

GROUND LEASE AGREEMENT

Site No.: _____
Land Unit No.: _____
Project No.: _____

Summary of Ground Lease Agreement Terms:

This section provides a summary of the general business terms. In the event of any discrepancy, the terms and conditions in the attached Ground Lease Agreement shall prevail. All capitalized terms shall have the same meaning as set forth in the attached Ground Lease Agreement.

Effective Date: _____, 2018

Landlord: County of Buncombe

Tenant: Duke Energy Progress, LLC

Summary Description of Land: Approximately 30 acres of land (being portions of Tax Map Nos. 9721-94-2726-00000 and 9721-95-9833-00000) located at Landlord’s landfill site in Woodfin, Buncombe County, NC, and generally shown as the area(s) outlined in purple on that map entitled “Approximate Lease Boundary” dated May 24, 2018 attached as **Exhibit A** and incorporated herein by reference.

Term of Lease: The term of this Lease shall commence on the Commencement Date and shall end at 11:59 P.M. local time on the date that is twenty-five (25) years after the Commencement Date.

Commencement Date: The Commencement Date of the Term is the Commercial Operation Date (as defined in Section 2(a) of the Lease).

Number and Length of Optional Renewal Term(s): Three (3) optional Renewal Terms of five (5) years each.

Due Diligence Period: The Initial Due Diligence Period commences on the Effective Date and ends two (2) years after the Effective Date.

Construction Period: The Construction Period commences upon the Construction Commencement Date (as defined in Section 3(b) of the Lease) and expires upon the Commercial Operation Date (which is the same date as the Commencement Date of the Term). Tenant shall pay Landlord the sum of One Hundred Dollars (\$100.00) for each Usable Acre of the Land (prorated for any fractional Usable Acres) for each year of the Construction Period (prorated for any fractional years).

Rent: During the Term, Tenant shall pay Landlord rent in the sum of Seven Hundred Dollars (\$700.00) per Usable Acre of the Land (prorated for any fractional Usable Acres) as provided in Section 5 of the Lease.

Addresses:

<u>Landlord:</u>	<u>Tenant:</u>
Buncombe County 200 College Street Asheville, NC 28801 Attn: County Manager	Duke Energy Progress, LLC Lease Administration 550 S. Tryon Street, DEC22A Charlotte, NC 28202

GROUND LEASE AGREEMENT

THIS GROUND LEASE AGREEMENT (this “Lease”) is made and entered into as of the _____ day of _____, 2018 (the “Effective Date”), by and between the **COUNTY OF BUNCOMBE**, a political subdivision of the State of North Carolina (the “Landlord”) and **DUKE ENERGY PROGRESS, LLC**, a North Carolina limited liability company (the “Tenant”).

Landlord and Tenant covenant and agree as follows:

1. **Premises and Intended Use.** In consideration of the rents, terms, covenants, and agreements set forth in this Lease to be paid, kept, and performed, Landlord leases to Tenant and Tenant leases from Landlord approximately thirty (30) acres of land, more or less, located at the County-owned landfill site in Woodfin, Buncombe County, North Carolina (being portion(s) of those tract(s) or parcel(s) of land designated as Buncombe County Tax Map Nos. 9721-94-2726-00000 and 9721-95-9833-00000), and generally shown as the area(s) outlined in purple on that map entitled “Approximate Lease Boundary” dated May 24, 2018 attached hereto as **Exhibit A** and incorporated herein by reference (the “Land”), and all improvements, fixtures, personal property and trade fixtures in the future that may be located thereon by or on behalf of Tenant, together with all other appurtenances, tenements, hereditaments, rights and easements pertaining to the Land and the improvements now or in the future located thereon (the Land, together with the above-described property, improvements and appurtenances are hereinafter collectively referred to as the “Premises”), to be occupied and used upon the terms and conditions herein set forth. Tenant’s intended use of the Premises is for the development, construction, installation, operation and maintenance of a solar photovoltaic power array and related improvements for the generation of electric power and related ancillary technologies, including but not limited to, energy storage, voltage regulation, and power quality regulation (the “Intended Use”), and including without limitation, (i) electrical and communication lines, transformers, power inverters, equipment, cables, switches and electrical substation(s); (ii) laydown areas, control buildings, and maintenance facilities; and (iii) roads, fences and gates, and other structures and facilities required for ingress and egress for pedestrians, motor vehicles and equipment and for security (collectively the “Solar Generating Facility”).

2. **Term of Lease, Commencement Date, and Renewal Terms.**

(a) **Term of Lease and Commencement Date.** The term of this Lease (including any extensions or renewals, the “Term”) shall commence on the Commencement Date and shall end at 11:59 P.M. local time on the date that is twenty-five (25) years after the Commencement Date (the “Expiration Date”), unless extended or sooner terminated as herein provided. If the Expiration Date is other than the last day of a calendar month, the Term shall be extended automatically until 11:59 P.M. local time on the last day of the calendar month in which the Term otherwise would expire. The “Commencement Date” shall be the Commercial Operation Date. The “Commercial Operation Date” shall be the date that all of the following have occurred: (i) the Solar Generating Facility has been installed, constructed, tested, commissioned, and is fully capable of being operated for its Intended Use; (ii) the Tenant has received all permits and approvals from governmental authorities having jurisdiction and the applicable electrical transmission provider for the Solar Generating Facility; and (iii) the Solar Generating Facility begins delivering energy to the electrical grid. Once the Commencement Date is ascertained, the parties agree to execute a memorandum or other writing confirming the Commencement Date.

(b) **Renewal Terms.** Tenant shall have the right to extend the initial Term granted herein for up to three (3) additional terms of five (5) years each (each a “Renewal Term” and collectively, the “Renewal Terms”) by providing Landlord with written notice of Tenant’s desire to extend the Term for the

applicable Renewal Term prior to the Expiration Date (or prior to the expiration of the preceding Renewal Term, as applicable).

3. Due Diligence Period; Construction Period; and Landlord's Rights Before Construction Commencement Date.

(a) Due Diligence Period. Commencing on the Effective Date and continuing for a period of two (2) years after the Effective Date (the "Initial Due Diligence Period"), Tenant shall have the right to enter the Premises to perform its due diligence, inspection, investigation and pre-construction activities to determine if the Premises is suitable for leasing by Tenant, the Intended Use, and obtaining permits and approvals for the Intended Use. Tenant may extend the Initial Due Diligence Period for one (1) additional year commencing after the expiration date of the Initial Due Diligence Period (the "Extended Due Diligence Period"), by delivering written notice to Landlord prior to the expiration date of the Initial Due Diligence Period. (The Initial Due Diligence Period and Extended Due Diligence Period are collectively referred to herein as the "Due Diligence Period").

(b) Construction Period. The "Construction Period" shall commence upon the Construction Commencement Date (as hereinafter defined) and expire upon the Commercial Operation Date (which is the same date as the Commencement Date of the Term of this Lease). **Tenant shall pay Landlord the sum of One Hundred Dollars (\$100.00) for each Usable Acre of the Land (prorated for any fractional Usable Acres) for each year of the Construction Period (prorated for any fractional years).** The "Construction Commencement Date" shall be the earlier of (i) the date Tenant issues written notice to Landlord advising Landlord of Tenant's intent to begin construction activities at the Premises, or (ii) the date Tenant commences the construction or installation of the Solar Generation Facility at the Premises; provided however, the Construction Commencement Date shall not be deemed to have occurred by virtue of any testing conducted by Tenant on the Land, minimal site clearing to support such testing, or by virtue of Tenant installing access routes or roads on the Land. Once the Construction Commencement Date is ascertained, the parties agree to execute a memorandum or other writing confirming the Construction Commencement Date.

