

Prepared by: Wielechowski & Fuller, PC

and return to:

Wielechowski & Fuller, PC
201 South Tryon Street, Suite 1475
Charlotte, NC 28202

**COLLATERAL ASSIGNMENT OF LEASE AGREEMENT
AND LANDLORD WAIVER AGREEMENT**

This Collateral Assignment of Lease Agreement and Landlord Waiver Agreement (this “Agreement”) dated as of [_____], 2021, is entered into by and among USS Itasca Clean Energy LLC, a Delaware limited liability company (“Assignor”), with an address at 100 North 6th Street, Suite 218C, Minneapolis, MN 55403, and **LIVE OAK BANKING COMPANY**, a North Carolina banking corporation (the “Lender”), with an address at 1741 Tiburon Drive, Wilmington, North Carolina 28403, and consented and agreed to by the City of Grand Rapids, County of Itasca, Minnesota, the Grand Rapids/Itasca County Joint Airport Commission and the Grand Rapids – Itasca County Airport Commission (collectively, the “Landlord”). The City of Grand Rapids has an address of 420 No. Pokegama Ave., Grand Rapids, MN 55744 and Itasca County has an address of 123 NE 4th St., Grand Rapids, MN 55744.

WITNESSETH:

WHEREAS, Assignor is the tenant under that certain Option to Lease, Lease and Solar Easement dated as of February 23, 2021 (as it has been and may further be amended, restated, supplemented or otherwise modified and in effect from time to time, collectively, the “Lease”);

WHEREAS, pursuant to the Lease and any other documents executed pursuant to the Lease, the Landlord has leased to Assignor the “Premises” as defined in the Lease and as more particularly described on Exhibit A hereto (the “Leased Property”);

WHEREAS, Assignor has entered or may in the future enter into with Lender a loan agreement (as it may be amended, restated, supplemented or otherwise modified and in effect from time to time, the “Loan Agreement”), pursuant to which Lender has agreed to make one or more loans to Assignor for the purpose of constructing, owning and operating a solar power generation facility (the “Solar Facility”) on the Leased Property;

WHEREAS, Assignor has granted or may in the future grant to Lender security interests in all or substantially all of Assignor’s properties and assets (including without limitation the Solar Facility) to secure payment of the liabilities and obligations of Assignor arising pursuant to the Loan Documents; and

WHEREAS, in order to induce the Lender to make the loan to Assignor under the Loan Agreement, the Assignor, with the consent of Landlord, desires to assign all of its rights, remedies and interests in and to the Lease and all other documents, instruments, deeds and agreements executed by Assignor and Landlord or by Landlord in favor of Assignor in connection therewith or pursuant thereto (collectively, the “Assigned Contracts”) to Lender.

NOW, THEREFORE, in consideration of the premises set forth above and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Unless otherwise defined herein, all other terms used herein shall have the meanings ascribed thereto under the Loan Agreement.

2. Assignor hereby assigns and transfers to Lender (and grants a security interest to Lender with respect to), as additional security for the repayment in full of the Obligations, all of Assignor's rights, remedies and interests in and to the Assigned Contracts including, without limitation (a) the right of the Lender to take over the Leased Property and (b) any and all of the representations, warranties, covenants and indemnities made in favor of Assignor. The maximum principal amount of the Obligations secured hereby, other than any amounts constituting an "indeterminate amount" under Minn. Stat. §287.05, Subd. 5, and excluding advances made by Lender in protection of the Leased Property or the lien of this Agreement, is [_____] (\$_____)] and payment of the Obligations shall be due on or before [_____], [2046]. The representations contained in this paragraph are made solely for the benefit of county recording authorities in determining the mortgage registry tax payable as a prerequisite to the recording of this Agreement. Assignor acknowledges that such representations do not constitute or imply an agreement by the Lender to make any future advances to Assignor.

3. Assignor hereby irrevocably authorizes and empowers Lender to assert, either directly or on behalf of Assignor, any claim or claims Assignor may from time to time have with respect to the Assigned Contracts (including, without limitation, with respect to any and all payments or performance due to Assignor under or pursuant to the Assigned Contracts) as Lender may deem proper, and to apply the same on account of any of the Obligations. Assignor hereby irrevocably makes, constitutes and appoints Lender (and any officers, employees, or agents designated by Lender) as its true and lawful attorney (and agent-in-fact) for the purpose of enabling Lender or its agents to assert and collect such claims and to apply such monies in the manner set forth hereinabove.

