the roof or roof membrane of the Buildings and to the Leased Premises arising out of the use of the Leased Premises by the Tenant shall be completed by contractors approved by the Landlord.

- (f) Tenant's Work. All work performed by Tenant with respect to the Leased Premises shall:
 - (i) be done in accordance with the design criteria approved by the Landlord;
 - (ii) be done in a good and workmanlike manner;
 - (iii) be done in such manner as will not interfere with the use and operation by the Landlord of the Building;
 - (iv) be done in compliance with the Tenant's Lease;
 - (v) be done at the risk and cost of the Tenant.
- (g) Construction Liens. If any construction lien is registered against the Sites as a result of work done and/or materials supplied thereto arising out of improvements made by the Tenant, the Tenant shall cause the lien to be vacated or, at the option of the Tenant, discharged within thirty (30) days thereafter and, if the Tenant fails to do so, the Landlord may terminate this Lease as provided for in Section 3.2 hereof.
- (h) Utilities. To pay all utility costs incurred on the Leased Premises by reason of the Tenant's operations thereon.
- (i) Hazardous Substances. Not to bring any Hazardous Substances on the Landlord's Land except in accordance with Applicable Law relating to the environment.
- (j) Permit the Landlord Access. The Tenant shall permit the Landlord to access the Leased Premises at any time and from time to time to inspect, repair, replace and maintain the roof and roof membrane of the Buildings.
- (k) Observance. To observe and perform all the covenants and provisos of this Lease on the part of the Tenant to be observed and performed.
- (l) Disruption/Access. The Tenant agrees to take all necessary steps to ensure there is no disruption to the use and operation of the Building by the Landlord.
- (m) Installation and Maintenance of Equipment. With the Landlord's prior written approval, the Tenant may attach the Tenant's Equipment to the structural fabric of the Building provided such attachment does not reduce or impair the structural integrity of the Building nor penetrate the roof membrane of the Building. Rooftop installations shall be approved by the Landlord's roofing consultant and shall be effected in such a manner as not to adversely affect any roof warranty.
- (n) Removal of Equipment. During the Term and any renewals thereof, if there are any repairs required to the Building, including life cycle repairs to the roof or roof membrane, or additional equipment to be installed by the Landlord which will require the removal of the Equipment, the Landlord agrees to cooperate with the Tenant to minimize any disruption to the energy generation. Should there be no option other than the temporary removal of the Equipment, the Tenant shall be responsible for all costs to remove or relocate and reinstall the Equipment and the Landlord agrees to complete any repairs in a timely manner and any rent payable shall abate for the period of time, if any, the Development is not operational.
- (o) Tenant's Responsibility. The Tenant agrees to be responsible for any damage to the Building caused by its operations, its employees, contractors, or those for whom it is responsible, save and except any repairs or replacements caused by normal wear and tear. The Tenant shall be solely responsible for the operation and maintenance of the Development, and shall comply at all times with all Applicable Laws.
- (p) Net Lease. The Tenant acknowledges and agrees that (a) it is intended that this Lease is a completely carefree absolutely net lease to Landlord, except as expressly herein set out, and that Landlord shall not be responsible during the Term for any costs, charges, expenses and outlays of any nature whatsoever arising from or relating to the use or occupancy of the Leased Premises, the Equipment, or the business carried on by the Tenant, and (b) the Tenant shall pay all charges, impositions, costs and expenses of every nature and kind, extraordinary as well as ordinary and foreseen as well as unforeseen, relating to the Leased Premises, the use and occupancy thereof, and the business carried on

therein; (c) any amount and any obligation which is not expressly declared in this Lease to be the responsibility of Landlord shall be the responsibility of the Tenant to be paid or performed by or at the Tenant's expense in accordance with the terms of this Lease.

5.2 Covenants of the Landlord

The Landlord covenants with the Tenant:

- (a) Quiet Possession. That the Tenant may peaceably possess and enjoy the Leased Premises for the Term without disturbance from the Landlord or any other party lawfully claiming by, from or under the Landlord.
- (b) Taxes. To pay, as and when they fall due, all Taxes assessed against the Landlord's Land; to promptly deliver to the Tenant copies of all assessments and bills in respect of Taxes, and upon request of the Tenant, proof of payment of all Taxes.
- (c) Utilities. The Landlord will provide electrical, telephone, cable and water connections to the Leased Premises at the Tenant's cost to the extent such utilities are available at the Site and the Tenant shall make its own arrangements for utility service with utility providers.
- (d) No Buildings. Not to erect nor suffer or permit to be erected any building or structure nor erect or plant any tree or hedge: (i) that projects into or on the Restricted Zone which at any time during the Term might in the reasonable opinion of the Tenant project into the Restricted Zone or interfere with Conducting Media forming part of or serving the Development and to ensure that any existing tree is kept trimmed to such height as is reasonably necessary to allow the Development to be used for the Permitted Use; or (ii) on any land used to provide access to the Equipment or any part of the Sites under or over which any Conducting Media are situate.
- (e) No Obstruction. Not to interfere with, obstruct or damage nor suffer or permit any interference with, obstruction of or damage to, a Development or the Equipment nor take, or suffer or permit to be taken, any action to the detriment of the Development or the operation of the Equipment.
- (f) No Other Solar Power. Not to use nor suffer or permit to be used all or any part of the Sites for generation of electricity by solar power or purposes ancillary thereto other than by the Tenant, provided that the Landlord reserves the right to install generators of "green" energy other than solar power.
- (g) Approvals. Not to object to or support the objections of others in connection with any proceedings undertaken by or concerning the Tenant to obtain or maintain Approvals.
- (h) Consents. Promptly to provide all consents or execute any documents or agreements required for the Tenant to obtain or maintain any Approvals or required in connection with any Proceedings, Studies or any Works.
- (i) Co-operate. To co-operate with and support the Tenant in connection with all Approvals sought by the Tenant and all Proceedings.
- (j) Acknowledgements Concerning Equipment. That it will, upon the written request of the Tenant, provide a written acknowledgement to any lender or vendor of Equipment that is financed or leased by the Tenant that such Equipment is, and will be regarded as Tenant's Property and is not, and will not, become a fixture or form part of the Leased Premises.
- (k) Conducting Media. That it has been advised by the Tenant that the Conducting Media may be placed below ground and that the Landlord will not dig or disturb the soil on the Leased Premises or on any Easement: (i) within two metres of any below grade Conducting Media; and (ii) without first obtaining from the Tenant confirmation that the Conducting Media is not located in the area in which the Landlord wishes to dig or disturb the soil.