(c) Landlord's Rights Prior to Construction Commencement Date/Existing Weather Tower & Model Airplane Shelter. During the period between the Effective Date and the Construction Commencement Date, Landlord shall continue to have full use and control of the Premises, subject to Tenant's access and inspection rights set forth in Section 3(a) and Section 4 of this Lease. On and after the Construction Commencement Date, Landlord (and any other person claiming, by, through or under Landlord) shall not enter the Premises or engage in any activities or operations on the Premises, except as set forth in Section 29 of this Lease and as required for Landlord to comply with its obligations set forth in Section 25 of this Lease concerning the Landfill (as defined and described in Section 25(a) hereof. If the existing weather tower and model airplane runway and shelter have not been removed from the Premises within thirty (30) days after the date the Tenant notifies Landlord that the Construction Commencement Date has occurred, then Tenant, at Tenant's cost, shall have the right (but not the obligation) to remove the existing weather tower and model airplane runway and shelter (collectively the "Existing Improvements") from the Premises without liability for damages to the Existing Improvements to Landlord and/or to any other third party owners, tenants, or users of the Existing Improvements. Tenant, at Tenant's cost, shall promptly repair areas of the Premises disturbed by Tenant's removal of the Existing Improvements.

4. **Lease Contingencies and Tenant's Due Diligence.**

(a) **Lease Contingencies.** Tenant's obligation to perform hereunder shall be subject to the satisfaction of the following contingencies (collectively the "Contingencies"): (i) Tenant obtaining all necessary permits and approvals from federal, state and local governmental authorities required by Tenant for its Intended Use and to construct and operate its Solar Generating Facility at the Premises with interconnection to the grid for the sale and delivery of electrical power; (ii) Tenant's review and approval of title and survey matters with respect to the Premises, the environmental, geological, geotechnical, and physical condition of the Land; (iii) Tenant obtaining all necessary easements for its Intended Use; (iv) Tenant deciding to lease the Premises in lieu of other sites being considered by Tenant prior to the expiration date of the Due Diligence Period; and (v) Tenant's review and approval of any other matters that Tenant deems relevant to determining whether Tenant's leasing of the Premises is economically and otherwise feasible. Landlord, at no cost to Landlord, agrees to sign any applications or other documents (that require signature by the fee owner of the Premises), and to take all such other actions, as are reasonably required to allow Tenant to, at Tenant's expense, obtain any re-zonings, variances, permits or other approvals required by Tenant for the Intended Use. If Tenant is unable to satisfy the Contingencies to Tenant's satisfaction prior to the expiration date of the Due Diligence Period, or if Tenant otherwise determines that Tenant's leasing of the Premises is not feasible or desirable for any reason whatsoever, Tenant may terminate this Lease by giving written notice to Landlord prior to the expiration date of the Due Diligence Period. In addition, the Tenant's right to terminate this Lease pursuant to this Section 4(a) shall expire on the Construction Commencement Date and is further subject to the conditions specified in Section 9 of this Lease. If Tenant terminates this Lease prior to the expiration date of the Due Diligence Period and the Construction Commencement Date pursuant to this Section 4(a), no payment by Tenant for the Construction Period as set forth in Section 3(b) of this Lease and no rent as set forth in Section 5 of this Lease shall be due or payable to Landlord hereunder.

(b) **Due Diligence, Inspections, Title and Survey.** After the Effective Date, Tenant and its employees, agents, contractors, and authorized representations shall be entitled to enter the Premises and conduct, at Tenant's expense, inspections, investigations, studies, surveys, borings, sampling, and testing of the Premises as Tenant deems necessary or desirable to determine if the Premises is suitable for Tenant's Intended Use (the "Due Diligence Work"). Within sixty (60) days after the Commencement Date, Tenant shall obtain a survey of the Premises (the "Survey"). The Survey's legal description shall be deemed to be the legal description of the Land for all purposes under this Lease (including determining the amount of rent payable during the Term). After the Commencement Date, Tenant may, at Tenant's expense, conduct the necessary survey(s) and submit the required filings to the local governmental authority having jurisdiction to subdivide the parcel(s) of Land comprising the Premises so that the Premises are contained within one or more tax parcels separate from other adjacent property owned by the Landlord.

5. **Rent and Annual REC Price Adjustment for Delivery of Renewable Energy Certificates.**

(a) **Annual Rent.** Commencing on the Commencement Date and subject to the Annual REC Price Adjustment (as set forth in Section 5(c)(iii) hereof), **Tenant shall pay Landlord annual rent during the Term in the sum of Seven Hundred Dollars (\$700.00)** per Usable Acre of Land located within the Premises (prorated for any fractional acres), as evidenced and determined by the Survey. As used herein, "Usable Acre" shall mean the gross acreage of the Land including shade buffers, less any acreage located within public road right of way, wetlands, jurisdictional streams, NCDEQ-required stream buffers,

watersheds, endangered species habitat, sites of protected cultural resources and/or flood plains, as determined by the Survey or Tenant's investigation of the Premises. Rent shall be payable on an annual basis, with the first annual payment of rent being due within thirty (30) days after the Commencement Date and subsequent payments of rent being due every twelve (12) months thereafter.

(b) Rent Payments. The payment of rent for any fractional calendar year during the Term shall be prorated. The Tenant shall receive a credit against the initial installment(s) of rent in an amount that is the pro-rated portion paid by Tenant during the Construction Period attributable to the number of months from the Commencement Date through the date up to which Tenant previously made payments pursuant to Section 3(b) of this Lease. If Tenant fails to pay any installment of rent to Landlord by the date that the same is due hereunder, and such failure continues for a period of (15) days after Landlord provides Tenant with written notice of such failure to pay, Tenant will pay a late fee to the Landlord in the amount of three percent (3.0%) of such unpaid delinquent rent amount.

(c) Delivery of Renewable Energy Certificates; Tenant's Ownership of the Solar Generated Energy; and Annual REC Price Adjustment.

(i) Renewable Energy Certificate - Defined. As used in this Lease, the term "Renewable Energy Certificate" means a tradable instrument that is equal to one megawatt hour of electricity or equivalent energy supplied by a renewable energy facility, new renewable energy facility, or reduced by implementation of an energy efficiency measure that is used to track and verify compliance with the requirements of the Renewable Energy and Energy Efficiency Portfolio Standard as determined by the North Carolina Utilities Commission (or any successor thereto). A "Renewable Energy Certificate" does not include the related emission reductions, including, but not limited to, reductions of sulfur dioxide, oxides of nitrogen, mercury, or carbon dioxide.

(ii) Tenant's Exclusive Ownership of the Solar Generated Energy. The Landlord recognizes, acknowledges and agrees that Tenant expressly retains the right to make public statements and claims that Tenant is the exclusive owner and operator of the Solar Generating Facility and all of the solar generated energy supplied and delivered from the Solar Generating Facility into the Tenant's electrical grid. Tenant shall retain title to and be the legal and beneficial owner of the Solar Generating Facility at all times. Landlord shall provide timely notice of Tenant's title and sole ownership of the Solar Generating Facility to all persons that have, or may come to have, an interest in or lien upon the Land comprising the Premises. Except as otherwise specifically provided in Section 5(c)(i) of this Lease, Tenant shall be the exclusive owner of the energy and all aspects of the energy generated by the Solar Generating Facility. Without limiting the generality of the foregoing, Tenant shall have the exclusive right to claim that the energy generated by the Solar Generating Facility was delivered into Tenant's electrical grid for use by Tenant's customers, and including but not limited to, any impacts of or avoidances resulting from such deliveries into Tenant's electrical grid.

