

**Solar Purchase Agreement**

**by and between**

**FLS SOLAR 20, LLC**

**as Seller,**

**and The Board of Trustees of Haywood Community College,**

**as Purchaser**

**for the Creative Arts Building**

**DATED AS OF JANUARY 20, 2010  
2011**

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### EXHIBITS:

Exhibit A-1	Solar Thermal Facility Information and Estimated Annual Production for First Year
Exhibit A-2	PV System Information and Nameplate Capacity
Exhibit B-1	Unit Purchase Price
Exhibit B-2	Minimum Annual Payment
Exhibit C	Termination Value
Exhibit D	Purchase Option
Exhibit E	Schematic of Solar Thermal Facility
Exhibit F	Plans and Specifications

## Solar Purchase Agreement

This Solar Purchase Agreement (as it may be amended, modified or supplemented from time to time, this "Agreement"), dated as of JANUARY 20, 2018 (the "Effective Date"), by and between FLS Solar 20, LLC, a North Carolina limited liability company ("Seller"), and The Board of Trustees of Haywood Community College ("Purchaser").

### RECITALS

WHEREAS, Purchaser desires to purchase from Seller and Seller desires to sell to Purchaser the Thermal Output (as defined below) of the Solar Thermal Facility (as defined below) used by the Building (as defined below).

NOW, THEREFORE, in consideration of Ten Dollars (\$10.00) the premises and the mutual benefits from the covenants hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree as follows:

### ARTICLE 1

#### DEFINITIONS AND CONSTRUCTION

Section 1.1 Definitions. As used herein, the following terms shall have the following meanings.

(a) "Absorption Chiller" means a fifty (50) ton absorption unit in accordance with the Plans and Specifications that Seller shall deliver to General Contractor for General Contractor to install in the Building.

(b) "Affiliate" means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with such Person. For purposes of this definition, "control" (including related forms such as "controlled by" and "under common control with") means the power, directly or indirectly, to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

(c) "Agreement" has the meaning set forth in the preamble.

(d) "Average BTU Output" means the daily number of BTUs of Thermal Output from the applicable Solar Thermal Facility as metered at the Thermal Delivery Point in the previous twelve (12) months divided by 365 days; provided, however, that if the Thermal Commercial Operation Date was less than twelve (12) months previous, the "Average BTU Output" means the quotient derived by dividing (i) 864.6 million BTUs by (ii) the number of days in such period.

(e) "BAS" means Building Automation System as set forth in Section 3.1(e).

(f) "Business Day" means Monday through Friday, except for federal or state

holidays.

(g) “Building” means the Creative Arts Building that Purchaser intends to construct on the Property.

(h) “BTU” means British thermal unit.

(i) “Contract Year” means the one year period beginning on 0000 hours on the Commercial Operation Date (or anniversary thereof) and running through 2400 hours on the day before the following anniversary of the Commercial Operation Date (e.g., 0000 hours on January 1 through 2400 hours on December 31).

(j) “County” means Haywood County, North Carolina.

(k) “Due Date” has the meaning set forth in Section 5.3.

(l) “Effective Date” has the meaning set forth in the preamble.

(m) “Emergency Generator” means a back-up generator sufficient for the needs of the System and in accordance with the Plans and Specifications [to be delivered by Seller to the General Contractor to be installed by General Contractor in the Building].

(n) “Environmental Attributes” means the characteristics of thermal energy generation at the Solar Thermal Facility or the electricity generation of the PV System that have intrinsic value, separate and apart from the Thermal Output or the Solar Electricity, arising from the perceived environmental benefits of the Solar Thermal Facility, Thermal Output, PV System, or the Solar Electricity, including but not limited to all environmental and other attributes that differentiate the Solar Thermal Facility, Thermal Output, PV System, or the Solar Electricity from energy generated by fossil-fuel based generation units, fuels or resources, characteristics of the Solar Thermal Facility or the PV System that may result in the avoidance of environmental impacts on air, soil or water, such as the absence of emission of any oxides of nitrogen, sulfur or carbon or of mercury, or other gas or chemical, soot, particulate matter or other substances attributable to the Solar Thermal Facility of the PV System or the compliance of the Solar Thermal Facility or the Thermal Output or the PV System or Solar Electricity with the law, rules and standards of the UNFCCC (as defined below) or the Kyoto Protocol to the UNFCCC or crediting “early action” with a view thereto, or laws or regulations involving or administered by the Clean Air Markets Division of the United States Environmental Protection Agency or successor administrator or any state or federal entity given jurisdiction over a program involving transferability of rights arising from Environmental Attributes and Reporting Rights.

(o) “Environmental Incentives” means all rights, credits (including tax credits), rebates, benefits, reductions, offsets, and allowances and entitlements of any kind, howsoever entitled or named (including carbon credits and allowances), whether arising under federal, state or local law, international treaty, trade association membership or the like, arising from the Environmental Attributes of the System or the Thermal Output or Solar Electricity or otherwise from the development or installation of

the Solar Thermal Facility or PV System or the production, sale, purchase, consumption or use of the Thermal Output or the Solar Electricity. Without limiting the foregoing, “Environmental Incentives” include green tags, renewable energy credits, tradable renewable certificates, portfolio energy credits, the right to apply for (and entitlement to receive) incentive programs offered by the NCUC (as defined below) or other incentive programs offered by the State of North Carolina, the right to claim any available North Carolina state income tax credits and the right to claim federal income tax credits under Sections 48 and 50 of the Internal Revenue Code and Section 1.48-4 of the Treasury Regulations.

(p) “Estimated Annual 1<sup>st</sup> Year Production” means the total estimated annual production of the Solar Thermal Facility for the first year after the Commercial Operation Date as will be shown on **Exhibit A-1**. Once the final Solar Thermal Facility design has been completed, and any case prior to the Thermal Commercial Operation Date the Parties shall each consent to and attach a completed **Exhibit A-1**.

(q) “Expiration Date” means the end, as applicable, of the Initial Term or any Renewal Term where the Parties have not elected to renew this Agreement.

(r) “Facility Owner” means FLS Owner II, LLC, a North Carolina limited liability company.

(s) “Force Majeure” has the meaning given to it in Section 15.1(b).

(t) “GAAP” means United States generally accepted accounting principles consistently applied.

(u) “General Contractor” means Miles-McClellan Construction Company, Inc. who Purchaser has contracted with to construct the Building, or any replacement contractor.

(v) “Good Industry Practice” means the practices, methods and acts that would be implemented and followed by a prudent operator of solar thermal generating facilities and/or photovoltaic solar electric generation system in the United States which are similar to the Solar Thermal Facility and/or the PV System and that, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, permits, codes, standards, equipment manufacturer’s recommendations, reliability, safety, environmental protection, economy and expedition. Good Industry Practices are not intended to be limited to the optimum practices, methods and acts to the exclusion of all others, but rather to include reasonable and prudent practices, methods and acts generally accepted by prudent operators of solar thermal generation facilities and/or photovoltaic solar electric generation systems in the United States that are similar to the Solar Thermal Facility and/or the PV System.

(w) “Indemnified Party” has the meaning set forth in Section 12.1.

- (x) “Indemnifying Party” has the meaning set forth in Section 12.1.
- (y) “Initial Term” has the meaning set forth in Section 6.1.
- (z) “kWh” means kilowatt-hour equivalent. One kWh is equivalent to 3,412 BTUs.
- (aa) “Lease” means that certain Lease between the County and Purchaser for the lease of the Property dated \_\_\_\_\_, 2010.
- (bb) “Maintenance Plan” means the maintenance plan delivered from Seller to Purchaser pursuant to Section 3.1(h).
- (cc) “NCUC” means the North Carolina Utilities Commission.
- (dd) “Parties” means Seller and Purchaser.
- (ee) “Party” means Seller or Purchaser.
- (ff) “Person” means any individual, partnership, joint venture, limited liability company, corporation, trust or other entity, and the heirs, executors, administrators, legal representatives, successors and assigns of such Person where the context so requires.
- (gg) “Plans and Specifications” means those plans and specifications agreed to between Seller and Purchaser which will be attached within ninety (90) days of execution hereto as Exhibit F. The Plans and Specifications may only be revised or modified by written agreement of Purchaser and Seller, which consent may not be unreasonably withheld.
- (hh) “PPA” means that certain Power Purchase Agreement to be executed between Seller and Utility for the Solar Electricity.
- (ii) “Premises” means the area of the roof, floor space, and access areas of the Building on which the System will be installed and is more particularly described in the Site Agreement.
- (jj) “Price Escalation” has the meaning set forth on Exhibit B-1.
- (kk) “Prime Rate” shall be equal to the prevailing prime rate of interest as published in The Wall Street Journal on the relevant day (for example on the date of default).
- (ll) “Property” means the real property located at the intersection of Freedlander Drive and College Drive and more particularly described in the Site Agreement.
- (mm) “Purchase Option” means Purchaser’s Option to purchase the System as set forth on Exhibit D.



- (nn) “Purchaser” has the meaning set forth in the Preamble.
- (oo) “PV Commercial Operation” means the condition existing when (i) the PV System is mechanically complete and operating and (ii) the Solar Electricity is delivered through the PV System to the PV Delivery Point complying with the Plans and Specifications and all local and state regulations.
- (pp) “PV Commercial Operation Date” means the date on which Seller notifies Purchaser in accordance with Section 3.1(e) of this Agreement that the PV System has achieved PV Commercial Operation.
- (qq) “PV Delivery Point” means the delivery point within or off the Property at which Seller transfers the Solar Electricity to the Utility in accordance with the Plans and Specifications, the PPA and any interconnection agreement between Seller and the Utility.
- (rr) “PV System” means a roof-mounted, photovoltaic solar electric generation system, controls, meters, switches, connections, conduit, wires and other associated equipment to be installed by Seller or its affiliate on the Premises in accordance with the terms of the Site Agreement and the Plans and Specifications.
- (ss) “Renewal Term” has the meaning set forth in Section 6.2.
- (tt) “Reporting Rights” means the right of Seller to report to any federal, state, or local agency, authority or other party, including without limitation under Section 1605(b) of the Energy Policy Act of 1992 and provisions of the Energy Policy Act of 2005, or under any present or future domestic, international or foreign emissions trading program, that Seller owns the Environmental Attributes and the Environmental Incentives associated with the Thermal Output.
- (uu) “Seller” has the meaning set forth in the preamble.
- (vv) “Site Agreement” means the Solar Facility System Site Sublease Agreement, dated \_\_\_\_\_, 2010, by and between Facility Owner and Purchaser.
- (ww) “Solar Electricity” means the instantaneous electrical output generated by the PV System on or after the Commercial Operation Date, delivered to the PV Delivery Point and sold to the Utility pursuant to the PPA.
- (xx) “Solar Heating and Cooling Thermal Facility” means the solar heating and cooling generation equipment, controls, meters, switches, connections, conduit, wires and other associated equipment to be installed by Seller or its affiliate on the Premises which will provide Thermal Output to the Absorption Chiller in accordance with the terms of the Site Agreement and the Plans and Specifications for the purposes of providing heating and/or cooling to Purchaser under this Agreement.
- (yy) “Solar Thermal Facility” means the Solar Heating and Cooling Thermal Facility and the Solar Water Heating Thermal Facility.

(zz) “Solar Water Heating Thermal Facility” means the solar water heating generation equipment, controls, meters, switches, connections, conduit, wires and other associated equipment to be installed by Seller or its affiliate on the Premises in accordance with the terms of the Site Agreement and the Plans and Specifications for the purposes of providing heated water to Purchaser under this Agreement.

(aaa) “Substitute Payment” has the meaning set forth in Section 3.3(a).

(bbb) “System” means the Solar Thermal Facility, the PV System, the Emergency Generator, and the Absorption Chiller.

(ccc) “Term” means the Initial Term and any Renewal Term.

(ddd) “Thermal Commercial Operation” means the condition existing when (i) the Solar Thermal Facility is mechanically complete and operating as will be specified in Exhibit A-1, (ii) the Thermal Output is delivered through the Solar Thermal Facility to the Thermal Delivery Point complying with the Plans and Specifications and all local and state regulations; and (iii) the Absorption Chiller and Emergency Generator are installed in accordance with the Plans and Specifications.

(eee) “Thermal Commercial Operation Date” means the date on which Seller notifies Purchaser in accordance with Section 3.1(d) of this Agreement that the Solar Thermal Facility has achieved Thermal Commercial Operation; provided, however, that in no event shall the Thermal Commercial Operation Date be deemed to have occurred prior to the date that is one month following the date upon which Purchaser applies for its certificate of occupancy for the Building.