- (l) Hazardous Substances. That it is not aware of any Hazardous Substance having been released into the environment on the Landlord's Land and that it has not or will not bring onto or store on the Landlord's Land any Hazardous Substances except in compliance with all provisions of Applicable Law relating to the environment.
- (m) Maintenance of Buildings. The Landlord shall maintain each of the Buildings in a safe and structurally sound condition and maintain each of the Sites in accordance with all Applicable Law such that the Tenant will have continued and unimpeded access to the Leased Premises.
- (n) Access. The Landlord shall allow the Tenant to access the Sites and to access the Buildings in order to assess the Leased Premises and Easements.
- (o) Observance. To observe and perform all the covenants and provisos of this Lease on the part of the Landlord to be observed and performed.

ARTICLE VI
GENERAL PROVISIONS RELATING TO THE LEASED PREMISES

6.1 Tenant's Realty Taxes

- (a) The Tenant shall pay to the Landlord, or at the direction of the Landlord, directly to the relevant taxing authority, all Taxes assessed against or attributable to the Leased Premises in excess of the Taxes that would have been payable by the Landlord had the Facility not been erected on the Site. Such Taxes be agreed upon by the Landlord and the Tenant, each acting reasonably and in good faith, or failing such agreement, shall be determined by the Landlord's realty tax consultant, whose determination shall be final and binding upon the parties hereto.
- (b) The Tenant, at its expense, by itself or in conjunction with the Landlord, may contest the legal validity or amount of any Taxes, assessments or other charges for which each is responsible under this Lease and may institute such proceedings as it considers prudent in that regard. The Landlord covenants and agrees to fully cooperate and support the Tenant in connection with the foregoing.

6.2 Trees

Subject to the Landlord's prior approval, the Tenant may cut trees and other vegetation on the Site as necessary for the construction of the Development on the Leased Premises and to keep the Restricted Zone clear of vegetation, provided that the Tenant complies with Applicable Law.

6.3 Ownership of Tenant's Property

The Landlord and the Tenant agree that all Tenant's Property and all other fixed improvements and fixed equipment which the Tenant may construct or install upon or affix to the place on the Leased Premises or any Easements or rights of way used in connection therewith, from time to time, shall and are intended to remain the absolute property of the Tenant regardless of its degree of affixation to the Leased Premises. The Landlord hereby waives any right that it may have to destrain against the Tenant's Property.

6.4 Expropriation

If the whole or any part of any Site is taken by expropriation during the Term, the following shall apply:

- (a) if the expropriation does not prevent or materially affect the construction and use or economic viability of the Facility on the Site and related facilities, as a solar energy facility as determined by the Tenant acting reasonably, the Lease shall not be terminated in respect of the Site but shall take effect as to the portion of the Leased Premises at the Site as remain; or
- (b) if the expropriation prevents or materially impairs the development, construction and use or economic viability of the Facility on the Site and related facilities as a solar energy facility, as determined by the Tenant acting reasonably, then the Tenant may terminate the Lease in respect of the Site by Notice to the Landlord not later than one hundred and eighty (180) days after the Tenant has been notified that the expropriation has taken place;

then, in either event, the parties shall cooperate with one another such that each party receives the maximum award to which it is entitled at law.

6.5 Damage and Destruction To Equipment

- (a) If any damage or destruction of the Equipment at any Site occurs; the repair or reconstruction of which the Tenant determines, in its absolute discretion, is uneconomic, the Tenant shall, at the Tenant's cost and expense, be permitted, but not obligated, to repair, reconstruct or replace, or cause to be repaired, reconstructed or replaced, that part of the Equipment which has been damaged or destroyed provided that the remaining provisions of the Lease are complied with. If the Tenant does not repair, construct or replace the Equipment the Tenant shall take the protective measures contemplated by Section 6.5(b).
- (b) Despite Section 6.5(a), forthwith after any damage or destruction of the Equipment at any Site or the decision of the Tenant not to repair or replace the Equipment the Tenant shall take reasonable protective measures to clean up and protect the Leased Premises and ensure that the damage or destruction or the lack of repair or replacement of Equipment does not constitute a continuing danger to others or interfere in a material way with the rights of the Landlord under the Lease, or interfere with the proper conduct of the Sites. . Any reconstruction or replacement of the Leased Premises or parts thereof or the Equipment shall be undertaken by the Tenant within a reasonable period of time after the damage or destruction, at the expense of the Tenant.

