

CITY OF ROSWELL, NEW MEXICO

and

GALLAGHER SOLAR LLC

LEASE AGREEMENT

Dated as of July \_\_, 2026

Up to \$4,800,000  
City of Roswell, New Mexico  
Taxable Industrial Revenue Bonds  
(Gallagher Solar LLC Project)  
Series 2026

CITY OF ROSWELL, NEW MEXICO, a political subdivision of the State of New Mexico (together with its successors and assigns, the “Issuer”), as lessor, and GALLAGHER SOLAR LLC, a Delaware limited liability company (together with its successors and assigns, the “Company”), as lessee, agree:

## **ARTICLE I RECITALS**

### **Section 1.1. Recitals.**

A. The Company has requested that the Issuer issue its Taxable Industrial Revenue Bonds (Gallagher Solar LLC Project), Series 2026 in the maximum principal amount of \$4,800,000 (the “Bonds”). The proceeds of the Bonds will be used to finance the Project (defined below).

B. The Issuer is authorized under Section 3-32-1 to 3-32-16, New Mexico Statutes Annotated, 1978 Compilation (the “Act”) to acquire certain projects and issue its industrial revenue bonds in payment therefore and has determined that it is desirable to acquire the Project (defined below) pursuant to Ordinance No. \_\_\_\_\_ (the “Bond Ordinance”) and has in the Bond Ordinance authorized the issuance of the Bonds.

C. The Bonds are to be issued under an Indenture dated as of July \_\_, 2026 (together with any and all amendments and supplements, the “Indenture”) among the Issuer, Gallagher Solar Holdings, LLC (together with its successors and assignees, and transferees of the Bonds, the “Purchaser”), the Company and BOKF, NA, as Depositary (the “Depositary”). The Bonds will be a special limited obligation of the Issuer payable solely as therein provided and the Bonds will not constitute a debt or indebtedness or pledge of the credit of the Issuer, and the Purchaser or owners of the Bonds will have no right to have taxes levied by the Issuer or to require the Issuer to use any revenues for the payment of the Bonds, except for Basic Rent (as defined in this Agreement).

D. The proceeds of the Bonds will be used to finance the acquisition of the Project Property (defined below) leased to the Company under this Lease Agreement (together with all amendments and supplements, this “Agreement”).

E. The Bonds are to be purchased under a Bond Purchase Agreement dated as of July \_\_, 2026 (together with any and all amendments and supplements, the “Bond Purchase Agreement”) among the Issuer, the Purchaser and the Company.

F. The Bonds will be secured by the Indenture which constitutes, among other things, a security agreement, lien, and collateral pledge of this Agreement.

In consideration of the promises and the mutual representations and agreements hereinafter contained, the Issuer and the Company agree as follows (provided that any obligation of the Issuer created by or arising out of this Agreement will never constitute an indebtedness of the Issuer or give rise to any pecuniary liability of the Issuer, or a charge against its general credit or taxing powers but will be payable solely out of Basic Rent).

## ARTICLE II DEFINITIONS AND RULES OF CONSTRUCTION

**Section 2.1. Definitions.** All words and terms defined in the Indenture have the same meanings when used in this Agreement. In addition:

“Additional Payments” has the meaning assigned in Section 5.3(b).

“Applicable Environmental Law” means any applicable state, federal or local law, statute, ordinance, regulation, order or rule relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or materials or pertaining to health or the environment, including, without limitation, CERCLA and RCRA, as each is amended and in effect from time to time.

“Basic Rent” has the meaning assigned in Section 5.3(a).

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

“Closing Date” means the date of execution and delivery of the Bonds.

“Company Financing” means a transaction or series of transactions involving credit agreements, loan documents, letters of credit, or other instruments evidencing financial obligations to which the Company or any subsidiary or affiliate of the Company is a party entered into or occurring at any time prior to the Closing Date (as defined in the Bond Purchase Agreement) or during the Term and after the date of initial delivery of the Bonds, for the use by the Company or any subsidiary or affiliate of the Company, together with any Company Financing Lien.

“Company Financing Lien” means any pledge, encumbrance or other lien on all or any portion of the Leased Property entered into in connection with a Company Financing

“Construction Completion Date” has the meaning assigned in Section 4.4.

“Issuer PILOT” means the payment in lieu of taxes to be made by the Company to the Issuer in the amounts and on the dates set forth in Section 6.4 hereof.

“Eminent Domain” means the taking of title to, or the temporary use of; all or any part of the Project Property pursuant to eminent domain or condemnation proceedings, or by any settlement or compromise of such proceedings, or any voluntary conveyance of all or any part of the Project Property during the pendency of, or as a result of a threat of, such proceedings.

“Event of Default” has the meaning assigned in Section 8.1.

“Facility” means a solar power generation facility to be operated by the Company on the Project Site located in the City of Roswell, New Mexico, and its related supporting equipment and all improvements thereon for the generation of electricity.

“Indemnatee” has the meaning assigned in Article VI.

“Institutional Investor” means, collectively, any natural person(s) or any entity(ies) who acquire a direct or indirect interest in the Company or in the Project as a part of a transaction to ensure that the Project is owned at least in part by a person or entity able to use the federal renewable electricity production tax credits or investment tax credits and tax depreciation benefits associated with holding an ownership interest in the Project (including any subsequent transferees of any such person(s) or entity(ies)).

“Proceeds,” when used with respect to any insurance proceeds or any award resulting from, or other amount received in connection with, Eminent Domain, means the gross proceeds from the insurance or such award or other amount.

“Project” means the acquisition of the Project Property for use at the Facility.

“Project Property” means that equipment and other personal property as described in Exhibit A attached hereto.

“Project Site” means the real property currently owned by the City of Roswell, New Mexico and located within the boundaries of the City of Roswell, New Mexico described in Exhibit A and leased by the company pursuant to the Site Lease described on Exhibit A.

“RCRA” means the Resource Conservation and Recovery Act of 1976.

“Related Costs” means expenditures incurred or to be incurred with respect to the Project, including, without limitation, the acquisition, installation and construction of the Project Property.

“Rent” means Basic Rent and any Additional Payments under this Agreement.

“School District” means Roswell Independent School District No. 4.

“School District PILOT” means the payment in lieu of taxes to be made by the Company to the School District in the amount and on the dates set forth in section 6.5 hereof.

“State” means the state of New Mexico.

“Term” means the duration of the leasehold estate created by this Agreement pursuant to Section 5.1 hereof.

“TRD” means the New Mexico Taxation and Revenue Department.

## **Section 2.2. Rules of Construction.**

(a) The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

(b) All references in this Agreement to particular articles, sections or exhibits are references to articles or sections of or exhibits to this Agreement unless some other reference is established.

(c) Any inconsistency between the provisions of this Agreement and the provisions of the Indenture will be resolved in favor of the provisions of this Agreement.

### **ARTICLE III REPRESENTATIONS**

**Section 3.1. Issuer Representations.** The Issuer represents that, as of the date of delivery of this Agreement:

(a) The Issuer is a political subdivision, organized and existing under the laws of the State.