(fff) “Thermal Delivery Point” means the delivery point within the Property at which Seller transfers the heated fluid in the solar tank to the various Building thermal loads (*e.g.*, for domestic water heating, to the radiant floor heating, and the absorption cooling system). Within the Building one or more heat exchangers will be installed; it is currently anticipated that there will be one heat exchanger for the Solar Heating and Cooling Thermal Facility and one for the Solar Water Heating Thermal Facility. Each heat exchanger shall be considered the Thermal Delivery Point. The Thermal Delivery Point will be located on the building load side of the heat exchanger (as opposed to the solar tank side) and is illustrated in Exhibit E.

(ggg) “Thermal Output” means the total quantity of all actual net energy generated by the Solar Thermal Facility and measured pursuant to Section 8.1 and delivered in accordance with Section 4.2 to the Thermal Delivery Point, in any given period of time. Thermal Output does not include the Environmental Incentives or Environmental Attributes. In no case shall the Thermal Output include any energy that is released through the Building’s cooling tower as excess thermal energy or otherwise not used to meet the Building’s energy demand.

(hhh) “UNFCCC” means the United Nations Framework Convention on Climate Change.

(iii) “Unit Purchase Price” means the purchase price per 1,000,000 BTUs as set forth in Section 5.1 and on Exhibit B-1 and adjusted in accordance with the Price Escalation.

(jjj) “Utility” means any utility provider purchasing Solar Electricity and shall initially be Progress Energy, its successors and or assigns.

Section 1.2 Construction of Certain Terms and Phrases. Unless the context of this Agreement provides otherwise:

(a) the words “herein,” “hereunder” and “hereof” refer to the provisions of this Agreement and a reference to a Recital, Article, Section, subsection, paragraph or attachment is a reference to a Recital, Article, Section, subsection, paragraph or attachment to this Agreement unless otherwise stated;

(b) references to this Agreement, or any other agreement or instrument, includes any Schedule, Exhibit, annex or other attachment hereto or thereto;

(c) a reference to this Agreement, any other agreement or an instrument or any provision of any of them includes any amendment of this Agreement or such other agreement, instrument or provision, as the case may be;

(d) a reference to a law or a provision of any law includes all regulations, rules, subordinate legislation and other instruments issued or promulgated thereunder as in effect from time to time and all consolidations, amendments, re-enactments, extensions or replacements of such law or provision;

(e) the singular includes the plural and vice versa;

(f) a reference to a Person includes a reference to the Person’s executors and administrators (in the case of a natural person) and successors, substitutes (including Persons taking by novation) and permitted assigns;

(g) words of any gender shall include the corresponding words of the other gender;

(h) “including” means “including, but not limited to” and other forms of the verb “to include” are to be interpreted similarly;

(i) where a period of time is specified to run from or after a given day or the day of an act or event, it is to be calculated exclusive of such day; and where a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of such day;

(j) if the time for performing an obligation under this Agreement expires on a day that is not a Business Day, the time shall be extended until that time on the next Business Day;

(k) a reference to (i) a day (other than a Business Day) is a reference to a calendar day, (ii) a month is a reference to a calendar month and (iii) a year is a reference to a calendar year;

(l) where a word or phrase is specifically defined, other grammatical forms of such word or phrase have corresponding meanings; and

(m) all accounting terms used but not defined herein have the meanings given to them under GAAP as consistently applied by the Person to which they relate.

## ARTICLE 2

### CONDITIONS PRECEDENT SELLER'S OBLIGATIONS

#### Section 2.1 Conditions Precedent to Seller's Obligations.

(a) Promptly following the execution of this Agreement, Seller shall at its sole cost and expense commence or cause Facility Owner to commence pre-installation activities relating to the System, which shall include, without limitation, the following:

(1) obtaining (A) financing for installation of the System in such amounts as Seller deems sufficient in its sole discretion; (B) a commitment from an investor in such amounts as Seller deems sufficient in its sole discretion for any available incentive credits for construction or operation of the System; and (C) a contract for the sale of any available Environmental Attributes in such amounts as Seller deems sufficient in its sole discretion.

(2) obtaining the right to use the Property under Facility Owner's standard Site Agreement with such revisions as have been negotiated between Facility Owner and Purchaser, for the lease of premises upon which the System will be located;

(3) obtaining all permits, contracts, and agreements required for installation of the System;

(4) obtaining all necessary authority from the NCUC or other regulatory entities for the operation of the System and sale and delivery of Thermal Output to Purchaser and sale and delivery of the Solar Electricity to the Utility; and

(5) entering into contract(s) for installation of the System, subject to the terms of any proposed financing.

(b) Successful completion of parts (1) - (5) of Section 2.2(a) shall be conditions precedent to Seller's obligations to install and operate the System and otherwise perform its obligations under this Agreement. If despite Seller's efforts the activities contemplated in parts (1) - (5) of Section 2.2(a) are not completed by August 1,

2011, both Seller and Purchaser shall have the option to terminate the Agreement without triggering the default provisions of this Agreement or any liability under this Agreement. Alternatively, in the event that such conditions precedent are not satisfied by such date, the Parties may mutually agree to amend this Agreement to extend the time period by which Seller must successfully complete parts (1)-(5). Additionally, Seller shall coordinate and cooperate with the General Contractor for the obtaining of all permits, contracts, and agreements required for construction of the Building;

### ARTICLE 3

#### INSTALLATION AND OPERATION OF THE SYSTEM

##### Section 3.1 Installation of the System.

(a) Seller shall install or cause the System to be installed on the Property in accordance with Good Industry Practice, the Site Agreement, the Plans and Specifications and this Agreement. Upon Thermal Commercial Operation, the Solar Heating and Cooling Thermal Facility and the Solar Water Heating Thermal Facility shall be designed to have an annual production rating as will be shown on Exhibit A-1. Upon PV Commercial Operation, the PV System shall be designed to have the installed, nameplate capacity as will be shown on Exhibit A-2 (the Parties shall consent to and attach Exhibit A-2 at the same time that they attach Exhibit A-1, and in no case later than the PV Commercial Operation Date). Seller shall provide Purchaser reasonable written notice of the progress of the installation of the System and shall provide reasonable notice to Purchaser of both the Thermal and PV Commercial Operation Dates.

(b) Seller or its Affiliate shall be solely responsible for all costs and the performance of all tasks required for installation of the System and any damages caused as a result of such installation; provided, however, that Seller's obligations with respect to the Absorption Chiller and the Emergency Generator shall be limited to the delivery of the Absorption Chiller and the Emergency Generator to the General Contractor at the Property in a manner and at a time that would allow the General Contractor to install such items in accordance with its timeline for constructing the Building. The General Contractor will be responsible for the installation of the Absorption Chiller as well as all related piping, insulation, and controls. The General Contractor will also be responsible for the installation of the Emergency Generator, gas piping and associated wiring and conduit. It will be the responsibility of the Seller to coordinate with and provide to the BAS sub-contractor and General Contractor the proper control logic to maximize performance of the Absorption Chiller and ensure the Emergency Generator is energized and the excessive heat is dumped when required. For security and liability purposes, Seller shall coordinate times of construction and installation of the System with General Contractor and Purchaser.

Notwithstanding anything to the contrary found in any agreement between the Parties or their Affiliates, Seller makes no representation or warranty as to the effectiveness of the Absorption Chiller and/or Emergency Generator. While the Absorption Chiller and/or Emergency Generator will remain at Seller's risk until such time as Purchaser may

exercise its option to purchase, Seller does not guaranty that either the Absorption Chiller and/or Emergency Generator will work for their respective intended purposes. Seller will use commercially reasonable efforts to cause the manufacturer of the Absorption Chiller and/or the Emergency Generator to correct or repair any defect in the Absorption Chiller and/or Emergency Generator and shall otherwise use commercially reasonable efforts to ensure that Purchaser obtains all benefits of any manufacturer's warranty with respect to the Absorption Chiller and/or the Emergency Generator.

(c) Seller shall use commercially reasonable efforts to work with the General Contractor to cause the Absorption Chiller and the Emergency Generator to be installed prior to the date Purchaser applies for its certificate of occupancy for the Building and in a manner that would not materially adversely impact the sequencing of the construction process by General Contractor.

(d) Seller shall use commercially reasonable efforts to cause installation of the Solar Thermal Facility to be completed on or before the date upon which Purchaser applies for its certificate of occupancy for the Building and to cause the Solar Thermal Facility to begin Thermal Commercial Operation on or before the date that is one month following the date upon which Purchaser applies for its certificate of occupancy for the Building. Seller shall promptly notify Purchaser of the date of Thermal Commercial Operation.

(e) Seller shall use commercially reasonable efforts to cause installation of the PV System to be completed on or before the date upon which Purchaser applies for its certificate of occupancy for the Building and to cause the PV System to begin PV Commercial Operation on or before the date that is six months following the date upon which Purchaser applies for its certificate of occupancy for the Building. Seller shall promptly notify Purchaser of the date of PV Commercial Operation.

(f) Seller shall take and shall cause its Affiliates and contractors to take all commercially reasonable measures to prevent activities associated with installation, operation and repair, maintenance of the System from disrupting or interfering with General Contractor's construction of the Building or Purchaser's normal activities at the Property.

(g) Seller shall coordinate with Innovative Design, the General Contractor, and all applicable subcontractors, including those implementing the Building Automation System ("BAS"), controls, real-time monitoring, plumbing, mechanical and electrical systems to ensure compatibility and intended performance of the System. Seller shall provide essential control programming logic of the System to the General Contractor to ensure that the System's performance is maximized.

(h) Seller shall, at its sole cost and expense, make provision for a telephone and/or an internet connection to the System's monitoring equipment so that it is possible for Seller and Purchaser to remotely monitor production by the System. Purchaser, at its sole cost and expense, may connect to the System's monitoring equipment to view the monitoring information remotely and at an on-site, real-time monitoring display. If

Purchaser elects to connect to the System's monitoring equipment, Seller, without unreasonable delay, shall provide Purchaser with the appropriate information and access necessary to make said connection.

(i) Seller shall coordinate with General Contractor and Purchaser to schedule their respective installation and construction obligations.

(j) Seller shall, or shall cause Facility Owner to, maintain an adequate supply of spare parts to replace normal wear components and have procedures in place for maintenance of the System, instrumentation and any other components that require expert repair or service. Seller shall, or shall cause Facility Owner to, maintain commercially reasonable records of the maintenance performed on the System. In the event Purchaser exercises its option to purchase the System, or any of its components, pursuant to the Purchase Option, which is attached as Exhibit D, Seller shall provide the maintenance records with respect to the System or the relevant component to Purchaser on the Closing Date (as defined in the Purchase Option).

(k) Procedures, including contact information, scope of services to be performed and estimated turn-around times for services must be included in the Maintenance Plan (the "Maintenance Plan"). A description of routine maintenance items, procedures and spare parts must also be included in the Maintenance Plan.

(l) Seller shall provide an Operations and Maintenance (O&M) Manual to Purchaser as soon as practicable following the date on which the Purchaser applies for its certificate of occupancy for the Building and shall promptly provide Owner with any subsequent updates to the O&M Manual, which shall contain pertinent manufacturer information about electrical, mechanical and instrumentation components. Electrical, mechanical, instrumentation layout drawings and control logics for each System are also to be part of the O&M Manual.

(m) Seller shall, or shall cause Facility Owner to, assist the commissioning agent in verifying and optimizing the performance of the System.

(n) Seller shall provide Purchaser with a one-day training session regarding the Solar Thermal Facility within 30 days following the Thermal Commercial Operation Date.

(o) Seller shall provide Purchaser with a one-day training session regarding the PV System within 30 days following the PV Commercial Operation Date.

(p) Seller shall, or shall cause Facility Owner to, maintain all applicable construction and operations records for the life of this Agreement and such records shall be kept available for reference by the Purchaser. In the event that the System is transferred to Purchaser, all records, including "as-built" drawings, specifications, maintenance and operational procedures, warranty information, manufacturers specifications on all major equipment, digital data and drawings, shall become the property of Purchaser.

(q) In the event the System is transferred to Purchaser, Seller will provide, if required, support to Purchaser in Purchaser's permitting documentation or renewal for state or federal permits. Such support includes, but is not limited to, providing drawings, test data or other monitoring data, meeting with regulatory agencies, and providing access to all parts of the System for purposes of inspections by regulatory agencies, Purchaser and its employees, and Purchaser's architects, engineers and other consultants.

### Section 3.2 Operation of the System

(a) Subject to the obligations and responsibilities of Purchaser under this Agreement and the Site Agreement, Seller shall, or shall cause Facility Owner to, at all times during the term of this Agreement, cause the System to be operated, repaired and maintained without cost to Purchaser, in accordance with Good Industry Practice and in compliance with all laws, regulations and governmental permits. Seller shall bear all risk of loss with respect to the System, except for losses arising from breach of this Agreement or for negligent or willful acts or omissions of Purchaser or its agents or employees. Any damage to the Property, Premises, or Purchaser's other property caused by or arising from Seller's or its Affiliate's operation, repair, or maintenance of the System shall be repaired in conformance with the repair requirements set forth in the Site Agreement.