6.6 Damage and Destruction of Building

If the Building shall be damaged by fire, tempest, the elements or other casualty of an insured risk not caused by the Tenant, but are not thereby rendered untenable, in whole or in part, the Landlord shall promptly at its expense cause such damage to be repaired, but only to the extent of proceeds received by the Landlord from its insurers. If by reason of such occurrence the Building shall be rendered wholly untenable, the Landlord may:

- (a) cause such damage to be repaired at its expense (but only to the extent of proceeds received by the Landlord from its insurers); or
- (b) within sixty (60) days after such occurrence notify the Tenant in writing that it has elected not to repair or reconstruct the Building, whereupon this Lease and the tenancy hereby created shall cease as of the date of such occurrence, without obligation or liability to the Tenant.

In no event shall the Landlord be liable for damage to or replacement or repair to the Development.

ARTICLE VII **TITLE MATTERS**

7.1 Landlord's Title

The Landlord represents and warrants to the Tenant that:

- (a) it is the registered and beneficial owner of each of the Sites in fee simple subject only to those encumbrances listed in Schedule "C" in respect of such Site; and
- (b) to the best of the Landlord's knowledge, there are no covenants, restrictions, rights of way, easements or other encumbrances affecting the Landlord's Land which would unreasonably interfere with the use thereof by the Tenant.

7.2 Description of the Leased Premises

Following construction of the Facilities, the Tenant may cause a Site to be surveyed in order to provide a registerable legal description for the Leased Premises which the Tenant requires pursuant to Section 2.1(b). Upon such survey being complete, the Landlord shall execute such acknowledgement as may be required by the Tenant confirming the legal descriptions of the Leased Premises.

ARTICLE VIII INSURANCE

8.1 Landlord's Insurance

The Landlord shall obtain and keep in force, without limiting its obligations or liabilities under this Lease, at its own expense, obtain and maintain during the Term property and boiler and machinery insurance in an amount not less than the replacement cost of each Building, comprehensive general liability insurance in an amount not less than Two Million Dollars (\$2,000,000.00) inclusive per occurrence against liability for bodily injury, personal injury, death and property damage, relating to Landlord's ownership, use, occupation, operation and/or maintenance of each of the Buildings and the Sites, as well as "all risks" property insurance, on a full replacement cost basis, on each of the Buildings.

8.2 Tenant's Insurance

The Tenant shall effect and maintain during the Term, and any renewal, at its sole cost and expense:

- (a) "all risks" insurance upon the Development in amounts sufficient to fully cover, on a replacement cost basis without deduction for depreciation, the Development;
- (b) commercial general liability insurance and excess umbrella liability insurance on an occurrence basis, against claims for bodily injury, personal injury, economic loss and property damage arising from occurrences in or about the Building or arising from or in any way relating to the Tenant's use or occupancy of the Leased Premises or the Building, contractual liability (including coverage of the indemnities provided for in this Lease), damage to property of the Landlord including loss of use thereof, non-owned automobile liability and owner and contractors' protective liability, in amounts which are from time to time acceptable to a prudent tenant in the community in which the Building is located (as determined by the Landlord), but not less than Five Million Dollars (\$5,000,000.00) in respect of each occurrence;
- (c) workers' compensation coverage as required by the *Workplace Safety and Insurance Act, 1997* (Ontario) or any other Applicable Laws respecting all of the Tenant's personnel.
- (d) any other form of insurance that the Landlord may reasonably require from time to time in form, amounts and for insurance risks acceptable to the Landlord and the Tenant.

8.3 The Insured

Each insurance policy referred to in Section 8.2 will name the Landlord and any persons, firms or corporations designated by the Landlord as additional named insured as the interests may appear, will contain if available and as appropriate a waiver of rights of subrogation against the Landlord and the Tenant or a cross liability clause protecting the Landlord against claims by the Tenant as if the Landlord and other insured designated by it were separately insured, and will contain a clause that the insurer will not cancel or change or refuse to renew the insurance without first giving the Landlord thirty (30) days prior written notice.

8.4 Increase in Landlord's Insurance

If the premium rate of insurance on the Building shall be increased by reason of any act or omission of the Tenant or any use made of the Leased Premises by the Tenant or those for whom the Tenant is in law responsible, the Tenant shall pay to the Landlord on demand the amount of such premium increase.

8.5 Default by the Tenant re Insurance

Should the Tenant fail to maintain any of the insurance required pursuant to paragraph 8.2 and should such default continue for five days after notice to the Tenant, then in addition to any other rights and remedies, the Landlord may, but shall have no obligation to, elect to obtain the required insurance and the Tenant shall upon demand pay to the Landlord, the Landlord's cost of obtaining such insurance.

8.6 Premiums and Proof of Insurance

The Tenant shall pay all premiums and costs of insurance required to be obtained by the Tenant under Section 8.1 and shall, upon request, but not more frequently than once every twelve

months, file with the Landlord certificates of insurance and shall promptly notify the Landlord of any cancellation by any insurer of any policy.