(a) If Lender shall, in its discretion, take possession of the Leased Property, the Lender shall be deemed to be substituted as the "Lessee" as defined in the Lease in the place and instead of Assignor, and shall be deemed to have assumed all of the terms, covenants, and obligations of the Lease theretofore applicable to the Assignor and shall likewise be entitled to enjoy all of the rights and privileges granted to Assignor under the Assigned Contracts, with the right to reassign the same, at the option of the Lender, in accordance with the applicable terms of the Lease.

(b) Notwithstanding the foregoing, Lender agrees that unless an Event of Default has occurred and is continuing, (i) the Assignor shall retain possession of the Leased Property in accordance with the terms and conditions of the Lease and (ii) the Assignor alone shall have the right to assert claims in connection with the representations, warranties, covenants and indemnities; provided, that Assignor shall give Lender notice of any intention to assert any such claims and keep Lender informed of the status of any proceedings concerning such claims.

4. Notwithstanding anything to the contrary herein, in any Assigned Contract, or in any other Loan Document, so long as Lender shall not have exercised its option herein to take over the Leased Property, the Lender shall not be liable for rent or any obligation of Assignor under any Assigned Contract or in connection therewith, and Assignor shall remain liable for such rent and other obligations.

5. This Agreement shall continue in effect until all of the Obligations have been paid in full and the Loan Documents have been terminated in accordance with the terms thereof, at which time Lender shall release to the Assignor Lender's interests in the Assigned Contracts.

6. At any time or from time to time, upon Lender's written request, Assignor will execute and deliver to Lender such further documents and do such other acts and things as Lender may reasonably request in order to further effect the purposes of this Agreement or any schedule, amendment or supplement hereto, or a financing or continuation statement with respect hereto, in accordance with the laws of any applicable jurisdictions. Assignor hereby authorizes Lender to effect any such filing or recording statements (or amendments thereto) without the signature of Assignor, and Lender's reasonable costs and expenses with respect thereto shall be part of the Obligations and shall be payable by Assignor on demand.

7. Assignor hereby represents and warrants that, as of the date of this Agreement:

(a) the Assigned Contracts are in full force and effect and are enforceable in accordance with their respective terms except as such enforceability may be limited by applicable bankruptcy, moratorium, reorganization and other similar laws affecting the enforcement of creditors' rights generally;

(b) no default exists under any Assigned Contract on behalf of the Assignor or, to Assignor's knowledge, on behalf of the other parties to any Assigned Contract;

(c) Assignor has full power, authority and legal right to assign its rights under the Assigned Contracts pursuant to this Agreement;

(d) this Agreement has been duly authorized, executed and delivered by Assignor and constitutes a legal, valid and binding obligation of Assignor, enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, moratorium, reorganization and other similar laws affecting the enforcement of creditors' rights generally;

(e) no consent of any Person and no consent, license, permit, approval or authorization of, exemption by, notice or report to, or registration, filing or declaration with, any governmental authority, domestic or foreign, is required to be obtained by Assignor in connection with the execution, delivery or performance of this Agreement except (i) pursuant to paragraph 12 hereof and (ii) those that have been obtained or made on or prior to the date hereof; and

(f) the execution, delivery and performance of this Agreement will not violate any provision of any statute or law or contractual obligation to which Assignor is a party or that purports to be binding upon Assignor or upon any of its assets or properties and will not result in the creation or imposition of any Lien on or security interest in any of the assets of Assignor except those in favor of Lender as contemplated by this Agreement.