(b) The Issuer has duly authorized by an ordinance of the governing body of the Issuer adopted at a meeting duly called and held by the affirmative vote of not less than a majority of its members, the execution, delivery and performance of the Bond Documents, the Bonds and the issuance of the Bonds, all for the purpose of financing the Project including the acquisition, construction and equipping of the Project Property and paying certain costs related to the issuance of the Bonds.

(c) To the knowledge of the Issuer, (i) the execution, delivery and performance by the Issuer of the Bond Documents will not conflict with or create a material breach of or material default under the Act or any other law, rule, regulation or ordinance applicable to the Issuer or any agreement or instrument to which the Issuer is a party or by which it is bound, and (ii) there is no action, suit, proceeding, inquiry or investigation by or before any court, public board or body, pending or threatened against the Issuer, which seeks to or does restrain or enjoin the issuance or delivery of the Bonds or the execution and delivery of any of the Bond Documents or in any manner questions the validity or enforceability of the Bonds or any of the Bond Documents.

**Section 3.2. Company Representations.** The Company represents that, as of the date of delivery of this Agreement:

(a) The Company is a limited liability company duly organized and validly existing under the laws of Delaware, is in good standing under the laws of Delaware, is a duly registered foreign limited liability company authorized to do business in New Mexico, and has duly authorized the execution, delivery and performance of this Agreement and the Bond Purchase Agreement.

(b) The Company has full legal right, power and authority to carry out and consummate the transactions contemplated by this Agreement and the Bond Purchase Agreement, all of which have been duly authorized by all necessary action on the part of the Company.

(c) The execution, delivery and performance by the Company of this Agreement and the Bond Purchase Agreement and the application by the Company of the proceeds

of the issuance and sale of the Bonds as provided in the Bond Documents do not and will not conflict with, contravene, violate or constitute a breach of or default under the articles of organization or operating agreement of the Company or any material agreement to which the Company is a party or by which the Company or its properties or the Project Property is bound or any law, rule, regulation, ordinance, order, consent, or decree, applicable to the Company, its properties or the Project Property if such conflict, contravention, violation, breach or default could materially affect the ability of the Company to perform its obligations under the Bond Documents.

(d) This Agreement and the Bond Purchase Agreement constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and general principles of equity.

(e) No Default or Event of Default, or event or condition which, with notice or lapse of time or both, would constitute a Default or an Event of Default, with respect to the Company has occurred and is continuing.

(f) There is no action, suit, proceeding, inquiry or investigation by or before any court, public board or body pending or, to the best of the knowledge of the Company, threatened against the Company, which (i) seeks to or does restrain or enjoin the issuance or delivery of the Bonds or the execution and delivery of any of the Bond Documents, (ii) questions the validity or enforceability of the Bonds or any of the Bond Documents, (iii) questions the authority of the Company to own, lease or operate any of the Project Property, or (iv) if adversely determined, would have a material adverse effect on the Project Property or the Company's ability to perform its obligations under the Bond Documents.

(g) All necessary authorizations, approvals, consents and other orders of any governmental authority or agency for the execution and delivery by the Company of this Agreement and the Bond Purchase Agreement have been obtained and are in full force and effect.

(h) The Company acknowledges that the Issuer has made no warranty or representation, express or implied, that the amount in the Acquisition Fund, as defined in Section 701 of the Indenture, will be sufficient to pay the Related Costs or that the Project Property will be suitable for the Company's needs.

(i) The Company will not use or operate the Project, or permit the Project to be used or operated, in any way which would adversely affect the qualification of the Project as a "project" under the Act. None of the proceeds of the Bonds will be used to provide working capital.

(j) The acquisition, construction and installation of the Project Property by the Company and the operation thereof will comply in all material respects with applicable zoning, planning, building, environmental and other regulations of the governmental authorities having jurisdiction over the Facility, and all permits, licenses, consents and permissions necessary for the Facility have been or will be obtained in due course.

(k) The Project Property is located within the corporate boundaries of the City of Roswell, New Mexico and is or will be an electric generation facility which does not require location approval and a certificate of convenience and necessity prior to construction or operation of the facility pursuant to the New Mexico Public Utility Act, Sections 62-3-1, et seq., NMSA 1978.

(l) No representation made by the Company in this Agreement and no statement made by the Company in any written information, material or report furnished to the Issuer or the Purchaser in connection with the transactions contemplated by this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the representation or statement, in light of the circumstances under which it is made, not misleading.

(m) The representations of the Company in this Section 3.2 and in any other instrument delivered by the Company in connection with the transactions contemplated by the Bond Documents will survive the execution and delivery of this Agreement, the issuance, sale and delivery of the Bonds for one year as representations of facts existing as of the date of execution and delivery of the Bond Documents or other instrument containing such representation.

#### **ARTICLE IV THE PROJECT AND THE COMPANY**

**Section 4.1. Acquisition, Equipping and Completion.** The Company will acquire and install the Project Property as agent for the Issuer under the Act and applicable TRD regulations. To the extent necessary, after all proceeds of the issuance of the Bonds have been exhausted, the Company will finance the completion of the Project with other funds. The Project Property will at all times during the Term be located within the City of Roswell, New Mexico. The Issuer makes no warranty that the proceeds of the issuance and sale of the Bonds will be sufficient to pay all the Related Costs. The Company will obtain at the necessary time all licenses and permits required for the occupancy and operation of the Project Property.

**Section 4.2. Plans and Specifications; Changes.** The Company may make changes, supplements, amendments and additions, omissions or substitutions for components of the Project Property without the approval of the Issuer or the Purchaser. If the Company elects to make any such change, supplement, amendment, addition, omission or substitution which would make the description of the Project Property contained in Exhibit A materially inaccurate, the Company will revise the description of the Project Property set forth in Exhibit A, accordingly and will deliver a copy of such revised Exhibit A, certified by an Authorized Company Representative, to the Issuer and the Purchaser. The Issuer and Company will take such further actions as necessary to effect such change including executing, delivering, and recording a bill of sale, assignment and any amendments to the Bond Documents. Notwithstanding the foregoing, the Company will not make any changes, supplements, amendments, additions, omissions, or substitutions or otherwise change or operate the Project Property or permit the Project Property to be operated so as to cause the Project Property not to be a “project” within the meaning of the Act as in effect on the date of issuance of the Bonds, and the Company will not take or omit to take any action which will result in the Bond proceeds being applied in violation of the Bond Documents.

**Section 4.3. No Warranty of Condition or Suitability by Issuer.** THE COMPONENTS OF THE PROJECT PROPERTY HAVE BEEN DESIGNATED AND SELECTED BY THE COMPANY. THE ISSUER HAS NOT MADE AN INSPECTION OF ANY PORTION OF THE PROJECT PROPERTY. THE ISSUER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS, IMPLIED OR OTHERWISE, WITH RESPECT TO ANY PORTION OF THE PROJECT PROPERTY OR THE LOCATION, USE, DESCRIPTION, DESIGN, MERCHANTABILITY, FITNESS FOR USE FOR ANY PARTICULAR PURPOSE, CONDITION OR DURABILITY OF THE SAME, OR AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP IN THE SAME. ALL RISKS INCIDENT TO THE PROJECT PROPERTY ARE TO BE BORNE BY THE COMPANY. THE ISSUER WILL HAVE NO LIABILITY WITH REGARD TO OR ARISING OUT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN ANY PORTION OF THE PROJECT PROPERTY, WHETHER PATENT OR LATENT. THE PROVISIONS OF THIS SECTION 4.3 HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES OR REPRESENTATIONS BY THE ISSUER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PORTION OF THE PROJECT PROPERTY, WHETHER ARISING UNDER THE UNIFORM COMMERCIAL CODE OR ANY OTHER LAW NOW OR HEREFTER IN EFFECT.