8.7 Cancellation of Insurance

In the event of an actual or threatened cancellation of any Landlord's insurance on the Building or any material adverse change thereto by the insurer by reason of the use or occupation of the Leased Premises and if the Tenant has failed to remedy the situation giving rise to such actual or threatened cancellation or adverse change within two days after notice thereof by Landlord, then without prejudice to any other rights which Landlord may have, Landlord may remedy such situation or other factor and for such purposes Landlord shall have the right to enter upon the Leased Premises without further notice.'

ARTICLE IX **INDEMNIFICATION**

9.1 Indemnification of Landlord

The Tenant covenants and agrees to protect, indemnify, defend and hold harmless the Landlord and those for whom the Landlord is responsible in law from and against any and all liabilities, obligations, claims, damages (other than lost business, lost profits, loss of use and other special and/or consequential damages, whether direct or indirect, all claims for which are hereby irrevocably waived) penalties, causes of action, costs and expenses (including, without limitation, all legal fees and expenses incurred by the Landlord) arising out of or in connection with:

- (a) damage to the property of the Tenant, its directors, officers, workers, employees, agents, contractors, customers, guests or invitees, any injury (including death) to any person or persons resulting from the operations of the Tenant on any Site and, unless such damage or injury is (i) caused by the wilful acts and/or omissions of the Landlord or those for whom the Landlord is in law responsible; or (ii) results or arises by reason of any Person other than the Tenant or those Persons' authorized by the Tenant entering upon the Leased Premises;
- (b) the failure of the Tenant to observe any Applicable Law with respect to the use of the Leased Premises;
- (c) any breach of the provisions of the Lease by the Tenant, its directors, officers, employees, agents, contractors, customers or invitees; and
- (d) any liability of the Landlord, of any kind or nature whatsoever, that would not have occurred but for this Lease and the use and occupancy of the Leased Premises by the Tenant, its directors, officers, employees, agents, contractors, customers or invitees, other than liability (i) caused by the wilful acts and/or omissions of the Landlord or those for whom the Landlord is in law responsible; or (ii) resulting or arising by reason of any Person for whom the Landlord is in law responsible or over whom the Landlord does or could reasonably be expected to exercise control entering upon the Leased Premises.

If any action, suit or proceeding is brought against the Landlord by reason of any such occurrence the Landlord shall give prompt Notice thereof to the Tenant and the Tenant will, at the Landlord's option and at the Tenant's expense, by counsel selected by the Tenant (which counsel must be satisfactory to the Landlord, acting reasonably), defend such action, suit or proceeding, or cause the same to be defended. No such action, suit or proceeding shall be settled or compromised without the Tenant's prior consent, such consent not to be unreasonably withheld or delayed.

9.2 Indemnification of Tenant

The Landlord covenants and agrees to protect, indemnify, defend and hold harmless the Tenant its directors, officers, workers, employees, agents, contractors, customers, guests or invitees or others for whom the Tenant is responsible in law from and against any and all liabilities, obligations, claims, damages (other than lost business, lost profits, loss of use and other special and/or consequential damages, whether direct or indirect, all claims for which are hereby irrevocably waived) penalties, causes of action, costs and expenses (including, without limitation, all legal fees and expenses incurred by the Tenant) arising out of or in connection with:

- (a) damage to the property of the Landlord or those for whom the Landlord is in law responsible, any injury (including death) to any person or persons resulting from the operations of the Landlord on any Site, unless such damage or injury is caused by the negligent or willful acts and/or omissions of the Tenant its directors, officers, workers, employees, agents, contractors, customers, guests or invitees or those for whom the Tenant is in law responsible;
- (b) the failure of the Landlord to observe any Applicable Law with respect to the use of any Site;
- (c) any breach of the provisions of the Lease by the Landlord or those for whom the Landlord is in law responsible.

If any action, suit or proceeding is brought against the Tenant by reason of any such occurrence the Tenant will give prompt Notice thereof to the Landlord and the Landlord will at the Tenant's option and at the Landlord's expense, by counsel selected by the Landlord (which counsel must be satisfactory to the Tenant, acting reasonably), defend such action, suit or proceeding, or cause the same to be defended. No such action, suit or proceeding shall be settled or compromised without the Landlord's prior consent such consent not to be unreasonably withheld or delayed.

9.2 Survival of Indemnity

Subject to any limitation as to time imposed by Applicable Law, all indemnification provisions under the Lease shall survive the expiry, termination or surrender of the Lease, notwithstanding anything in the Lease to the contrary. The parties shall hold all rights of indemnification hereunder intended for the benefit of such party and others in trust for such others.