(iii) Delivery of Renewable Energy Certificates; Annual REC Price Adjustment Netted and Deducted from Tenant's Annual Rent Payment. During the Term (and any Renewal Term) of this Lease, and for and in consideration of the Annual REC Price Adjustment (as hereinafter defined, calculated, and adjusted), Tenant agrees to deliver to Landlord the Renewable Energy Certificates associated with the generation of energy from the Solar Generating Facility. The Landlord and Tenant agree that the Annual REC Price Adjustment shall not exceed the total amount of annual rent then payable by Tenant and shall be netted, offset, and deducted from the amount of each of Tenant's annual rent payments to Landlord; provided however, Tenant's first annual rent payment to Landlord due within thirty (30) days after the Commencement Date shall not be subject to the Annual REC Price Adjustment.

The “Annual REC Price Adjustment” shall be calculated and determined as follows: During each of the first five (5) years of the Term, the Annual REC Price Adjustment shall be calculated by multiplying \$0.01 and the total number of Renewable Energy Certificates associated with the generation of energy from the Solar Energy Facility delivered by Tenant to Landlord during the immediately preceding lease year. The term “immediately preceding lease year” as used in this Lease refers in each case to the year preceding the year to be adjusted. Commencing on the sixth (6th) anniversary date of the Commencement Date and continuing through the remainder of the Term, the Annual REC Price Adjustment shall be calculated by multiplying \$1.00 and the total number of Renewable Energy Certificates associated with the generation of energy from the Solar Energy Facility that were delivered by the Tenant to Landlord during the immediately preceding lease year.

6. **Utilities, Maintenance and Repairs.** Tenant shall pay for all utilities used at the Premises by Tenant. Tenant, at Tenant’s cost, shall be responsible for the repair and maintenance of the Solar Generating Facility and Tenant’s improvements on the Premises.

7. **Alterations.** Tenant may, at its expense, make any alterations, additions, improvements and changes to the Premises as it may deem necessary or desirable in the operation of its business or Solar Generating Facility, without the consent of Landlord, including without limitation any fencing, security devices and or signage desired by Tenant. Any alteration, addition, improvement or change conducted by Tenant shall be done in compliance with applicable laws and requirements of governmental agencies having jurisdiction, including without limitation any Landfill Requirements (as defined in Section 25(c) of this Lease) to the extent applicable to any such alteration, addition, improvement, or change conducted by Tenant). Landlord, at no cost to Landlord, agrees to sign any permit applications and to take all such other actions as are reasonably required to allow Tenant to accomplish any such alterations, additions, improvements and changes to the Premises. The Solar Generating Facility and any and all improvements constructed on the Premises by or for Tenant, and all machinery, fixtures, trade fixtures, equipment, and other personal property installed or placed in the Premises by or for Tenant, shall, regardless of the manner of attachment to the Premises or the improvements thereon, be and at all times remain the property of Tenant, and shall be removable by it at any time and from time to time during the Term and at the expiration or earlier termination of this Lease. In the event that Tenant removes any trees, crops (if any) or other vegetation from the Premises during the Term, Tenant may dispose of the same, and any revenues derived by Tenant from the sale of the same shall belong to Tenant.

8. **Use and Occupancy.** Tenant shall be entitled to use the Premises for the Intended Use. Tenant agrees that no unlawful use of the Premises will be made. Landlord shall deliver sole and exclusive possession of the Premises to the Tenant on the Construction Commencement Date, subject to Landlord’s right to enter the Premises in accordance with Section 29 of this Lease for purposes of Landlord’s compliance with its obligations in Section 25 hereof concerning the Landfill.

9. **Lease Termination and Surrender of Land.**

(a) **Termination Rights.** Tenant shall have the right to terminate this Lease as of the date that is thirty-six (36) months after the Commencement Date (the “Termination Date”) by providing Landlord with written notice of such termination on or before the date that is thirty (30) days prior to the Termination Date. Rent shall be prorated as of the Termination Date. Additionally, Tenant shall have the right to terminate this Lease in the event that its power purchase agreement, or other agreement, under which Tenant provides power generated at the Premises to a third party, is terminated for any reason whatsoever (other than a termination due to a default by Tenant under such agreement). Upon a termination of this Lease by

Tenant permitted hereunder, this Lease shall terminate and become null and void, and Tenant shall have no further obligations hereunder.

(b) Surrender of Land. Upon the expiration or earlier termination of this Lease, Tenant shall (i) return the Land to Landlord in substantially the same condition the same were in as of the Construction Commencement Date, to the extent practicable and reasonable wear and tear excepted; and if applicable, (ii) decommission and remove Tenant's Solar Generating Facility and all improvements and equipment constructed or installed by Tenant on the Land. Notwithstanding the foregoing, in no event shall Tenant have any obligation to replace any crops (if any) or other vegetation damaged or removed by Tenant during the Term.

10. Insurance. Notwithstanding anything to the contrary in this Section 10, Tenant may self-insure as to all insurance coverages and obligations under this Lease. Tenant shall provide a letter of Self-Insurance to Landlord upon request, including prior to the Effective Date. If Tenant elects not to utilize self-insurance with respect to this Lease, then Tenant agrees its insurance policies shall be endorsed evidencing the minimum insurance coverage and limits set forth in this Section 10. The insurance coverage and limits set forth herein shall be deemed minimum coverage limits and shall not be construed in any way as a limitation on Tenant's duty to carry adequate insurance. The insurance coverage and limits set forth below shall not act as, be construed, or deemed to be a limitation on the liability and obligations of Tenant for losses or damages under this Lease. If Tenant does not elect to utilize self-insurance, then the minimum insurance coverage which the Tenant shall procure and maintain at its sole cost and expense during the Term of the Lease is as follows:

(a) Worker's Compensation. Coverage at the statutory limits in compliance with applicable North Carolina and Federal laws. Tenant shall ensure that any subcontractors of Tenant entering the Premises also have workers compensation coverage at the statutory limits.

(b) Employer's Liability. Coverage with minimum limits of \$1,000,000 each employee accident and \$1,000,000 each employee disease.

(c) Commercial General Liability. Insurance covering all operations performed by or on behalf of the Tenant (including by Tenant's subcontractors) in fulfillment of this Lease with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Landlord shall be included as an additional insured under any commercial general liability policy of Tenant or Tenant's subcontractors.

(d) Commercial/Business Automobile Liability. Insurance covering all owned, non-owned, and hired vehicles used in performance of this Lease. The minimum combined single limit each accident for bodily injury, death, and property damage shall be \$1,000,000 and shall include uninsured/underinsured motorist coverage per N.C. Gen. Stat. § 20-279.21. Landlord shall be included as an additional insured under any commercial/business automotive liability policy of Tenant or Tenant's subcontractors.

(e) Umbrella/Excess. Coverage with available limits of at least \$5,000,000 per occurrence and in the aggregate which follows the form of the underlying commercial general liability and commercial/business automotive liability insurance required hereunder and provide the same scope of coverages thereunder. Landlord shall be included as an additional insured under any umbrella/excess liability policy of Tenant or Tenant's subcontractors.