**Section 4.4. Construction Completion Date.** The Company will complete the Project as promptly as practicable and, in any event, within the five-year anniversary date of this Agreement. On the date the Project is complete and a certificate of occupancy has been obtained for the Facility (if such certificate is required to be obtained) (the “Construction Completion Date”), the Company will deliver to the Issuer and the Depositary a certificate signed by an Authorized Company Representative stating that, except for specified amounts remaining in the Acquisition Fund for any specified Related Costs incurred by the Company but not then due and payable, the Project is complete and all costs of labor, services, materials and supplies in connection with the Project have been paid for or provisions have been made for their payment. After the transfer of remaining moneys in the Acquisition Fund to the Company pursuant to Section 706 of the Indenture, the Company will have sole responsibility for the payment of any Related Costs in excess of the amount specified to be retained in the Acquisition Fund. Upon completion, the Project Property will comply in all material respects with all building codes, and other laws, ordinances, rules and regulations applicable to the Project Property or the Facility.

**Section 4.5. Gross Receipts and Compensating Tax.** The Company, either on its own behalf or as agent for the Issuer pursuant to Section 4.1 and this Section, will file returns for reporting and paying compensating tax which is due because of the Project and promptly will pay, as a Related Cost, any gross receipts or compensating tax due from the Issuer under any such returns. To the extent consistent with or required by State law, the Issuer will cooperate with the Company in the obtaining of Nontaxable Transaction Certificates from the TRD for delivery to suppliers with respect to the Project Property as may be applicable under the New Mexico Gross Receipts and Compensating Tax Act. The Company shall take delivery of all Project Property as agent of the Issuer and may specify such agency relationship on all purchasing and delivery documentation corresponding to the Project Property. It is the intention of the Issuer and the Company that the Company shall be deemed to be acting as agent for the Issuer with respect to all purchases of Project Property to the extent consistent with the terms set forth herein, even if certain purchasing and delivery documentation may not expressly disclose or identify such agency

relationship. The Company will pay any gross receipts or compensating tax plus applicable penalty and interest which is found by the TRD to be due from the Company or the Issuer because of the purchase or use of the Project Property or any component of the Project Property by the Company or the Issuer. The Company, at its sole expense, may request any rulings from the TRD which the Company determines might be necessary or desirable to clarify the New Mexico gross receipts and compensating tax results of transactions related to the Project and may dispute, at its sole expense, in any manner authorized by the New Mexico Tax Administration Act, any gross receipts or compensating tax liability imposed on the Company or the Issuer because of the Project. The Issuer will, at the sole expense of the Company, join in any reasonable modifications to this Agreement which are necessary or desirable to obtain Nontaxable Transaction Certificates or otherwise reduce the gross receipts and compensating tax imposed on the Company or the Issuer as a result of or in connection with the acquisition, construction and installation of the Project Property and will otherwise cooperate with the Company to address any reasonable request of the Company regarding issues raised by TRD with respect to Non-Taxable Transaction Certificates. The Company will employ Nontaxable Transaction Certificates solely to purchase Project Property and will not employ Nontaxable Transaction Certificates for purchases after the Construction Completion Date or for purchases in amounts greater than the proceeds of the Bonds.

**Section 4.6. Compliance With Law.** The Company will obtain or cause to be obtained all necessary permits and approvals, for the occupancy, operation and maintenance of the Project Property and will comply in all material respects with all Applicable Environmental Laws and all lawful requirements of any governmental body, agency or department regarding the use, condition or operation of the Project Property. The Company may in good faith contest the validity or the applicability of any such requirement. During the period of such contest and any related appeal, this Section 4.6 will be deemed satisfied with respect to the requirement so contested.

To the extent that the use which the Company makes or intends to make of the Project Property will result in the manufacturing, treatment, refining, transportation, generation, storage, disposal or other release or presence of any hazardous substance or solid waste on or to the Project Property, such use will be in accordance with all applicable law, including any applicable regulations. For purposes of this paragraph, the terms “hazardous substance” and “release” will have the meanings specified in CERCLA, and the term “disposal” (or “disposed”) will have the meaning specified in RCRA; provided, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning will apply subsequent to the effective date of such amendment, and provided, further, to the extent that the laws of the State establish a meaning for “hazardous substance,” “release,” or “disposal” which is broader than that specified in either CERCLA or RCRA, such broader meaning will apply; provided, further, that the term “hazardous substance” will also include those listed in the U.S. Department of Transportation Table (49 C.P.R. 172.101) and amendments thereto from time to time.

The Company agrees to promptly notify the Purchaser and the Issuer of any violation of any Applicable Environmental Laws of which the Company becomes aware.

Company shall, at Company’s sole cost and expense, remove or take remedial action with regard to any hazardous substance for which any removal or remedial action is required pursuant to any Applicable Environmental Laws. Company shall indemnify, defend, protect and hold the Issuer and the Issuer’s councilors, employees and agents free and harmless from any liability

(including, without limitation, costs, reasonable attorneys and consulting fees, investigation, laboratory fees and litigation expenses) arising out of (a) a release of any hazardous substance in, on or under the Project Site or (b) the violation by Company or its employees, agents or contractors of any Applicable Environmental Laws. The indemnity obligations stated in this Section are in addition to the other indemnity obligations of Company hereunder and shall survive the termination of this Agreement.

**Section 4.7. Nuisance Not Permitted.** The Company will use reasonable care to not commit a nuisance in connection with its use or occupancy of the Project Property.

**Section 4.8. Taxes and Utility Charges.** The Company will pay or cause to be paid, as and when due, (i) all taxes, assessments, and governmental and other charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project Property, (ii) all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project Property and (iii) all assessments and charges lawfully made by any governmental body for public improvements that may be secured by any lien on the Project Property. The Company may, in good faith, contest the amount or validity of any such levy, tax, assessment or other charge by appropriate legal proceedings. During the period of such contest and any related appeal, this Section 4.8 will be deemed satisfied with respect to any such levy, tax, assessment or other charge so contested.

**Section 4.9. Maintenance.** The Issuer will not be under any obligation to, and will not, operate, maintain or repair the Project Property. The Company will, at its own expense, keep the Project Property in safe repair and in such operating condition as is needed for its operations. The Company will use commercially reasonable efforts to renew, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable, inappropriate or unnecessary equipment to the extent necessary to ensure the continued operation of the Project Property as a "Project" as defined under the Act for the Term of this Lease Agreement.