ARTICLE X TRANSFERS AND MORTGAGES

10.1 Transfer by Tenant

- (a) Except as otherwise provided elsewhere in this Lease, the Tenant shall not assign this Lease in whole or in part or sublet any of the Leased Premises in whole or in part (each a "Transfer") without first obtaining the Landlord's prior written consent which shall not be unreasonably withheld, conditioned or delayed. The Landlord shall respond in writing to any request for consent within sixty (60) days of a request therefore. If the response does not grant the consent it shall state the reasons therefore. If no response is received by the Tenant within the said sixty (60) day period the Landlord shall be conclusively deemed to have granted its consent. A request for consent shall provide reasonable details of the identity of the transferee and, in the case of an assignee of the Lease, evidence of such assignee's competence and experience in operating a solar power facility and credit worthiness.
- (b) As a condition of consent to any assignment, the assignee shall execute an agreement with the Landlord to assume, be bound by, observe and perform all of the terms, covenants and conditions of this Agreement which are required to be performed by the Tenant.
- (c) Notwithstanding any assignment, the Tenant shall remain fully liable with respect to the Tenant's obligations pursuant to this Agreement and shall not be released from performing any of the terms, covenants and conditions of this Agreement.
- (d) It shall be reasonable for Landlord to withhold its consent to any assignment: (i) if the financial ability, credit rating, business reputation and standing of the proposed assignee, or any of the person(s) controlling such proposed assignee, is not satisfactory to Landlord; (ii) if any Mortgagee of the Landlord will not consent to such assignment; (iii) if the proposed assignee has not, or will not enter into an agreement with Landlord agreeing to be bound by all of the Tenant's covenants in this Lease; (iv) if the proposed transferee's intended use of the Leased Premises may increase the likelihood of damage, is not the same or similar to Tenant's use as a solar facility or is otherwise not compatible with the operation of the Development.

10.2 Notice to the Landlord

Notice to, but no consent of the Landlord, is required to a Transfer:

- (a) to a Tenant's Mortgagee in conjunction with a Tenant's Mortgage;
- (b) to an Affiliate or to a limited partnership of which the Tenant or an Affiliate is the general partner;

10.3 Tenant's Mortgage

- (a) If any default occurs under a Tenant's Mortgage, the Tenant's Mortgagee shall give the Landlord Notice of the default at the same time as it gives such Notice to the Tenant and the Landlord shall have a period of fifteen (15) days (or such longer period as provided in the Notice to the Tenant) within which to remedy the default (or such longer period as may be reasonably required to cure the default provided the Landlord diligently pursues the cure and provided the default is not a monetary default) and, if the default is remedied within the said fifteen (15) days (or such longer periods as hereinbefore provided) the Tenant's Mortgagee shall not, by reason of the default, exercise any right or remedy which it might have as holder of the Tenant's Mortgage which would entitle it to possession of the whole or any part of the Leased Premises. Nothing in this Section 10.3 shall obligate the Landlord to cure any default under the Tenant's Mortgage. The Tenant's Mortgagee shall incur no liability to the Landlord if it fails to notify the Landlord as provided in this Section 10.3 but the Tenant's Mortgagee shall not proceed to obtain possession of the Leased Premises unless and until such Notice is given and the Landlord has had the opportunity to cure the default.
- (b) The Tenant's Mortgage shall not proceed to obtain possession of the Leased Premises unless and until it has appointed a competent and experienced operator to manage the Development. The operator selected by the Tenant's Mortgagee shall be subject to the consent of the Landlord, which consent shall not be unreasonably withheld or delayed.

10.4 Tenant's Mortgagee's Right to Cure Tenant's Default Under the Lease

The Landlord shall send copies to the Tenant's Mortgagee of all Notices sent to the Tenant at the same time as any such Notice is sent to the Tenant regarding a default of the Tenant that if uncured would entitle the Landlord to terminate the Lease. The Tenant's Mortgagee shall have a period of fifteen (15) days (or such longer period as is provided in the Notice to the Tenant) to cure the default (or such longer period as may be reasonably required to cure the default provided the Tenant's Mortgagee diligently pursues the cure and provided the default is not a monetary default) and, if the default is remedied within such fifteen (15) day period (or such longer period as hereinbefore provided), the Landlord shall not, by reason of the default, exercise any right or remedy which it may have to terminate the Lease or otherwise disturb the Tenant's possession of the Leased Premises. Provided that nothing in Section 10.4 will obligate the Tenant's Mortgagee to cure any default or prejudice its rights to obtain a new lease as otherwise provided in this Lease. The Landlord shall incur no liability to the Tenant's Mortgagee if it fails to notify the Tenant's Mortgagee as provided in this Section 10.4 but the Landlord shall not proceed to terminate the Lease or take possession of the Leased Premises unless and until such Notice is given and the Tenant's Mortgagee has had the opportunity to cure the default.

10.5 Possession/New Lease

A Tenant's Mortgagee upon going into actual possession of the whole or any part of the Leased Premises shall agree with the Landlord to assume and, as long as it remains in possession thereof, to perform each of the covenants of the Tenant under this Lease in the same manner and to the same extent as if originally named in this Lease as the Tenant, provided that the Tenant's Mortgagee shall not by reason thereof be or become liable to remedy any continuing non-monetary default of the Tenant arising prior to the time of the Tenant's Mortgagee's actual possession. The Landlord shall not terminate the Lease by reason only that a default on the part of the Tenant entitling the Landlord to terminate the Lease is not susceptible to cure by the Tenant's Mortgagee, provided that such default does not interfere with the proper operation of a Site. If the Lease is disclaimed or otherwise terminated due to circumstances beyond the Tenant's Mortgagee's control or for a default with is not susceptible to cure by the Tenant's Mortgagee then, so long as the Tenant's Mortgagee has cured all monetary and other defaults under the Lease that are susceptible to cure by it, the Landlord will grant the Tenant's Mortgagee a new lease on the same terms and conditions as the Lease for a term equal to the Term then remaining under the Lease (including remaining renewals or extension, if any).