(f) **Property.** Tenant shall not be obligated to maintain property insurance on its Solar Generating Facility, Tenant's personal property, or other improvements constructed on the Premises by or for Tenant. However, the Solar Generating Facility and any and all improvements constructed on the Premises by or for Tenant, and all other machinery, fixtures, trade fixtures, equipment, and other personal property installed or placed in the Premises by or for Tenant (and of persons claiming by, through, or under Tenant which may be located on the Premises) shall be at the sole risk and hazard of Tenant and no part of loss or damages to such property from whatever cause shall be the responsibility of, charged to, or borne by the Landlord, except as otherwise provided in this Lease.

(g) **Additional Insurance Provisions.** (i) The Tenant shall provide the Landlord with certificates of insurance from Tenant's subcontractors (and from Tenant in the event Tenant elects not to utilize self-insurance) evidencing the above amounts upon Landlord's request, including before commencing construction of the Solar Generating Facility and for any subsequent Renewal Terms. (ii) Each insurance policy required herein shall state that coverage shall not be canceled, except with written notice to the Landlord, delivered in accordance with the policy provisions. All insurance shall be procured from reputable insurers authorized and qualified to do business in North Carolina and in a form acceptable to the Landlord. Tenant shall require and verify that all subcontractors of Tenant entering the Premises maintain insurance meeting all the requirements stated herein.

(h) **Waiver of Subrogation.** Tenant hereby grants to Landlord a waiver of any right to subrogation which any insurer of Tenant may acquire against the Landlord by virtue of payment of any loss under such insurance. Tenant agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation.

11. **Taxes.** Pursuant to N.C. Gen. Stat. §105-278.1(b), the Premises is currently exempted from taxation. During the Term, Tenant shall pay when due any and all ad valorem taxes that become due on the Premises, Tenant's Solar Generating Facility, or Tenant's other personal property by reason of Tenant's construction of the Solar Generating Facility as contemplated herein. During the Term, Tenant, at its cost, shall have the right, at any time, to seek a reduction in the assessed valuation of the Premises or to contest any taxes that are assessed against the Premises (or any portion thereof) or are to be paid by Tenant. If Tenant seeks a reduction or contests any taxes, the failure on Tenant's part to pay the taxes shall not constitute a default as long as Tenant complies with the provisions of this Section 11.

12. **Fire or Other Casualty.** In the event that the Premises, Solar Generating Facility, the improvements thereon, or any portions thereof, are damaged by fire or other casualty during the Term, and if in Tenant's sole reasonable judgment, the damage is of such nature or extent that it is uneconomical to repair and restore the Premises, the Solar Generating Facility, or other improvements thereon, as the case may be, Tenant may terminate this Lease by written notice to Landlord. The proceeds of any casualty insurance policy maintained by Tenant shall be payable to Tenant. In the event of such termination, rent shall be prorated as of the effective date of termination.

13. **Condemnation.**

(a) If the whole of the Premises shall be taken under the exercise of the power of eminent domain or by agreement with any condemnor in lieu of such taking, or such portion thereof that, in Tenant's judgment, the remainder of the Premises is not suitable for Tenant's purposes (a "**Total Taking**"), then this Lease shall terminate as of the earlier of the date when title thereto vests in the condemnor or the date when possession thereof shall be delivered to the condemnor.

(b) If a portion or portions of the Premises shall be taken under the exercise of the power of eminent domain or by agreement with any condemnor in lieu of such taking, and such taking does not constitute a Total Taking (a “Partial Taking”), then this Lease, only as to the portion or portions so taken, shall terminate as of the date possession thereof shall be delivered to the condemnor, but otherwise this Lease shall remain in full force and effect. In the case of a Partial Taking, the rent payable under this Lease after possession of the portion so taken shall be reduced pro-rata based on the acreage so taken. If there is any Partial Taking, the Landlord and the Tenant shall both be entitled to participate in the condemnation proceeding to establish the condemnation award to the taking of each parties’ interest in the Premises.

(c) If Landlord and Tenant are unable to obtain separate awards with respect to their respective interests in the Premises, then, the single award shall be fairly and equitably apportioned between Landlord and Tenant. The portion of the award to be received by Landlord shall be based upon the taking of or injury to the fee simple estate in the Land, but not the improvements thereon. The portion of the award to be received by Tenant shall be based upon the taking and reduction of Tenant’s leasehold estate created by this Lease, the taking of any improvements constructed or placed by Tenant on the Land, loss or interruption of Tenant’s business and the cost of any restoration or repair necessitated by such taking or condemnation. Notwithstanding the foregoing, however, in the event Tenant has exercised its right to terminate this Lease under this Section 13, then Tenant shall first receive all condemnation proceeds until Tenant has received an amount equal to the appraised value of the improvements made to the Land by Tenant prior to the taking. Tenant shall have the right to participate, at its own expense, in any such condemnation proceedings and to negotiate on behalf of itself in such proceedings; provided, however, Tenant shall not enter into any binding agreement or settlement to which Landlord is a party without the prior consent of Landlord. Landlord agrees to cooperate with Tenant and to execute such documentation as may be reasonably necessary to allow Tenant to participate in such condemnation proceedings.

14. **Default.** If either party fails to comply with any term, covenant or condition of this Lease for a period of thirty (30) days after the defaulting party’s receipt of written notice from the other party of such failure (provided, however, if such failure cannot reasonably be cured within such thirty (30) day period, the defaulting party shall not be in default hereunder if it commences to cure within such thirty (30) day period and prosecutes the cure to completion in good faith and with due diligence), then the defaulting party shall be deemed in default hereunder and the other party may, at its option, may pursue any and all remedies available to such party at law or in equity. If there a default by a party hereunder, the non-defaulting party will take commercially reasonable measures to mitigate its damages.

15. **Binding Effect; Assignment and Subletting.** This Lease shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. Tenant may assign this Lease, in whole or in part, or sublet the Premises, or any part thereof, without Landlord’s prior consent, provided that any such assignee shall agree in writing to be bound by all of the terms and conditions of this Lease. Landlord shall promptly notify Tenant in writing of the identity and address of any purchaser of Landlord’s fee interest in the Premises and Landlord shall cause such purchaser to notify Tenant in writing of the address for payment of rent.

16. **Indemnification.** Subject to the terms of this Agreement, Tenant covenants to indemnify, defend and hold Landlord harmless from and against any and all claims, damages, liabilities, judgments, costs, and expenses, including reasonable attorney’s fees and court costs, incurred or suffered by Landlord on account of personal injuries, deaths, or damages to property occurring at the Premises arising out of or in connection with Tenant’s use and occupancy of the Premises. Tenant shall promptly notify Landlord of any claim, action, proceeding or suit instituted or threatened by one or more third parties against Landlord arising out of or related to this Lease or the Premises of which Tenant receives notice or of which Tenant acquires knowledge. In the event the Landlord is made a party to any such third party action for damages

21. **Memorandum of Lease.** Landlord and Tenant agree that this entire Lease shall not be recorded; provided however, promptly after the full execution of this Lease, Landlord and Tenant shall execute and record (at Tenant's expense) a memorandum of this Lease in the Office of the Register of Deeds in the County in which the Premises is located and which memorandum shall be in form sufficient to publish notice and protect the validity of this Lease and Tenant's rights hereunder. The lease memorandum shall specify the Commencement Date, the Expiration Date, the Renewal Terms granted herein, and such other provisions of this Lease as the parties mutually agree to incorporate therein.

