

Transaction No. ZFN-3185661

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Book - 10922 Pg - 2202-2229
RASHELLE HOBBS
Recorder, Salt Lake County, UT
COTTONWOOD TITLE
BY: eCASH, DEPUTY - EF 28 P.

WHEN RECORDED, RETURN TO:

Zions Bancorporation, N.A.
dba Zions First National Bank
Enterprise Loan Operations-UT RDWG 1970
PO Box 25007
Salt Lake City, UT 84125-0007

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT AND CONSENT**

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT AND CONSENT (the "Agreement") is entered into on February 13, 2020, by and between the undersigned BG Vista 7 Solar, L.C., a Utah limited liability company, its successors (the "Tenant") and American National Insurance Company, a Texas insurance company, its successors and/or assigns ("Lender"), whose address is 2525 South Shore Blvd., Suite 207, League City, Texas 77573.

RECITALS

A. Tenant is the "Owner" and BG Vista Office 7, L.C., a Utah limited liability company, is the "Operator" under that certain Solar Energy Lease and Operating Leaseback Agreement dated October 16, 2019, which together with any and all modifications and amendments thereto, is completely described on EXHIBIT "A" attached hereto and incorporated into this Agreement by this reference (collectively the "Lease").

B. In addition, BG Vista Office 7, L.C., a Utah limited liability company, (hereafter "Borrower"), has received a loan from Lender in the amount of Twenty-Two Million Dollars (\$22,000,000.00), which loan is secured by that certain Deed of Trust, Security Agreement and Financing Statement dated May 25, 2017, and recorded on May 25, 2017, as Entry Number 12543003, in Book 10561, at Pages 2402-2440 in the Salt Lake County Recorder's Office, State of Utah ("Deed of Trust") covering the property (the "Property") described on EXHIBIT "B" attached hereto and incorporated into this Agreement by the reference. The premises covered by the Lease are located within the Property.

C. Zions Bancorporation, N.A., dba Zions First National Bank ("Zions Bank"), has agreed to extend a loan in the amount of Seven Million Sixty-Two Thousand Dollars (\$7,062,000.00) ("Zions Bank Loan") to KCG Solar 19, L.C., a Utah limited liability company ("KCG Solar"). Tenant is an affiliate of KCG Solar and will receive proceeds of the Zions Bank Loan to purchase or to be reimbursed for the purchase of Solar Equipment and/or Solar Canopies as such terms are defined in the Lease.

27-30-151-042

D. Zions Bank requires, as conditions to extending the Loan to KCG Solar, that (i) Tenant grant Zions Bank a first lien priority security interest in the Solar Equipment and Solar Canopies (“Zions Bank Lien”) pursuant to the terms of this Agreement, (ii) Lender consent to the terms of the Lease, including, without limitation, the Lease provisions allowing Tenant to install the Solar Equipment and Solar Canopies on the Property as set forth in the Lease, and (iii) that Tenant enter into this Agreement.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Tenant and Lender hereby agree as follows:

1. The Lease and the encumbrance thereof are and shall at all times continue to be subject and subordinate in all respects to the lien of the Deed of Trust and all rights, privileges and provisions in favor of Lender thereunder, and Tenant further waives all rights and claims to assert that the Lease or any provision thereof is superior to the lien or to any other provision of the Deed of Trust.

2. So long as Tenant is not in breach or default (beyond any period in the Lease given to Tenant to cure such breach or default) in the payment of rent or additional sums or in the performance of any of the other terms, covenants or conditions of the Lease on Tenant’s part to be performed, Tenant’s use, occupancy, and possession under the Lease and Tenant’s rights and privileges thereunder, or under any extensions, renewals, or expansions thereof which may be effected in accordance with any option therefor contained in the Lease, shall not be diminished or interfered with by Lender acting pursuant to the Deed of Trust, and Tenant’s use, occupancy, and possession shall not be disturbed by Lender during the term of the Lease or any such extensions, renewals, or expansions thereof in accordance with any extension or renewal options contained in the Lease.

3. If the interests of Borrower in the Property or the Lease shall be acquired by Lender by foreclosure, by deed in lieu of foreclosure or by any other method, and Lender succeeds to the interests of Borrower under the Lease, then provided that and so long as Tenant is not in default in the payment of any sums due from Tenant under the Lease or in the performance of any other obligation of Tenant under the Lease (beyond any period in the Lease given to Tenant to cure such breach or default), the Lease and the rights of Tenant thereunder shall continue in full force and effect and shall not be terminated, diminished, interfered with or disturbed except in accordance with the terms of the Lease, and except that Tenant shall be bound to Lender and Lender shall be bound to Tenant under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining, and any extensions, renewals, or expansions thereof which may be effected in accordance with any option therefor contained in the Lease, with the same force and effect as if Lender were the original lessor under the Lease, and Tenant does hereby attorn to Lender as its lessor, said attornment to be effective and self operative without the execution of any other instruments on the part of either party hereto immediately upon Lender’s succeeding to the interest of Borrower under the Lease; provided, however, that unless otherwise required by applicable law, Tenant shall be under no

obligation to pay rent to Lender by virtue of this Agreement until Tenant receives written notice from Lender that Lender has succeeded to the interests of Borrower under the Lease or exercised its assignment of rents and Lender has otherwise complied with the Utah Uniform Assignment of Rents Act, as amended. It is the intention of the parties hereto for this purpose to incorporate the Lease into this Agreement by reference for all purposes with the same force and effect as if set forth at length herein.

4. If Lender shall succeed to the interests of Borrower under the Lease, Lender shall be bound to Tenant under all of the terms, covenants and conditions of the Lease, and Tenant shall, from and after Lender's succession to the interests of Borrower under the Lease, have the same remedies against Lender for the breach or default by Lender of any agreement contained in the Lease that Tenant might have had under the Lease against Borrower for Borrower's breach or default; provided, however, that Lender shall not be:

(a) liable for any act or omission of any prior or succeeding landlord (including Borrower);

(b) liable for the return of any security deposit unless actually received by Lender;

(c) subject to any offsets or defenses which Tenant might have against any prior or succeeding landlord (including Borrower);

(d) bound by any rent or additional sums which Tenant might have paid for more than one month in advance to any prior or succeeding landlord (including Borrower); or

(e) except the assignments or transfers expressly permitted under the Lease without the landlord's consent, approval or agreement, bound by any agreement, amendment or modification of the Lease or any cancellation or termination of the Lease by any prior landlord (including Borrower), made without Lender's prior written consent.

5. Tenant from and after the date hereof shall send a copy of any notice or statement of a breach or default (including matters which, but for the passage of time, the giving of notice, or both, would be a breach or default) under the Lease or any notices or statement of any intention to cancel or terminate the Lease by certified mail, return receipt requested to Lender at the address shown above at the same time such notice or statement is sent to Borrower. Tenant further agrees that, in the event of any act or omission by Borrower or other occurrence which would give Tenant the right to cancel or terminate the Lease or to claim a partial or total eviction (either actual or constructive), or in the event of any other breach or default by Borrower under the terms of the Lease, promptly after learning of the occurrence, Tenant shall so notify Lender by certified mail, return receipt requested, at the address above.