10.6 Transfer by Tenant's Mortgagee

The Tenant's Mortgagee or a privately or court appointed receiver and/or receiver/manager may dispose of the Lease (or a new lease granted pursuant Section 10.5) to a third party in accordance with Section 10.1. The provisions of Section 10.1 shall apply mutatis mutandis to the consent. Upon the assignee of the Lease (or new lease) executing and delivering its agreement to be bound by the Lease (or the new lease) as if it were the original tenant, the Tenant's Mortgagee shall be released from all obligations under the Lease, without any further formalities.

10.7 Transfers and Encumbrances by the Landlord

The Landlord upon sixty (60) days' Notice to the Tenant, may sell, assign, transfer, mortgage, charge, encumber or otherwise deal with any interest in the Sites or any portion thereof in every case without the consent of the Tenant and without restriction, so long as any such dealing by the Landlord with the Sites or any portion thereof or any interests of the Landlord therein is expressly made subject to the rights of the Tenant in the Lease, the rights of the Tenant's Mortgagees and to any written agreements entered into by the Landlord, Landlord's Mortgagees and/or the Tenant's Mortgagees with the Tenant. At the request of the Tenant or a Tenant's Mortgagee, the Landlord shall use its best efforts to cause any Landlord's Mortgagees to enter into an agreement with the Tenant and any Tenant's Mortgagee to the foregoing effect and to be expressly bound.

10.8 Release of Landlord

So long as Section 10.7 has been complied with in connection with a sale or assignment, to the extent that any purchaser or assignee from the Landlord has become bound by and has covenanted in favour of the Tenant and, if applicable, a Tenant's Mortgagee, to perform the covenants and obligations of the Landlord under the Lease with respect to the lands which are the subject of such sale or assignment:

- (a) subject to Section 10.8(c), the Landlord shall be freed and relieved from all liability upon such covenants and obligations in relation to such lands without further written agreement for the balance of the Term;
- (b) subject to Section 10.8(c), the Tenant shall look to such purchaser or assignee for performance of such obligations under the Lease with respect to the lands and premises that are the subject of the sale or the assignment; and
- (c) provided, however, nothing in Sections 10.8(a) and 10.8(b) shall release the Landlord from any obligation to the Tenant or any Tenant's Mortgagee resulting from any prior default by the Landlord under the Lease or any agreement to which the Landlord and the Tenant and any Tenant's Mortgagee are parties.

10.9 Rights of Tenant's Mortgagees

The Landlord will use its best efforts to obtain from all present and future Landlord's Mortgagees a non-disturbance agreement in favour of the Tenant and any Tenant's Mortgagee of their respective interests in the Leased Premises in form satisfactory to the Tenant or Tenant's Mortgagee, acting reasonably, subject to such changes as the parties may reasonably require. The Landlord will enter into a lease acknowledgement agreement with the Tenant and any Tenant's Mortgagee in form satisfactory to the Tenant or Tenant's Mortgagee, acting reasonably, subject to such changes as the parties may reasonably require. At the request of the Tenant or any Tenant's Mortgagee, the Landlord shall use its best efforts to cause a Landlord's Mortgagee to be made a party to the lease acknowledgement agreement the form of which shall be suitably amended so as to maintain the Tenant's tenure of the Leased Premises and the Tenant's Mortgagee's priority and security position regardless of any dealing with the Landlord's Land by the Landlord or the Landlord's Mortgagee's security. Any rights granted to the Tenant or Tenant's Mortgagee by any agreement referred to or contemplated in the Lease shall be in addition to and in no way limit the rights granted to the Tenant or a Tenant's Mortgagee in the Lease.

10.10 Acknowledgement by Landlord and Tenant

Each party upon the request of the other party shall execute an acknowledgement or certificate in favour of (and shall deliver to) the other party and any actual or prospective assignee, mortgagee, or encumbrancer of the Lease or the Leasehold Estate, acknowledging or certifying the status of this Lease, any modifications of this Lease, any breaches of covenants known to the party on the part of the other party and the state of the Rent account with the intent that any acknowledgement or certificate may be relied upon by any Person to whom it is addressed.

10.11 Subordination and Attornment

This Lease is subordinate to every mortgage or charge of the Landlord (a "**Landlord's Mortgage**") that now affects the Sites. The Tenant will subordinate this Lease to every Landlord's Mortgage that hereafter affects the Sites and execute promptly a document in confirmation of the subordination if requested by the Landlord in which the Tenant also will agree with the Landlord's Mortgagee that if the Landlord's Mortgagee becomes a mortgagee in possession or takes action to realize the security of the Landlord's Mortgage the Tenant will attorn to the Landlord's Mortgagee as a tenant upon all the terms of this Lease, but only if the Landlord's Mortgagee agrees in writing to accept the attornment providing that Tenant's rights under this Lease shall not be affected and permit the Tenant to continue in occupation of the Leased Premises until this Lease is terminated by passage of time or by action taken because of a default of the Tenant.

10.12 Reimbursement of Landlord's Costs

The Tenant shall reimburse the Landlord for all reasonable legal and other costs incurred by the Landlord in connection with its undertaking or complying with the matters set out in Sections 10.1, 10.3, 10.4, 10.5, 10.6, 10.9 and 10.10

ARTICLE XI **GENERAL**

11.1 Notices

Unless otherwise provided in this Lease, any demand, approval, consent or Notice required or permitted under this Lease (a "**Notice**") will be in writing and may be delivered in person, by courier or by facsimile to the applicable party, at the following addresses or to any other address, fax number or individual that a party designates.