(b) Unless and until Purchaser exercises its Purchase Option, Purchaser shall have no ownership interest in the System or the Environmental Attributes and no responsibility for the operation or maintenance of the System other than using commercially reasonable efforts to protect the System against vandalism and other destruction. Neither Purchaser nor any party related thereto shall have the right or be deemed to operate the System for purposes of Section 7701(e)(4)(A)(i) of the Internal Revenue Code.

### Section 3.3 Removal of the System.

(a) Either Party may request that any component part of the System be moved to another location on the Property. If either Party requests that any component part of the System be moved to, or replaced at, an alternate location at the Property during the term of this Agreement, the alternate location shall be subject to the approval (such approval not to be unreasonably withheld or delayed) of the other Party, and, upon such approval, the obligations of Purchaser and Seller shall remain as set forth in this Agreement. The Party requiring such movement or replacement shall be responsible for all associated costs of removal and reinstallation. If Purchaser requires movement or replacement, for the period of time during which any such component part of the System is not in Thermal or PV Commercial Operation, as the case may be, due to the movement or replacement, Purchaser shall pay to Seller, in addition to other amounts set forth in this Section 3.3(a), a monthly payment (the "Substitute Payment") (prorated as needed) equal to:

(1) If such movement includes the Solar Thermal Facility, the Unit Purchase Price of Thermal Output, as set forth under Section 5.1 (using the Unit



Purchase Price as such Unit Purchase Price would have been escalated pursuant to the Price Escalation) times the Average BTU Output times the number of days comprising the period of time during which the Solar Thermal Facility is not in Thermal Commercial Operation due to the movement or replacement; and/or

(2) If such movement includes the PV System, the average monthly income generated by the PV System pursuant to the PPA for the preceding twelve (12) months, or however long the PV System has been in PV Commercial Operation if less than twelve (12) months, for the period of time the PV System is not in PV Commercial Operation due to the movement or replacement; plus

(3) the expected realizable value as determined by prevailing market indices then available of any Environmental Incentives and Environmental Attributes (including any applicable tax credits) that would have accrued to Seller for the period of time during which the System is not in Commercial Operation due to the movement or replacement. Notwithstanding anything to the contrary contained herein, the portion of the Substitute Payment attributable to Environmental Incentives and Environmental Attributes shall not exceed one thousand five hundred dollars (\$1,500) per month.

(b) If after the Building has been completed and Thermal and/or PV Commercial Operation has been achieved, temporary removal of any component part of the System is required due to work on the Building unrelated to the System, Purchaser shall be responsible for all associated costs of removal and reinstallation and shall proceed diligently in performing the necessary work to the Property. During any period while the System is not in Commercial Operation in connection with a relocation, Purchaser also shall pay Seller the Substitute Payment (prorated if only a portion of the System is not in Commercial Operation).

(c) Purchaser shall use commercially reasonable efforts to not cause or permit any material interference with the System's insolation and access to sunlight, as such access exists as of the Effective Date of this Agreement, such efforts shall include not planting any trees or vegetation that will materially interfere with the operation of the System. Without relieving Purchaser's obligations herein, Seller warrants that Seller has considered, or has caused Facility Owner to consider, existing trees and vegetation and their projected growth patterns (assuming routine maintenance and pruning) in designing the System and shall not hold Purchaser accountable for, nor terminate this Agreement as a result of, interference that the existing trees and vegetation, which have been properly maintained and pruned, may cause to the performance and operation of the System

## ARTICLE 4

### **PURCHASE AND SALE; DELIVERY OF THERMAL OUTPUT**

Section 4.1 Purchase and Sale of Thermal Output. Beginning on the Thermal Commercial Operation Date, continuing for the term of this Agreement, Purchaser shall purchase and accept delivery from Seller the Thermal Output at the Unit Purchase Price, and Seller shall

sell and deliver to Purchaser, the Thermal Output (in such amount of output as the System produces and the Purchaser demands from time to time). Purchaser shall not resell any of the Thermal Output.

Section 4.2 Delivery of Thermal Output.

(a) Seller is solely responsible for the delivery of the Thermal Output to the Thermal Delivery Point in accordance with the terms and conditions of this Agreement and shall bear all risks and costs associated therewith.

(b) Seller, at Seller's sole cost, shall ensure that all Thermal Output generated by the System conforms to NCUC specifications, which shall include the installation of safety equipment, submittal of necessary specifications, coordination of NCUC testing and verification, and all related costs.

(c) Purchaser shall be responsible for arranging delivery of Thermal Output from the Thermal Delivery Point to Purchaser and any installation and operation of equipment on Purchaser's side of the Thermal Delivery Point necessary for acceptance and use of the Thermal Output; provided, however, that Seller shall be responsible for the effects of the control logic that it provides to the BAS.

Section 4.3 Title and Risk of Loss. Title and risk of loss of the Thermal Output shall pass from Seller to Purchaser upon delivery of the Thermal Output at the Thermal Delivery Point. All deliveries of Thermal Output hereunder shall be in the form of BTUs, or similar, to properly integrate with the Property's hot water, heating and/or cooling system. Purchaser shall purchase and accept delivery of Thermal Output at the Thermal Delivery Point.

## ARTICLE 5

### PRICING AND PAYMENT OF THERMAL OUTPUT

Section 5.1 Purchaser shall pay Seller an amount equal to \$12.50 plus any Price Escalation as shown on Exhibit B-1 per 1,000,000 BTUs of Thermal Output (the "Unit Purchase Price"). Purchaser shall make quarterly payments, consistent with Section 5.3 below, equal to the Unit Purchase Price times the number of actual BTUs of Thermal Output generated during the previous quarter as metered at the Thermal Delivery Point (the "Quarterly Purchase Price"). For example, if the Solar Thermal Facility generates 192.06 million BTUs in a given quarter as metered at the Thermal Delivery Point, Purchaser will be required to pay a Quarterly Purchase Price of \$2,400.75. The "Annual Purchase Price" shall equal the total amount due from Purchaser to Seller on an annual basis. The projected annual BTU generation and an estimated Annual Purchase Price for each year of the Initial Term is also shown on Exhibit B-1. Notwithstanding the forgoing, for each quarter during the Term, Seller shall be entitled to receive and Purchaser shall pay, a minimum payment for thermal energy ("Minimum Quarterly Purchase Price") regardless of the amount of thermal energy consumed by Purchaser, provided the Solar Thermal Facility produced for each and every month in such quarter at least an amount equal to the lesser of: [a] the amount of energy set forth for such month on Exhibit B-3 or [b] the Building's demand for energy for such month. The amount of the Minimum Quarterly Purchase

Price for each year of the Term is shown on Exhibit B-2. Notwithstanding anything to the contrary contained herein, in the event that in any year (i) Purchaser makes a quarterly payment based on the Minimum Quarterly Purchase Price and (ii) the Annual Purchase Price exceeds the Minimum Annual Purchase Price for that year as established in Exhibit B-2, Purchaser shall with respect to invoice for the fourth quarter of such year be entitled to a credit against any amounts that would otherwise be due in such quarter equal to the lesser of (y) the difference between the Annual Purchase Price and the Minimum Annual Purchase Price and (z) the amount by which Purchaser's quarterly payments in that year exceeded the amount that would have been due if payment had been based exclusively on the Quarterly Purchase Price without regard to the Minimum Quarterly Purchase Price.

Section 5.2 Taxes. Seller represents that there are currently no taxes assessed against the generation, sale, or consumption of Thermal Output. In the event that any taxes are assessed against the generation, delivery, sale or consumption of Thermal Output, Purchaser shall either pay or reimburse Seller for all such amounts due, including any taxes assessed thereon, as set forth in Section 5.3, except any income taxes imposed on Seller based on such sales or profits from such sales.

Section 5.3 Invoices and Payment. Seller shall deliver to Purchaser an invoice quarterly by the fourteenth (14th) Business Day of the first calendar month following such quarter (the quarterly invoice shall be based on Purchaser's fiscal year or upon a quarterly schedule reasonably acceptable to Purchaser and Seller), stating all amounts due hereunder for the preceding quarter, including (a) the Unit Purchase Price (b) a statement of the actual BTUs generated as Thermal Output during the quarter as metered at the Thermal Delivery Point (c) the amount due for the quarter (which shall equal greater of either (i) the product of (a) times (b) above or (ii) the Minimum Quarterly Payment) (d) taxes payable, if any, pursuant to Section 5.2 for such quarter (e) interest payable, if any, under this Section 5.3 and (f) the sum of (c) (d) and (e), which will equal the total payment due. After giving effect to any offset for any amount owed or claimed to be owed by Seller or the Facility Owner under the Site Agreement, Purchaser shall pay the invoiced amount by wire transfer, ACH payment or check, on or before thirty (30) days following the date of the invoice, which shall be referred to as the "Due Date." If the Due Date is a bank holiday or a weekend, payment shall be due on the next following Business Day. Any amount, other than a disputed amount pursuant to Section 5.4, remaining unpaid after the Due Date shall bear interest at an annual rate of eight percent (8%). Invoices and payments schedule shall commence the first calendar month following the quarter in which the Thermal Commercial Operation Date occurs.

Section 5.4 Invoice Adjustments; Disputes over Invoices. Seller shall maintain all applicable operations records for the life of the Solar Thermal Facility in a suitable location on site or a location where it will be available for Purchaser's review within twenty-four (24) hours. Purchaser and its consultants shall have the right to review and copy such records. Either Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered or adjust any invoice for any arithmetic, computational or, in the case of any true-up payment, any meter-related error within twelve (12) months of the date the invoice or adjustment to an invoice was rendered. In the event a Party disputes all or a portion of an invoice, or any other claim or adjustment arises, that Party shall pay the undisputed portion when due and provide the other Party notice of the dispute and the amount in dispute. In such event, the Parties

shall first use good faith, reasonable, diligent efforts to resolve such dispute within a reasonable period of time not to exceed thirty (30) days from the date of such notice. If the Parties do not resolve such a dispute within such thirty (30) days, then the Parties may pursue their rights available to them. Seller shall return to Purchaser any disputed amount which is ultimately determined to have been improperly billed to Purchaser, together with interest thereon at eight percent (8%) per annum. Purchaser shall pay to Seller interest at a rate of eight percent (8%) per annum on any disputed amount which is ultimately determined to have been properly billed to Purchaser, until such properly billed amount is paid.

Section 5.5 PV System. Unless and until Purchaser exercises its Purchase Option, Seller may use the PV System to generate Solar Electricity for delivery to the Utility and sell the Solar Electricity and any Environmental Incentives to the Utility or other third-party purchaser. Pursuant to the Site Agreement, Facility Owner will pay Purchaser the rental provided for therein in consideration of the ability to locate the PV System on the Property. Purchaser shall have no right to purchase the Solar Electricity from Seller.

## ARTICLE 6

### TERM

Section 6.1 Initial Term. Subject to the conditions set forth in Section 2.1(a), the term of this Agreement (the "Initial Term") shall commence upon the Effective Date and, unless sooner terminated in accordance with the terms hereof, shall expire with respect to the Solar Thermal Facility, the Absorption Chiller, and Emergency Generator at 2400 hours on the date ten (10) years following the Thermal Commercial Operation Date and with respect to the PV System at 2400 hours on the date ten (10) years following the PV Commercial Operation Date; provided, however, that the purchase and sale obligation under Article 4 above with respect to the Thermal Output from the System shall commence on the Thermal Commercial Operation Date. For purposes of clarification, the Initial Term may continue with respect to one or more components of the System even though the Initial Term has been terminated or expired with respect to another component of the System.

Section 6.2 Purchase Option and Renewal Terms. At the end of the Initial Term (and any Renewal Term), if Purchaser has not exercised the Purchase Option and the Parties elect to extend this Agreement pursuant to this Section 6.2, the Parties will negotiate in good faith to renew the Site Agreement for the Premises. At the end of the Initial Term (and any Renewal Term), this Agreement, including the purchase and sale obligation under Article 4 with respect to Thermal Output from the System, will terminate unless (a) Purchaser elects to purchase the component of the System associated with the Term that is then ending (*e.g.*, the option to purchase the PV System must be exercised prior to the end of the PV System Term) at its then fair market value pursuant to the terms of the Purchase Option hereto attached as Exhibit D, in which case the Term of this Agreement shall extend until the Closing Date (as defined in Purchase Option); or (b) either Party delivers to the other Party at least six (6) months prior to the end of the Initial Term (or any subsequent Renewal Term) written notice that the notifying Party desires to extend this Agreement for an additional five (5) years and the notified Party accepts the extension in writing within thirty (30) days of such renewal notice (each additional five (5) year period, a "Renewal Term"); provided neither Party may extend this Agreement with respect

to any relevant component of the System if such Renewal Term will extend this Agreement beyond nineteen (19) years and eleven (11) months from the relevant Thermal or PV Commercial Operation Date. Unless otherwise agreed to by the Parties in writing, upon the renewal of this Agreement, the terms and conditions of this Agreement shall remain in effect except that the Unit Purchase Price shall continue to escalate annually at the Price Escalation Rate as set forth in Exhibit B. Nothing contained herein shall prevent Seller from donating the System or any component thereof to Purchaser.