6. Lender shall have the option, within thirty (30) days, plus up to an additional sixty (60) days if Lender commences such cure within such thirty day period and continues such cure with reasonable diligence, to cure any such act, omission, breach, or default of Borrower described in such paragraph 5, including if necessary, the commencement and prosecution of

foreclosure proceedings, and Tenant agrees to accept the performance of Lender in lieu of the performance of Borrower and that the Lease shall thereby remain in full force and effect. Tenant shall not exercise any right to terminate the Lease for default or breach of the Lease or act or omission by Borrower in connection with the Lease, unless and until Tenant has notified Lender as provided in paragraph 5 hereof and until the time for Lender to commence and complete such cure has elapsed; provided, however, Tenant may exercise all remedies permitted under the Lease other than termination of the Lease after Tenant has provided the notice required by paragraph 5.

7. Tenant hereby agrees that for so long as the Deed of Trust encumbers or is a lien on the Property, or any portion thereof, and thereafter, should Lender acquire the Property, or any portion thereof, no covenant, agreement or other obligation of Borrower which is to be performed or complied with beyond the boundaries of the Property and no act or omission or occurrence which occurs beyond the boundaries of the Property (including, without limitation, any restrictions prohibiting Borrower's or its affiliates or other related persons or entities from competing, operating or leasing in competition with Tenant or to cause or restrict certain actions or activities on other property not encumbered by the Deed of Trust) shall be a breach or default under the Lease nor permit Tenant to cancel or terminate the Lease or abate or reduce any rent or other sums, unless Lender owns the property beyond the boundaries of the Property that is subject to the covenant, agreement or obligation. Nothing in this Section 7 shall prevent Tenant from seeking or obtaining a restraining order or injunction against such breach, default, act, omission or occurrence or from obtaining a monetary judgment against Borrower or any successor landlord other than Lender for any such breach, default, act, omission or occurrence.

8. In the event the Tenant becomes the owner of the Property or any portion thereof and the Deed of Trust is still a lien on the Property (i.e., the Deed of Trust has not been repaid in full at or prior to the Tenant's acquisition of the Property), there shall be no merger of the leasehold interest and the fee interest and the Lease shall remain in existence and, without limiting the foregoing, Lender shall be permitted to collect rent thereunder if a breach or default occurs under the Deed of Trust or any indebtedness secured thereby or any assignment of leases and/or rents by and/or executed in connection with any of the preceding. Nothing in this Agreement shall be construed to permit a transfer of Tenant's interest not permitted by the Lease.

9. This Agreement may not be amended or modified orally or in any other manner other than by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns including, any applicable, heirs, administrators, legal representatives and executors.

10. Tenant agrees that it will not, without the written consent of Lender, pay rent or any other sums becoming due under the Lease more than one (1) month in advance.

11. Tenant agrees that the Deed of Trust and the indebtedness secured thereby may be increased, rearranged, renewed, extended, consolidated and modified from time to time by agreement between Borrower and Lender, and, except as otherwise provided in the Lease,

Lender may exercise any one or more of its rights under the Deed of Trust from time to time at Lender's discretion, all without notice to or consent of Tenant, and this Agreement shall continue in full force and effect as to all such renewals, extensions, increases, rearrangements, consolidations and modifications and all such exercises of rights.

12. Except as otherwise described on Exhibit "A", the Lease has not been amended or modified and is in full force and effect as originally executed, and there are no side letters or other arrangements, whether or not constituting amendments to the Lease, for tenant inducements or otherwise.

13. To Tenant's knowledge, neither Borrower nor Tenant is in breach or default under any provision of the Lease nor is Tenant aware of any act, omission or occurrence which, but for the passage of time, the giving of notice, or both, which would constitute a breach or default or would permit the Tenant to terminate the Lease or reduce or abate any rent thereunder. To Tenant's knowledge, Borrower has complied fully and completely with all of Borrower's covenants, warranties and other obligations under the Lease to the date hereof. As of the date hereof, Tenant is fully obligated to pay the rent and other sums as and when due from Tenant under the Lease, subject to rent abatement rights as specified in the Lease, and is fully obligated to perform and is performing all of the obligations of Tenant under the Lease, without right of counterclaim, offset or other defense.

14. Lender hereby consents to (i) the Zions Bank Lien, and (ii) the terms of the Lease, including, without limitation, the Lease provisions allowing Tenant to install the Solar Equipment and the Solar Canopies on the Property. Lender agrees the Zions Bank Lien is and shall at all times continue to be senior in all respects to the lien of the Deed of Trust (but only as to the Solar Equipment and the Solar Canopies), and Lender further waives all rights and claims to assert that the Deed of Trust or any provision thereof is superior to the lien or to the Zions Bank Lien. In the event Zions Bank forecloses the Zions Bank Lien, Lender consents to Zions Bank or its agents entering the Property to take possession of and remove the Collateral in a commercially reasonable manner. Tenant agrees to pay Lender for any damage to the Property caused by such removal.

15. Where appropriate, all references to the singular shall include the plural and vice versa and all references to any gender shall include the others.

16. This Agreement may not be waived, amended or modified except by subsequent written agreement signed by the party to be bound.

17. The words "breach" and "default" are used interchangeably in this Agreement for convenience of drafting and there is no distinction between the meanings of either word.

18. This Agreement satisfies Borrower's obligation, if any, to provide a subordination, non-disturbance and attornment agreement, or similar document, pursuant to the Lease.

19. This Agreement may be executed in multiple counterparts, each of which shall be an original instrument and which, taken together, constitutes one and the same agreement.

20. This Agreement shall be governed by the laws of the State of Utah.

21. Tenant and Lender irrevocably (i) submit to the jurisdiction of: (1) any state or federal court sitting in the State of Utah; (2) any state court sitting in the county of the state where the Property is located, and (ii) consents to service of process by any means authorized by the law of the state where the Property is located or federal law. Tenant and Lender irrevocably waive, to the fullest extent permitted by law, any objection that Tenant and Lender may now or hereafter have to the laying of venue of any such suit, action, or proceeding brought in any such court and any claim that any such suit, action, or proceeding brought in any such court has been brought in an inconvenient forum.

[Remainder of Page Intentionally Reserved]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

TENANT

BG VISTA 7 SOLAR, L.C.,
a Utah limited liability company

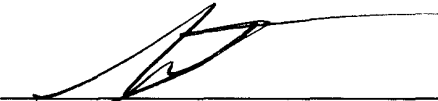
By: KC Gardner Company, L.C.,
a Utah limited liability company,
Manager of BG Vista 7 Solar, L.C.

By: 
Name: Christian Gardner
Title: Manager of KC Gardner Company, L.C.

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 13 day of February, 2020, by CHRISTIAN GARDNER, Manager of KC Gardner Company, L.C., a Utah limited liability company, Manager of BG Vista 7 Solar, L.C., a Utah limited liability company




NOTARY PUBLIC
Residing at: DAVIS COUNTY, UT

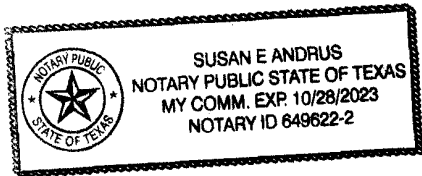
LENDER

AMERICAN NATIONAL INSURANCE COMPANY,
a Texas insurance company

ETK
Jup
By: [Signature]
Name: Scott F. Brast
Title: Senior Vice President

STATE OF TEXAS)
COUNTY OF Galveston) : ss.

This instrument was acknowledged before me on February 10, 2020, by Scott F. Brast, Senior Vice President of American National Insurance Company, a Texas insurance company, on behalf of said company.