If to the Landlord:

The Corporation of the City of London

Attention:

Fax:

If to the Tenant:

Attention:

Telephone:

Fax:

- (a) if delivered personally or by courier will be deemed to have been given when actually received;
- (b) if delivered by fax at or before 3:00 p.m. on a Business Day will be deemed to have been delivered on that Business Day; and
- (c) if delivered by fax after 3:00 p.m. on a Business Day or on a day which is not a Business Day will be deemed to be delivered on the next Business Day.

11.2 Registration

The Tenant may register a notice of lease on the title to each of the Sites in a form approved by the Landlord. The Landlord may register a notice of lease (which shall not refer to the Rent payable hereunder) on title to the Sites but shall not register this Lease on title. Upon the expiration or earlier termination of this Lease, the Tenant shall at its expense forthwith remove and discharge the notice of lease from title. In the event the Tenant fails or neglects to discharge the notice as required then the Tenant appoints the Landlord its agent or attorney to execute all documents to effect the discharge.

11.3 Surrender

Upon the expiration or earlier termination of this Lease, the Tenant shall execute and deliver within thirty (30) days of such expiry or termination, a surrender of lease in order to remove the registration of the Lease or notice of lease from the title to the Landlord's Land.

11.4 Waiver

Failure by a party to require performance by any other party of any term, covenant or condition contained in this Lease will not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of such term, covenant or condition or of any other term, covenant or condition contained in this Lease.

11.5 Planning Act and Municipal Compliance

- (a) This Lease shall be effective to convey or grant an interest in the Leased Premises only if the subdivision control provisions of the *Planning Act* (Ontario) or any similar legislation is complied with by the Tenant at the Tenant's expense.
- (b) The Tenant shall, at its own expense, be responsible for applying for and obtaining all necessary applications for consent under the provisions of the *Planning Act* (Ontario) as a result of the length of the Term and for all necessary minor variances, zoning amendments and Approvals to allow the Permitted Use to be carried on upon the Sites.
- (c) The Landlord covenants and agrees to co-operate with and support the Tenant in all such applications and shall appoint the Tenant its agent for the purpose of making the applications referred to in this Section 11.5 and shall execute all consents and other documents and take all other actions that the Tenant reasonably requires for such purposes, including any actions that may be required in order to satisfy conditions imposed by the relevant Governmental Authority in connection with the granting of any Approvals, consent, minor variance or zoning amendment, provided that such actions are undertaken at the expense of the Tenant..
- (d) Until such time as the subdivision control provisions of the *Planning Act* (Ontario) have been complied with and the Tenant has obtained any necessary consent to severance, the Term and all Extension Terms shall be deemed to be for a period of twenty-one (21) years less one (1) day.
- (e) The Tenant hereby declares that the Leased Premises being acquired by the Tenant pursuant to this Lease are for the purposes of a renewable energy generation facility or renewable energy project in accordance with Section 50(3)(d.1) of the *Planning Act* (Ontario).

11.6 Approvals and Consents

Where, in the Lease an approval, consent, acceptance or agreement (in this Section 11.6 these are individually and collectively referred to as an "approval") is required, unless the contrary is expressly provided:

- (a) the party requesting the approval shall accompany the request for approval, with such information in reasonable detail as the recipient may reasonably require to make a fully informed decision where the circumstances require;
- (b) the party whose approval is required shall respond with reasonable dispatch and shall notify the requesting party in writing either that it approves, or that it withholds its approval, setting forth in reasonable detail its reasons for withholding; and
- (c) an approval may not be unreasonably withheld.

11.7 Obligations and Covenants

Each obligation or agreement of the parties expressed in this Lease, unless expressed as a representation, even though not expressed as a covenant, is considered to be a covenant for all purposes.

11.8 Ownership of Environmental Attributes

The parties shall jointly determine the manner in which all Environmental Attributes arising out of the production of solar power as contemplated pursuant to the provisions of this Agreement or anything ancillary thereto are determined.

11.9 Further Assurances

Each party agrees to promptly execute and deliver to the other party such further assurances, documents, deeds, consents and will do all such further acts as may from time to time be reasonably determined, in good faith, to be required by such party to more fully effect the true intent of this Lease.

11.10 Unavoidable Delay

Despite anything to the contrary in the Lease, if either party is delayed or hindered in or prevented from the performance of any term, covenant or act required hereunder by reason of being unable to obtain materials, goods, equipment, services or labour, power failure, riots, insurrection, sabotage, rebellion, war, act of God, or by reason of any Applicable Law, or by reason of an order or direction from any Governmental Authority or by reason of any Governmental Authority having lawful jurisdiction preventing or delaying or restricting such fulfilment, or by reason of any other cause beyond its control, whether of the foregoing character or not, then the time for fulfilment of such obligation shall be extended during the period in which such circumstance operates to prevent, delay or restrict the fulfilment thereof and the other party to the Lease shall not be entitled to compensation for any inconvenience, nuisance or discomfort occasioned thereby. However, the party who is so prevented, delayed or restricted in performing its obligations shall use commercially reasonable efforts to fulfil its obligations under the Lease and to minimize any damage which the other party may suffer as a result of the delay. This Section 11.10 shall not apply to the payment of Rent by the Tenant.