8. Assignor hereby covenants and agrees that:

(a) it will not assign, pledge or otherwise encumber any of its right, title or interest under, in or to any Assigned Contract except for the assignment to Lender and its successors or assigns;

(b) it will not take or omit to take any action, the taking or omission of which might result in any material alteration or impairment of any Assigned Contract or Lender's rights under this Agreement;

(c) it will not enter into any agreement amending, supplementing or terminating any Assigned Contract without Lender's consent which consent shall not be unreasonably withheld;

(d) it will deliver to Lender a copy of each demand, notice, communication or document of a material nature delivered to or sent by it in any way relating to any Assigned Contract;

(e) it will keep Lender informed of all material circumstances known to it bearing upon the rights and remedies of Assignor under any Assigned Contract; and

(f) it will not grant any waiver of a material provision of any Assigned Contract without Lender's consent, which consent shall not be unreasonably withheld, delayed or conditioned.

9. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or enforceability without invalidating the remaining provisions hereof, and any such prohibition or enforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

10. None of the terms or provisions of this Agreement may be waived, altered, modified or amended except by an instrument in writing, duly executed by Assignor and Lender (and, with regard to any waiver, alteration, modification or amendment of paragraph 12, the Landlord). This Agreement and all obligations of the parties hereunder shall be binding upon the successors and assigns of the Assignor and shall, together with the rights and remedies of Lender hereunder, inure to the benefit of Lender and its successors and assigns. This Agreement may be signed in any number of counterpart copies and by the parties hereto on separate counterparts, but all such copies shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile transmission shall be effective as delivery of a manually executed counterpart. Any party so executing this Agreement by facsimile transmission shall promptly deliver a manually executed counterpart; provided, that any failure to do so shall not affect the validity of the counterpart executed by facsimile transmission.

11. Except as otherwise provided herein, whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon any of the parties by the other, or whenever any of the parties desires to give or serve upon the other any communication with respect to this Agreement, each such notice, demand, request, consent, approval, declaration or other communication shall be given in accordance with the notice provisions of the Loan Agreement.

12. The Landlord hereby enters into this Agreement solely for the purposes set forth in this paragraph 12.

(a) Landlord (and any person claiming by, through or under Landlord and any heir, executor, administrator, successor to or assign of Landlord) is not (and shall under no circumstances be deemed to be) a party to or third-party beneficiary of the arrangements between Lender and Assignor evidenced hereby or entitled to enforce or rely upon such arrangements.

(b) The Landlord has entered into the Lease and the other Assigned Contracts with Assignor. The Landlord acknowledges that the Assignor has assigned to Lender all of the Assignor's rights in and to the Assigned Contracts as security for the Obligations.

(c) The Landlord hereby consents to such assignment and confirms that such assignment is permissible under the Lease and the other Assigned Contracts. To the extent that notice of this Agreement is required pursuant the Lease, the Landlord acknowledges that this Agreement constitutes such notice. The Landlord acknowledges that the Lender is a “Lender” (as such term is used in Section 9.1 of the Lease), and Lender shall be a third party beneficiary of the provisions of Section 9.1 of the Lease.

(d) The Landlord certifies to the Lender that each Assigned Contract is in full force and effect, and that no default currently exists under any Assigned Contract.

(e) For such period as the Obligations are outstanding, notwithstanding any provision to the contrary in Section 2.2 of the Lease and the failure of Assignor, if any, to deliver written notice of Assignor’s intention to exercise its extension rights, the Term of the Lease will automatically extend for the next succeeding extension period unless Landlord has received written confirmation from the Lender that the Term will not be extended.

(f) Landlord will notify the Lender at such time as Assignor breaches the Lease or vacates the Leased Property, and agrees to give the Lender written notice at least thirty (30) days (or such longer period as may be set forth in the Lease) prior to acceleration of sums due under the Lease or termination of the Lease in order to allow the Lender to cure such default, provided, that the Lender has no obligation to cure any such default. Landlord’s failure to deliver such notice shall not result in any liability of Landlord to the Lender or the Assignor, but Landlord may not accelerate the sums due under the Lease or terminate the Lease without first having delivered such notice and afforded the Lender an opportunity to cure the default. Such notices must be in writing and will be effective upon receipt and may be sent to a party’s address set forth below or to such other address as any party may give to the other for such purpose in accordance with this paragraph:

To the Lender: Live Oak Banking Company
 1741 Tiburon Drive
 Wilmington, NC 28403
 Attention: Loan Servicing/US Solar MN 2021 Portfolio

(g) The Landlord agrees that it shall look solely to the Assignor for the prompt payment and performance of any covenants and provisions of the Assigned Contracts (including without limitation all rent payable under the Lease) to be paid or performed by the Assignor, and that the Landlord shall accept performance from the Lender to the extent the Lender chooses to render performance of the Lease and any other Assigned Contract under the terms of this Agreement.