[Signature]
NOTARY PUBLIC
Printed Name: Susan E Andrus
My Commission Expires: 10/28/2023

EXHIBIT "A"

SOLAR ENERGY LEASE AND OPERATING LEASEBACK AGREEMENT

(See Attached)

**SOLAR ENERGY
LEASE AND OPERATING LEASEBACK AGREEMENT**

BY AND BETWEEN

BG VISTA 7 SOLAR, L.C.

AS OWNER,

AND

BG VISTA OFFICE 7, L.C.

AS OPERATOR

DATED

October 16, 2019

SOLAR ENERGY LEASE AND OPERATING LEASEBACK AGREEMENT

THIS SOLAR ENERGY LEASE AND OPERATING LEASEBACK AGREEMENT ("Agreement"), is made and entered into as of the 16th day of October, 2019 between BG VISTA 7 SOLAR, L.C., a Utah limited liability company ("Owner") and BG VISTA OFFICE 7, L.C., a Utah limited liability company ("Operator") for certain leased premises (the "Premises") which are part of the real property constituting a commercial building and related improvements in Midvale, Utah (the "Building").

RECITALS

A. Operator owns, manages or controls the Premises and the Building.

B. Owner desires to: (i) install and own certain solar photovoltaic generation equipment, including panels, wiring, cabling and other accessories used therewith as described in Appendix 2-A ("Solar Equipment") on the portions of the rooftop of the Building as specified in Appendix 2-B ("Rooftop"); and (ii) to install certain canopies, supports, footings and Solar Equipment, as depicted on Appendix 2-C ("Solar Canopies"), within the portions of the parking lot at the Building as depicted on Appendix 2-D ("Parking Lot").

C. Owner and Operator desire to enter into a lease agreement ("Lease") pursuant to which Owner will install and own Solar Equipment and the Solar Canopies on the Rooftop and the Parking Lot, as applicable.

D. Owner and Operator desire to enter into an operating leaseback ("Operating Leaseback") pursuant to which Operator will manage, operate, and control Solar Equipment installed by Owner on the Rooftop and on the Solar Canopies in the Parking Lot, with all of the solar energy generated by such Solar Equipment to be used solely by tenants, members of an association of unit owners, affiliates, or users located in the Building or on the Premises.

E. Owner and Operator desire to enter into this Agreement on the terms and conditions specified herein.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

I. LEASE TO OWNER

1.1 LEASE. Subject to the terms and conditions contained in this Agreement, Operator hereby grants to Owner, and Owner hereby accepts, at Owner's sole cost and expense, a non-exclusive right and lease to access and use the Rooftop and the Parking Lot for the installation, at Owner's sole cost and expense, of the Solar Equipment and the Solar Canopies in the Parking Lot, provided, however, that Operator hereby reserves the right for Operator and all users and occupants of the Building to use the surface space under the canopy portions of the Solar Canopies in any manner which does not interfere with such Solar Canopies. Throughout the Term of the Lease, Operator grants Owner a non-exclusive easement through the Building, including elevators, stairways or other access points of egress and ingress, for purposes of accessing the Rooftop and

the Solar Equipment for purposes described herein; provided, however, that such rights of ingress and egress will be consistent with the terms and conditions of this Agreement and rules and regulations reasonably promulgated from time to time by Operator. Owner acknowledges that it has inspected the Rooftop, that Operator has made no representations or warranties respecting the condition thereof or otherwise or its suitability for the Solar Equipment, and that, except as may be expressly provided to the contrary in this Agreement, Operator has no obligation or duty to make any alterations, improvements, or repairs in and to the Rooftop to make same ready for Owner's use and occupancy of the Rooftop for the Solar Equipment. Owner acknowledges that it has inspected the Parking Lot, that Operator has made no representations or warranties respecting the condition thereof or otherwise or its suitability for the Solar Equipment and the Solar Canopies, and that, except as may be expressly provided to the contrary in this Agreement, Operator has no obligation or duty to make any alterations, improvements, or repairs in and to the Parking Lot to make same ready for Owner's use and occupancy of the Parking Lot for the Solar Equipment and Solar Canopies. Owner takes and accepts the Rooftop and Parking Lot in its present "as is" condition.

1.2 **LEASE TERM.** The Lease to Owner will commence on the Effective Date and will terminate on that date that is twenty-one (21) years from the Effective Date (the "Term"). Upon termination of the Lease, Owner will, at its own cost, expense and risk, (i) remove all Solar Equipment from the Rooftop and repair any damage to the Rooftop or the Building caused thereby and (ii) remove all Solar Canopies from the Parking Lot and repair any damage to the Parking Lot caused thereby. At the end of the Term, Owner will surrender the portions of the Rooftop and Parking Lot that are subject to this Agreement to Operator in good condition and repair (subject to ordinary wear and tear). If Owner is in default under this Agreement, then Operator can prohibit the removal of any of the Solar Equipment, in its discretion, until the default is cured.

1.3 **LEASE FEES.** Owner agrees to pay Operator a fee for this Lease, without notice, setoff or demand, in the amounts specified in Appendix 1 (the "Lease Fee"). Such payments will be due on the first day of each calendar year of the Term of the Lease and will be made by United States Mail, postage prepaid or by wire transfer, as directed by Operator.

II. OPERATING LEASEBACK TO OPERATOR

2.1 **OPERATING LEASEBACK.** Subject to the terms and conditions contained in this Agreement, Owner hereby grants to Operator, and Operator hereby accepts, an exclusive right to operate, manage, and control the Solar Equipment installed by Owner on the Rooftop and the Solar Canopies in the Parking Lot, and to provide all of the solar energy generated by such Solar Equipment to tenants, members of an association of unit owners, affiliates, or users located in the Building or on the Premises.

2.2 **OPERATING LEASE TERM.** The term of the Operating Leaseback to Operator will be coterminous with the Term of the Lease.

2.3 **OPERATING LEASEBACK FEE.** Operator agrees to pay Owner a fee for this Operating Leaseback, without notice, setoff or demand, in the amounts specified in Appendix 1 (the "Operating Leaseback Fee"). Such payments will be due on the first day of each calendar month of the Term of the Operating Lease and will be made by United States Mail, postage prepaid to the address of Owner set forth in this Agreement or by wire transfer as directed by Owner.

III. RIGHTS AND RESPONSIBILITIES OF THE PARTIES

3.1 **RIGHT TO INSTALL AND OPERATE.** Owner shall have the sole and exclusive right to install Solar Equipment on the Rooftop and on the Solar Canopies in the Parking Lot, as described and in the location(s) specified in Appendix 2. Operator will have the sole and exclusive right and obligation to continuously operate, manage and control the Solar Equipment and to continuously supply solar energy produced by the same to tenants, members of an association of unit owners, affiliates, or users located in the Building or on the Premises. Absent the advance written agreement of both parties, during the Term neither party will construct, build or locate, or allow others to construct, build, or locate, any equipment (solar or otherwise) that would unreasonably interfere with the Solar Equipment, or otherwise engage in, or allow others to engage in, any activity that might unreasonably impede the Solar Equipment's access to the sun or materially decrease the output or efficiency of the Solar Equipment. Notwithstanding the foregoing, Operator, at Operator's sole cost and expense and with the prior written consent of Owner (which shall not be unreasonably withheld), may cause Owner to move or relocate Solar Equipment or Solar Canopies to accommodate any incidental improvements Operator is required to construct on the Rooftop or in the Parking Lot, but only if the relocation does not materially impair the performance of, or the cost of removing, the Solar Equipment or Solar Canopies.