22. **Governing Law and Lease Dispute Resolution.** This Lease shall be construed and enforced in accordance with the laws of the State of North Carolina. Any claim, dispute, or other material matter in question arising out of or related to this Lease ("Lease Dispute") that cannot first be resolved by the parties within forty-five (45) days after its escalation to DEP's executive management and Landlord's officials, shall be subject to voluntary non-binding mediation as a condition precedent to the institution of legal or equitable proceedings by either party. If the parties are unable to agree upon a certified mediator to hear the Lease Dispute, the then President of the Buncombe County Bar Association shall name a mediator (other than the mediators that the parties proposed but could not mutually agree) to hear the matter. Each party shall bear its own costs and expenses in seeking resolution of any Lease Dispute pursuant to mediation. The parties shall equally share the mediator's fee. The mediation shall be held in Asheville, N.C. at a location designated by the mediator selected to hear the matter and at a time and date mutually agreed upon by the parties. The dispute resolution procedures in this Section 22 hereof shall not preclude either party from exercising remedies in the event of a default by the other party while the Lease Dispute is being resolved. If the Lease Dispute cannot be resolved within thirty (30) days after the mediation is held, then either party may pursue any rights or remedies available at law or in equity through judicial relief.

23. **Invalidity of Particular Provisions.** If any term or provision of this Lease shall to any extent be ruled invalid or unenforceable by a court of competent jurisdiction, the remainder of this Lease shall not be affected thereby and each other term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

24. **Subordination/Non-Disturbance Agreement.**

(a) Tenant's obligation to subordinate its interests or attorn to any mortgagees or beneficiaries of mortgages or deeds of trust, or any other holders of liens on the Premises or any portion thereof (each hereinafter a "Mortgagee") that may heretofore or hereafter be placed against the Premises by Landlord is conditioned upon the Mortgagee's written agreement not to disturb Tenant's possession, quiet enjoyment of the Premises, and rights under this Lease so long as Tenant is not in default under the terms of this Lease (beyond any applicable notice and cure periods). Landlord shall use commercially reasonable efforts to provide to Tenant, on or before the expiration date of the Due Diligence Period and Construction Commencement Date, a subordination, non-disturbance, and attornment agreement from any and all current Mortgagees that is reasonably acceptable to Tenant. With respect to any future Mortgagee of a mortgage or deed of trust, Landlord shall use commercially reasonable efforts to obtain from such future Mortgagee a subordination, non-disturbance, and attornment agreement that is reasonably acceptable to Tenant.

(b) In the event any proceedings are brought for foreclosure of any mortgage or deed of trust on the Premises, Tenant will attorn to the purchaser at a foreclosure sale on acquiring Landlord's interest in the Premises and the Lease, and any assignee thereof, and recognize such purchaser or assignee as Landlord under this Lease provided such purchaser or assignee agrees in writing not to disturb Tenant's possession or rights under this Lease or in the Premises, and to acknowledge all of Tenant's rights hereunder, so long as Tenant is not in default under the terms of this Lease (beyond any applicable notice

and cure periods). Tenant agrees to give any such Mortgagee of whom Tenant has been informed in writing, written notice of any default or failure to perform by Landlord under this Lease. Such Mortgagee shall have the same amount of time afforded to Landlord hereunder to cure any Landlord default; and Tenant shall accept such cure if timely and effectively made by such Mortgagee.

25. **Landfill Provisions.**

(a) **Description of Landfill.** The parties acknowledge and agree that a closed and capped municipal solid waste (nonhazardous) landfill is located on all or a part of the Premises (the "Landfill").

(b) **Definitions.** As used in this Lease, the following terms are defined as follows:

(i) The term "Environmental Laws" means any applicable federal, state, or local statute, law (including without limitation common law), rule, regulation, ordinance, code, standards, or requirement of any governmental authority in each case having the force and effect of law now or hereafter in effect and in each case as amended, including any legally binding judicial or administrative order, consent decree or judgment relating to the environment, natural resources, pollution, Hazardous Materials, landfills, public health and safety, and occupational safety in each case as amended from time to time, including without limitation, the Clean Air Act, the Comprehensive Environmental Response, Compensation, and Liability Act as amended by the Superfund Amendments and Reauthorization Act of 1986, Resource Conservation and Recovery Act, Federal Water Pollution Control Act, Toxic Substances Control Act, Oil Pollution Act, Safe Drinking Water Act, Occupational Safety and Health Act, Hazardous Materials Transportation Act, and any state or local laws implementing or analogous to the foregoing federal laws, and including without limitation, all those relating to the presence, use, production, generation, handling, transportation, treatment, storage, monitoring, disposal, distribution, labeling, testing, processing, discharge, release, control, or Remediation of any Hazardous Materials, each as amended and as now or hereafter in effect.

(ii) The term "Hazardous Materials" means any (A) substance, chemical, pollutant, contaminant, waste, mixture or other material which is or becomes defined, regulated, listed in, designated, or otherwise is or becomes classified pursuant to any Environmental Laws as a "hazardous substance", "hazardous material", "hazardous waste", "toxic substance", "solid waste", "special waste", "extremely hazardous waste", or any other formulation intended to define, list, or classify substances or materials by reason of deleterious properties or by reason of harm to human health or the environment, such as ignitability, corrosiveness, reactivity, carcinogenicity, toxicity, infectiousness, radioactivity, explosiveness, or flammability; and/or (B) methane, methane gas, oil, used oil, petroleum, or petroleum derived substances, gasoline, kerosene, lead and lead based paint, asbestos, and asbestos-containing materials, radon, urea-formaldehyde, and PCBs.

(iii) The term "Landfill Contamination" means the presence, release, spill, leak, emission, deposit, discharge, leaching, disposing, dumping, dispersion of any Hazardous Materials or non-hazardous leachate on, at, or under the Premises (or migrating from the Premises onto other real property) caused by, attributable to, originating and/or resulting from the Landfill in violation of applicable Environmental Laws.

(iv) "Remediate" or "Remediation" means any cleanup, investigation, monitoring, assessment, sampling and analysis, system installation, removal, containment, restoration, abatement, closure or post-closure work, mitigation, or other remedial or corrective actions in connection with Hazardous Materials.

(c) Landfill Requirements - Landlord. On and after the Effective Date and during the Term of this Lease, Landlord, at Landlord's cost, shall be responsible for the Landfill's compliance with all federal, state, and local laws (including without limitation Environmental Laws), regulations, rules, permits, and requirements of governmental authorities having jurisdiction applicable to the Landfill, including without limitation, matters involving the Landfill's closure and post-closure activities, inspections, maintenance, repairs, monitoring, Remediation, storm water management and runoff, leachate, reporting, and/or recordkeeping pursuant to Environmental Laws (collectively the "Landfill Requirements"). With regard to any Remediation required by Environmental Laws, the U.S. Environmental Protection Agency ("USEPA"), N.C. Department of Environmental Quality ("NCDEQ"), and/or any other governmental authorities having jurisdiction, or any third party claim (by any person or governmental authority), arising out of, resulting from, or in any way related to the presence of the Landfill Contamination (whether currently known or unknown), as between the parties, the Landlord shall be solely responsible, at the Landlord's cost, for such Remediation or third party claim. Landlord and Landlord's employees, agents, and contractors shall perform any actions or work at the Landfill (including any portion of the Landfill within the Premises) in accordance with applicable Landfill Requirements. It is understood and agreed that Landlord, and Landlord's employees, agents, contractors, guests, subtenants and designees requires access to the Premises in order to operate and maintain the active landfill gas collection system. Access to the Premises is also required for Landlord, and Landlord's employees, agents, contractors, guests, subtenants and designees in order to properly maintain the cap to the closed landfill on the Premises. Such access by Landlord, and Landlord's employees, agents, contractors, guests, subtenants and designees to the Land shall be conducted in accordance with paragraph 29, Access, below.

