

When recorded, return to:

Alerus Bank  
17045 North Scottsdale Road  
Scottsdale, Arizona 85255  
Attn: Tim Brunner

**DEED OF TRUST AND FINANCING STATEMENT  
(Solar PV System)**

*El Mirage Police Department*

**THIS DEED OF TRUST AND FINANCING STATEMENT (“Deed of Trust”)**, dated as of December 1, 2021, is made by the following parties: (a) CITY OF EL MIRAGE, an Arizona municipal corporation (“Owner”); (b) FTC SOLAR CAPITAL XVIII, LLC, an Arizona limited liability company (“Provider”); and (c) ALERUS FINANCIAL, N.A., chartered under the laws of the United States of America (“AFNA”).

**Part I. Recitals.**

1.1 Owner is the fee simple owner of real property at 12401 West Cinnabar Avenue, El Mirage, Arizona 85335-3258, and described on *Exhibit A* hereto (the “Property”).

1.2 Provider as successor to EMPS Solar Array, LLC, which has no further interest therein and Owner are now parties to a Solar Power Purchase Agreement dated June 18, 2013, and related documents (the “SPPA”), pursuant to which Provider is providing Owner electrical energy solar services (“Solar Services”) through the “System” described in the SPPA.

1.3 The SPPA and this Deed of Trust provide license, access and/or easement rights to Owner, Provider and AFNA to facilitate the nonexclusive use of the Property and System. Owner hereby grants Provider and AFNA utility connection and related rights in gross (the “Access Rights”) to maintain, operate, monitor and remove the System.

1.4 Owner and Arizona Public Service Company, an Arizona corporation (“APS”) are parties to an “Interconnection Agreement” as required by APS. APS provides net metering, buyback and related billing options to its qualifying users of Solar Services including Owner (“APS Buybacks”). The Interconnection Agreement and APS Buybacks are the “APS Items”.

1.5 By unrecorded Assignment & Assumption (the “Assignment”), EMPS Solar Array, LLC transferred and assigned to Provider, and Provider assumed, the rights and obligations of the provider under the documents described above.

1.6 The SPPA, Access Rights and APS Items are the “Base Rights.” The Base Rights, with any other documented rights required thereby and to which Provider is a party, and all amendments and replacements thereto and thereof, are the “Solar Items.”

1.7 The lien documents and Part III (“AFNA Liens”) will encumber the System, Solar Items, and proceeds thereof (the “Collateral”), to refinance and secure the System (the “Loan”) in the principal amount of approximately \$255,155.00.

1.8 AFNA and Provider acknowledge that Owner has separate agreements for interconnection of the System with Arizona Public Service Company and hereby agree that no actions will be taken by either party to interfere with such interconnection agreements.

**Part II. Confirmations.**

2.1 Provider confirms to AFNA that: (a) the above recitals are correct; (b) the Solar Items are in effect and have not been further modified; and (c) any termination or modification of any Solar Item must be approved by AFNA.

2.2 Provider confirms to AFNA and Owner that: (a) no bankruptcy or receivership petition has been filed by or against Provider; (b) except by the Solar Items and AFNA documents, Provider has not assigned its interest in any Collateral; and (c) this Agreement satisfies any requirement in any Project document requiring a nondisturbance from AFNA.

**Part III. AFNA Liens.**

3.1 To secure the Loan, Provider as trustor conveys to AFNA as trustee and beneficiary, to benefit AFNA as beneficiary, with power of sale, and grants to AFNA a security interest in all present and future right, title and interest of Provider in, to and under the: (a) Collateral; (b) Solar Items; (c) Provider’s equipment, inventory, chattel paper, accounts and general intangibles; and (d) proceeds of the foregoing.

3.2 Provider authorizes AFNA to file Arizona Uniform Commercial Code (“UCC”) financing statements with the Arizona Secretary of State describing Provider as debtor, AFNA as secured party, and the collateral as all assets of Provider. This is a financing statement and it is recited to the extent required pursuant to the UCC because any Collateral may constitute fixtures that this Agreement may be filed in the office where a mortgage on the Property would be recorded, which is the office of the Recorder of Maricopa County, Arizona.

3.3 Notwithstanding any conflicting provision in this Part III: (a) the Loan will not be secured by any lien on Owner’s fee interest in the Property; and (b) it is the intention of Provider and Owner that the System will remain removable personal property and not fixtures.

**Part IV. Subordination.**

4.1 Subject to Sections 4.2 and 5.2 and Part VI, any present and future rights of Owner in or to the System and/or otherwise in or to any Collateral will be subject and subordinate to the AFNA documents.

4.2 Section 4.1 is not intended to and will not subject to compliance with Section 5.2 and Part VI affect Owner’s right to receive Solar Services including by purchasing energy, pursuant to the SPPA or to exercise any option in the SPPA to extend the term thereof or purchase the System.

**Part V. Non-Default Payments.**

5.1 Amounts payable by Owner to Provider on a periodic basis pursuant to the SPPA or which are pass-throughs of RECs to APS, in which AFNA will have no interest therein, are “Scheduled Payments.” Other amounts payable by Owner to Provider pursuant to Solar documents, including any option price, termination penalty, relocation expense, condemnation award and insurance proceeds not used to repair the System, are “Unscheduled Payments.”