3.2 **PLANS, SPECIFICATIONS AND INSTALLATION.** Owner, at Owner's sole expense, will design, procure and install the Solar Equipment in accordance with its plans and specifications, which plans and specifications will be shared with Operator. Owner is responsible for all costs associated with the Lease, including the costs of installing the Solar Equipment.

3.3 **USE AND MAINTENANCE.** Owner shall be responsible for all costs associated with the Operating Lease throughout the Term, including operating and maintenance costs and insurance costs for the Solar Equipment, which costs shall be borne by Owner. Operator shall send invoices to Owner for reasonable operating and maintenance costs and/or insurance costs incurred by Operator in connection with the Solar Equipment, and Owner shall reimburse Operator for such costs within thirty (30) days. Each party agrees not to keep or store environmentally hazardous materials in or around the Rooftop or the Solar Canopies and Owner agrees that no such materials will be used in or on any of the Solar Equipment installed by Owner. Operator will not permit unauthorized persons with insufficient expertise or experience to access the Rooftop space or the tops of the Solar Canopies specified in Appendix 2 where the Solar Equipment will be installed ("Equipment Space"), or to maintain or operate the Solar Equipment. Both parties understand and agree that the Equipment Space on the Rooftop must at all times be kept locked and secure and that interruptions in utility services and power surges are not uncommon.

3.4 **SITE TECHNICAL STANDARDS.** Owner agrees that the installation of the Solar Equipment must at all times comply with such technical standards for the Rooftop as may from time to time be established by Operator in its reasonable discretion, including, without limitation, technical standards relating to structural engineering, and city construction permits (the "Site Technical Standards").

3.5 **REMOVAL OF SOLAR EQUIPMENT.** Owner will remove the Solar Equipment and Solar Canopies within sixty (60) days after the end of the Term or other termination of the Lease and repair any damage to the Building (including the Rooftop and Parking Lot) caused

thereby, excluding ordinary wear and tear. Without affecting any of Owner's obligations hereunder, Operator may prevent Owner from removing Solar Equipment and Parking Fixtures, as applicable, from the Rooftop and Parking Lot if Owner is then in default under this Agreement.

IV. GENERAL COVENANTS AND AGREEMENTS

4.1 **USE OF ELECTRICAL SERVICES BY OPERATOR.** Operator will be responsible to arrange to furnish Operator with electrical equipment and supplies to provide sufficient power for the Solar Equipment and to interconnect the Solar Equipment to facilities of the applicable electric utility provider; provided, however, that Owner will be responsible for (i) the cost of installing any such equipment, (ii) the cost of the installation of any separate meters required by Owner or applicable codes or tariffs, and (iii) any interconnection costs and other amounts charged by the applicable electric utility provider. Temporary interruption in the power provided by such equipment will not render either party liable in any respect for damages to either person or property nor relieve either party from fulfillment of any covenant or agreement hereof. If any of Solar Equipment fails because of a loss of electrical power, Operator will use reasonable diligence to restore electrical power promptly, but neither party will have a claim for damages on account of any interruption in electrical service occasioned thereby or resulting therefrom.

4.2 **LAWS AND REGULATIONS.** Owner and Operator agree to comply with all applicable laws, ordinances, rules, and regulations of any governmental entity or agency having jurisdiction with respect to the Solar Equipment, this Agreement, the Premises or the Building. Owner warrants that installation, and Operator warrants that operation and maintenance, of the Solar Equipment and Solar Canopies will comply with applicable manufacturers' specifications and federal, state and local codes, rules and regulations, whether now or hereafter existing, and that ownership, operation and maintenance of the equipment will comply with all contractual obligations to which Owner or Operator is bound, as applicable. Each party agrees to comply with rules and regulations of the Building as reasonably adopted or altered by Operator from time to time, and to cause its agents, employees, invitees and visitors to comply with the same.

4.3 **ASSIGNMENT, SUBLETTING AND TRANSFERS.** Either party may assign its rights and obligation under this Agreement to (a) any corporation, company or other entity which is controlled by, or is under common control with, such party, (b) any partnership in which such party has a controlling interest, (c) any entity which has purchased all or substantially all the assets of such party or the Solar Equipment and Solar Canopies, or (d) as security for financing purposes. Otherwise, a party may assign its rights or obligations under this Agreement only with the prior written consent of the other party, which consent will not be unreasonably withheld.

4.4 **INSURANCE.** Prior to the commencement of and during construction work in, on, or about the Building or the Rooftop or Parking Lot in connection with installation of the Solar Equipment and Solar Canopies, and following completion of construction of the Solar Equipment and Solar Canopies during the remainder of the Term, Owner will obtain and maintain, at its own expense, insurance coverages on and relating to the Solar Equipment with such coverages and policy limits as are specified in Appendix 3, as applicable. All such policies shall include endorsements as Additional Named Insureds of Operator and its partners, directors, members, officers, agents and representatives, and affiliates as designated from time-to-time by Operator, and shall require at least thirty (30) days prior notice of cancellation to each certificate holder.

4.5 **CASUALTY DAMAGE.** If the Solar Equipment, Solar Canopies or any part of

either of them is damaged by fire or other casualty, Operator will give prompt written notice thereof to Owner. If the Building is damaged such that alteration or reconstruction of the Building, in Operator's reasonable opinion, is required (whether or not any equipment or property of Owner will have been damaged by such casualty) or in the event any mortgagee or lien holder of Operator or the Premises should require that the insurance proceeds payable as a result of a casualty be applied to the payment of the secured debt, or in the event of any material uninsured loss to the Building, Operator may, at its option, terminate this Agreement by notifying Owner in writing of such termination within ninety (90) days after the date of such casualty. If Operator does not elect to terminate this Agreement, Operator will commence and proceed with reasonable diligence to restore the Building and Owner will commence and proceed with reasonable diligence to restore the Solar Equipment in accordance with the terms of this Agreement; provided that a party's obligation to restore will not require such party to spend for such work an amount in excess of the amount of insurance required hereunder for such casualty.

4.6 **CONDEMNATION.** If the whole or substantially the whole of the Building should be taken for any public or quasi-public use, by right of eminent domain or otherwise, or be sold in lieu of condemnation, then this Agreement will terminate as of the date when physical possession of the Building is taken by the condemning authority. If less than the whole or substantially the whole of the Building is thus taken or sold, Operator (whether or not Owner's equipment or property are affected thereby) may terminate this Agreement by giving written notice thereof to Operator; in which event this Agreement will terminate as of the date when physical possession of such portion of the Building is taken by the condemning authority. If less than the whole of the Building is taken and the portion so taken materially interferes or prohibits Operator from providing its services, then Operator may terminate this Agreement upon notice to Owner. If this Agreement is not so terminated upon any such taking or sale, Operator will, to the extent reasonably feasible, restore the Building to substantially its former condition, but such work will not exceed the scope of the work done in originally constructing the Building and installing shell improvements in the Building, nor will Operator be required to spend for such work an amount in excess of the amount received by Operator or Owner, as applicable, as compensation for such taking. All amounts awarded upon a taking of any part or all of the Property or Building will belong to Operator, and Owner will not be entitled to and expressly waives all claims to any such compensation, except to the extent amounts awarded expressly include compensation to Owner for the Solar Equipment.