11.11 Entire Agreement

This Lease and the Schedules attached to this Lease and forming part of this Lease shall supersede all previous negotiations and discussions between the parties including the Option to Lease and sets out all the covenants, promises, agreements, conditions and understandings between the parties concerning the Landlord's Land and the Development. Once the Lease has been executed and delivered if there is any conflict or inconsistency between the terms of the Lease and the terms of the Option to Lease, the terms of the Lease will govern to the extent necessary to resolve the conflict or inconsistency. There are no covenants, promises, warranties, agreements, conditions or representations, either oral or written, between them other than are those set out in this Lease. Except where this Lease so provides, no subsequent alteration, amendment, change or addition to this Lease will be binding upon the parties unless it is in writing and signed by them.

11.12 Confidentiality

- (a) The Landlord and Tenant shall each maintain in confidence all information pertaining to this Lease (except to the extent that the same or a notice of the same is registered against title to the Landlord's Land).
- (b) The Landlord shall maintain in confidence the Tenant's site or product design, methods of operation, methods of construction, power production or availability of the Equipment, and the like, whether disclosed by Tenant or discovered by the Landlord, in each case unless such information either:
 - (i) is in the public domain by reason of prior publication through no act or omission of the Landlord or those for whom it is in law responsible; or
 - (ii) was already known to Landlord at the time of disclosure and which the Landlord is free to use or disclose without breach of any obligation to any person or entity.
- (c) The Landlord shall not publish or otherwise disclose such information to others, except to consultants, retained experts, lawyers or other professionals who receive such information under an obligation of confidentiality.
- (d) The foregoing is subject to the obligations of the Landlord pursuant to the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56.

11.13 Independent Advice

Each party acknowledges having obtained such independent legal and other professional advice that it deems necessary in connection with entering into the Lease.

11.14 No Partnership

Nothing contained herein will be deemed to create any relationship between the Landlord and Tenant other than the relationship of landlord and tenant.

11.15 Governing Law

This Lease shall be construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein.

11.16 Interpretation

The doctrine of contractual interpretation that the construction least favourable applies to the person putting forward an instrument shall not apply to the interpretation of this Lease.

11.17 Severability

If any term, covenant or condition of this Lease or its application to any Person or circumstance is, to any extent, invalid or unenforceable, the remainder of this Lease and/or the application of such term, covenant or condition to Persons or circumstances will not be affected (other than the term, covenant or condition which was held invalid or unenforceable). Each term, covenant or condition of this Lease is separately valid and enforceable to the fullest extent permitted by law.

11.18 Successors and Assigns

All rights, advantages, privileges, immunities, powers and things hereby secured to the parties will be secured to, will enure to and be exercisable by their successors and permitted assigns, as the case may be, and all covenants, liabilities and obligations entered into or imposed hereunder upon the parties will be equally binding upon such successors and assigns, as the case may be.

11.19 Time To Be of the Essence

Time is of the essence of this Lease.

11.20 Dispute Resolution

- (a) The parties will use all commercially reasonable efforts to resolve by negotiation at the operations level any dispute, disagreement, controversy, question or claim that may arise under this Agreement, other than pursuant to Article 4 herein.
- (b) Save as aforesaid, the parties will refer any dispute or other controversy between the parties arising in respect of this Agreement which remains unresolved, after a reasonable attempt has been made to resolve in accordance with the terms hereof, to arbitration before a single arbitrator. The Rules for Procedure for Commercial Arbitration of the Arbitration and Mediation Institute of Canada Inc., in effect at the date of commencement of any arbitration held under this Agreement will apply to the arbitration. No party may appeal the decision of the arbitrator in any matter whatsoever, except as permitted by the *Arbitration Act, 1991* (Ontario). A party may enter any judgment upon any award rendered by the arbitrator in any court having jurisdiction. The arbitration will be conducted in English under the *Arbitration Act, 1991* (Ontario) and will take place in the City of London Ontario at such time and place as the arbitrator may fix.

IN WITNESS WHEREOF the parties hereto have executed this Lease as of the date first written above.

**THE CORPORATION OF THE CITY
OF LONDON**

Per: _____
Name:
Title:

Per: _____
Name:
Title:

We have authority to bind the Corporation

Per: _____
Name:
Title:

Per: _____
Name:
Title:

SCHEDULE "A"
THE SITES

Site	Name of Landlord's Site	Address of the Site
1.	A.J. Tyler Operations Centre	663 Bathurst Street
2.	Carling Arena	675 Grosvenor Street
3.	Earl Nichols Arena	799 Homeview Road
4.	Exeter Road Operations Centre	707 Exeter Road
5.	Kinsmen Arena	20 Granville Street
6.	Lambeth Arena	7112 Beattie Street
7.	London Convention Centre	300 York Street
8.	Medway Arena	119 Sherwood Forest Square
9.	Argyle Arena	1948 Wavell Street
10.	Canada Games Aquatic Centre	1045 Wonderland Road North
11.	No. 2 Fire Station	1103 Florence Street
12.	North London Optimist Centre	1345 Cheapside Street
13.	Oakridge Arena	825 Valetta Street
14.	Pottersburg Pollution Control	1141 Hamilton Road
15.	Stronach Arena	1221 Sandford Street
16.	Vauxhall Pollution Control Plant	54 Price Street

SCHEDULE "B"
LEASED PREMISES

[For each Site attach a sketch showing Buildings and location of solar arrays on rooftops and a plan showing any ancillary Building space]

SCHEDULE "C"
PERMITTED ENCUMBRANCES