**Section 6.3 Substitute Property.** Purchaser may not require a substitute Property pursuant to this Section 6.3 within the first six (6) years from the later of the Thermal or PV Commercial Operation Date. Thereafter, if Purchaser ceases to conduct business operations at the Property, vacates the Property, or is prevented from allowing operation of the System on the Property prior to the end of the term of this Agreement, then Purchaser shall make a good faith effort to provide Seller with a mutually agreeable substitute Property located within the same Utility district to relocate the System, which agreement shall not be unreasonably withheld, or, if not available, in a location with similar insolation and Utility rates. If such alternate Property is available and is reasonably acceptable to Seller and Purchaser, the definition of the Property set forth herein shall thereafter be deemed automatically amended to delete the prior Property and add the new Property, but otherwise this Agreement shall remain in full force in accordance with its terms and shall not be deemed otherwise amended. Purchaser shall pay (i) the reasonable costs arising in connection with the relocation of the System, including removal costs, installation costs, any applicable fees, other costs of deployment at the substitute Property, and (ii) the Substitute Payment for the period of time during which the System is not in Thermal and/or PV Commercial Operation due to the relocation. Such reasonable costs shall be determined by mutual consent of the parties, provided, however, if the parties cannot mutually agree on such costs, the Parties shall select an independent appraiser with experience and expertise in solar energy systems and general construction to determine the reasonable amount of such costs. The costs of the appraisal shall be born equally by both parties. In all other cases contemplated under this Section 6.3 in which a substitute site cannot be located, Purchaser may terminate this Agreement upon 90 days' written notice and shall pay Seller the relevant Termination Value (as set forth in Exhibit C and defined in Section 6.6 below), Seller shall remove the System subject to Purchaser's reimbursement pursuant to Section 6.4(d), and this Agreement shall terminate subject to due payment.

**Section 6.4 Early Termination by Seller.** After the first five (5) years from the later of the Thermal or PV Commercial Operation Date, Seller shall have the right, but not the obligation, to terminate this Agreement prior to expiration of its term only upon the occurrence of:

- (a) an unstayed order of a court or administrative agency having the effect of subjecting the sales of Thermal Output to federal or state regulation of prices and/or service;
- (b) elimination or alteration of one or more Environmental Incentives or other change in law that results in a material adverse economic impact on Seller; or
- (c) an annual level of direct beam solar resource availability that is less than

or equal to 90% of historical averages as measured by long-term weather data (minimum of five (5) years) collected at the Site and/or other reliable calibrated and appropriate weather station representative of the Site.

In the event of an early termination by Seller, Seller shall pay all costs of removal of the System and shall restore the Property to its original condition, reasonable wear and tear excepted.

Section 6.5 Removal of System. Upon expiration of this Agreement or early termination by either Party pursuant to the terms hereof, Seller shall cause the removal of any part of the System for which Purchaser has not exercised the Purchase Option from the Property and the restoration of the Property to its original condition, reasonable wear and tear excepted, by a mutually convenient date but in no case later than one hundred twenty (120) days after such expiration or termination, subject to Purchaser's reimbursement of Seller's reasonable costs of removal if removal occurs as a result of early termination by Purchaser pursuant to Section 6.3, and at Seller's expense at the end of the term of the Agreement or if removal occurs as a result of early termination by Seller pursuant to Section 6.4 of this Agreement. Purchaser shall provide Seller with reasonable access to perform such activities.

Section 6.6 Termination Value. In the event that a termination occurs as a result of Purchaser's default pursuant to Section 13.1 or termination pursuant to Section 6.3, Purchaser shall pay to Seller the Termination Value as set forth in Exhibit C (which shall be prorated for partial years), plus all other amounts then due and owing by Purchaser to Seller.

## ARTICLE 7

### ENVIRONMENTAL ATTRIBUTES AND ENVIRONMENTAL INCENTIVES

Section 7.1 Delegation of Attributes. During the Initial Term, Seller and/or Facility Owner shall own, and, subject to Seller's obligations under Section 3.1, may assign or sell in its sole discretion, all right, title and interest associated with any Environmental Incentives resulting from the development and installation of the System and the production, sale, purchase or use of the Thermal Output and Solar Electricity including, without limitation:

- (a) all Environmental Incentives and all Environmental Attributes; and
- (b) the Reporting Rights and the exclusive rights to claim that: (i) the Thermal Output was generated by the System; (ii) Seller is responsible for the delivery of the Thermal Output to the Thermal Delivery Point and the Solar Electricity to the PV Delivery Point; (iii) Seller is responsible for the reductions in emissions of pollution and greenhouse gases resulting from (a) the generation of the Thermal Output and the delivery thereof to the Thermal Delivery Point and (b) the generation of the Solar Electricity and the delivery thereof to the PV Delivery Point; and (iv) Seller and/or Facility Owner is entitled to all credits, certificates, registrations, etc., evidencing or representing any of the foregoing. Purchaser may publicly state it is purchasing solar energy for its needs consistent with Section 15.2 below.

Section 7.2 Impairment of Environmental Attributes and Environmental Incentives. Purchaser shall use commercially reasonable efforts to follow reasonable guidelines provided by

Seller in writing so as not to take any action or suffer any omission at the Property that would have the effect of impairing the value to Seller of the Environmental Attributes and Environmental Incentives. Purchaser shall be solely responsible for notifying Seller of any action or omission of Purchaser that could impair such value. Seller shall be responsible for consulting with Purchaser as necessary to prevent impairment of the value of Environmental Attributes and Environmental Incentives.

## ARTICLE 8

### METERING AND SELLER DELIVERIES

#### Section 8.1 Metering.

(a) Seller shall, or shall cause Facility Owner to, install and maintain a standard revenue quality meter at the System. The meter shall measure the BTUs of the System on a continuous basis. Seller shall be responsible for maintaining the metering equipment in good working order and, if Purchaser so requests, for testing at Purchaser's sole expense the same once per calendar year and certifying the results of such testing to Purchaser. In the event of a failure of the meter reading system, Seller shall use commercially reasonable efforts to repair or replace the meter as soon as practicable. Until such failure has been corrected, the System shall be deemed to have produced on a daily basis the daily Average BTU Output.

(b) Seller shall maintain all metered data and shall provide to Purchaser a report of the Property's individual metered energy, as read and collected on a monthly basis, once each calendar year within thirty (30) Business Days after the last calendar day of the preceding year. Seller shall preserve all data compiled hereunder for a period of at least five (5) years following the compilation of such data.

(c) Seller Deliveries. Seller shall provide the following to Purchaser as soon as practicable unless a different time is provided below:

(1) copies of any and all engineering, construction, and site plans or inspection reports concerning the System;

(2) copies of all Governmental Approvals;

(3) within thirty (30) days following the Thermal Commercial Operation Date, the Maintenance Plan as it relates to the Solar Thermal Facility and within thirty (30) days following the PV Commercial Operation Date, the Maintenance Plan as it relates to the PV System and any as-built drawings and specifications;

(4) standard reporting forms for monitoring, repairs and reporting; and

(5) all programming information required to properly control the operation and performance of the System.

## ARTICLE 9

### PROPERTY RIGHTS

Section 9.1 Ownership of System. Notwithstanding anything to the contrary herein, unless and until Purchaser exercises its right to purchase a component of the System, all components of the System shall be owned by the Facility Owner and leased by and under the control and direction of Seller. The Parties intend that, notwithstanding their method and degree of annexation, their adaptation or application to the underlying realty comprising the Property or its past, present or future classification for purposes of local or state property taxation, the System is and shall remain tangible personal property under the laws of North Carolina and shall not constitute fixtures, that the System is subject to removal from the Property, and title to the System has been and shall remain severed from the title to the Property to the maximum extent permitted by the laws of North Carolina. To the extent that, notwithstanding the intent and agreement of the Parties as expressed herein, all or any part of the System shall be determined to constitute a fixture, Purchaser hereby irrevocably disclaims any interest whatsoever in such assets as fixtures, unless and until Purchaser exercises its right to purchase the System.

Section 9.2 Other Property Rights. Nothing in this Agreement shall be construed to convey to Purchaser a license or other right to trademarks, copyrights, technology or other intellectual property of Seller.

## ARTICLE 10

### REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants to the other Party that:

(a) such Party is duly organized, validly existing and in good standing under the laws of the state of its formation and has all requisite power and authority to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby;

(b) the execution and delivery of this Agreement and the performance of such Party's obligations hereunder have been duly authorized by all necessary company or corporate action;

(c) this Agreement is a legal, valid and binding obligation of such Party enforceable against such Party in accordance with its terms, subject to the qualification, however, that the enforcement of the rights and remedies herein is subject to (i) bankruptcy and other similar laws of general application affecting rights and remedies of creditors and (ii) the application of general principles of equity (regardless of whether considered in a proceeding in equity or at law);

(d) to such Party's knowledge, no governmental approval (other than any governmental approvals which have been previously obtained or disclosed in writing to the other Party) is required in connection with the due authorization, execution and delivery of this Agreement by such Party or the performance by such Party of its



obligations hereunder which such Party has reason to believe that it will be unable to obtain in due course; and

(e) neither the execution and delivery of this Agreement by such Party nor compliance by such Party with any of the terms and provisions of this Agreement conflicts with, breaches or contravenes the provisions of such Party's organizational documents, the NCUC rules or regulations or the North Carolina law as applies to such Party.

## ARTICLE 11

### COVENANTS

Section 11.1 Security. Purchaser shall provide and take reasonable measures for security of the Solar Thermal Facility, including commercially reasonable monitoring of the Site's alarms, if any.

Section 11.2 Liens. Purchaser shall not directly or indirectly cause, create, incur, assume or suffer to exist any mortgage, pledge, lien (including mechanics', labor or material man's lien), charge, security interest, encumbrance or claim on or with respect to the System or any interest therein. Purchaser also shall pay promptly before a fine or penalty may attach to the System any taxes, charges or fees of whatever type of any relevant governmental authority for which Purchaser is responsible. If Purchaser breaches its obligations under this Section 11.2, it shall immediately notify Seller in writing, shall promptly cause such liens to be discharged and released of record without cost to Seller, and shall indemnify Seller against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such liens. Seller shall ensure that no liens are filed against the Property in connection with construction of the System. If any such lien is filed against the Property, Seller shall promptly cause such lien to be discharged and released of record without cost to Purchaser, and shall indemnify Purchaser against all costs and expenses (including reasonable attorneys' fees and court costs at trial and on appeal) incurred in discharging and releasing such liens.

## ARTICLE 12

### INDEMNIFICATION; INSURANCE; LOSS

Section 12.1 Indemnification.

(a) Seller and Purchaser (each, in such case, an "Indemnifying Party") shall, to the extent permitted by law, indemnify, defend and hold the other Party and its Affiliates, employees, directors, officers, managers, members, shareholders and agents (each, in such case, an "Indemnified Party") harmless from and against any and all third party claims, suits, damages, losses, liabilities, expenses and costs (including reasonable attorneys' fees), including, but not limited to, those arising out of property damage (including environmental claims) and personal injury and bodily injury (including death, sickness and disease), to the extent caused solely by the Indemnifying Party's (i) breach

of any obligation, representation or warranty contained herein and/or (ii) negligent or willful acts or omissions. Notwithstanding anything to the contrary contained herein, Purchaser shall not be required to indemnify Seller if any such indemnification would constitute a waiver of governmental or sovereign immunity under the law.

(b) When the Indemnifying Party is required to indemnify any Indemnified Party in accordance with this Section 12.1, the Indemnifying Party shall assume on behalf of such Indemnified Party, and conduct with due diligence and in good faith, the defense of any claim against such Indemnified Party, whether or not the Indemnifying Party shall be joined therein, and the Indemnified Party shall cooperate with the Indemnifying Party in such defense. The Indemnifying Party shall be in charge of the defense and settlement of such claim; provided, however, that without relieving the Indemnifying Party of its obligations hereunder or impairing the Indemnifying Party's right to control the defense or settlement thereof, the Indemnified Party may elect to participate through separate counsel in the defense of any such claim, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party. In the event that the Indemnified Party shall have reasonably concluded that there exists a material conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of any such claim, then each party shall retain their separate counsel (at the sole cost of the Indemnifying Party) and shall have the right to control the defense of such claim but shall have no right to settle such claim without the written consent of the Indemnifying Party. In the event the Indemnifying Party does not employ counsel to assume the defense of any such claim asserted against any Indemnified Party within twenty (20) days after the Indemnifying Party's receipt of notice of the commencement of an action thereon, the Indemnified Party may thereafter retain counsel for the defense thereof, in which case the reasonable fees and expenses of counsel shall be paid by the Indemnifying Party. The Indemnifying Party shall not settle any such claims or actions in a manner which would require any action or forbearance from action by any Indemnified Party without the written consent of the Indemnified Party, which consent shall not be unreasonably withheld or delayed.