4.7 **DAMAGE TO PARKING LOT.** Notwithstanding the foregoing Sections 4.5 and 4.6 to the contrary, in the event of a casualty or condemnation that affects only the Parking Lot on which the Solar Canopies are located, this Lease shall not terminate, and (a) in the case of a casualty, Owner may, at its option, either repair and restore the Solar Canopies and Solar Equipment located thereon, or remove such Solar Canopies and Solar Equipment, and (b) in the case of a condemnation, receive a reduction in the Lease Fee in proportion to the area of the Parking Lot taken.

4.8 **EVENTS OF DEFAULT/REMEDIES.**

4.8.1 Each of the following events will be a default before passage of any applicable cure period and an event of default thereafter: (i) a party fails to pay any fees or other sums of money when due hereunder and such failure continues for a period of ten (10) business days after receipt of written notice from the other party of such failure; (ii) a party fails to comply with its respective obligations under any provision of this Agreement, and such failure continues

for a period of thirty (30) days after written notice of such default is delivered to the defaulting party, provided, however, if such condition cannot reasonably be cured within such thirty (30) day period, it instead will be an event of default if the defaulting party fails to commence to cure such condition within such thirty (30) day period and/or thereafter fails to prosecute such action diligently and continuously to completion within ninety (90) days of the date of the notice of default; (iii) a party ceases to do business or abandons any rights granted under this Agreement; (iv) a party becomes insolvent or unable to pay its debts as they become due, or notifies the other party that it anticipates either condition; (v) a party takes any action, or notifies the other party that it intends, to file a petition under any section or chapter of the United States Bankruptcy Code, as amended from time to time, or under any similar law or statute of the United States or any State thereof; or (vi) a receiver or trustee is appointed for a party or for its interest under this Agreement.

4.8.2 Upon the occurrence of any event of default, the non-defaulting party will have the option to pursue any remedies available to it at law or in equity. A party's remedies may include, but are not necessarily limited to, as applicable: (i) terminate this Agreement; (ii) take possession of the Solar Equipment and Solar Canopies; (ii) terminate electrical power to the Solar Equipment; and (iv) exercise any remedies available to a party at law or in equity, including, without limitation, injunctive relief and termination rights.

4.9 SUBORDINATION TO MORTGAGE. Each party acknowledges that this Agreement is subject and subordinate to any mortgage, deed of trust or other lien currently existing or hereafter arising upon the Building and/or the Premises, and to any renewals, modifications, consolidations, refinancing, and extensions thereof; provided, however, that Operator shall deliver a customary subordination and non-disturbance agreement ("SNDA") to Owner. Subject to the foregoing sentence, Operator is hereby irrevocably vested with full power and authority to subordinate this Agreement to any mortgage, deed of trust or other lien now existing or hereafter placed upon the Building or the Premises, and Owner agrees upon request to execute such further instruments as may be requested to subordinate this Agreement or to attorn to the holder of any such mortgage or lien. Subject to the terms of any SNDA, any mortgagee or holder of a deed of trust or lien on the Building or the Premises will have the right to terminate this Agreement upon foreclosure of such mortgagee or lienholder's interest. Owner agrees that it will from time to time upon request by Operator execute and deliver to such persons as Operator may request a statement in recordable form certifying, to the extent accurate, that this Agreement is unmodified and in full force and effect (or if there have been modifications, that this Agreement is in full force and effect as so modified), stating the dates to which fees and other charges payable under this Agreement have paid, stating that Operator is not in default hereunder (or if Owner alleges a default stating the nature of such alleged default) and further stating such other matters as Operator may reasonably request.

V. MISCELLANEOUS

5.1 ATTORNEYS' FEES. In the event of a dispute hereunder, the non-prevailing party will pay the reasonable attorneys' fees and costs of the prevailing party.

5.2 NO IMPLIED WAIVER. The failure of either party to insist at any time upon the strict performance of any covenant or agreement herein or to exercise any option, right, power or remedy contained in this Agreement will not be construed as a waiver or a relinquishment thereof for the future.

5.3 PERSONAL LIABILITY. In no event will either party be liable to the other for (a) any loss or damage that may be occasioned by or through the acts or omissions of any third parties or (b) any consequential, special or incidental damages.

5.4 NOTICE. All notices, demands, requests, or other communications which are required to be given, served, or sent by one party to the other pursuant to this Agreement will be in writing, and will be mailed, postage pre-paid, by registered or certified mail, or by a reliable overnight courier service with delivery verification, addressed as follows:

If to Owner to: BG Vista 7 Solar, L.C.
 201 South Main Street, Suite 2000
 Salt Lake City, Utah 84111

If to Operator to: BG Vista Office 7, L.C.
 201 South Main Street, Suite 2000
 Salt Lake City, Utah 84111

Each notice, demand, request, or communication which is mailed or delivered in the manner described above will be deemed sufficiently given, served, sent or received for all purposes at such time as it is delivered to the addressee first named above for each party (with the return receipt of verification of delivery being deemed conclusive evidence of such notice), or at such time as delivery is refused by addressee upon presentation. Either party may designate by notice in writing a new address and/or individual to which any notice, demand, request or communication made thereafter will be so given, served or sent.

5.5 SEVERABILITY. If any term or provision of this Agreement, or the application thereof to any person or circumstance is, to any extent, held invalid or unenforceable by a court of competent jurisdiction, 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 held invalid or unenforceable, will not be affected thereby, and each term and provision of this Agreement will be valid and enforced to the fullest extent permitted by law.

5.6 GOVERNING LAW. This Agreement and the rights and obligations of the parties hereto will be interpreted, construed, and enforced in accordance with the laws of the State of Utah.

5.7 COMMISSIONS. Each party hereby indemnifies and holds the other party harmless from and against any loss, claim, expense or liability with respect to any commissions or brokerage fees claimed on account of such party's execution and/or renewal of this Agreement.

5.8 TAXES. Owner will be responsible for collecting and remitting all applicable federal, state and local taxes attributable to the ownership and operation of Solar Equipment installed pursuant to this Agreement. Operator will not be responsible for any taxes imposed on the income of the Owner derived from the Solar Equipment, Solar Canopies or otherwise.

5.9 REGULATORY AUTHORITY. Owner will secure any permits, regulatory approvals or authorizations required now or in the future from federal, state and local governments ("Permits") for the construction and installation of the Solar Equipment and Solar Canopies, and Operator will secure any Permits required for the operation and maintenance of the Solar Equipment and the supply of solar energy therefrom to tenants, members of an association

of unit owners, affiliates, or users located in the Building or on the Premises. Each party will promptly inform the other party of any legal or regulatory development of which such party becomes aware that would prohibit or render all or any portion of this Agreement unfeasible or of the revocation of or failure to obtain any Permits.

5.10 INDEPENDENT CONTRACTOR. Each party will at all times act in its own capacity and right as an independent contractor. Neither party shall have any right to make purchases for, or to obligate the other party to expend any funds or to perform any obligations other than as provided in this Agreement or as may be authorized in writing by the other party. Each party agrees that it and any of its employees or agents will at all times represent itself or themselves as representatives of such party and not the other party.