**Section 4.10. Replacement and Removal of Project Property.** The Company may replace or remove and/or sell, trade in, exchange or otherwise dispose of any machinery, equipment or fixtures constituting a part of the Project Property, without any responsibility or accountability to the Issuer, and thereby acquire title to such machinery, equipment or fixtures, provided that such replacement or removal will not change the nature of the Project as a qualified "project" as defined in and as contemplated by the Act. Upon request and at the expense of the Company, the Issuer will deliver to the Company appropriate instruments evidencing the acquisition by the Company of title to any machinery, equipment or fixtures permitted by this Section 4.10 to be so replaced or removed. The provisions of Article X govern the delivery and form of any such instruments. The removal from the Project of any portion of the equipment, if any, pursuant to the provisions of this Section will not entitle the Company to any abatement or diminution in amount of the Basic Rent, Additional Payments, School District PILOTs or Issuer PILOTs payable under this Agreement. The Company may acquire machinery, equipment or other property (other than fixtures) which does not constitute a part of the Project Property and title to any such property will not thereby be transferred to the Issuer.

**Section 4.11. Eminent Domain; Damage; Destruction.** The Company will give prompt notice to the Issuer and the Purchaser of any material damage to or destruction of the Project

Property. If either the Issuer or the Company receives notice of the proposed taking of all or any part of the Project Property by Eminent Domain, it will give prompt notice to the other and the Purchaser. Any such notice will describe generally the nature and extent of such damage, destruction, taking or proposed taking. The Proceeds resulting from the exercise of Eminent Domain with respect to or from any damage to or destruction of all or any portion of the Project Property shall at the option of the Purchaser, be applied to the prepayment of the Bond or paid to the Company.

**Section 4.12. Access and Inspection.** The Company authorizes the Issuer and the Purchaser and their duly authorized agents during regular business hours, upon two (2) days prior written notice, such rights of access to the Project Property as may be reasonably necessary to inspect the progress of the Project. Such rights of access and entry will not be terminated, curtailed or otherwise limited by any sale, assignment, lease or other transfer of the Project Property by the Company to any other Person.

**Section 4.13. Assessment in the Company's Name.** If this Agreement has not been terminated on or before the fifteenth anniversary of this Agreement, the Company will take all necessary action to have the Project Property assessed for property tax purposes in the name of the Company on or within thirty (30) days before the fifteenth anniversary of this Agreement, and the Company will pay all ad valorem taxes on the Project Property from and after such date. If the Project Property must be conveyed to the Company to accomplish such assessment, the Company will promptly notify the Issuer and the Issuer will convey the Project Property to the Company, and this Agreement will thereafter be construed to be an installment sale agreement and all terms and provisions of this Agreement will remain in full force and effect. The provisions of Article X govern the manner and form of any such conveyance. Notwithstanding the foregoing, if the Company fails to take all necessary action to have the Project Property assessed for property tax purposes in the name of the Company thirty (30) days before or on the fifteenth anniversary of this Agreement, the Issuer may terminate this Agreement and execute, deliver and cause to be recorded, at the expense of the Company, a quitclaim deed, assignment of easements and a bill of sale with respect to the Project Property. In anticipation of the conveyance of the Project Property by the Issuer to the Company, the Issuer will, upon the request of the Company, deliver to an escrow agent agreed to by the Issuer and the Company appropriate documents, including, but not limited to, a quitclaim deed, an assignment of easements and other real property rights and a bill of sale, prepared by the Company at the Company's expense, conveying to the Company the Issuer's interest in the Project Property; such documents to be delivered to the Company at the time of purchase of the Project Property.

**Section 4.14. Use of Project Property.**

(a) The Company will use the Project Property or cause the Project Property to be used continuously during the Term as defined in Section 5.1(a) below, so as to constitute a "project" within the meaning of the Act as in effect on the date of issuance of the Bonds. As used in the first sentence of this Section 4.14(a), "continuously" means regularly and on a schedule consistent with that of similar facilities in the United States. Temporary cessation of operations shall not constitute a failure by the Company to comply with this Section 4.14(a) if such temporary cessation is (i) as a result of maintenance or retooling or for repair or replacement of facilities, or due to slack demand or other similar circumstances, in each case not exceeding fifteen (15)

consecutive days (unless the Issuer agrees in writing to a longer period) or (ii) as a result of acts of God or the public enemy, labor disputes or strikes or for any other reason beyond the reasonable control of the Company.

(b) If the Company fails to comply with the first sentence of subsection (a) of this Section 4.14, the Company shall pay to the Issuer an amount equal to all ad valorem, gross receipts and compensating taxes abated as a result of the Project being owned by the Issuer less all amounts paid by the Company pursuant to Sections 6.4 and 6.5.

**Section 4.15. Existence.** Unless its successor or the transferee of its assets, as the case may be, assumes in writing all of the obligations of the Company under the Bond Documents, the Company will maintain its existence as a limited liability company and will not dispose of all or substantially all of its assets, other than through execution of this Agreement. The Company shall have the right to change its organizational structure if such a change is necessary to permit the Company as restructured to remain eligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, provided such restructured organization assumes in writing all of the obligations of the Company under the Bond Documents. Original executed copies of such assumption will be delivered to each of the other Parties on or before the effective date of such succession or transfer. To the extent necessary under State law, the Company and its successors or transferees will become and remain authorized to transact business in the State and, if applicable, in good standing in the State.

**Section 4.16 Insurance.** The Company will keep the Project Property continuously insured against such risks and in such amounts, with such deductible provisions, as are customary in connection with the operation of facilities of the type, location and size comparable to the Project, as reasonably determined by the Company. Each policy of such insurance will show the Company as loss payee and the Issuer as an additional insured under such policies as the respective interests of such parties may appear. Such insurance may, to the extent permitted under applicable law, be provided by blanket policies maintained by the Company, by a captive insurance company controlled by the Company or through self-insurance. Such insurance will include extended coverage insurance and general liability insurance against liability for (i) claims for injuries to or death of any person or damage to or loss of property arising out of or in any way relating to the condition of the Project Property, and (ii) liability with respect to the Project Property under the workers' compensation laws of the State (unless the Company has complied with the requirements of the law of the State for self-insurance).

**Section 4.17 Subleases; Granting and Release of Easements; Amending or Modifying Subleases and Easements.** The Company may at any time or times cause to be granted subleases, easements, licenses, rights-of-way (temporary or perpetual and including the dedication of public highways) and other rights or privileges in the nature of easements with respect to any property included in the Project and such grant will be free from the lien or security interests created by the Indenture or this Agreement, or the Company may cause to be amended, modified or released existing subleases, easements, licenses, rights-of-way and other rights or privileges in the nature of easements, held with respect to any property included in the Project Property with or without consideration, and the Issuer agrees that it will, at the expense of the Company, execute and deliver any instrument necessary or appropriate to confirm and grant, amend, modify or release any such sublease, easement, license, right-of-way or other right or privilege upon receipt of: (i) a

copy of the instrument of grant, amendment, modification or release, and (ii) a written application of the Company signed by an authorized representative of the Company requesting such instrument and stating (1) that such grant, amendment, modification or release is not detrimental to the proper conduct of the business of the Company, and (2) that such grant, amendment, modification or release will not impair the effective use or materially interfere with the operation of the Project Property; will not materially diminish or impair the security intended to be given by or under this Agreement or the Indenture and will not materially diminish or impair the obligations of the Company under this Agreement or the Indenture.