(c) The indemnification obligations contained in this Section 12.1 shall not be construed so as to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to an Indemnified Party hereunder. In claims against an Indemnified Party pursuant to the indemnification obligations contained in this Section 12.1 and which are brought by an employee of the Indemnifying Party or anyone directly or indirectly employed by the Indemnifying Party or anyone for whose acts it may be liable, the indemnification obligations contained in this Section 12.1 shall not be limited (i) by a limitation on the amount or type of damages, compensation, or benefits payable by or for the Indemnifying Party under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts, or (ii) pursuant to any common law or case law.

## Section 12.2 Insurance

(a) Throughout the Term of this Agreement, Seller shall maintain, at its sole expense, commercial general liability insurance, including products and completed

operations and personal injury insurance, in a minimum amount of one million dollars (\$1,000,000) per occurrence and amount of two million dollars (\$2,000,000) in the aggregate, endorsed to provide contractual liability in said amount. The minimum coverage amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate may be satisfied by a combination of a general liability policy and an excess/umbrella liability policy. Seller, if it has employees, shall also maintain at all times during the term of this Agreement workers' compensation insurance coverage in accordance with the applicable requirements of federal and state law. All policies of insurance (except workers' compensation) required hereunder shall name Purchaser, County, Facility Owner, FLS Energy, Inc. and CCG Energy Fund 29, LP as additional insureds or loss payees. Within thirty (30) days after execution of this Agreement and annually thereafter, Seller shall deliver to Purchaser certificates of insurance, in a form reasonably acceptable to Purchaser, which show that the insurance requirements set forth herein are in effect. These certificates shall specify that Purchaser shall be given at least thirty (30) days' prior written notice by the insurer in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Purchaser.

(b) Throughout the Term of this Agreement, Purchaser shall maintain, at its sole expense, commercial general liability insurance, including personal injury insurance, in a minimum amount of one million dollars (\$1,000,000) per occurrence and amount of two million dollars (\$2,000,000) in the aggregate, endorsed to provide contractual liability in said amount, naming Seller and Facility Owner as additional insureds or loss payees. The minimum coverage amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate may be satisfied by a combination of a general liability policy and an excess/umbrella liability policy. Within thirty (30) days after execution of this Agreement and annually thereafter, Purchaser shall deliver to Seller certificates of insurance, in a form reasonably acceptable to Seller, which show that the insurance requirements set forth herein are in effect. These certificates shall specify that Seller shall be given at least thirty (30) days' prior written notice by the insurer in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Seller. Any other insurance maintained by Purchaser is for the exclusive benefit of Purchaser and shall not in any manner inure to the benefit of Seller.

(c) Purchaser will comply, and Seller will comply or will cause the Facility Owner to comply, with the obligations set forth in Section 9 of the Site Agreement to keep their respective property insured against fire and other casualty.

### Section 12.3 Loss or Impairment.

(a) Except as set forth Section 12.3(b), Purchaser shall, to the extent permitted by law and without waiving governmental or sovereign immunity, indemnify Seller from all losses, liabilities, expenses and costs arising out of any damage or impairment to the System arising from (i) breach by Purchaser of any obligation, representation or warranty contained herein and/or (ii) negligent or willful acts or omissions of Purchaser or its Affiliates, agents, employees, contractors and representatives. Except as set forth Section

12.3(b), Seller shall, to the extent permitted by law, indemnify Purchaser from all losses, liabilities, expenses and costs arising out of any damage or impairment to the Property arising from (i) breach by Seller of any obligation, representation or warranty contained herein and/or (ii) negligent or willful acts or omissions of Seller or its Affiliates, agents, employees, contractors and representatives.

(b) Notwithstanding Section 12.3(a), should any damage or impairment to the System result from fire or other insured casualty Seller agrees that all personal property, including the System, in or on the Property shall be at the risk of Seller only and that Purchaser shall not be liable for damage thereto under any circumstances. Unless and until Purchaser exercises its Purchase Option, neither Purchaser nor any of its mortgagees shall have any right, title or interest with respect to the System and or any insurance proceeds with respect thereto. Should any damage or impairment to the Property, including any buildings located thereon or personal property (excluding the System) of Purchaser located therein, result from fire or other insured casualty Purchaser agrees that all such real and personal property shall be at the risk of Purchaser only and that Seller shall not be liable for damage thereto under any circumstances. Seller shall not have any right, title or interest with respect to any insurance proceeds with respect thereto.

(c) If the System is (i) materially damaged or destroyed, or suffers any other material loss or (ii) condemned, confiscated or otherwise taken, in whole or in material part, or the use thereof is otherwise diminished so as to render impracticable or unreasonable the continued production of Thermal Output, to the extent there are sufficient insurance or condemnation proceeds available to Seller and/or Facility Owner, Seller shall, at its sole cost unless such damage or diminution in value is caused by Purchaser, either cause (A) the System to be rebuilt and placed in Thermal and/or PV Commercial Operation, as the case may be, at the earliest practical date or (B) another materially identical System to be built in an approximately similar location on the Property and placed in Thermal or PV Commercial Operation, as the case may be, as soon as commercially practicable.

(d) Purchaser and Seller agree that if the System, the Property or any furniture, fixtures, machinery, equipment or other personal property located therein are damaged or destroyed by fire or other insured casualty, the rights, if any, of either party against the other with respect to such damage or destruction are hereby waived if and to the extent permitted by any applicable or required insurance policies. The Parties agree to ensure that the policies of insurance obtained by them permit such waivers of subrogation and shall furnish evidence of such, each to the other.

## ARTICLE 13

### DEFAULT AND REMEDIES

Section 13.1 Event of Default. With respect to a Party, there shall be an Event of Default if:

- (a) such Party fails to pay any amount due hereunder within sixty (60) days

after receipt of written notice that such amount is due;

(b) such Party fails to pay any amount within fifteen (15) days after receipt of written notice that such amount is due two times in any one year period;

(c) except as otherwise set forth in Section 13.1(a), such Party is in breach of any material representation or warranty set forth herein or fails to perform any material obligation set forth in this Agreement and such breach or failure is not cured within thirty (30) days after written notice from the non-defaulting Party; provided, however, in the event a Force Majeure either causes such breach or failure or occurs during the cure period, the cure period shall be extended by the number of days during which the defaulting Party is prevented from taking curative action solely as the result of such Force Majeure;

(d) such Party admits in writing its inability to pay its debts generally as they become due;

(e) such Party files a petition or answer seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law or statute of the United States of America or any State, district or territory thereof;

(f) such Party makes an assignment for the benefit of creditors;

(g) such Party consents to the appointment of a receiver of the whole or any substantial part of its assets;

(h) such Party has a petition in bankruptcy filed against it, and such petition is not dismissed within 90 days after the filing thereof;

(i) a court of competent jurisdiction enters an order, judgment, or decree appointing a receiver of the whole or any substantial part of such Party's assets, and such order, judgment or decree is not vacated or set aside or stayed within 90 days from the date of entry thereof; or

(j) under the provisions of any other law for the relief or aid of debtors, any court of competent jurisdiction shall assume custody or control of the whole or any substantial part of such Party's assets and such custody or control is not terminated or stayed within 90 days from the date of assumption of such custody or control.

In addition to the above, it shall be an Event of Default if at any time Purchaser permanently ceases operations at Property and fails to (i) find a substitute site in accordance with Section 6.3, or (ii) pay Seller the Termination Value in accordance with Section 6.6 and such breach or failure is not cured within ten (10) days after notice from Seller. The Parties acknowledge the periodic school breaks shall not be deemed ceasing operations at the Property; provided, Purchaser shall remain obligated to purchase the Thermal Output pursuant to this Agreement.

Section 13.2 Termination; Liquidated Damages. Upon default by one Party, the other Party shall have the right, but not the obligation, to terminate this Agreement with respect to all obligations arising after the effective date of such termination or suspension (other than payment obligations relating to obligations arising prior to such termination). The Parties acknowledge that given the complexity of this technology and the volatility of energy markets, adequate damages in the event of breach of contract will be difficult if not impossible to calculate. Consequently, the Parties agree that in the event of a default under this Agreement that leads to termination, the non-defaulting Party may pursue, subject to Article 14 hereof, all remedies available to it at law, in equity or under this Agreement and the defaulting Party's liability hereunder shall be determined as follows:

(a) as to Seller's liability after the Thermal Commercial Operation Date, the present value (discounted at the Prime Rate) of the cash flows equal to the product of (i) the positive difference, if any, of the price per one Deka Therm of natural gas from commercially available natural gas in the applicable market(s) minus the Unit Purchase Price of Thermal Output, as set forth under Section 5.1 (using the Unit Purchase Price as such Unit Purchase Price would have been escalated pursuant to the Price Escalation), times (ii) times the daily Average BTU Output (iii) times the number of days remaining in the term of the Agreement; or

(b) as to Purchaser's liability, in an amount equal to the Termination Value as set forth in Exhibit C (which shall be prorated for partial years), plus all other amounts then due and owing by Purchaser to Seller. Notwithstanding anything to the contrary contained herein, Purchaser's liability for such liquidated damages shall be mitigated to the extent that Seller, using commercially reasonable efforts, is able to enter into alternative arrangements with another power purchaser to install the System or any component thereof at another site and sell its Thermal Output and/or Solar Electricity to the substitute power purchaser on equal or superior terms than stated in this Agreement.

In either case, the defaulting Party shall be liable to reimburse the non-defaulting Party for such non-defaulting Party's reasonable expenses and costs relating to such default (including but not limited to reasonable attorneys' fees).

Section 13.3 No Waiver. Any waiver at any time by either Party of its rights with respect to an event of default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any subsequent default or other matter. Any waiver under this Agreement must be in writing.

## ARTICLE 14

### LIMITATION OF LIABILITY

FOR BREACH OF ANY PROVISION OF THIS AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT, THE RIGHTS OF THE NON-DEFAULTING PARTY AND THE LIABILITY

OF THE DEFAULTING PARTY SHALL BE LIMITED AS SET FORTH IN THIS AGREEMENT, AS THE SOLE AND EXCLUSIVE FULL, AGREED UPON AND LIQUIDATED DAMAGES, AND NOT AS A PENALTY, AND ALL OTHER DAMAGES OR REMEDIES ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED, OR IF A REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY NONEXCLUSIVE, THE NON-DEFAULTING PARTY SHALL HAVE THE RIGHT TO EXERCISE ALL RIGHTS AND REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY; PROVIDED, HOWEVER, THAT THE LIABILITY OF THE DEFAULTING PARTY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY AND ALL OTHER DAMAGES AND REMEDIES ARE WAIVED. EXCEPT AS SET FORTH IN ARTICLE 13, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT, CONTRACT OR OTHERWISE. Notwithstanding any provision to the contrary under this Agreement, neither Purchaser nor any party related to Purchaser shall bear or be deemed to bear any significant financial burden if there is nonperformance by Seller under this Agreement, as the phrase “any significant financial burden if there is nonperformance” is used in Section 7701(e)(4)(A)(ii) of the Internal Revenue Code. Notwithstanding any provision to the contrary under this Agreement, neither Purchaser nor any party related to Purchaser shall be deemed to receive any significant financial benefit if the operating costs of the System are less than the standard of performance and/or operation set forth in this Agreement, as the phrase “significant financial benefit if the operating costs of the System are less than the standard of performance and/or operation” is used in Section 7701(e)(4)(A)(iii) of the Internal Revenue Code.

## ARTICLE 15

### MISCELLANEOUS

#### Section 15.1 Event of Force Majeure.

(a) In the event that either Party is delayed in or prevented from performing or carrying out its obligations under this Agreement by reason of Force Majeure, such circumstance shall not constitute an event of default, and such Party shall not be liable to the other Party for or on account of any loss, damage, injury, or expense resulting from, or arising out of, such delay or prevention; provided, however, that the Party encountering such delay or prevention shall use commercially reasonable efforts to remove the causes thereof (with failure to use such efforts constituting an event of default hereunder). The settlement of strikes and labor disturbances shall be wholly within the control of the Party experiencing that difficulty.