5.11 FORCE MAJEURE. If the performance by a party to this Agreement of any nonmonetary obligation hereunder is interfered with by reason of any circumstances without the fault or negligence, or beyond the reasonable control, of either party, including fire, explosion, power failure, acts of God, war, revolution, civil commotion, or acts of public enemies, any law, order, regulation, ordinance, requirement, acts of, or failures to act by, any government or any legal body or representative of any such government, labor unrest, including without limitation, strikes, slowdowns, picketing or boycotts, embargo, delay of a common carrier, or other cause beyond such party's control, then the party affected will be excused from such performance on a day-to-day basis to the extent of such interference (and the other party will likewise be excused from performance of its obligations on a day-to-day basis to the extent such other party's obligations relate to the performance so interfered with), provided that the affected party will use reasonable efforts to remove such causes of non-performance.

5.12 OWNERSHIP AND OPERATION OF SOLAR EQUIPMENT. Neither Operator nor any owner of the Building or the Premises will have any ownership or other interest in any Solar Equipment or Solar Canopies installed on the Rooftop or Parking Lot, as applicable. The manner of operation of the Solar Equipment, including but not limited to decisions on when to conduct maintenance, is within the discretion of Operator.

5.13 AUTHORITY. Each party to this Agreement, and each person executing this Agreement on behalf of a party, hereby represents and warrants that it, he, or she has been duly authorized and has the full right, ability and authority (i) to execute this Agreement on behalf of such party, and (ii) to execute and deliver this Agreement to the other party and to perform its obligations hereunder.

5.14 ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties hereto with respect to the matters specified herein, and there have been and are no other covenants, agreements, representations, warranties or restrictions between the parties hereto with regard thereto, whether oral or in writing, other than those specifically set forth herein.


[Execution Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

OWNER:

BG VISTA 7 SOLAR, L.C., a Utah limited liability company, by its Manager

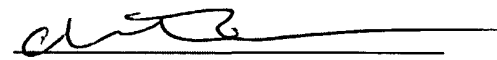
KC Gardner Company, L.C., a Utah limited liability company

By: 
Name: Christian Gardner
Title: Manager

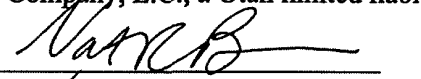
OPERATOR:

BG VISTA OFFICE 7, L.C., a Utah limited liability company, by its Managers:

KC Gardner Company, L.C., a Utah limited liability company

By: 
Name: Christian Gardner
Title: Manager

The Boyer Company, L.C., a Utah limited liability company

By: 
Name: NATHAN R. BOYER
Title: MANAGER

Appendix 1

LEASE FEE

Owner agrees to pay Operator a Lease fee in the amount of \$12 per year.

OPERATING LEASEBACK FEE

Operator agrees to pay Owner an Operating Leaseback Fee in the amount approximating the current Rocky Mountain Power, Schedule 6 tariff, or the latest period utility rate the Building is subject, which amount shall not exceed the rate charged by Rocky Mountain Power or the applicable local utility provider. An explanation of the current Schedule 6 tariff main costs components is set forth here; however, the utility may over time update the rate and thus the Owner will make approximate updates to this Fee structure to best match the PV benefits provided.

The Operating Leaseback Fee will consist of the following components:

- **Facilities Charge (\$/kW) or "FC"** – The PV system may reduce the Building’s peak demand during a utility billing period, as measured by the submeter, for which the Owner will be paid a rate (\$/kW) matching the Schedule 6 Facilities Charge rate, with the utility’s mark-ups, for the appropriate time of year (Summer/Winter).
- **Power Charge (\$/kW) or "PC"** – Similarly, the PV system may reduce the Building’s peak demand during a utility billing period, as measured by the submeter, for which the Owner will be paid a rate (\$/kW) matching the Schedule 6 Power Charge rate, with the utility’s mark-ups, for the appropriate time of year (Summer/Winter).
- **Effective Energy Charge (\$/kWh) or "EC"** – The PV system may reduce the Building’s electricity consumption during a utility billing period, as measured by the submeter, for which the Owner will be paid a rate (\$/kWh) accounting for all charges RMP passes on at a \$/kWh rate or percentage markup.

Fee Calculation:

$$\text{Fee} = [(\text{FC} + \text{PC}) * (\text{peak demand reduction from utility due to PV}) + \text{EC} * (\text{PV energy generated})]$$

Table 1 reflects the charge on a kWh basis (energy) with associated utility percentage markups and kWh basis (demand) for each hour of the year, whether in Summer or Winter period. Summer period is May through September and Winter period is October through April.

Table 1

Facilities Charge		
Winter	\$4.5692	per kW
Summer	\$4.5692	per kW
Power Charge		
Winter	\$12.3392	per kW
Summer	\$16.5352	per kW
Energy Charge		
Effective Charge	\$0.0450	per kWh

Appendix 2-A

SOLAR EQUIPMENT

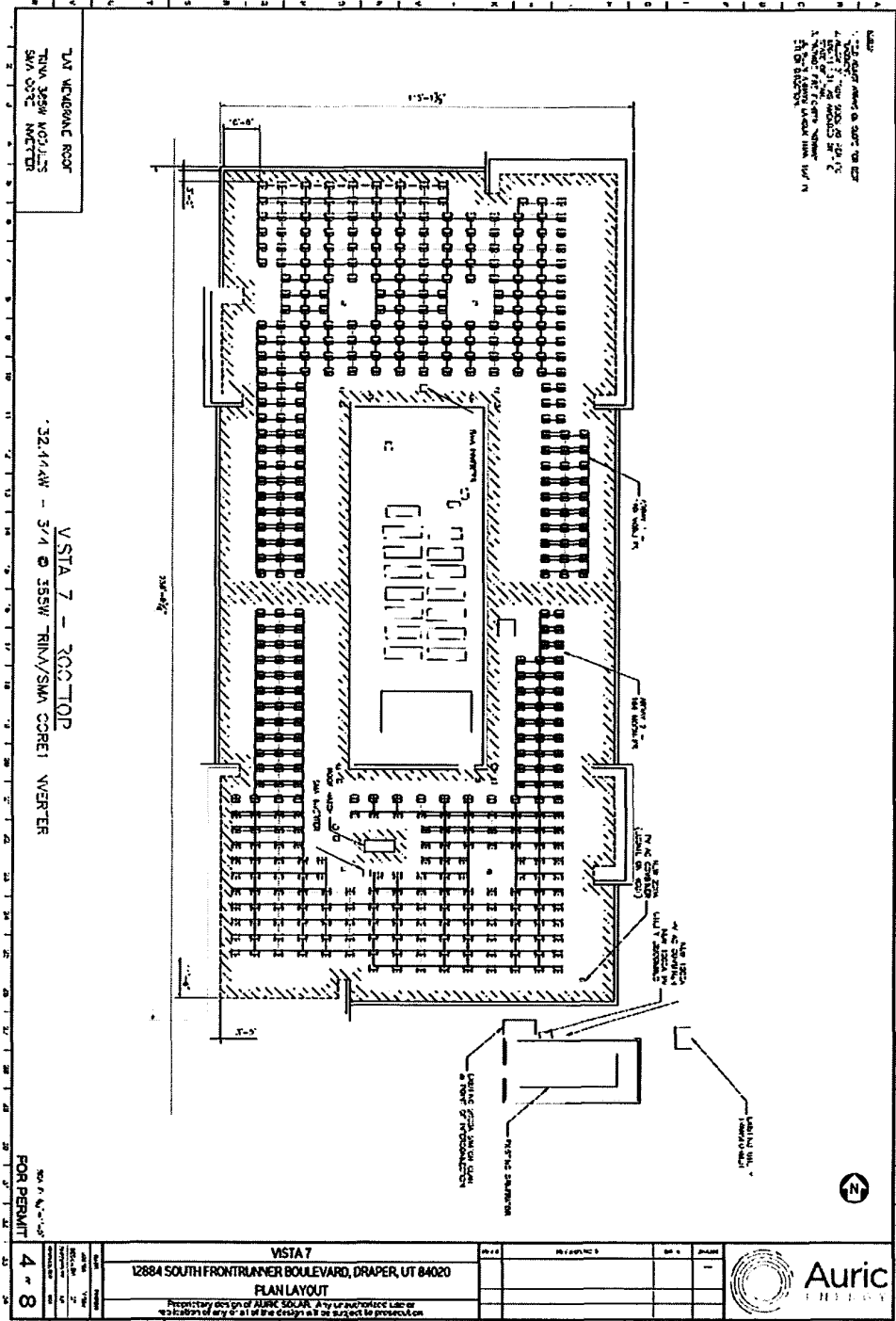
Solar equipment to be installed on rooftop inclusive of a non-penetrating (ballasted) rooftop solar racking system supporting photovoltaic (PV) modules with current inverters. All equipment manufacturers, number and ratings provided in below table.