## **ARTICLE V LEASE; TERM; POSSESSION; RENT**

### **Section 5.1. Lease of the Project Property; Term.**

(a) The Issuer hereby leases the Project Property to the Company pursuant to the terms of this Agreement. This Agreement shall become effective upon its execution and delivery, and the leasehold estate created hereby and the Term shall then begin, and subject to the provisions of this Agreement, the Term shall expire on the earlier of (i) July \_\_, 2041 or (ii) on such earlier date as the payment or redemption and discharge of the whole amount of the principal and interest on the Bonds at the time outstanding shall have been made as provided in the Indenture, or on such earlier date as arrangements satisfactory to the Issuer and the Purchaser for such payment or redemption and discharge of the Bonds shall have been made. The parties acknowledge that the Company may pay, discharge and redeem the Bonds by offsetting amounts owed under the Bonds to the Purchaser against monies owed to the Company by the Purchaser, including but not limited to monies advanced by the Company to the Purchaser in anticipation of making Bond advances under the Indenture.

(b) Upon the termination of this Agreement, all right, title and interest of the Issuer and the Purchaser under this Agreement shall thereupon cease, terminate and become void, the Bonds shall cease to be entitled to any benefit under this Agreement, and, except as otherwise provided in Section 6.7, all covenants, agreements and obligations of the Company to the Purchaser, the Issuer (except for the provisions pertaining to Issuer indemnification), and with respect to the School District, the School District PILOTs, shall thereupon cease, terminate and become void.

**Section 5.2. Quiet Enjoyment.** So long as no Event of Default has occurred and is continuing, the Issuer will not take any action, other than pursuant to Section 4.11 or Article VIII, to prevent the Company from having quiet and peaceable possession and enjoyment of the Project Property during the Term (except as necessary with respect to Eminent Domain or condemnation for public projects and purposes) and will, at the request of the Company and at the Company's expense, including all expenses incident to any legal action, to the extent that the Issuer may lawfully do so, join in any legal action in which the Company asserts its right to such possession and enjoyment.

### **Section 5.3. Basic Rent and Additional Payments.**

(a) The Company will pay to the Purchaser for the account of the Issuer such amounts at such times as are required to make all payments of principal of, interest on and redemption price of the Bonds in accordance with the terms of the Bonds and the Indenture as and when due (the “Basic Rent”), and the Company shall take all such actions relating to the withholding and reporting of interest as are required by the Internal Revenue Code of 1986, as amended. A copy of the anticipated payment schedule for the Bonds is attached hereto as Exhibit B. The parties acknowledge that the Company may pay, discharge and redeem the Bonds by offsetting amounts owed under the Bonds to the Purchaser against monies owed to the Company by the Purchaser, including but not limited to monies advanced by or on behalf of the Company to or on behalf of the Purchaser in anticipation of making Bonds advances under the Indenture.

(b) The Company will make payments (the “Additional Payments”) to or on behalf of the Issuer and the School District for all actual costs, expenses and taxes (including, but not limited to costs attributable to work performed by in-house staff and the fees of its outside advisors including counsel and its financial advisor) paid or incurred by the Issuer or the School District in connection with (i) the discussion, review, negotiation, preparation, approval, execution and delivery of the Bonds, the Indenture, this Agreement, and the other documents and instruments related hereto and thereto through the Closing Date, all of which amounts shall be paid in full on or before the Closing Date, (ii) any amendments or modifications to any of the foregoing documents, instruments or agreements and the negotiation, preparation, approval, execution and delivery of any and all documents necessary to effect such amendments or modifications, (iii) the enforcement by the Issuer or the School District, during or after the Term of any of the rights or remedies of the Issuer or the School District under any of the foregoing documents, instruments or agreements including without limitation, costs and expenses of collection, whether or not suit is filed, (iv) the servicing and administration of the Bonds during the Term or thereafter, and (v) any requested subordination of the Issuer’s interest in the Project Property to a Lender.

(c) Additional Payments that are not paid when due will bear interest at a rate equal to the prime rate as most recently published in the “Bonds, Rates and Yields” table of the Wall Street Journal, as in effect from time to time, plus 200 basis points until paid in full.

#### **Section 5.4. Obligations Unconditional; Rights of Setoff.**

(a) The obligation of the Company to pay Rent and to perform its other obligations under this Agreement is absolute and unconditional and, except as otherwise provided in 5.4(b) below, will not be subject to diminution by setoff, counterclaim, abatement or otherwise, whether as a result of Eminent Domain with respect to, damage to or destruction of or removal of all or any portion of the Project Property or any other event or condition. In the event the Issuer fails to perform its obligations under this Agreement, the Company may, subject to the limitations imposed by Section 11.3, institute such action against the Issuer as the Company may deem necessary to compel performance of those obligations of the Issuer set forth in Sections 4.5, 5.2, 7.1, 7.2, and Article X. The Company may also, at its own cost and expense and in its own name or, if necessary, in the name of the Issuer prosecute or defend any action or proceeding or take any other action involving third parties which the Company deems reasonably necessary in order to secure or protect its title to or its right of possession, occupancy and use of the Project Property. In such event, if no Event of Default has occurred and is continuing, the Issuer will cooperate with the Company, so long as it is not the adverse party, upon receipt of indemnity satisfactory to the

Issuer against any out-of-pocket cost, expense (including reasonable counsel fees and expenses) or liability the Issuer may incur or suffer as a result of or in connection with such cooperation.

(b) Notwithstanding the above paragraph, it is the intention of this Agreement that the Company shall make Basic Rent payments to the Purchaser for the account of the Issuer, in such amounts and at such times as are required to make payments of principal of, interest on and redemption price of the Bond in accordance with the terms of the Bond Documents as and when due, and the parties acknowledge that all such Basic Rent payments may be offset against any monies due and payable to the Company from the Purchaser in connection with any funds advanced by or on behalf of the Company to or on behalf of the Purchaser in anticipation of any Advances to the Acquisition Account (as defined in the Indenture) as provided for under Section 702 of the Indenture. The Purchaser will look only to the Company for payment of the Bonds and upon the security granted in the Indenture for the Company's obligations under this Agreement. As described in Section 7.1, the Issuer will assign and pledge to the Purchaser certain of its rights, title and interests in and to this Agreement including the right to receive payments of Basic Rent hereunder.

**Section 5.5. Net Lease.** This Agreement will be deemed and construed to be a "net lease," and the Company will pay Rent, absolutely net, and except as set forth in Section 5.4(b) hereof, free of any deductions and without abatement, diminution or setoff.

