

**FIRST AMENDMENT OF GROUND LEASE AGREEMENT**

**THIS FIRST AMENDMENT OF GROUND LEASE AGREEMENT** (this "Amendment") is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2021 (the "First Amendment 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 are each a "Party" and are collectively the "Parties").

**RECITALS:**

**WHEREAS**, Landlord and Tenant previously entered into that Ground Lease Agreement dated as of August 21, 2018 (the "Lease") regarding Tenant's leasing of certain Premises from Landlord for purposes of constructing, installing, owning and operating a Solar Generating Facility, said Premises and Solar Generating Facility being more particularly described in the Lease; and

**WHEREAS**, in response to certain comments received during the Tenant's application process for a Certificate of Public Convenience and Necessity from the North Carolina Utilities Commission involving its proposed Solar Generating Facility (Docket E-2 Sub 1257), Landlord and Tenant desire to amend Section 5 of the Lease regarding Tenant's annual rent payments and the consideration to be paid by Landlord to Tenant for Tenant's delivery to Landlord of the Renewal Energy Certificates associated with generation of energy from the Solar Generating Facility.

**NOW THEREFORE**, in consideration of the foregoing recitals (which, by this reference, are incorporated into the operative provisions of this First Amendment) and the mutual covenants, terms, and conditions set forth herein, Landlord and Tenant, intending to be legally bound, agree to amend the Lease as follows:

1. **Amendment of Section 5.** Section 5 of the Lease is amended and restated in its entirety as follows:

5. **Rent and REC Payment Offset for Tenant's Delivery of Renewable Energy Certificates to Landlord.**

(a) Annual Rent. Commencing on the Commencement Date, and subject to the REC Payment Offset (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. All subsequent payments of rent during the Term shall be subject to the REC Payment Offset as set forth in Section 5(c)(iii) hereof.

(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 first annual payment 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 the first annual payment 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 REC Payment Offset.

(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; REC Payment Offset. During the Term (and any Renewal Term) of this Lease, and for the consideration hereinafter set forth, Tenant agrees to deliver to Landlord the Renewable Energy Certificates associated with the generation of energy from the Solar Generating Facility. Landlord and Tenant agree that the consideration to be paid by Landlord to Tenant annually for such Renewable Energy Certificates shall equal the total amount of annual rent then due and payable by Tenant to Landlord under this Lease, which effectively means all of Tenant's annual rent payments to Landlord under this Lease (except for Tenant's first annual rent payment) shall be fully netted and offset by the annual consideration required to be paid by Landlord to Tenant for Renewable Energy Certificates delivered during the Term (and any Renewal Term) (the "REC Payment Offset"); 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 REC Payment Offset and shall be paid to Landlord in accordance with the terms of Section 5(a) and 5(b) of this Lease.

2. **Other Lease Terms.** All other terms, covenants, and agreements set forth in the Lease shall continue in full force and effect, except as otherwise provided in this First Amendment. Any capitalized terms used in this First Amendment that are not defined or amended herein shall have the same meaning ascribed to them in the Lease.

3. **Binding.** This First Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

4. **Counterparts; Governing Law.** This First Amendment may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. An executed counterpart delivered by email or facsimile transmission shall be deemed an original. This First Amendment shall be construed and enforced in accordance with the laws of the State of North Carolina.

*[Remainder of Page Intentionally Left Blank. Signature Page(s) Follow.]*

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

**LANDLORD:**

**COUNTY OF BUNCOMBE**

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

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

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

**TENANT:**

**DUKE ENERGY PROGRESS, LLC**

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

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

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