*Total No. Modules	Module Manufacturer(s)	*Inverter Manufacturer	Rooftop Racking Manufacturer	Total DC Rating	Total AC Rating
1,988	HT-SAAE & Trina	(3) SMA 33.3 kW (2) SMA 50 kW (8) SMA 62.5 kW	Unirac	755.44 kW	699.90 kW

*Includes modules mounted on canopies in parking areas.

Appendix 2-B

DEPICTION OF ROOFTOP



Appendix 2-C

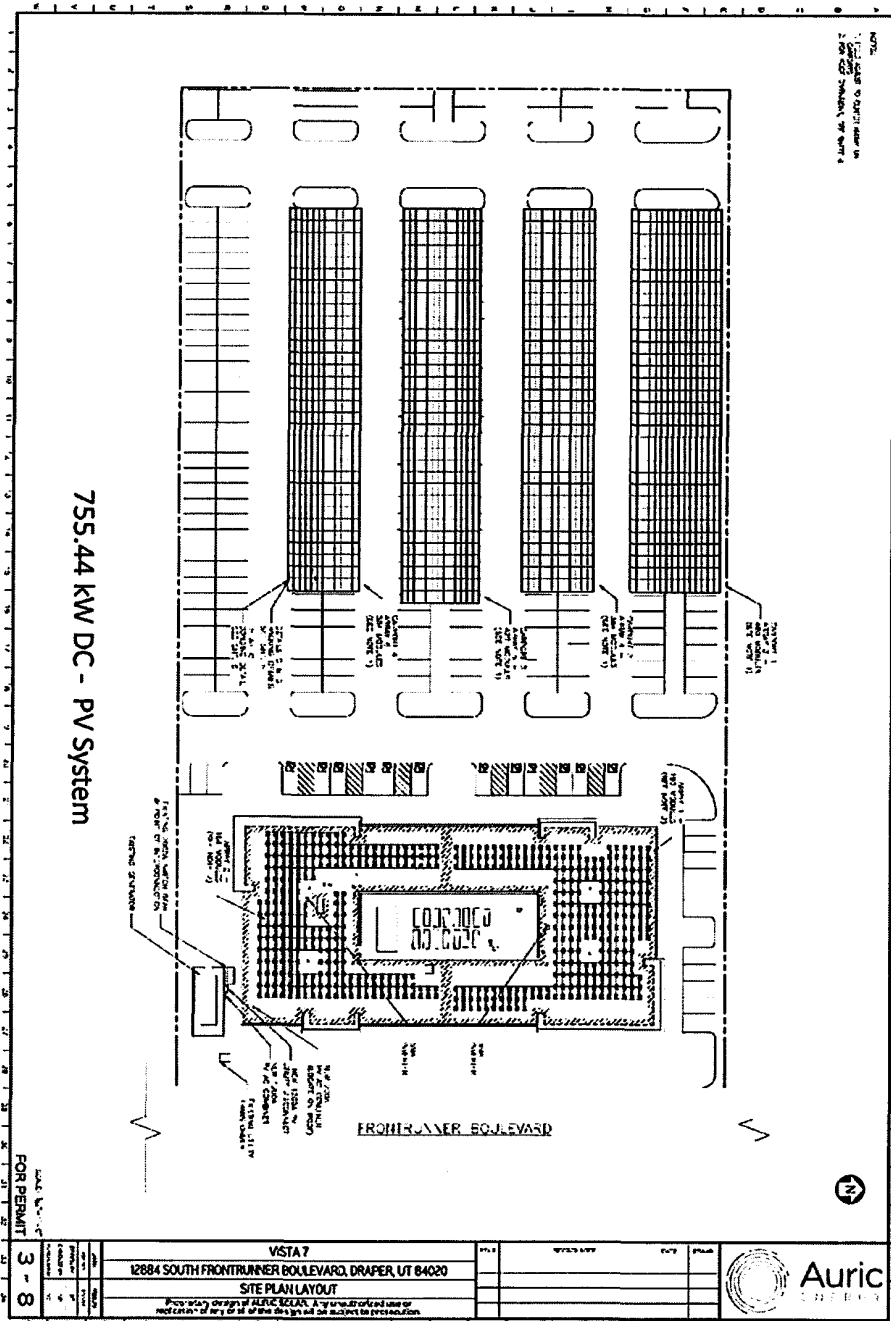
PARKING FIXTURES

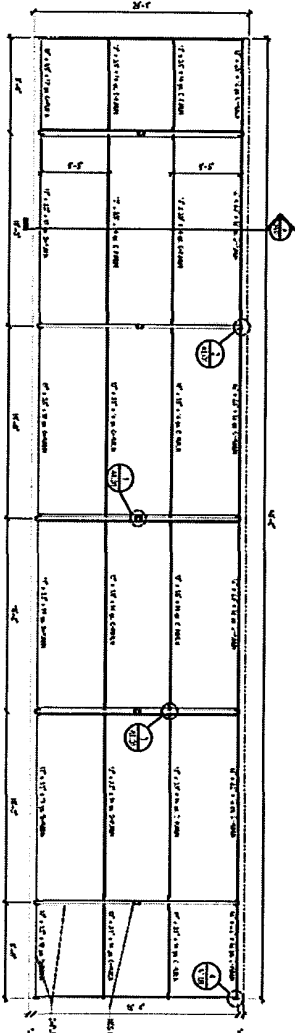
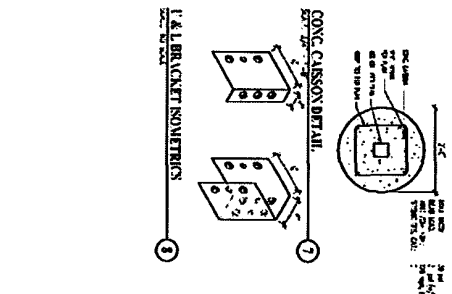
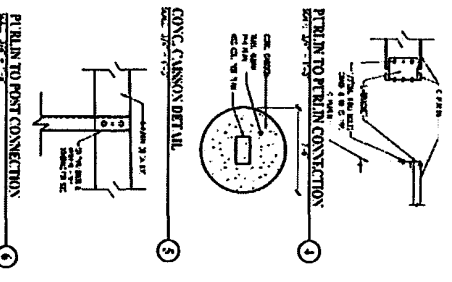
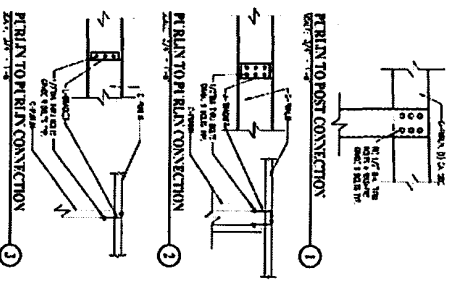
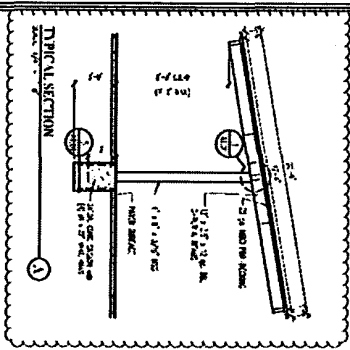
Solar equipment to be installed upon newly constructed canopy structures.

