



**SOLAR FARM ASSOCIATION PARTICIPANT AGREEMENT**

This Solar Farm Association Participant Agreement is made this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between St. James Solar Farm Association, LLC, of St. James, Missouri, hereinafter called "Association", and \_\_\_\_\_, of \_\_\_\_\_, hereinafter called "Participant".

Whereas, the Association leases a parcel of land in St. James, Phelps County, Missouri; and

Whereas, the Participant is desirous of using all or a portion of that parcel to have Participant's solar panels installed as part of a cooperative solar electricity generation facility (hereinafter, the "Facility"), and Association is willing to allow Participant to do so.

Now, Therefore, the parties agree as follows:

**1. PARTICIPATION REQUIREMENTS / BENEFITS**

- 1.1. Participant must have completed all steps necessary to become a Continuing Member of St. James Solar Farm Association.
- 1.2. Participant must purchase solar panels (and other related solar electricity generation equipment) sufficient to generate at least 3 kilowatt of electricity, and sufficient to generate an amount of electricity that bears the same proportion to the total solar farm's output as such Participant's membership interest in Association bears to the total membership interests in Association. Participant may only use solar panels that have been approved by Association, and may only use an installer that has been approved by Association.
- 1.3. The premises leased by Association are to be used by Participant solely for solar electricity generation for personal use, and for no other purpose without the prior written consent of the Association.
- 1.4. Provided Participant is not in default under this agreement or Association's operating agreement, Participant shall be entitled to receive Participant's proportional share of the net-metering kilowatt-hour (KWH) credits generated by the solar farm based on the quantity of panels owned by Participant compared to the total number of panels in the system.
  - 1.4.1. If Participant fails to use as much electricity in their home or business as they generated in any given month, the net metering credits attributable to Participant's generation in excess of their use will be divided proportionally among the other Participants with solar panels at the Facility who are able to use such credits to offset electricity use in that month.

- 1.5. Association shall track the amount of electricity generated by the Facility, and report to the local utility the amount of energy each Participant should be given credit for generating.

## **2. TERM OF AGREEMENT / FEES**

- 2.1. The term of this agreement shall be thirty (30) years, beginning on the \_\_\_ day of \_\_\_\_\_ 20\_\_\_, and ending on the \_\_\_ day of \_\_\_\_\_ 20\_\_\_. During the term of this Agreement, Participant shall have the right to place equipment on Association's premises to participate in joint solar electricity generation for personal use.
  - 2.1.1. Participant agrees that it will, during the term and for such further time as the Participant or any person or persons claiming under it shall have equipment placed on Association's premises or any part thereof, pay unto Association, its successors or assigns the common costs hereinafter provided for upon the days hereinbefore appointed for the payment of fees during said term.
  - 2.1.2. If Participant fails to pay its share of the common costs on or before the date due, Participant shall pay to Association a late fee equal to ten percent (10%) of Participant's unpaid balance without any demand being required of Association.
  - 2.1.3. It is the intention of the parties hereto that the obligations of Participant hereunder shall be separate and independent covenants and agreements, that common costs payable by Participant hereunder shall continue to be payable in all events, and that the obligations of Participant hereunder shall continue unaffected, unless the requirement to pay or perform the same shall have been terminated pursuant to an express provision hereof.
- 2.2. Participant agrees that it will remain obligated hereunder in accordance herewith, and that it will not take any action to terminate, rescind, or avoid this Agreement, notwithstanding the bankruptcy, insolvency, reorganization, composition, readjustment, liquidation, dissolution, winding-up or other proceeding affecting Association or any assignee of Association in any such proceeding and any action with respect hereto which may be taken by any trustee or receiver of Association or of any assignee of Association in any such proceeding or by any court in any such proceeding.

## **3. OPTION FOR RENEWAL**

- 3.1. Provided that Association has not notified Participant that Association in

not willing to extend this agreement beyond its current term, Participant shall have the right to extend the term of this agreement for successive periods of two years, upon the terms, covenants and conditions contained herein except that the fees for said additional term must be agreed to in writing by Participant and Association prior to the beginning of any such two-year extension.