(d) Landfill Requirements – Tenant. Tenant, at Tenant's cost, shall comply with any Landfill Requirements applicable to the Tenant's design, siting, construction, installation, operation, maintenance, repair, permitting, and/or removal of Tenant's Solar Generating Facility. Tenant shall be responsible, as between the parties, for any Remediation required of Tenant by applicable Environmental Laws, the USEPA, NCDEQ, and/or other governmental authorities having jurisdiction arising out of any release in violation of Environmental Laws caused by Tenant (or its employees, agents or contractors) of Hazardous Materials brought onto the Premises by Tenant (or its employees, agents, or contractors) in the first instance after the Effective Date. Tenant and Tenant's employees, agents, and contractors shall perform any actions or work at the Premises in accordance with applicable Landfill Requirements. Tenant has no obligation under this Lease to undertake any Remediation relating to the Landfill Contamination, except to the extent any such Remediation is caused by Tenant and required by the NCDEQ. Tenant does not assume any liability or responsibility for any Landfill Contamination or any environmental impacts or damage occurring prior to or after the Effective Date of this Lease caused by Landlord (or Landlord's employees, agents, or contractors).

(e) Landfill Cap/Liner. On and after the Effective Date and during the Term of this Lease, Tenant shall not (i) conduct (or cause to be conducted) any activities on the Premises that will, or are reasonably likely to, penetrate any Landfill capping or liner material or otherwise materially threaten the integrity of any Landfill cap or liner; (ii) violate any applicable Landfill Requirements; and/or (iii) unreasonably interfere with Landlord's employees, agents, and contractors access and entry to the Landfill for performance of any obligations or duties required of Landlord pursuant to and in accordance with applicable Landfill Requirements and this Lease or other actions necessary to maintain the Landfill's compliance with applicable Landfill Requirements. If Tenant (or any of Tenant's employees, agents, or contractors) damages the Landfill cap or liner, Tenant, at Tenant's cost, shall promptly and diligently repair and restore any such damaged areas or materials to substantially the same condition as existed prior to the occurrence of the damage and in a condition consistent with applicable Landfill Requirements. Tenant

shall be responsible for actions and costs associated with state (NCDEQ) permitting and approvals required prior to and for any type of work on the Premises performed by Tenant's employees, contractors, and agents pursuant to this Lease, including any repair of damages to the Premises or Remediation caused by Tenant and Tenant's employees, agents, contractors, guests, subtenants, and designees, as and to the extent required of Tenant by this Lease.

(f) Subsidence and Settlement of Landfill Cap. Landlord and Tenant acknowledge and agree that, notwithstanding anything to the contrary in this Lease, neither Landlord nor Tenant shall be responsible for the following matters: (i) the subsidence or settlement of all or any part of the Landfill cap arising from the natural or ordinary decay or settlement of material constituting, underlying, or beneath the Landfill cap, including, but not limited to, as may result from the decay of waste buried beneath the Landfill cap, or the failure of the Landfill cap through no fault of Landlord or Tenant or their respective employees, agents, or contractors; or (ii) the effects of such subsidence or settlement on the Solar Generating Facility. For the avoidance of doubt, this Section 25(f) of the Lease shall not relieve Tenant of responsibility for subsidence, if any, solely caused or exacerbated by the Tenant's Solar Generating Facility, or with respect to Tenant's obligations to construct, operate and maintain the Solar Generating Facility in accordance with the terms of this Lease.

(g) Indemnification. To the extent allowed by applicable laws, Landlord shall indemnify, defend, and hold Tenant harmless from and against any claims, liabilities, damages, fines, penalties, enforcement actions, notices of violation or non-compliance, suits, demands, losses, costs and/or expenses (including reasonable attorney's fees, consultant's fees, and court costs) suffered or incurred by Tenant arising out of, related to, or associated with (i) the Landfill Contamination, and/or (ii) the Landlord's (or any of its employee's, agent's, or contractor's) failure to comply with applicable Landfill Requirements or Landlord's obligations under this Section 25 of the Lease. The Landlord's indemnity obligation under this Section 25(g) of the Lease shall survive the expiration or any sooner termination of this Lease.

26. Warranties and Representations.

(a) Tenant hereby agrees with, and warrants and represents to Landlord as follows: (i) Tenant is a duly formed and validly existing entity, incorporated or organized under the laws of the State in which it was incorporated or organized; (ii) Tenant has the full legal right, power and authority to execute this Lease and all documents now or hereafter to be executed by it pursuant to this Lease; (iii) this Lease has been duly authorized by all requisite entity action on the part of the Tenant, and is the valid and legally binding obligation of Tenant, enforceable in accordance with its terms; (iv) this Lease will not contravene any provision of Tenant's organizational documents, any judgment, order, decree, writ or injunction issued against Tenant or any provision of any laws applicable to Tenant; and (v) the consummation of the transaction contemplated hereby will not result in a breach or constitute a default or event of default by Tenant under any agreement to which Tenant or any of its assets are subject or bound and will not result in a violation of any laws applicable to Tenant.

(b) Landlord hereby agrees with, and warrants and represents to Tenant as follows: (i) Landlord is the owner of the Premises with full right and authority to execute this Lease and to lease the Premises to Tenant in accordance with the terms hereof; (ii) to the best of Landlord's knowledge, the Premises complies with any and all applicable laws, rules, and ordinances, including without limitation any and all applicable Environmental Laws, except as to any Landfill Contamination that Landlord has disclosed to Tenant through separate written reports provided by Landlord to Tenant prior to the expiration of the Due Diligence Period; (iii) Landlord has not received any notice of condemnation, zoning change or legal notice of violation or noncompliance relating to the Premises or Landfill; (iv) Landlord will not

institute or consent to any rezoning of the Premises during the Term, unless specifically requested by Tenant; (v) Landlord shall not further encumber the title to the Premises after the Effective Date and during the Term; (vi) Landlord acknowledges that access to sunlight is essential to the value of the rights granted to Tenant under this Lease, and accordingly, Landlord shall not cause or permit any property owned or controlled by Landlord in the vicinity of the Premises, or any activities, uses or improvements thereon, to impair Tenant's use of the Premises or the Solar Generating Facility thereon (for example, and without limiting the generality of the foregoing, Landlord shall not cause or permit any cell towers, water towers, billboards, silos or any other structures to be placed or constructed thereon or permit the growth of any foliage that may obstruct the sunlight that otherwise would reach the Premises, or that may cast shade or shadows upon the Premises or any portion thereof); (vii) to the best of Landlord's knowledge, the Premises is free from any recorded or unrecorded use or occupancy restrictions or declarations of restrictive covenants; (viii) there are no service or maintenance contracts affecting the Premises for which Tenant may be obligated or liable for; (ix) there are no delinquent or outstanding assessments, liens, taxes, or other impositions levied or assessed against the Premises; (x) to the best of Landlord's knowledge, there is no pending or threatened lawsuit, claim, or legal proceeding against Landlord, the Premises, or Landfill that could affect the Tenant's rights under this Lease or the Landlord's ability to perform Landlord's obligations hereunder; (xi) to the best of Landlord's knowledge, except for this Lease, there are no leases, options to purchase, license agreements or other third party rights to use or possess the Premises (or any portion thereof), whether written or oral, recorded or unrecorded; (xii) Landlord is not in the hands of a receiver nor is an application for such a receiver pending; (xiii) Landlord has made no assignment for the benefit of creditors, nor filed, or had filed against it, any petition in bankruptcy; and (xiv) within thirty (30) business days after the Effective Date, Landlord shall use reasonable best efforts to provide copies of the following documents with respect to the Premises in Landlord's possession or reasonably available to Landlord: (a) any notices of any statute or code violation; (b) to the extent assignable, copies of all documents, contracts, reports, communications, or other materials reasonably requested by Tenant, that relate to the design, development, construction, condition, ownership or operation of the Premises; (c) surveys of the Land, engineering studies, soil suitability and compaction studies, Landfill permits, other environmental permits, local zoning permits, variances, waivers, or similar documents; (d) environmental reports and audits (including, but not limited to, all "Phase I" environmental site assessments and other environmental assessment and Remediation reports pertaining to the Landfill and Premises); (e) liens, mortgages, deeds of trust, leases, easements, restrictions, covenants, and agreements applicable to the Premises; and (f) title commitments, title policies, title opinions, and other title or survey information. Landlord shall have a continuing obligation to provide to Tenant the documents, if any, referenced in subparts (a) through (f) above, which may come into Landlord's possession, or become available to Landlord, during the Due Diligence Period. The representations of Landlord under this Section 26(b) shall in no way limit or excuse the Contingencies set forth in Section 4(a) hereof and Tenant's Due Diligence Work pursuant to Section 4(b) hereof.