Carport Manufacturer	Carport Racking Manufacturer
Custom Carports	Snap N Rack

Appendix 2-D

DEPICTION OF PARKING LOT





FLOOR PLAN

NOTE: ALL DIMENSIONS ARE IN FEET AND INCHES. UNLESS OTHERWISE SPECIFIED, ALL MATERIALS SHALL BE AS SHOWN ON THE DRAWING.



DATE	11/10
PROJECT	CUSTOM 10 BAY CARPORT
SCALE	AS SHOWN
BY	ME
CHECKED	ME
APPROVED	ME

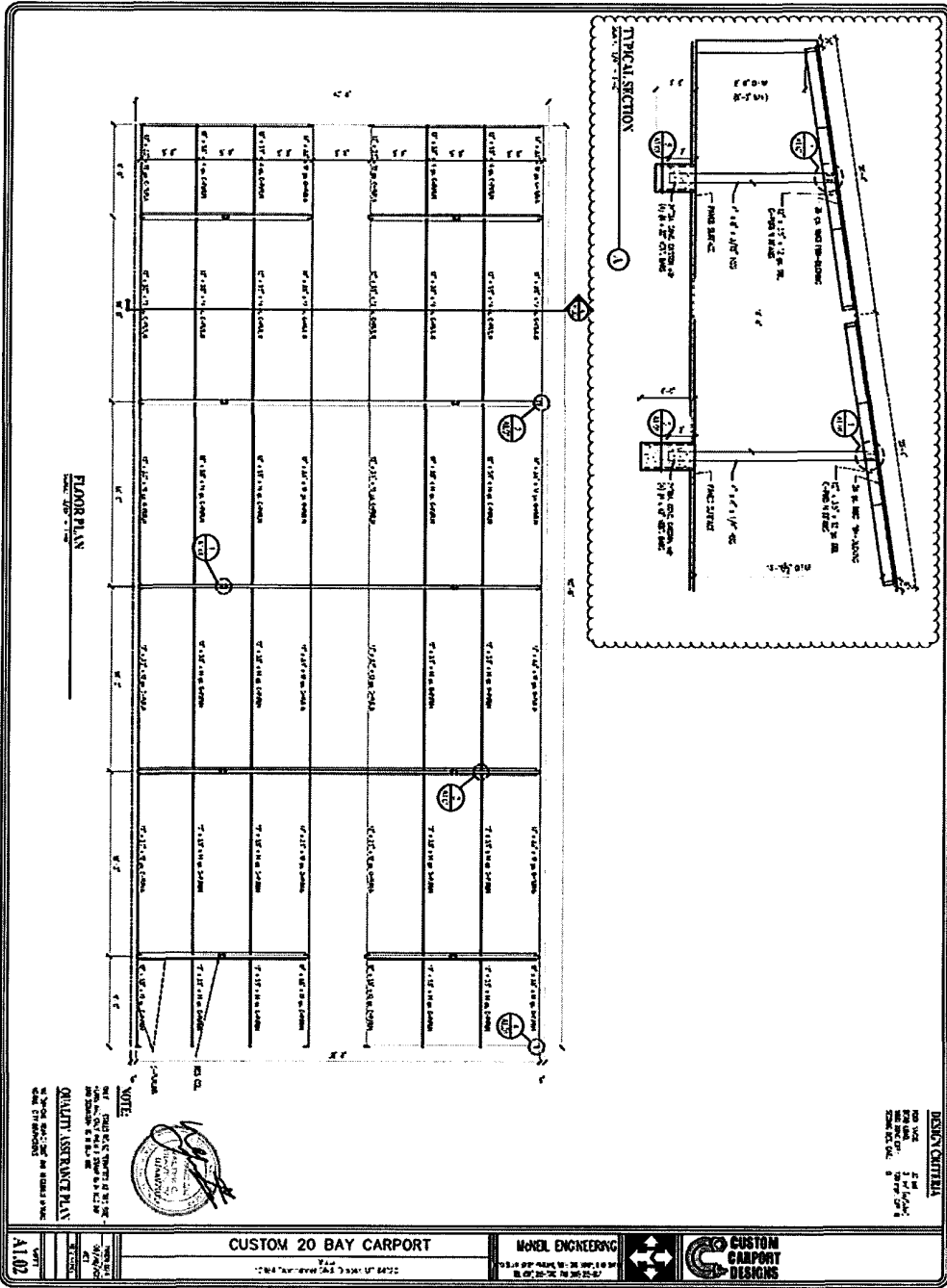
CUSTOM 10 BAY CARPORT

NO. 11100 DATE 11/10

MOORE ENGINEERING
11100 DATE 11/10



CUSTOM CARPORT DESIGNS



Appendix 3

INSURANCE REQUIREMENTS

- Workers compensation insurance in accordance with the laws of the State of Utah
- Employer's liability insurance in an amount not less than \$500,000
- Commercial General Liability for bodily injury liability and property damage liability with limits of \$5,000,000 combined single limit each occurrence, and including but not limited to Comprehensive Form, Premises - Operation, Explosion Collapse, Underground Hazard, Products/Completed Operations Hazard (2 years extension beyond completion of the Project)
- Blanket Contractual Coverage (including coverage for the Indemnity Clauses provided under this contract)
- Broad form Property Damage, Independent Contractors, Personal Injury (employees exclusion deleted)
- Comprehensive Automobile Liability covering owned, hired and non-owned vehicles with limits of \$1,000,000 combined single limit each occurrence
- Excess liability (Umbrella) insurance with limits of \$2,000,000
- Builder's Risk insurance.

EXHIBIT "B"

REAL PROPERTY LEGAL DESCRIPTION

That certain real property situated in the County of Salt Lake, State of Utah and described as follows:

PARCEL 1:

Lot 324, VISTA STATION OFFICE PARK, AMENDED, according to the official plat thereof as recorded in the office of the Salt Lake County Recorder, State of Utah.

PARCEL 1A:

Reciprocal rights and easements as more specifically defined in that certain instrument entitled Covenants, Conditions and Restrictions recorded February 4, 2015 as Entry No. 11987390 in Book 10293 at Page 6891 of the official records.

PARCEL 1B:

Reciprocal rights and easements as more specifically defined in that certain instrument entitled Declaration of Covenants, Restrictions and Easements recorded November 24, 2015 as Entry No. 12176579 in Book 10381 at Page 9348 of official records.