## **ARTICLE VI SPECIAL COVENANTS**

**Section 6.1. Recording and Filing; Further Assurances.** The Company will, at the expense of the Company, take all actions that at the time are and from time to time may be reasonably necessary to perfect, preserve, protect and secure the interests of the Issuer and the Purchaser in and to the Rent and in the Project Property, including, without limitation, the recordation of this Agreement and the Indenture, the filing of financing statements and continuation statements and the execution, acknowledgment, delivery, filing and recordation of such other instruments as may reasonably be required in carrying out the intention of or facilitating the performance of this Agreement.

**Section 6.2. Claims; Liens.** The Company will pay and discharge and will indemnify and hold harmless the Issuer from (a) any lien or charge upon payments by the Company to, or for the account of, the Issuer under this Agreement (other than the Indenture) and (b) any taxes, assessments, impositions and other charges in respect of the Project Property. If any such lien or charge upon payments, or any such taxes, assessments, impositions or other charges, are sought to be imposed, the Issuer will give prompt notice to the Company of any such lien, taxes, assessments, impositions or other charges of which the Issuer has actual notice, and the Company will have the sole right and duty to assume the defense of the same and will have the power to litigate, compromise or settle the same.

**Section 6.3. Release and Indemnification.**

The Company releases the Issuer, its Councilors, officials, employees and agents (each an "Indemnatee") from, and will indemnify each Indemnatee against all liabilities, claims, costs and

expenses imposed upon, incurred or asserted against any Indemnitee on account of: (a) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the installation, maintenance, operation and use of the Project Property; (b) the inaccuracy of any representation by the Company (regardless of whether the Company was aware of such inaccuracy at the time the representation was made) or any breach or default on the part of the Company in the performance of any representation, covenant or agreement of the Company under this Agreement, or any related document, or arising from any acts or failure to act by the Company, or any of its agents, contractors, servants, employees or licensees; (c) the Company's failure to comply with any requirements of this Agreement; (d) suits, legal or administrative proceedings, demands, losses, liabilities, damages, claims, causes of action, costs and expenses resulting from or in any way connected with the presence, release or disposal in or under the Project Site of, any hazardous substances (as defined in CERCLA), hazardous wastes (as defined in RCRA), oils, radioactive materials, asbestos in any form or condition, any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials or substances within the meaning of any Applicable Environmental Law; (e) any liability, whether under federal or state securities laws or otherwise, that may arise as a result of inaccurate information supplied by the Company in connection with the issuance of the Bonds or any subsequent sale of the Bonds; (f) any other loss, claim, damage, penalty, liability, disbursement, litigation expenses and attorneys' fees or court costs arising out of or in any way relating to the execution or performance of this Agreement, actions taken under the Indenture, the issuance of the Bonds, the ownership or leasing of the Project Property or any other cause whatsoever pertaining to the Project Property; and (g) any claim, action or proceeding brought with respect to the matters set forth in clauses (a) through (f). The Issuer will not be liable to the Company, and the Company releases and discharges the Issuer from any liability for any and all losses, costs, expenses (including attorneys' fees), damages, judgments, claims and causes of action paid, incurred or sustained by the Issuer as a result of or relating to any action, or failure or refusal to act on the part of the Purchaser or the Depositary with respect to the Bonds, the Bond Documents or the transactions contemplated thereby, including without limitation the exercise by the Purchaser of any of its rights thereunder. This Section 6.3 is not intended in any way to detract from provisions of the Bond Documents to the effect that the Issuer is not to incur any pecuniary liability with respect to the transactions contemplated by the Bond Documents.

Notwithstanding the fact that it is the intention of the parties that the Issuer will not incur pecuniary liability by reason of this Agreement or the undertakings of the Issuer under this Agreement, by reason of the issuance of the Bonds, the execution of the Bond Documents, the performance of any act required of it by the Bond Documents, the performance of any act related to the Bond Documents or the Bonds requested of it by the Company or its position as owner or lessor of the Project Property, nevertheless if the Issuer incurs any such pecuniary liability or the same is claimed or sought, then in such event the Company will indemnify and hold harmless the Issuer against all claims by or on behalf of any person arising out of the same and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice from the Issuer, the Company will defend the Issuer in any such action or proceeding.

In case any action or proceeding is brought against any Indemnitee in respect of which indemnity may be sought hereunder, such Indemnitee will give notice of the action or proceeding to the Company, and the Company, upon receipt of that notice, will have the obligation and the

right to assume the defense of the action or proceeding; provided that failure of an Indemnatee to provide such notice will not relieve the Company from any of its obligations under this Section unless that failure prejudices the defense of the action or proceeding by the Company, in which case the liability of the Company under this Section shall be reduced only by an amount equal to the amount of the loss sustained by the Company solely as a result of such failure to notify. The Company will have no obligation to indemnify any Indemnatee with respect to any settlement entered into by such Indemnatee without the prior consent of the Company (which consent will not be unreasonably withheld).

The provisions of this Section will be enforceable by the Issuer to the full extent permitted by law, but will not include the gross negligence or willful misconduct of the Indemnitees. The provisions of this Section will survive the payment of the Bonds and the termination of this Agreement.

Nothing in this Section 6.3 shall be deemed a waiver of or revision to the application of the provisions of the New Mexico Tort Claims Act, NMSA 1978 Section 41-4-1 *et seq.*, as amended, as applicable to the Issuer.

**Section 6.4. Payments to Issuer.** The Issuer and the Company acknowledge that during the Term, the Project Property will be exempt from property taxation pursuant to Section 7-36-3 NMSA 1978. The total annual fixed payment in lieu of taxes to be paid by the Company is as set forth on Exhibit C (the “Total PILOT”), of which a portion shall be paid to and retained by the Issuer as the Issuer PILOT (as defined below) and a portion of which shall be paid to the School District as the School District PILOT (as defined below). For the purpose of Section 3-32-6.A(2) (b) NMSA 1978, the Total PILOT shall be deemed to be the amount “received” by the Issuer.

The Company shall make an annual fixed payment in lieu of taxes to the Issuer (the “Issuer PILOT”) in the amount of set forth on Exhibit C on the first anniversary date of this Agreement and, thereafter, on each succeeding anniversary date of this Agreement (each such payment date, a “PILOT Payment Date”) during the Term, such Issuer’s PILOT amount representing the Issuer’s respective portion of the Total PILOT.

**Section 6.5. Payments to School District.** The Company shall make an aggregate annual fixed payment in lieu of taxes to the School District in the amount of set forth on Exhibit C (the “School District PILOT”) on each PILOT Payment Date during the Term, such School District PILOT representing the School District’s respective portion of the Total PILOT. The School District PILOT as set forth herein has been calculated in accordance with the requirements of Section 3-32-6.A(2) NMSA 1978. For the purposes of establishing the minimum School District PILOTs as required under Section 3-32-6.A(2) NMSA 1978, the Company hereby represents that none of the Project Property was subject to New Mexico Property Taxes in the tax year immediately preceding the date of issuance of the Bonds (the “Prior Tax Year”) and, accordingly, no New Mexico Property Taxes were due or payable to any of the School Districts with respect to the Project Property in the Prior Tax Year.