(b) As used herein, the term “Force Majeure” shall mean (i) sabotage, riots or civil disturbances, (ii) acts of God, (iii) acts of the public enemy, (iv) terrorist acts affecting the Property, (v) volcanic eruptions, earthquake, hurricane, flood, ice storms,

explosion, fire, lightning, landslide or similarly cataclysmic occurrence, (vi) requirement by NCUC that the System discontinue operation for any reason other than the acts or omissions of Seller or any Affiliate, (vii) appropriation or diversion of solar thermal output by sale or order of any governmental authority having jurisdiction thereof, or (viii) any other action by any governmental authority which prevents or prohibits the Parties from carrying out their respective obligations under this Agreement. Economic hardship of either Party shall not constitute a Force Majeure under this Agreement.

Section 15.2 Publicity. The Parties (including any members of the Seller and their members) share a common desire to generate favorable publicity regarding the System and their association with it. The Parties (including any members of the Seller and their members) agree that they will, from time-to-time, issue press releases regarding the System and that they shall cooperate with each other in connection with the issuance of such releases including, without limitation, completed review of press releases proposed to be issued by the other Party (including any members of the Seller and their members) by no later than four (4) business days after submission by such other Party. Each Party (including any members of the Seller and their members) agrees that it shall not issue any press release regarding the System without the prior consent of the other, and each Party agrees not to unduly withhold or delay any such consent. Purchaser shall have the right to publicize that it is serving as a “solar host” for the System and to display photographs of the System in its advertising and promotional materials; provided, that any such materials identify Seller and/or Facility Owner as the owner and developer of the System and shall be consistent with Article 7 of this Agreement. Seller shall use commercially reasonable efforts to maintain the area in the immediate vicinity of the System in a reasonably neat and clean condition. Without limiting the foregoing, the System shall be named “FLS Energy at Haywood Community College”. On all signage at Property that refers to the System by name and in all publicly distributed materials and other public communications issued by either Party that refer to the System by name, such name shall be followed by a statement to the effect that Seller and/or Facility Owner owns and operates the System.

Section 15.3 Records. In addition to the other record keeping requirements of Seller under this Agreement, each Party hereto shall use commercially reasonable efforts to keep complete and accurate records of its operations hereunder and shall maintain such data as may be necessary to determine with reasonable accuracy any item relevant to this Agreement. Each Party shall have the right to examine all such records insofar as may be necessary for the purpose of ascertaining the reasonableness and accuracy of any statements of costs relating to transactions hereunder or the operation of the System or any component following Purchaser’s exercise of the Purchase Option.

Section 15.4 Notices. Any notice or other communications hereunder shall be in writing and shall be deemed to have been given (unless otherwise set forth herein), if delivered in person, deposited with an overnight express agency, fees prepaid, or mailed by United States express, certified or registered mail, postage prepaid, return receipt requested, to the Parties at the following addresses, or to such other address as shall be later provided in writing by one Party to the other:

If to Seller:

If to Purchaser:



FLS Solar 20, LLC  
239 Amboy Road Asheville, NC 28806  
Attention: Michael Shore  
Phone: (828) 350-3993  
Fax: (828)-350-3997

*With a copy to:*

Blanco Tackabery  
150 Fairview Road, Suite 130  
 Mooresville, NC 28117  
Attn: Zoe Gamble Hanes

The Board of Trustees of Haywood  
Community College  
Haywood Community College  
185 Freedlander Drive  
Clyde, North Carolina 28721  
*Attention: President*  
Phone: [PHONE NUMBER]  
Fax: [FAX NUMBER]

*With a copy to:*

Kilpatrick Stockton LLP  
3737 Glenwood Avenue, Suite 400  
Raleigh, NC 27607  
Attn: Steve Levitas

#### Section 15.5 Confidentiality.

(a) All non-public information (including the terms of this Agreement and, in particular, the Unit Purchase Price and the calculation thereof) provided by either Party to the other or which is identified by the disclosing Party in writing as confidential or proprietary information shall be treated in a confidential manner and shall not be disclosed to any third party without the prior written consent of the non-disclosing Party, which consent shall not be unreasonably withheld. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. Notwithstanding the foregoing, Seller acknowledges that Purchaser and County are public institutions and are subject to laws affecting the transparency and confidentiality of governmental operations. Nothing in this Section 15.5(a) shall be deemed to modify the requirements under such laws and regulations, and Purchaser shall not have breached this Agreement as the result of any disclosure that Purchaser or the County determine is required by any law, rule or regulation. Notwithstanding anything to the contrary contained herein, Purchaser may, consistent with any laws, regulations, or rules, disclose the actual amounts of electricity and/or thermal energy generated by the System, the Environmental Attributes generated, and the estimated savings to Purchaser.

(b) Notwithstanding the preceding, this Section and the restrictions herein contained shall not apply to any data or documentation which is:

(1) required to be disclosed pursuant to state or federal law, an order or requirements of a regulatory body or a court, after five Business Days' notice of such intended disclosure is given by the disclosing Party to the non-disclosing Party or if five Business Days' notice is not practical or allowed under applicable law, order, or requirement, then such shorter notice as is practical or allowed (which may be after the disclosure in the event of a disclosure by Purchaser) required by law;

(2) disclosed by a Party to an Affiliate of such Party or in connection with an assignment permitted by Section 15.6; or

(3) is, as of the time of disclosure, public knowledge without the fault of the disclosing Party.

Section 15.6 Assignment. Neither Party shall assign this Agreement or any of its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, Seller may, upon prior written notice, without the need for consent from Purchaser (and without relieving itself from liability hereunder), (a) transfer, pledge or assign its rights to receive payments pursuant to this Agreement (i) as security for any financing or (ii) to an Affiliate special purpose entity created for the financing or tax credit purposes related to the System, provided, however, that any such assignee shall agree to be bound by the terms and conditions hereof; (b) transfer or assign this Agreement to any Person or entity succeeding to all or substantially all of the assets of such Party; provided, however, that any such assignee shall agree to be bound by the terms and conditions hereof; or (c) assign its rights under this Agreement to a successor entity in a merger or acquisition transaction; provided, however, that any such assignee shall agree to be bound by the terms and conditions hereof and, in the case of this 15.6(c), the assignor shall be relieved of all liability herein. Notwithstanding the foregoing, Purchaser may assign this Agreement without the need for consent of Seller in connection with an assignment of the Site Agreement.

Section 15.7 Set-Off. Except as otherwise set forth herein, each Party reserves to itself all rights, set-offs, counterclaims and other remedies and/or defenses to which it is or may be entitled, arising from or out of this Agreement or arising out of any other contractual arrangements between the Parties and/or between a Party and an Affiliate of the other Party, including, without limitation, the Site Agreement. All outstanding obligations to make, and rights to receive, payment under this Agreement may be offset against each other. Additionally, Purchaser may offset any obligation due to it by an Affiliate of Seller, including, without limitation, the obligations of Facility Owner under the Site Agreement.

Section 15.8 Binding Effect. The terms and provisions of this Agreement, and the respective rights and obligations hereunder of each Party, shall be binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns. Without limiting the provisions of Section 6.3 (Substitute Property), the Parties intend and agree that the obligations of Purchaser under this Agreement to purchase the Thermal Output of the System shall be binding on any and all successive owners of the Property for a period commencing on the Thermal Commercial Operation Date and ending on the expiration of the Initial Term or any applicable Renewal Term.

Section 15.9 Amendments.

(a) No modification of this Agreement shall be effective except by written amendment executed by the Parties.

(b) The Parties acknowledge that adjustments in the terms and conditions of this Agreement may be appropriate to account for statutory or regulatory changes in

North Carolina or NCUC that could not be anticipated at the date of execution of this Agreement or that are beyond the control of the Parties, and the Parties agree to make such commercially reasonable amendments as are reasonably required to comply therewith.

Section 15.10 Counterparts. Any number of counterparts of this Agreement may be executed and each shall have the same force and effect as the original. Facsimile signatures shall have the same effect as original signatures and each Party consents to the admission in evidence of a facsimile or photocopy of this Agreement in any court or arbitration proceedings between the Parties.

Section 15.11 Other Agreements. This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes any other prior agreements, written or oral, between the Parties concerning such subject matter.

Section 15.12 Third Party Beneficiaries. Nothing in this Agreement shall provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind, it being the intent of the Parties that this Agreement shall not be construed as a third party beneficiary contract.

Section 15.13 Severability. Should any provision of this Agreement for any reason be declared invalid or unenforceable by final and non-appealable order of any court or regulatory body having jurisdiction, such decision shall not affect the validity of the remaining portions, and the remaining portions shall remain in full force and effect as if this Agreement had been executed without the invalid portion.

Section 15.14 Survival. Any provision(s) of this Agreement that expressly or by implication comes into or remains in full force following the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement. The provisions of the Agreement relating to (a) confidentiality (b) publicity (c) limitations on liability (d) jury waiver and (e) indemnification from one Party to the other Party shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

Section 15.15 Governing Law. This Agreement shall be governed by the laws of the State of North Carolina.

Section 15.16 Legal Effect of Contract.

(a) The Parties acknowledge and agree that the transaction contemplated under this Agreement constitutes a “forward contract” within the meaning of the United States Bankruptcy Code, and the Parties further acknowledge and agree that each Party is a “forward contract merchant” within the meaning of the United States Bankruptcy Code.

(b) The Parties acknowledge and agree that, for accounting or tax purposes, this Agreement is not and shall not be construed as a capital lease and, pursuant to Section 7701(e)(3) of the Internal Revenue Code, this Agreement is and shall be deemed

to be a service contract with respect to the sale to Purchaser of thermal energy produced at an alternative energy facility.

(c) Cooperation. Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this Section.

Section 15.17 No Partnership. This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act as or be an agent or representative of, or otherwise bind, the other Party.

Section 15.18 Time is of the Essence. Time is of the essence in connection with every provision of this Agreement.

Section 15.19 Nondiscrimination. Seller, their agents, officials, employees and servants agree not to discriminate in any manner on the basis of race, color, creed, national origin, sex, age, handicap, or sexual orientation with reference to the subject matter of this contract, no matter how remote. Seller further agrees in all respects to conform with the provisions and intent of Purchaser's specific nondiscrimination requirements

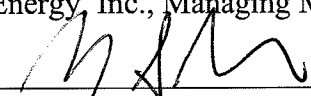
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IN WITNESS WHEREOF, the undersigned have duly executed and delivered this Agreement as of the day and year first above written.

**SELLER:**

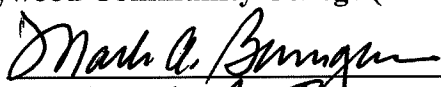
**FLS SOLAR 20, LLC (SEAL)**

By: FLS Energy, Inc., Managing Member

By:   
Michael Shore, President

**PURCHASER:**

**The Board of Trustees for  
Haywood Community College (SEAL)**

By:   
Name: MARK A. BYMGAENER  
Title: BOARD OF TRUSTEES CHAIR

**Exhibit A-1**

**Solar Thermal Facility Information and  
Estimated Annual Production for First Year**

<b>Metered</b>	<b>Location</b>	<b>Size</b>	<b>Estimated Annual 1st Year Production</b>	<b>Solar Hot Water or Heating/Cooling</b>	<b>Number and Type of Module</b>

**TOTAL ESTIMATE 1<sup>st</sup> YEAR PRODUCTION:** \_\_\_\_\_

The Parties shall consent to and attach a completed Exhibit A-1 once Seller and Purchaser have agreed on the final Solar Thermal Facility design and in no case later than August 1, 2011.

**Exhibit A-2**

**PV System Information and  
Nameplate Capacity**

<b>Metered</b>	<b>Location</b>	<b>Size</b>	<b>Nameplate Capacity</b>	<b>Degradation and Efficiency Factors</b>	<b>Number and Type of Module</b>

The Parties shall consent to and attach a completed Exhibit A-2 once Seller and Purchaser have agreed on the final PV System design and in no case later than August 1, 2011.

**Exhibit B-1  
Unit Purchase Price**

<b>Contract Year</b>	<b>Unit Purchase Price with 2.5% price escalator.</b>	<b>Projected Annual 1,000,000 BTU's Generated</b>	<b>Estimated Annual Purchase Price</b>
Year 1	\$12.50	937	\$11,712.50
Year 2	\$12.81	937	\$12,002.97
Year 3	\$13.13	937	\$12,302.81
Year 4	\$13.46	937	\$12,612.02
Year 5	\$13.80	937	\$12,930.60
Year 6	\$14.14	937	\$13,249.18
Year 7	\$14.50	937	\$13,586.50
Year 8	\$14.86	937	\$13,923.82
Year 9	\$15.23	937	\$14,270.51
Year 10	\$15.61	937	\$14,626.57

The chart included on this Exhibit B-1 is provided to show what the Unit Purchase Price shall equal through the Initial Term and to provide an estimate of the Projected Annual 1,000,000 BTUs generated by the Solar Thermal Facility and consumed by the Building and the projected Annual Purchase Price.