(h) The Landlord agrees that any lien or encumbrance arising from any act or omission of the Landlord shall accrue only against the fee simple estate owned by the Landlord and not against any improvement erected by the Assignor and shall, in all cases, be subject and expressly subordinate to the Assigned Contracts.

(i) The Landlord agrees that any action taken by the Lender to exercise its remedies under the Loan Agreement and the other Loan Documents shall not constitute a default or event of default under the Assigned Contracts, and the Assigned Contracts shall continue in full force and effect following the exercise of such remedies. Any assignment pursuant to the terms of this Agreement and further assignment by the Lender to any third party following the exercise of Lender’s rights and remedies or any assignment of the membership interests in the Assignor shall constitute a permitted assignment under the Lease and the Lease shall continue in full force and

effect following such assignment, without the requirement of any further documentation regarding such assignment between the Landlord and the Assignor.

(j) Until such time as all liabilities and obligations of Assignor and its affiliates to Lender have been paid and performed in full, the Landlord hereby waives, releases and relinquishes to Lender all right, title, interest, claim and lien which Landlord has or may in the future have, under any and all applicable laws, including statutory rights, in, to or against any assets and other personal property of Assignor, including without limitation, solar panels, transformers, inverters, racking, inventory, shelving, equipment, machinery, furniture, fixtures, and books and records, whether now owned or hereafter acquired by Assignor or any other party other than Assignor, and located at any time on the Leased Property (collectively, the "Personal Property"). The Personal Property shall not be subject to levy, sale on distress or distraint for rent or any claim, lien or demand of any kind by the Landlord, and notwithstanding the provisions of Section 5.3(d) of the Lease, for so long as the liabilities and obligations of Tenant and its affiliates to Lender remain outstanding, Landlord shall not exercise any right to dispose of or sell the Personal Property.

(k) At such time as Assignor vacates the Leased Property, voluntarily or involuntarily, the Lease is terminated, or Lender repossesses the Personal Property, Lender may store the Personal Property on the Leased Property, operate the solar power generation facility located on the Leased Property, and/or prepare the Personal Property for sale and/or conduct a sale or liquidation of such Personal Property on the Leased Property. Lender shall not be liable for rental storage charges under the Lease or otherwise. However, if Landlord has made written demand on Lender to remove the Personal Property within a reasonable period of time, but not less than sixty (60) days after Lender's receipt of such written notice, and Lender has failed to do so, Lender may continue to store the Personal Property on the Leased Property, operate the solar power generation facility located on the Leased Property and otherwise use the Leased Property as set forth above; provided, that Lender agrees to pay an amount equal to the regular monthly, non-accelerated rental payments due under the Lease (not including any past-due, additional or bonus rental) prorated for the number of days Lender keeps the Personal Property on the Leased Property after expiration of such sixty (60) day notice period. Nothing herein or elsewhere shall be deemed to prevent or limit Lender, at its option, from abandoning any part of the Personal Property.

(l) The agreements of the Landlord in this Section 12 shall be binding upon Landlord, its, his or her heirs, personal representatives, successors and assigns and shall inure to the benefit of Lender and its successors and assigns.

13. ASSIGNOR AGREES THAT ITS AND LENDER'S RIGHTS AND OBLIGATIONS UNDER THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH CAROLINA, WITHOUT GIVING EFFECT TO THE CONFLICTS-OF LAW RULES AND PRINCIPLES THEREOF. NOTWITHSTANDING THE FOREGOING, ASSIGNOR AGREES THAT:

(a) THE PROCEDURES GOVERNING THE ENFORCEMENT BY LENDER OF THE REMEDIES AGAINST ASSIGNOR, INCLUDING BY WAY OF ILLUSTRATION BUT NOT LIMITATION, ACTIONS FOR CLAIM AND DELIVERY OF PROPERTY OR FOR INJUNCTIVE RELIEF AND THE REQUIREMENTS NECESSARY TO CREATE OR GRANT, PERFECT OR FORECLOSE ON, OR DETERMINE THE PRIORITY OF, THE LIEN AND SECURITY INTEREST OF THIS AGREEMENT, SHALL BE GOVERNED BY THE LAWS OF THE STATE OF MINNESOTA; AND

(b) LENDER SHALL COMPLY WITH THE APPLICABLE LAW OF THE STATE OF MINNESOTA, TO THE EXTENT REQUIRED IN CONNECTION WITH THE FORECLOSURE OF THE SECURITY INTERESTS AND LIENS CREATED HEREBY; PROVIDED, HOWEVER, THIS SUBSECTION SHALL IN NO EVENT BE CONSTRUED TO PROVIDE THAT THE SUBSTANTIVE LAW OF THE STATE OF MINNESOTA SHALL APPLY TO THE OBLIGATIONS SECURED BY THIS AGREEMENT WHICH ARE AND SHALL CONTINUE TO BE GOVERNED BY THE SUBSTANTIVE LAW OF THE STATE OF NORTH CAROLINA. THE PARTIES FURTHER AGREE THAT LENDER MAY ENFORCE ITS RIGHTS UNDER THIS AGREEMENT AND THE LOAN DOCUMENTS IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH CAROLINA.

(c) Assignor agrees to pay in full the Minnesota mortgage registry tax, if any, payable with respect to and upon the recording of this Agreement and any amendments thereto in accordance with Minnesota Statutes § 287.035.

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IN WITNESS WHEREOF, the parties hereto have executed and delivered this Agreement as of the date first set forth above.

ASSIGNOR:

USS Itasca Clean Energy LLC,
a Delaware limited liability company

By: _____

Name: Reed Richerson

Title: Vice President

STATE OF MINNESOTA

COUNTY OF HENNEPIN

(Place of Acknowledgement)

I certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document as the Vice President of USS Itasca Clean Energy LLC, a Delaware limited liability company, on behalf of the limited liability company.

Date: July __, 2021

Official Signature of Notary

(Official Seal)

Notary's printed or typed name, Notary Public
My commission expires: _____

LENDER:

LIVE OAK BANKING COMPANY,
a North Carolina banking corporation

By: _____

Name:

Title:

STATE OF _____

COUNTY OF _____
(Place of Acknowledgement)

I certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document in the capacity indicated above: _____

Date: _____, 2021

Official Signature of Notary

Notary's printed or typed name, Notary Public

(Official Seal)

My commission expires: _____

LANDLORD:

City of Grand Rapids,
a Minnesota municipal corporation

By: _____
Name:
Title:

STATE OF _____

COUNTY OF _____
(Place of Acknowledgement)

I certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document: _____.

Date: _____, 2021

Official Signature of Notary

Notary's printed or typed name, Notary Public

(Official Seal)

My commission expires: _____

County of Itasca, Minnesota

By: _____
Name:
Title:

STATE OF _____

COUNTY OF _____
(Place of Acknowledgement)

I certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document: _____.

Date: _____, 2021

Official Signature of Notary

Notary's printed or typed name, Notary Public

(Official Seal)

My commission expires: _____

Grand Rapids/Itasca County Joint Airport Commission,

By the County of Itasca, Minnesota,
Its authorized signatory

By: _____
Name:
Title:

STATE OF _____

COUNTY OF _____
(Place of Acknowledgement)

I certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document: _____.

Date: _____, 2021

Official Signature of Notary

Notary's printed or typed name, Notary Public

(Official Seal)

My commission expires: _____

Grand Rapids - Itasca County Airport Commission,

By the County of Itasca, Minnesota,
Its authorized signatory

By: _____
Name:
Title:

STATE OF _____

COUNTY OF _____
(Place of Acknowledgement)

I certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document: _____.

Date: _____, 2021

Official Signature of Notary

Notary's printed or typed name, Notary Public

(Official Seal)

My commission expires: _____

EXHIBIT A

Leased Property

[TO BE ADDED]