## **ARTICLE VII ASSIGNMENT, LEASING AND SELLING**

**Section 7.1. Assignment of Rights by the Issuer.** Concurrently with issuance of the Bonds, the Issuer will assign to the Purchaser certain of the Issuer's rights, title and interests in and to this Agreement, pursuant to the Indenture, as security for payment of the principal of, interest on and redemption price of the Bonds. Thereafter, the Purchaser will be vested with, and authorized to exercise, such rights of the Issuer and the Purchaser under this Agreement. The Company consents to such assignment.

**Section 7.2. No Other Transfer by Issuer.** Except for the assignment described in Section 7.1 and Article X hereof or transfer to the Company in accordance with Section 4.13 or 8.3, the Issuer will not sell, assign, transfer or convey its rights, title or interests in this Agreement or the Project Property, or its obligations under this Agreement. Except for liens created or permitted by the Company, the Issuer will not cause or create any liens on the Project Property and will cooperate with the Company to defend the Project Property and the Company from and against any claims of lien.

**Section 7.3. Assignment, Lease, Mortgage and Sale by the Company.** The rights of the Company under this Agreement may be assigned, and the rights of the Company in the Project Property may be assigned, subleased, mortgaged or sold as a whole or in part by the Company. The Company may, sublease, mortgage or sell the Project Property and assign its rights under this Agreement, in whole or in part and the Company shall provide the Issuer and the Purchaser with notice of such assignment within thirty (30) days after the effective date of such assignment. Notwithstanding the foregoing, any assignment, sublease, mortgage or sale of Project Property that purports to relieve the Company from liability for making payments of Rent and for the performance of all other obligations of the Company under this Agreement and its obligations for the Project Property, will require the assumption in writing by any assignee, sublessee or purchaser of the obligations of the Company under this Agreement, and, the prior written consent of the Issuer. Any mortgagee or assignee that does not directly hold an interest in the Project Property or whose interest is held solely for security purposes shall have no obligation or liability under this Agreement prior to the time the mortgagee or assignee directly holds an interest in this Agreement or the mortgagee or assignee directly succeeds to absolute title to the Company's interest. A mortgagee or the assignee shall be liable to perform obligations under this Agreement only for and during the period it directly holds such interest or absolute title; provided, however, that such liability shall not include any liability for claims of the Issuer against the Company arising from the Company's failure to perform during the period prior to such mortgagee's or assignee's succession to the Company's interest in and under this Agreement.

**Section 7.4 Leasehold Security Deeds / Cooperation of Issuer.** The Issuer acknowledges the right of the Company to mortgage and/or give security interests in this Agreement under one or more leasehold security deeds (as the same may be amended, modified, consolidated, extended or refinanced, collectively, the "Leasehold Security Deed") and assign this Agreement, or any part or parts thereof, as collateral security for the Leasehold Security Deed. The Issuer hereby agrees to and will, at the Company's option and at the Company's sole expense, join in the Leasehold Security Deed in order to subject its fee interest in the Project to the lien of such Leasehold Security Deed provided that such Leasehold Security Deed will be fully non-recourse

to the Issuer and the Issuer will, subject to obtaining all necessary approvals of the Issuer's City Council to the extent required under applicable state laws, deliver such resolutions, or other documents or instruments as the holder of the Leasehold Security Deed reasonably requires in connection therewith. If the Company gives a Leasehold Security Deed with respect to this Agreement, or any part or parts hereof, the holder of the Leasehold Security Deed (the "Leasehold Mortgagee") will provide the Issuer and the Purchaser (as assignee of the Issuer under the Indenture) with notice of the Leasehold Security Deed and the name and address of the Leasehold Mortgagee.

**Section 7.5 Company Financing Liens.** The Company may from time to time grant one or more Company Financing Liens. The Issuer shall reasonably cooperate, at the expense of the Company, in connection with any such grant. In addition, the Issuer will grant such Company Financing Liens on its interest in the Project Property as the Company may from time to time reasonably request, all at the Company's expense, and only so long as the such Company Financing Lien does not involve any pecuniary liability or obligation of the Issuer except with respect to the Project Property and the application of the revenues therefrom.

## **ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES**

**Section 8.1. Events of Default Defined.** Each of the following events is an "Event of Default":

(a) Failure by the Company to (i) make any Rent payment (excluding PILOT payments) or Additional Payments when due which continues unremedied for a period of thirty (30) days after the provision by the Issuer, the School District or the Purchaser of written notice of non-payment, or (ii) make any Issuer PILOT payment when due which continues unremedied for a period of fifteen (15) days after the provision by the Issuer, the School District or the Purchaser of written notice of non-payment.

(b) Any representation of the Company in any Bond Document or in any document or agreement delivered to any of the other Parties in connection with the transactions contemplated by any Bond Document proves to have been incorrect in any material respect when made and remains incorrect for a period of thirty (30) days after written notice specifying such error and requesting that it be remedied is given by the PILOT unless such error cannot be remedied within thirty (30) days and the Company has instituted corrective action within thirty (30) days after such notice and diligently pursues such action until such failure is remedied.

(c) The filing by the Company of any petition for a decree or order for relief in bankruptcy in any federal or state court, or a court of competent jurisdiction enters an order or decree in an involuntary case under any federal or state bankruptcy, insolvency or similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Company or for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of sixty (60) consecutive days, or the commencement by the Company of a voluntary case under such law, or the consent by the Company either to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Company or

for any substantial part of its property, or the making by it of any assignment for the benefit of creditors, or the taking of action by the Company to authorize or effect any of the foregoing. Provided, however, neither the bankruptcy nor the insolvency of the Company shall be grounds for default as long as all Basic Rent payments, Issuer PILOT payments and Additional Payments, and all other monetary charges payable by the Company under this Agreement are paid in accordance with this Agreement.

(d) Failure by the Company to perform any of its obligations under this Agreement, other than the payment of Basic Rent, PILOT payments and Additional Payments for a period of thirty (30) days after written notice, specifying such failure and requesting that it be remedied, is given to the Company by the Issuer or the Purchaser, unless such failure is of a type which cannot be reasonably remedied within thirty (30) days and the Company has instituted corrective action within thirty (30) days after such notice and diligently pursues such action until such failure is remedied.

**Section 8.2. Remedies on Default.** If an Event of Default occurs and is continuing, the Purchaser (or its assignee), as the assignee of the Issuer under the Indenture and on behalf of the Issuer, may, but is not required to, take any one or more of the following remedial steps:

(a) By written notice to the Company declare all amounts of Basic Rent payable for the remainder of the Term as are required to provide for the Payment of the Bond and all Additional Payments then owed to be immediately due and payable, whereupon the same will be immediately due and payable; or

(b) Take whatever action at law or in equity may appear necessary or desirable to collect the Rent then due and thereafter to become due or to enforce the performance and observance of any obligation of the Company under this Agreement or the Indenture; or

(c) Exercise any remedies provided for in the Indenture; or

(d) Terminate this Agreement.

As the assignee of the Issuer, subject to Section 8.3, the Purchaser (or its assignee) has the sole right and responsibility for the exercise of any remedies if an Event of Default occurs and is continuing.