27. **Brokerage Commission.** Neither Landlord nor Tenant knows of any real estate brokers or agents who are or may be entitled to any commission or finder's fee in connection with this Lease. Each party hereto agrees to indemnify and hold the other party harmless from and against any and all claims, demands, losses, liabilities, lawsuits, judgments, costs and expenses (including without limitation, fees for legal counsel and costs) with respect to any leasing commission or equivalent compensation alleged to be owing on account of such party's discussions, negotiations and/or dealings with any real estate broker or agent.

28. **Easements.** Landlord agrees to reasonably cooperate with Tenant in granting easements and rights of way on adjacent property owned by Landlord necessary to serve the Premises for the Tenant's Intended Use. Landlord covenants and agrees that Landlord shall, upon the request of Tenant, join in the

execution of any such easement. Tenant is hereby authorized to grant such easements across, under and over the Premises as are necessary for rights of way, ingress and egress, and for the installation, construction, operation, maintenance, repair and replacement of utility lines and related facilities serving the Premises, including without limitation any such easements required to connect the Premises to a receiver of electric power generated at the Premises.

29. **Access.** Tenant and Tenant's employees, agents, contractors, guests, subtenants and designees shall have non-exclusive access to the Premises and may use the Landlord's access roads at the Landfill for ingress, egress, and regress to and from the Premises, all in common with Landlord, at all times after the Effective Date and during the Term. Landlord, at Landlord's cost, shall be responsible for maintaining the Landlord's access roads at the Landfill in driveable condition, except that Tenant, at Tenant's cost, shall repair any damages to such access roads caused by Tenant or Tenant's employees, agents, contractors, guests, subtenants and designees. All employees, agents, and contractors of Landlord or Tenant entering Tenant's secured fenced portion(s) of the Premises shall have received all required and proper training with respect to work at, on, or near energized electric systems and equipment, including National Electric Safety Code (NESC) and OSHA requirements regarding working near live electrical systems and equipment. Tenant agrees to provide such training to Landlord's employees, at no cost to Landlord. At least one employee, agent, or contractor of Landlord or Tenant entering Tenant's secured fenced portion(s) of the Premises shall be required to have satisfactorily completed a safety briefing to be conducted by or on behalf of the other party to this Agreement prior to any such entry. Each party shall use its best efforts to notify the other party of any access to the Premises prior to or contemporaneously with such access. For purposes of compliance with the Landlord's obligations under Section 25 of this Lease, Landlord is not required to give notice of its entry to the Premises in the event of emergency, law enforcement, and/or security purposes.

30. **Confidentiality.** Landlord acknowledges that Landlord may become privy to confidential information of Tenant, in addition to information regarding the terms of this Lease. To the extent permitted by applicable law, Landlord agrees to take all steps to ensure that any information with regard to Tenant, Tenant's Intended Use of the Premises (and the Tenant's Solar Generating Facility and other improvements thereon) and/or this Lease, shall remain confidential and shall not be disclosed or revealed to outside sources by Landlord or by its employees, officers, agents, counsel, accountants or representatives, except as otherwise required by law or court order. Should any third party request records pertinent to this Lease and Tenant's Intended Use, then Landlord will notify Tenant prior to the release of any pertinent public record. Tenant acknowledges that Landlord by law must comply with Chapter 132 of the North Carolina General Statutes.

31. **Estoppel.** Within fifteen (15) business days after written request therefor by Tenant, Landlord shall deliver a certificate to Tenant, Tenant's lender (if applicable) and/or any proposed assignee of Tenant, in a commercially reasonable form, setting forth the terms of this Lease, the absence of default hereunder, and such other reasonable terms as may be requested by Tenant or by such lender or assignee. If the Landlord fails to respond within such fifteen (15) business day period, then, in addition to such failure constituting an event of default, all matters set forth in the estoppel certificate shall be deemed to be true, accurate and complete.

32. **Leasehold Mortgages.** Tenant and every successor and assign of Tenant is hereby given the right by Landlord, with Landlord's prior consent (such consent not to be unreasonably withheld, conditioned, or delayed), to mortgage its interest in this Lease and assign its interest in this Lease as collateral security for such mortgage. If Tenant and/or Tenant's successors and assigns shall mortgage all or part of its interest in this Lease and if Tenant or the holder of such mortgage shall send to Landlord a

true copy thereof together with written notice specifying the name and address of the mortgagee and the pertinent recording data with respect to such mortgage, Landlord agrees that so long as the leasehold mortgage remains unsatisfied of record or until written notice of satisfaction is given by the holder to Landlord, the following provisions shall apply:

(a) Landlord shall, upon serving Tenant with any notice of default, simultaneously serve a copy of such notice upon the holder of the leasehold mortgage. The leasehold mortgagee shall have the same period, after service of such notice upon it, to remedy or cause to be remedied the defaults complained of, and Landlord shall accept such leasehold mortgagee's acts if they had been performed by Tenant.

(b) Landlord agrees that in the event of termination of this Lease by reason of any default by Tenant, that Landlord will enter into a new lease for the Premises with the leasehold mortgagee or its nominee for the remainder of the Term effective as of the date of such termination, at the rent and other charges, and upon the terms, provisions, covenants and agreement contained in this Lease, provided:

(i) the mortgagee or its nominee shall pay to Landlord, at the time of execution and delivery of the new lease, any and all sums which would then be due pursuant to this Lease but for such termination; and

(ii) the mortgagee or its nominee shall perform and observe all covenants in this Lease to be performed by Tenant and shall further remedy any other conditions which Tenant was obligated to perform under the terms of this Lease.

(c) Landlord shall, upon request, execute, acknowledge and deliver to each leasehold mortgagee an agreement prepared at the sole cost and expense of Tenant, in form satisfactory to the leasehold mortgagee and to Landlord, between Landlord, Tenant and the leasehold mortgagee confirming the provisions of this Section 32.