However, the Parties agree that the actual number of solar thermal panels installed may differ from what is currently estimated and annual fluctuations in climate and weather may impact performance of the Solar Thermal Facility. Thus the Projected Annual 1,000,000 BTUs may vary based on the final design and installation and the Estimated Annual Purchase Price is provided for informational purposes only and will not equal the actual Annual Purchase Price. Once the final system design has been determined, the Parties may amend this Exhibit B to better reflect the project BTU generation and projected Annual Purchase Price

**Price Escalator:** Beginning on the Thermal Commercial Operation Date, every 12 months during the term of the Agreement, the Unit Purchase Price shall be adjusted upward by 2.5%.



**Exhibit B-2**

**Minimum Annual Purchase Price and Minimum Quarterly Payment**

<b>Contract Year</b>	<b>Unit Purchase Price with 2.5% price escalator.</b>	<b>Minimum Annual 1,000,000 BTU's</b>	<b>Minimum Annual Purchase Price</b>	<b>Minimum Quarterly Purchase Price</b>
Year 1	\$12.50	864.60	\$10,807.50	\$2,701.88
Year 2	\$12.81	864.60	\$11,077.69	\$2,769.42
Year 3	\$13.13	864.60	\$11,354.63	\$2,838.66
Year 4	\$13.46	864.60	\$11,638.50	\$2,909.62
Year 5	\$13.80	864.60	\$11,929.46	\$2,982.36
Year 6	\$14.14	864.60	\$12,227.69	\$3,056.92
Year 7	\$14.50	864.60	\$12,533.39	\$3,133.35
Year 8	\$14.86	864.60	\$12,846.72	\$3,211.68
Year 9	\$15.23	864.60	\$13,167.89	\$3,291.97
Year 10	\$15.61	864.60	\$13,497.09	\$3,374.27

**The chart included on this Exhibit B-2 is provided to show the amount equal to 60% of the projected annual BTUs consumed by the Building and to calculate (using the Unit Purchase Price, including the Price Escalator) the Minimum Annual Purchase Price and the Minimum Quarterly Payment.**

These numbers were provided by Purchaser pursuant to that certain Solar Developer Proposal For Haywood Community College Creative Arts Building Solar Systems dated May 7, 2010. The Parties agree that while the actual number of panels installed may affect the Projected Annual 1,000,000 BTUs shown on Exhibit B-1, the Minimum Annual Purchase Price and the Minimum Quarterly Payment shall remain unaffected by the final design and installation.

### Exhibit B-3

#### Minimum BTU Production

Month	Million BTUS
January	96.1
February	91.3
March	77.3
April	81.3
May	34.8
June	78.2
July	109.6
August	51.1
September	78.7
October	29
November	52.1
December	85.3

**Exhibit C  
Termination Value**

**SOLAR THERMAL CHILLER**

<b>Contract Year</b>	<b>Termination Value</b>
Year 1	\$420,000
Year 2	\$420,000
Year 3	\$360,000
Year 4	\$300,000
Year 5	\$240,000
Year 6	\$180,000
Year 7	\$120,000
Year 8	\$60,000
Year 9	\$54,000
Year 10	\$48,000

Thereafter            \$30,000

**SOLAR THERMAL HOT WATER**

<b>Contract Year</b>	<b>Termination Value</b>
Year 1	\$70,000
Year 2	\$70,000
Year 3	\$60,000
Year 4	\$50,000
Year 5	\$40,000
Year 6	\$30,000
Year 7	\$20,000
Year 8	\$10,000
Year 9	\$9,000
Year 10	\$8,000

Thereafter            \$5,000

## SOLAR PV

Contract Year	Termination Value
Year 1	\$210,000
Year 2	\$210,000
Year 3	\$180,000
Year 4	\$150,000
Year 5	\$120,000
Year 6	\$100,000
Year 7	\$60,000
Year 8	\$30,000
Year 9	\$27,000
Year 10	\$24,000
Thereafter	\$15,000

**Exhibit D**  
**PURCHASE OPTION**

THIS PURCHASE OPTION (the "Option") is made and entered into effective the \_\_\_\_ day of \_\_\_\_\_, 2010, by and between FLS Owner II, LLC, a North Carolina limited liability company ("SELLER") and The Board of Trustees for Haywood Community College ("BUYER").

WITNESSETH:

That for and in consideration of the option money paid by Buyer to Seller in the amount of Ten and 00/100 Dollars (\$10.00) (the "Option Money"), the receipt and sufficiency of which are hereby acknowledged, Seller does hereby give and grant unto Buyer the right and option to purchase from Seller that certain System as defined in that certain Solar Purchase Agreement between FLS Solar 20, LLC and Buyer, of even date herewith (the "SPA") or any component of the System.

The terms and conditions of the Option are as follows:

1. Term. The Option shall become effective with respect to the Absorption Chiller, Emergency Generator, Solar Water Heating Thermal Facility and/or Solar Heating and Cooling Facility on the Thermal Commercial Operation Date, and shall become effective with respect to the PV System on the PV Commercial Operation Date, and in both cases shall terminate with respect to such component part of the System ninety (90) days following the expiration of the relevant Initial Term or any Renewal Term (the "Option Term"); provided however, the Closing with respect to any component of the System shall take place no earlier than the sixth year anniversary of the relevant Thermal or PV Commercial Operation Date. The Option may be exercised only by the giving of written notice of exercise to Seller by Buyer, which notice shall be in accordance with the provisions of **Section 9**. If the Option is not validly and timely exercised by Buyer, and the consummation of the Closing has not occurred prior to the earlier of (i) the date specified by Buyer in its notice or (ii) the end of the Option Term, all rights of Buyer to purchase the components of the System that had not previously been purchased by Buyer hereunder shall cease and terminate and the Option Money shall be retained by Seller.

For purposes of clarification, Buyer may exercise the Option with respect to any combination of the following components of the System: the Absorption Chiller, the Emergency Generator, the Solar Water Heating Thermal Facility, the Solar Heating and Cooling Thermal Facility and/or the PV System. The exercise of the Option with respect to any one component shall not prevent or require Buyer to exercise the Option with respect to any other component of the System.

2. Option Money. The Option Money shall not be credited against the Buyout Price of the System.

3. Terms and Conditions of Buyer's right to exercise Option. Buyer may only exercise the Option provided it is not then in default of the SPA beyond any applicable cure period. If Buyer fails to substantially comply with any of the terms and conditions of the SPA or

the Option with respect to any component of the System, the Option shall automatically terminate with respect to such component and Seller shall retain the Option Money paid.

4. Maintenance Agreement. At the option of Buyer, Seller shall at Closing enter into a maintenance agreement with Buyer wherein Seller will agree to perform for Buyer all of the maintenance and repair obligations that Seller would otherwise perform under the SPA with respect to the component of the System that is being purchased for a period commencing on the Closing Date and ending on the date that is twenty (20) years following the later of the PV or Thermal Commercial Operation Date. Seller shall be compensated at the rates set forth on **Schedule 3** attached hereto and incorporated herein for such maintenance and repair obligations.

5. REC Purchase Agreement. At the option of Buyer, Seller shall at Closing enter into a Thermal REC Purchase Agreement with Buyer in a commercially reasonable form wherein Seller will agree to purchase from Buyer all of the renewable energy certificates, as such term is defined in North Carolina Renewable Energy and Energy Efficiency Portfolio Standard (REPS), N.C.G.S. §62-133.8 (the "RECs") associated with the Solar Thermal Facility for which Seller has contracted with third-parties for the sale of such RECs (collectively, "Third-Party Purchasers") for the remainder of the term of such agreement. Seller shall compensate Purchaser for all RECs subject to such agreement at a rate equal to the greater of: (a) \$40 per MWH equivalent REC; or (b) such greater rate as Buyer and Seller shall mutually agree upon based on the rate set forth in the agreement between Seller and the Third-Party Purchasers and accounting for reasonable costs and expenses incurred by Seller in the purchase and sale of such RECs. Nothing contained herein shall be deemed to require Seller to breach any agreement with a Third-Party Purchaser, including, without limitation, any confidentiality clause of such agreements.

6. Assignment of PPA. At the option of Buyer, Seller shall, to the extent such agreement is assignable by Seller, at Closing assign all right, title, and interest of Seller in the PPA (as defined in the SPA), including, without limitation, the purchase of any Environmental Incentives associated with the PV System. In the event that the PPA is not freely assignable by Seller, Seller shall use commercially reasonable efforts to obtain all required consents to such assignment prior to Closing and shall assign the PPA to Buyer upon the later of (a) Closing or (b) the obtaining of all required consents. In the event that consents for the assignment of the PPA cannot be obtained despite Seller's efforts, Seller shall use commercially reasonable efforts to ensure that the Utility (as defined in the SPA) enters into a new Power Purchase Agreement with Buyer on economic terms at least as advantageous to Buyer as those contained in the PPA.

7. Exit Training. Seller shall provide Purchaser with a one-day training session regarding the component of the System that is being purchased as soon as practicable following the Closing Date.

8. Buyout Price. If Buyer validly exercises the Option hereunder with respect to any component of the System and consummates the Closing on or prior to the termination of the Option Term, the buyout price shall be the then fair market value of the component of the System being purchased (the "Buyout Price"). Buyer shall pay Seller the Buyout Price, as determined pursuant to the procedures set forth on the attached **Schedule 2**.

9. Closing. Subject to the provisions of **Sections 1 and 2**, the consummation of the purchase and sale of any component of the System (the "Closing") shall take place on a Business Day occurring on a date (the "Closing Date") selected by Buyer in its exercise of the Option with respect to such component but no later than the expiration of the Option Term, at the offices of Blanco Tackabery & Matamoros, P.A. in Winston-Salem, North Carolina, or on such other date or at such other place as the Parties may agree in writing.

10. Title. The applicable component of the System shall be conveyed by a bill of sale in substantially the form attached as **Schedule 1**.

11. Closing Costs. All funds due under the SPA must be paid at Closing. Seller shall pay the cost of preparing the bill of sale and its counsel fees. Buyer shall pay for any necessary equipment examination, any desired engineering reports, necessary fees, its counsel fees and for any other due diligence desired by Buyer. Any ad valorem taxes, if any, shall be prorated at Closing and any sales tax shall be paid by Buyer.

12. Closing Documents. Seller will execute, acknowledge and deliver to Buyer the bill of sale, a lien affidavit as Buyer's title insurer may require to insure against any possible unfiled and unpaid laborer's or materialmen's liens, a closing statement, and any other customary or reasonable documentation Buyer may require or request.

13. Notices. Any notice or other communications hereunder shall be in writing and shall be deemed to have been given (unless otherwise set forth herein), if delivered in person, deposited with an overnight express agency, fees prepaid, or mailed by United States express, certified or registered mail, postage prepaid, return receipt requested, to the Parties at the following addresses, or to such other address as shall be later provided in writing by one Party to the other:

If to Seller:

FLS Owner II, LLC  
239 Amboy Road  
Asheville, NC 28806  
*Attention: Michael Shore*  
Phone: (828) 350-3993  
Fax: (828)-350-3997

*With a copy to:*  
*Blanco Tackabery & Matamoros, P.A.*  
*150 Fairview Road, Suite 130*  
*Mooresville, NC 28117-9505*  
*Attn: Zoë Gamble Hanes*

If to Buyer:

The Board of Trustees of Haywood  
Community College  
Haywood Community College  
185 Freedlander Drive  
Clyde, North Carolina 28721  
*Attention: President*

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

*With a copy to:*  
*Kilpatrick Stockton LLP*  
*3737 Glenwood Avenue, Suite 400*  
*Raleigh, NC 27607*  
*Attn: Steve Levitas*

14. Risk of Loss. During all periods prior to the Closing Date with respect to any component of the System, Seller shall be responsible for causing the maintenance of liability insurance with respect to such component consistent with the SPA. Should any damage or impairment to the applicable component of the System result from fire or other insured casualty Seller agrees that all personal property, including the applicable component of the System, in or on the Property shall be at the risk of Seller only and that Buyer shall not be liable for damage thereto under any circumstances. Prior to the Closing Date, neither Buyer nor any of its mortgagees shall have any right, title or interest with respect to the applicable component of the System and or any insurance proceeds with respect thereto, except as provided herein and in the SPA.

15. Entire Agreement. The Option together with the SPA contains the entire agreement of the Parties and there are no representations, inducements or other provisions other than those expressed in writing. All changes, additions or deletions to the Option must be in writing and signed by each Party. Any and all references to Seller or Buyer shall be deemed to include their respective successors, heirs or assigns.

16. Governing Law. This Agreement shall be governed by North Carolina law.

17. Time is of the Essence. Time is of the essence in connection with every provision of the Option.

18. Terms. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the SPA.

19. AS IS. In the event Buyer exercises the Option and consummates the acquisition of any component of the System, the conveyance thereof by Seller shall be "AS IS, WHERE IS, WITH ALL FAULTS" and all warranties of quality, fitness and merchantability shall be excluded.