#### **4. COMMON COSTS**

4.1. Participant agrees to pay its proportional share of Association's expenses, including but not limited to:

- 4.1.1. Any tax on Association's income from its operations;
- 4.1.2. Any assessment, tax, fee, levy, or charge owed by Association on account of its property or operations;
- 4.1.3. Any insurance expense incurred by Association as required by this Agreement or otherwise formally approved by Association;
- 4.1.4. Any expense incurred by Association to acquire a fee or leasehold interest in the land where the Facility is located-
- 4.1.5. Any utility expenses (e.g. electricity, gas, water, trash, and any services or utilities used at the Facility) owed by Association, and any payments by Association to the electric utility for their costs associated with the Facility;
- 4.1.6. Any necessary construction, maintenance, repairs or improvements conducted by the Association, or conducted by a third party at Association's direction; and
- 4.1.7. Any other expense necessary for Association to carry out the joint solar electricity generation venture contemplated by this agreement, Association's agreements with other Participants, Association's agreement with a utility, and Association's operating agreement.

4.2. Participant's right to object to common costs incurred or authorized by Association shall be limited to Participant's rights to elect a new manager under Association's operating agreement, and Participant shall not have any other right to object to, or otherwise refuse to pay, common costs incurred by Association.

#### **5. MAINTENANCE / REPAIRS**

5.1. Participant shall have the express obligation to reimburse Association, promptly after the necessity therefore arises, the cost of any repairs to the

Participant's solar panels ("Participant's Equipment"), in order to maintain them in at least as good of condition as at the inception of this Agreement (ordinary wear and tear excepted). The cost of repair of an individual Participant's solar panels shall be an obligation solely of Participant, and not a common cost.

5.1.1. Participant, during the term of this agreement, may build, rebuild, remodel, recondition, rehabilitate Participant's Equipment, provided Participant is not then in default in the performance of any of its obligations hereunder; provided, however, that these rights may be exercised only in accordance with plans and specifications submitted to and approved in writing by the Association prior to any such work being performed.

5.1.2. Participant shall hold the Association harmless from any loss, cost or damage in connection with any loss, cost or damage occasioned by the Participant, its agents, servants or employees, or by persons coming on Association's premises. Participant agrees to hold the Association harmless of and from all liens by reason of any building, improvements, alterations, repairs, or restoration.

5.1.3. Risk of loss, whether by intentional act, negligence, casualty, act of god, or any other cause whatsoever, for the Participant's Equipment on shall be borne solely by Participant.

5.2. Association shall be responsible for cleaning, maintenance, repair and replacement of the all solar electricity generation equipment between the solar panel and the connection to the electrical grid (the "Common Equipment") in order to maintain it in at least as good of condition as at the inception of this Agreement (ordinary wear and tear excepted).

5.2.1. Association shall have the sole right to modify, alter, remove or improve portions of the Common Equipment, including without limitation, any equipment, fixtures and appurtenances, when in the Association's judgment it is necessary or desirable to do so.

5.2.2. Participant agrees that Participant has no right to modify, alter, remove or improve any portion of the Common Equipment, including without limitation, any equipment, fixtures and appurtenances, unless Participant has obtained Association's prior written consent.

5.2.3. Association shall only be required to perform repairs, alterations, or replace any Common Equipment to the extent

the members of St. James Solar Farm Association, LLC provide funds sufficient to do so, or any other third party provides funding sufficient to do so.

## **6. ASSIGNMENT**

- 6.1. Participant may assign all or any portion of Participant's interest in this agreement upon compliance with the terms for admitting a substitute Continuing Member under the operating agreement for St. James Solar Farm Association, LLC, and upon the assignee's compliance with the requirements for a Participant under this agreement. Participant shall not assign any of its interest in this Agreement to any other party without first obtaining the written consent of the Association. Association covenants and agrees that it will not unreasonably withhold such written consent for such assignment.