The term "mortgage," as used in this Section 32, shall include mortgages, deeds of trust and/or whatever security instruments are used in the State in which the Premises are located from time to time, as well as financing statements, security agreements and other documentation required pursuant to the Uniform Commercial Code.

33. **Bankruptcy.** In the event (i) the Premises or any rights therein shall be levied on by execution or other process of law by a creditor of either party, (ii) if either party shall be adjudged bankrupt or insolvent, (iii) if any party has a petition in bankruptcy filed against it, and such petition is not dismissed within ninety (90) days after the filing thereof, (iv) if any receiver shall be appointed for the business and property of either party, or (v) if any assignment shall be made of either party's property for the benefit of creditors, thereby diminishing any right or privilege granted by this Lease to the other party, then the other party may terminate this Lease forthwith and otherwise exercise any other remedy it may have at law or equity or under this Lease.

34. **Nature and Extent of Agreement/Amendments.** This Lease contains the complete agreement of the parties regarding the terms and conditions of the lease of the Premises, and there are no oral or written conditions, terms, understandings or other agreements pertaining thereto which have not been incorporated herein. This Lease creates only the relationship of landlord and tenant between the parties as to the Premises; and nothing in this Lease shall in any way be construed to impose upon either party any obligations or restrictions not expressly set forth in this Lease. No amendment or modification of this Lease shall be binding unless in writing and duly executed by both parties.

35. **Construction of Lease.** This Lease shall not in any way be construed against either party on the basis of having drafted all or any part of this document. All words used in this Lease will be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the words “including” or “includes” do not limit the preceding words or terms. Section headings are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Lease. In this Lease, all references to an exhibit or section refer to exhibits or sections of this Lease, unless otherwise indicated. Words using the singular or plural form also include the plural or singular form, respectively unless otherwise indicated.

36. **Counterparts.** This Lease may be executed in any number of counterparts, each of which shall be deemed an original once executed and delivered.

[REMAINDER OF PAGE BLANK. SIGNATURE PAGES FOLLOW.]

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease by authority duly given, as of the day and year first above written.

LANDLORD:

COUNTY OF BUNCOMBE

By: _____

Name: _____

Title: _____

STATE OF NORTH CAROLINA

COUNTY OF BUNCOMBE

I, _____, a Notary Public for Buncombe County, North Carolina, certify that _____, either being personally known to me or proven by satisfactory evidence, personally appeared before me this day and acknowledged the voluntary due execution of the foregoing instrument

WITNESS my hand and official stamp or seal this _____ day of _____, 20__.

Notary Public

Printed/Typed Name: _____

My Commission Expires: _____

[AFFIX NOTARIAL STAMP OR SEAL]

IN WITNESS WHEREOF, the parties hereto have duly executed this Lease by authority duly given, as of the day and year first above written.

TENANT:

DUKE ENERGY PROGRESS, LLC

By: _____

Name: Ottis W. Allen

Title: Manager, Land Services Regional

STATE OF NORTH CAROLINA

COUNTY OF _____

I, _____, a Notary Public for _____ County, North Carolina, certify that OTTIS W. ALLEN, either being personally known to me or proven by satisfactory evidence, personally appeared before me this day and acknowledged that he is the Manager, Land Services Regional, an authorized representative of DUKE ENERGY PROGRESS, LLC, a North Carolina limited liability company, and that he, as Manager, Land Services Regional, being authorized to do so, voluntarily executed the foregoing instrument on behalf of the limited liability company in the capacity indicated.

WITNESS my hand and official stamp or seal this _____ day of _____, 20__.

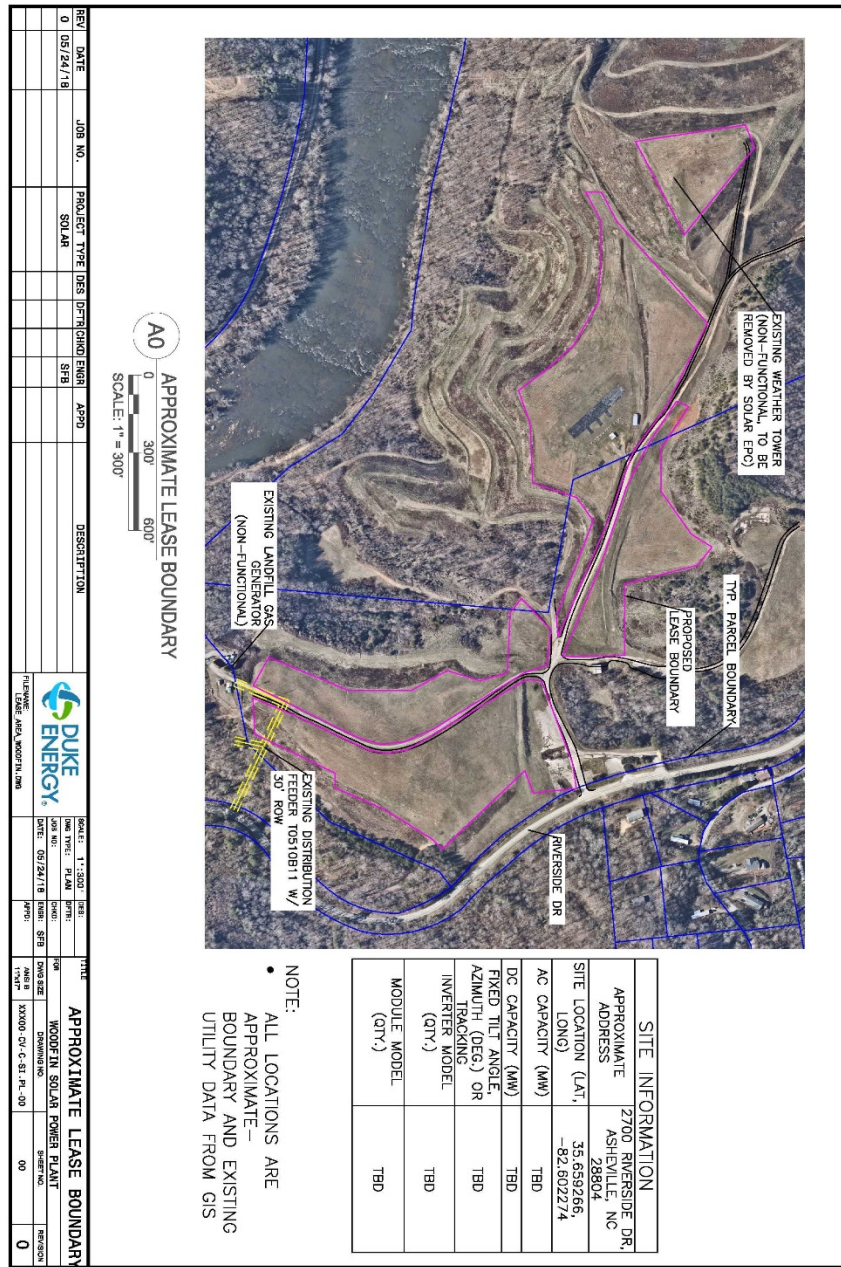
Notary Public
Printed/Typed Name: _____

My Commission Expires: _____

[AFFIX NOTARIAL STAMP OR SEAL]

EXHIBIT A

(Map Showing Approximate Lease Boundary of the Land)



The Land has been used as a sanitary landfill. The Landlord's Municipal Solid Waste Landfill Facility Permit No. 1101-MSWLF-1979 from the N.C. Department of Environment and Natural Resources (now NCDEQ) encumbering the Land is recorded in Book 5315, Pages 1492-1508, Buncombe County Registry.