**[SEPARATE SIGNATURE PAGE ATTACHED]**

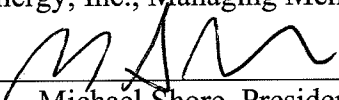


IN TESTIMONY WHEREOF, the Parties hereto have set their hands and seal this the day and year first above written.

**SELLER:**

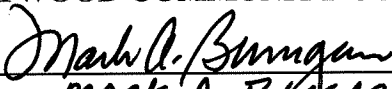
**FLS OWNER II, LLC (SEAL)**

By: FLS Energy, Inc., Managing Member

By:   
Michael Shore, President

**BUYER:**

**THE BOARD OF TRUSTEES FOR  
HAYWOOD COMMUNITY COLLEGE**

By:   
Name: MARK A. BYRNES  
Title: BOARD OF TRUSTEES CHAIR

## SCHEDULE 1

### BILL OF SALE

THIS BILL OF SALE (this "Bill of Sale") is executed as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by FLS Owner II, LLC, a North Carolina limited liability company ("Seller"), in favor of The Board of Trustees of Haywood Community College ("Buyer").

1. [System] or [Absorption Chiller][Emergency Generator][PV System][Solar Water Heating Thermal Facility] and/or [Solar Heating and Cooling Thermal Facility]. The ["System"] or ["Absorption Chiller"] ["Emergency Generator"] ["PV System"] ["Solar Water Heating Thermal Facility"] and/or ["Solar Heating and Cooling Thermal Facility"] shall have the meaning ascribed to it in that certain Solar Thermal Purchase Agreement dated as of \_\_\_\_\_, 2010, by and between FLS Solar 20, LLC and Buyer (the "SPA") and as further described on **Exhibit A** attached to this Bill of Sale.

2. Sale. For good and valuable consideration received by Seller, the receipt and sufficiency of which are hereby acknowledged, Seller hereby sells, assigns and transfers the ["System"] or ["Absorption Chiller"] ["Emergency Generator"] ["PV System"] ["Solar Water Heating Thermal Facility"] and/or ["Solar Heating and Cooling Thermal Facility"] and any available manufacturers' warranties with respect to the ["System"] or ["Absorption Chiller"] ["Emergency Generator"] ["PV System, including without limitation the solar collectors"] ["Solar Water Heating Thermal Facility, including without limitation the solar collectors"] and/or ["Solar Heating and Cooling Thermal Facility, including without limitation the solar collectors"] to Buyer. Except as provided herein, Seller makes no warranties or representations as to the System. The System is transferred "AS IS, WHERE IS, WITH ALL FAULTS" and ALL WARRANTIES OF QUALITY, FITNESS AND MERCHANTABILITY ARE HEREBY EXCLUDED.

3. Environmental Attributes and Environmental Incentives. As of the effective date of this Bill of Sale, all right, title and interest associated with any and all Environmental Attributes and Environmental Incentives shall transfer to Buyer including, without limitation: (a) all Environmental Incentives and all Environmental Attributes; and (b) the Reporting Rights and the exclusive rights to claim that: (i) [the Thermal Output was generated by the System][the Solar Electricity was generated by the PV System]; (ii) Buyer shall be entitled to all credits, certificates, registrations, etc., evidencing or representing any of the foregoing.

4. Limited Liability. By accepting this Bill of Sale, Buyer agrees that it will look only to the proceeds of the System for the performance or liability for nonperformance of any and all obligations of Seller hereunder, it being expressly understood and agreed that neither Seller nor any shareholder, member, officer or director thereof or any other person or entity shall have any personal liability or obligation of any kind or nature whatsoever under this Bill of Sale.

5. Title. Seller represents and warrants to Buyer that Seller is the lawful owner of the [System] or [Absorption Chiller][Emergency Generator][PV System][Solar Water Heating Thermal Facility] and/or [Solar Heating and Cooling Thermal Facility], with the full power and

authority to transfer title thereto, and that all of the [System] or [Absorption Chiller][Emergency Generator][PV System][Solar Water Heating Thermal Facility] and/or [Solar Heating and Cooling Thermal Facility] is free and clear of any and all liens, encumbrances, security interests and charges of every nature whatsoever; and Seller shall warrant and forever defend the right and title to the [System] or [Absorption Chiller][Emergency Generator][PV System][Solar Water Heating Thermal Facility] and/or [Solar Heating and Cooling Thermal Facility] unto Buyer, and the successors, legal representatives and assigns of Buyer, against the claims of all persons whomsoever. Seller covenants and agrees to execute and deliver to Buyer such further instruments and documents as Buyer may deem reasonably necessary or desirable to fully assign, transfer, convey or assure title to all of the [System] or [Absorption Chiller][Emergency Generator][PV System][Solar Water Heating Thermal Facility] and/or [Solar Heating and Cooling Thermal Facility] unto Buyer.

6. Terms. Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the SPA.

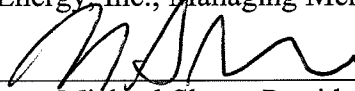
**[SEPARATE SIGNATURE PAGE ATTACHED]**

IN WITNESS WHEREOF, Seller has executed this Bill of Sale as of the day and year first above written.

**SELLER:**

**FLS OWNER II, LLC (SEAL)**

By: FLS Energy, Inc., Managing Member

By:   
Michael Shore, President

Accepted By:

\_\_\_\_\_

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

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

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

## SCHEDULE 2

### APPRAISAL EXHIBIT

(a) Appraisal Process. If Seller and Buyer fail to agree on the fair market value of the System or component of the System, as applicable within ten (10) days of exercise of the Option, at any time following the expiration of such time limit either Seller or Buyer may invoke the process described in this Appraisal Exhibit (the “Appraisal Process”) by sending written notice as described in the Option to the other Party, in which case the determination of fair market value in accordance with this Appraisal Exhibit shall be final and binding on all Parties to the Agreement (the “Fair Market Value”).

- (i) Appraised Value. Any Appraiser hired pursuant to the Appraisal Process described herein shall base the appraisal of the then fair market value of the System or applicable component of the System on the following: (1) with respect to the Absorption Chiller and the Emergency Generator, the value of the equipment and (2) with respect to the Solar Thermal Facility and/or the PV System any remaining value which may result from any potential rental income stream, income from the sale of the Thermal Output or Solar Electricity, income from any Environmental Attributes or Environmental Incentives or any other potential cashflow generated by the System or applicable component, considering the quality and operation of the relevant component, any cost of ownership, including debt service and operational expenses of Buyer; all in accordance with the best appraisal techniques then recognized as available for property of such type.
- (ii) First Appraisal. The Seller shall, within thirty (30) days of either Party invoking the Appraisal Process, send written notice to the Buyer setting forth the name and address of the Seller's selected appraiser (the “First Appraiser”). Any appraiser selected pursuant to this Appraisal Exhibit must be a certified appraiser, who is unrelated to the principals of Seller, who is familiar with solar thermal and solar photovoltaic systems and general construction issues and who shall furnish the appraisal to Buyer and Seller within thirty (30) days of being selected. The Buyer shall, if dissatisfied with the First Appraiser's appraisal, have thirty (30) days following Buyer's receipt of the First Appraiser's appraisal to select a second appraiser with the above stated required qualifications by sending to the Seller written notice setting forth the name and address of the appraiser (the “Second Appraiser”). If a Second Appraiser is not selected within the thirty (30) day time period, the First Appraiser's appraisal amount shall be binding upon both Parties, in which case the Appraisal Process shall be concluded and the Fair Market Value and the Buyout Price of the System or the component of the System shall be the amount set forth in the First Appraiser's appraisal.
- (iii) Second Appraisal. If the Buyer selects a Second Appraiser, the Second Appraiser shall submit the Second Appraiser's appraisal to Buyer and Seller within thirty (30) days of being retained. If the amounts of the two appraisals shall be within [five percent (5%)] of each other (as to the Fair Market Value), the average of the

two (2) appraisals shall be the Fair Market Value to serve as the Buyout Price, and the Appraisal Process shall be concluded. In the event the two appraisals are more than [five percent (5%)] apart, as to the Fair Market Value, then the two (2) appraisers shall, as soon as reasonably possible, select a third appraiser (the "Third Appraiser"), who must have qualifications similar to the above. (iv) Third Appraisal. If a Third Appraiser is selected, as above stated, the Third Appraiser shall have disclosed to him or her the appraisal reports of the first two appraisers, and the results of the first two appraisals. The Third Appraiser shall perform sufficient appraisal work to enable the Third Appraiser to furnish to Buyer and Seller such appraiser's opinion as to the correct Fair Market Value, and such number shall be the Buyout Price. Upon the Third Appraiser's submission to Seller and Buyer of his or her report, the Appraisal Process shall be concluded.

(b) Costs of Appraisal Process.

- (i) General Rules. The Seller shall bear the cost of the First Appraiser. The Buyer shall bear the cost of the Second Appraiser. The Parties shall equally share in the cost of the Third Appraiser.

**SCHEDULE 3**

**MAINTENANCE COMPENSATION**

Maintenance Costs for Solar Thermal Facility:

<u>Year following the Commercial Operation Date</u>	<u>Amount</u>
One	\$10,000
Two	\$5,000
Three	\$3,000
Four	\$3,000
Five	\$2,500
Six	\$1,000
Seven	\$1,000
Eight	\$1,000
Nine	\$1,000
Ten	\$2,600
Eleven	\$1,000
Twelve	\$1,000
Thirteen	\$1,000
Fourteen	\$1,000
Fifteen	\$2,600
Sixteen	\$1,200
Seventeen	\$1,200
Eighteen	\$1,200
Nineteen	\$1,200
Twenty	\$2,600

Maintenance Costs for PV System:

<u>Year following the Commercial Operation Date</u>	<u>Amount</u>
One	\$2,000
Two	\$2,000
Three	\$2,000
Four	\$2,000
Five	\$2,000
Six	\$2,000
Seven	\$2,000
Eight	\$2,000
Nine	\$2,000
Ten	\$2,000

Eleven	\$2,000
Twelve	\$2,000
Thirteen	\$2,000
Fourteen	\$2,000
Fifteen	\$2,000
Sixteen	\$2,000
Seventeen	\$2,000
Eighteen	\$2,000
Nineteen	\$2,000
Twenty	\$2,000

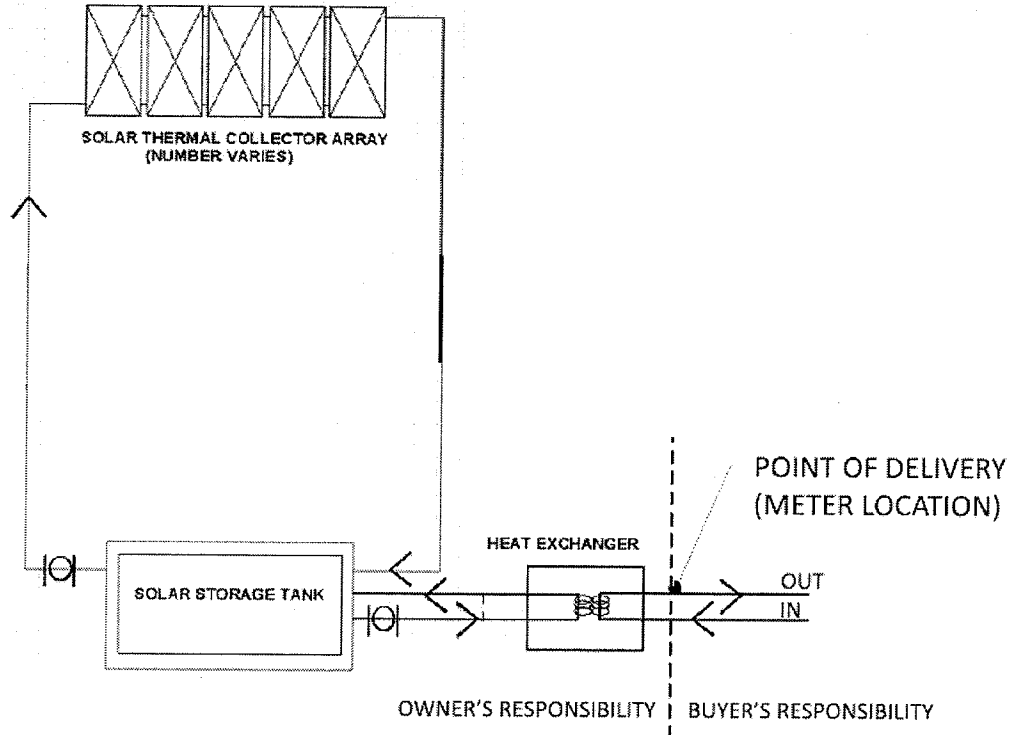
Maintenance Costs for Absorption Chiller:

Maintenance Costs for Emergency Generator:



# Exhibit E

## Schematic of Solar Thermal Facility



**Exhibit F**  
**Plans and Specifications**