## **7. DAMAGE TO PREMISES BY FIRE, CASUALTY OR BY TAKING FOR PUBLIC USE**

- 7.1. If a portion of Association's premises are taken through eminent domain, and as a result the continued operation of the Facility is practically or economically infeasible, this agreement shall terminate. The termination of the operations and assets of the Facility shall thereafter be administered as provided for the end of the term of this Agreement below.
- 7.2. If the Facility or any part thereof shall be damaged or destroyed by fire or other casualty, Association shall, upon receipt of insurance proceeds, with reasonable promptness and diligence, rebuild, replace, and repair any damage or destruction to the Facility in such manner as to restore the Facility to the condition it was in immediately prior to such damage or destruction.

## **8. INSURANCE**

- 8.1. The Association will maintain, at its expense, insurance on Association's premises of the following character:
  - 8.1.1. Insurance against loss or damage by fire, lightning, windstorms, hail, explosion, aircraft, smoke damage, vehicle damage, and other risks from time to time included under extended coverage policies and such other risks as are or shall customarily be insured against with respect to property that is similar to Association's premises, in amounts sufficient to prevent Association or Participant from becoming a co-insurer of any loss under the applicable policies, but, in any event, in amounts not less than the full insurable value of Association's premises. The term "full insurable value," as used herein, means actual

replacement value less physical depreciation.

- 8.1.2. General public liability insurance against claims for bodily injury, death, or property damage occurring on, in, or about Association's premises and the adjoining streets, sidewalks, and passageways, such insurance to afford protection to Association of not less than \$1,000,000 with respect to bodily injury or death to any one person, not less than \$1,000,000 with respect to any one accident, and not less \$500,000 with respect to property damage.
- 8.1.3. Worker's compensation insurance covering all persons employed in connection with any work done on or about Association's premises with respect to which claims for death or bodily injury could be asserted against Association, Participant, or Association's premises.
- 8.1.4. Such other insurance on Association's premises in such amounts and against such other insurable hazards which at the time are commonly obtained in the case of property similar to Association's premises.

8.2. Such insurance shall be written by companies of recognized financial standing which are authorized to do an insurance business in the state of Missouri.

## **9. ASSOCIATION'S OBLIGATION AT THE END OF TERM**

- 9.1. Upon the expiration of the term of this Agreement (unless it had been extended, in which case upon the expiration of the last extension of this Agreement), Association shall dismantle all solar electric generation equipment, sell (by auction or other reasonably prompt method) any equipment Association believes has a value sufficient to make a sale worthwhile, and salvage or dispose of any other equipment. The proceeds of any such sale shall be used by the Association to pay for the cost of winding up the solar electricity generation operation, and any remaining funds shall be paid to the Participants in proportion to their membership interest in Association (provided that in no case shall the amount paid to a Participant exceed the amount such Participant paid to acquire its solar electricity generation equipment, plus all fees paid by such Participant under this Agreement).

## **10. DEFAULT OF PARTICIPANT**

- 10.1. If Participant defaults in the payment of fees and remains in default for five (5) days after a notice to pay is delivered to Participant; or if Participant defaults with respect to any other covenant and remains in default for

thirty (30) days after a notice to cure default is delivered to Participant (or fails to take reasonable steps to cure the default if such takes longer than 30 days); or if Participant shall be declared insolvent according to law, or if any assignment shall be made of any of its property for the benefit of creditors; then Association may elect to do any one or more of the following:

- 10.1.1. continue the agreement on its present terms and conditions and cure Participant's default pursuant to the terms of this agreement; or
- 10.1.2. sell, or otherwise arrange for the transfer of the defaulting Participant's interest in this agreement (with all rights, privileges and obligations being transferred together) to a new or existing Participant. The proceeds of such a sale shall first be used to pay Association all amounts owed to it by the defaulting Participant, and the balance of the proceeds, if any, shall be returned to such Participant (provided that in no case shall the amount paid to a Participant exceed the amount such Participant paid to acquire its solar electricity generation equipment, plus all fees paid by such Participant under this Agreement). The rights of this section shall be in addition to the rights granted in Section 13 below for curing defaults.