5.2 Subject to Part VI, Owner may make Scheduled Payments directly to Provider. Unless AFNA consents to any Unscheduled Payments being made to Provider, Owner shall make any Unscheduled Payments to AFNA for the account of Provider.

**Part VI. Nondisturbance and Attornment.**

6.1 If AFNA acquires the System by foreclosure and/or transfer in lieu thereof (each a “Foreclosure”), as long as no Provider default exists beyond any cure period in the SPPA: (a) AFNA will not disturb Owner’s rights under the Project documents; and (b) Owner will not be made a party to any Foreclosure unless Owner is a necessary party to secure relief such as appointment of a receiver not involving termination of Owner’s interests under the Solar Documents. This Section 6.1 will not prevent AFNA from giving any notice or pursuing any right to enforce AFNA’s interest in any Collateral.

6.2 After notice from AFNA that an uncured default by Provider exists with a request to pay or provide AFNA amounts due under any Solar documents, Owner shall pay or provide such amounts to AFNA for the account of Provider. Provider authorizes Owner on receipt of such notice to pay to AFNA any amounts and items payable or deliverable under the Solar documents, and relieves Owner from any liability to Provider for doing so.

6.3 Owner shall give AFNA notice of any Provider default when given to Provider. If Provider fails to cure such Provider default within the period allowed by the Project documents, Owner will give AFNA notice of such failure and an additional 30 days or, if AFNA commences to cure such Provider default within 30 days of receipt of such second notice and diligently (considering requirements such as obtaining possession or stay relief) proceeds to cause such Provider default to be cured, such longer time as AFNA may reasonably need to cure such Provider default prior to terminating any Solar Right. AFNA need not cure any Provider default such as Provider’s insolvency which does not include a failure to provide Solar Services.

6.4 Owner shall attorn to AFNA and, on receipt of notice that AFNA has acquired the System by Foreclosure, recognize AFNA as owner of Provider’s rights under the Solar Rights; *provided that* AFNA will not be: (a) liable for monetary damages based on any act or omission of Provider, for the physical condition of the System or for breach of any Solar Right; (b) subject to offsets or defenses Owner has against Provider, *provided that* this will not affect credit for Scheduled Payments prepaid not over one month prior to their due dates; (c) bound by any release, termination, assignment or modification by Provider of any Solar Right without AFNA’s consent; (d) liable for any obligation under any Project document beyond AFNA’s interest in the related Collateral; or (e) responsible for performing any covenant of Provider under any Solar Item before AFNA obtains or after AFNA reconveys the System.

**Part VII. Miscellaneous.**

7.1 The rights of AFNA as a permittee and lender under the Project documents and as a party to this Deed of Trust are cumulative; *provided that*, any direct conflicts will be governed by this Deed of Trust.

7.2 This Deed of Trust will be binding on and inure to the benefit of the parties and their respective successors and assigns, including as a direct or indirect result of any conveyance of the Property or any Foreclosure. This Deed of Trust will not waive or otherwise affect any right of APS under any Solar Right.

7.3 Any notice, consent, approval or other communication under this Deed of Trust must be in writing and hand-delivered or sent by certified mail, return receipt requested, to the recipient Parties at their addresses set forth below, until such time as notice of a different address may be provided in accordance with this Section 7.3.

7.4 This Deed of Trust shall be governed by and construed in accordance with the substantive laws and judicial decisions of Arizona regardless of conflict of laws principles.

7.5 This Deed of Trust and the Project documents integrate the parties' agreement regarding the Solar Rights and may be modified only by written amendment signed by the Parties or their respective successors or assigns.

7.6 This Deed of Trust may be executed in counterparts by one or more parties. Signature and notary pages may be detached from counterparts and attached to a single copy of this Deed of Trust to form one legally effective Deed of Trust.

Addresses for Notices:

City of El Mirage  
12145 NW Grand Avenue  
El Mirage, Arizona 85335  
Attn: City Manager

CITY OF EL MIRAGE, an Arizona municipal corporation

By \_\_\_\_\_  
\_\_\_\_\_, City Manager

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, City Manager of the CITY OF EL MIRAGE, an Arizona municipality, on behalf of the City.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

FTC Solar Capital XVIII, LLC  
3080 Troy Pike  
Versailles, Kentucky 40383  
Attn: James L. Bates

FTC SOLAR CAPITAL XVIII, LLC, an Arizona limited liability company

By \_\_\_\_\_  
James Bates, Manager

*(with a copy of any default notice to)*

Paul M. Levine, Esq.  
McCarthy Holthus Levine  
8502 East Via de Ventura, Suite 200  
Scottsdale, Arizona 85258

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by James Bates, Manager of FTC SOLAR CAPITAL XVIII, LLC, an Arizona limited liability company, on behalf of the company.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

Alerus Financial  
17045 N. Scottsdale Road  
Scottsdale, Arizona 85255  
Attn: Tim Brunner

ALERUS FINANCIAL NATIONAL  
ASSOCIATION, a North Dakota national  
banking association

By \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, a \_\_\_\_\_ of ALERUS FINANCIAL NATIONAL ASSOCIATION, a North Dakota national banking association, on behalf of the association.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

## **EXHIBIT A**

Parcel No. 1 (501-45-944):

GATEWAY CENTER, according to Book 1139 of Maps, Page 26, Records of Maricopa County, Arizona.