## **11. COVENANTS AND AGREEMENTS**

- 11.1. All of the covenants, agreements and conditions of this agreement shall accrue to the benefit of and be binding upon the respective parties hereto and their successors and assigns as if they were in every case named and express.
- 11.2. This agreement shall be governed by the laws of the State of Missouri.
- 11.3. Each and every covenant and agreement contained herein is or shall be construed to be a separate and independent covenant and agreement, and the breach of any such covenant or agreement by Association shall not discharge or relieve Participant from its obligations to perform the same. If any term or provision hereof, or the application thereof to any person or circumstances, shall be invalid and unenforceable, the remainder of this agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision hereof shall be valid and shall be enforced to the extent permitted by law.

## **12. NOTICES**

- 12.1. All notices, demands and requests to be given hereunder by either party

shall be in writing and must be either personally served; or sent by certified mail carried by the United States Postal Service or by a reputable overnight, express, or ground-delivery service that allows a sender or recipient to electronically track its location and provides record of the signature of the recipient, addressed to Association at \_\_\_\_\_, and to Participant at \_\_\_\_\_, or at such other address as either party shall designate by written notice, served as specified herein, to the other. Any notice shall be effective upon the earlier of actual receipt, or seven business days after being provided to the post office or delivery service.

### **13. CURING DEFAULTS**

- 13.1. If either party is required to perform or comply with any agreement or provision hereof and shall fail to do so within the time provided therefor (or if no time is provided therefor, then within thirty (30) days after written demand for compliance shall have been received by any party hereto from the other unless such default shall be of such nature that same cannot be completely cured within such thirty (30) day period but the curing thereof has been commenced within the said thirty (30) day period and shall thereafter be continued with reasonable diligence) then, in each such case, upon the expiration of the time provided in this Section for the performance or compliance therewith or for the curing of same, the party demanding compliance may perform and comply therewith for the account and at the expense of the party failing to do so; and the party failing to do so immediately upon receipt of an itemized invoice of the cost and expense thereof, agrees to promptly pay the reasonable cost and expense incurred by the other party hereto, with interest at the rate of nine (9%) percent per annum to the date payment is received. Should Participant be the party failing to make such payment, the cost and expense thereof shall be charged to Participant as additional fees, which shall be paid by the Participant on the next fees payment date following the date of receipt by Participant of such invoice, and in the event such additional fees shall not be paid when due, it may be collected in the same manner as is herein provided for the collection of fees.
- 13.2. In computing the time within which either party is required to comply with any covenant, agreement or provision of this lease, there shall be excluded therefrom periods of reasonable delay on account of war, labor troubles, "Acts of God," and other unavoidable delays.

### **14. LIMITATION OF LIABILITY**

- 14.1. Association, and its members in their capacity as members, officers and employees:



- 14.1.1. Shall not be liable to Participant as a result of the performance of the Association's duties for any mistakes of judgment, negligence or otherwise, except for Association's willful misconduct or gross negligence;
- 14.2. Shall not be liable to a Participant, or Participant's employees, agents, customers or guests, for loss or damage caused by theft of or damage to Participant's Equipment or the Common Equipment; and
- 14.3. Shall have no liability in tort to Participant or any other person or entity, direct or imputed, by virtue of acts performed by or for Participant, except for Association's willful misconduct or gross negligence in the performance of its duties.

**15. ATTORNEY FEES**

15.1. In the event either party to this agreement is required to bring any action at law or in equity against the other party to enforce any terms of this lease, the losing party hereby agrees to pay the prevailing party's reasonable attorney fees (including appellate fees).

Dated: \_\_\_\_\_ 20\_\_ \_\_\_\_\_, Association

By .....

Title .....

Dated: \_\_\_\_\_ 20\_\_ \_\_\_\_\_ Participant

By .....

Title .....