**Section 8.3. Issuer Remedies.** If:

(a) the Company fails to comply with its obligations set forth in Sections 4.4, 4.5, 4.6, 4.7, 4.8, 4.12, 4.13, 4.14, 4.15, 4.16, or 6.3, and such failure continues for thirty (30) days after the Issuer gives the Company written notice of such failure; or

(b) the Company fails to comply with its obligations under 5.3, 6.4, or 6.5, and such failure continues for ten (10) days after the Issuer or Purchaser or its assignee gives the Company written notice of such failure; or

(c) any representation of the Company in any Bond Document or any document or agreement delivered to any of the other Parties in connection with the transactions

contemplated by the Bond Documents proves to have been incorrect in any material respect when made;

then, subject to Section 8.6 hereof, the Issuer may, in addition to exercising any other remedy, take whatever action at law or in equity is necessary to enforce the performance of the obligations of the Company under Sections 4.5, 4.6, 4.7, 4.8, 4.12, 4.13, 4.14, 4.15, 4.16, 5.3(b), 6.3, 6.4, and 6.5, as applicable. The Issuer's rights to enforce the Company's obligations under Sections 4.5, 4.6, 4.7, 4.8, 4.12, 4.13, 4.14, 4.15, 4.16, 5.3(b), 6.3, 6.4, and 6.5 are not assigned to the Purchaser under the Indenture. In addition, the Issuer may also immediately take all steps necessary to have the Project Property immediately assessed for property tax purposes in the name of the Company and this Agreement will thereafter be deemed to be an installment sale agreement. Provided however if any conditions described in paragraphs 8.3(a) (b) or (c) cannot be cured within the time allotted for cure, if the Company initiates within ten (10) days of the Notice of Default and proceeds with due diligence to effect a cure, a default will not be deemed to have occurred provided that the Company cures the default.

**Section 8.4. Notice of Default.** The non-defaulting party will promptly give notice to the defaulting party of the occurrence of any Event of Default or an event or condition (of which it has actual knowledge) which, with the passage of time or the giving of notice, or both, and in the absence of any corrective action, would result in an Event of Default.

**Section 8.5. Agreement to Pay Attorneys' Fees and Expenses.** If an Event of Default, or an event which with the giving of notice or the passage of time, or both, would constitute an Event of Default, occurs, and the Issuer incurs expenses, including attorneys' fees, in connection with the enforcement or administration of this Agreement, the Company will reimburse the Issuer for the reasonable expenses so incurred, upon request. Such amounts are deemed to be Additional Payments under Section 5.3.

**Section 8.6. Right to Cure Defaults.**

(a) To prevent termination of this Agreement, the Purchaser, any Institutional Investor and any mortgagee or assignee of the Company that holds an interest in the Project Property as security shall have a right, but not the obligation, at any time to perform any act necessary to cure any default and to prevent the termination of this Agreement. The Issuer will not terminate or suspend its performance under this Agreement until it first gives written notice of such default to the Purchaser, and allows the Purchaser, any Institutional Investor and such mortgagee or assignee the opportunity to cure such default within the applicable cure period under this Agreement. In addition, if the Purchaser, any Institutional Investor or such mortgagee or assignee gives the Issuer written notice prior to the expiration of the applicable cure period of the Purchaser's, any Institutional Investor's or such mortgagee's or assignee's intention to cure such default (which notice shall include a reasonable description of the time during which it anticipates to cure such default) and is diligently proceeding to cure such default, notwithstanding the applicable cure period under this Agreement the Purchaser, any Institutional Investor or the mortgagee or assignee shall have a period of sixty (60) days (or if such default is for failure by the Company to pay an amount to the Issuer which is due and payable under this Agreement, thirty (30) days) from the Purchaser's, any Institutional Investor's or the mortgagee's or assignee's receipt of the notice of such default from the Issuer to cure such default.

(b) If any default by the Company under this Agreement cannot be cured without obtaining possession of all or part of the Project Property, then any such default shall be deemed remedied if the Purchaser, any Institutional Investor, a mortgagee or assignee (a) in the time period provided in Section 8.3(a) and 8.3(b) and 8.6(a) (including the aggregate cure period provided under Section 8.6(a)) begins appropriate judicial or non-judicial proceedings to obtain the same; (b) diligently prosecutes any such proceedings to completion; and (c) after gaining possession of all or part of the Project Property, diligently proceeds to cure and perform all other obligations as and when the same are due in accordance with the terms of this Agreement. If the Purchaser, any Institutional Investor, a mortgagee or assignee is prohibited by any Court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the period specified above for commencing proceedings shall be extended for the period of such prohibition.

(c) If the Purchaser, any Institutional Investor, mortgagee or assignee (or a receiver requested by a mortgagee) succeeds to the interest of the Company in the Project Property, such successor party shall pay or cause to be paid the Basic Rent, PILOT payments, Additional Payments and all other monetary charges payable by the Company under this Agreement from the date in which the Purchaser, Institutional Investor, mortgagee or assignee (or a receiver requested by a mortgagee) succeeds to such interest and those which accrue thereafter during the term of this Agreement.

**Section 8.7. Discontinuance of Proceedings on Default; Position of Parties Restored.** In case the Issuer shall have proceeded to enforce any right under this Agreement and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Issuer, then and in every such case, unless otherwise determined in such proceeding or agreed by the Issuer and the Company, the Issuer and the Company will be restored to their former positions and rights under this Agreement with respect to the Project Property and all rights, remedies, and powers of the Issuer will continue as if no such proceedings had been taken.

**Section 8.8. Proofs of Claim.** In the case of any insolvency, bankruptcy, reorganization, arrangement, adjustment, composition, or other judicial proceedings affecting the Company, the Issuer will, to the extent permitted by law, be entitled to file such proofs of claims and other documents as may be necessary or advisable in order to have claims of the Issuer allowed in such proceedings for the entire amount due and payable by the Company to the Issuer under this Agreement, as the case may be, at the date of the institution of such proceedings and for any additional amounts which may become due and payable after such date.

## **ARTICLE IX PREPAYMENTS**

The Company may at any time (including after the occurrence and during the continuance of an Event of Default) and for any reason cause all or any portion of the Bond to be redeemed in accordance with the provisions of the Indenture by giving notice of such redemption to the Issuer, the Purchaser and, if there are monies on deposit in the Acquisition Account (as defined in the Indenture), to the Depositary not less than forty-five (45) days before the redemption date. Such notice will specify the redemption date and the principal amount of the Bonds to be redeemed. On

the redemption date the Company will prepay the Rent in an amount equal to such principal amount plus accrued interest on such principal amount to the redemption date by payment of such amounts to the Purchaser, will pay all Additional Payments, plus interest, if any, owed to the Issuer, will pay all PILOT payments, if any, owed to the Issuer and the School District, and will pay all payments due under Sections 6.4 and 6.5. The parties acknowledge that the Company may prepay, pay, discharge and redeem the Bonds by offsetting amounts owed under the Bonds to the Purchaser against monies owed to the Company by the Purchaser, including but not limited to monies advanced by the Company to the Purchaser in anticipation of making Bond advances under the Indenture.

## **ARTICLE X PURCHASE OF PROJECT PROPERTY**

The Company will purchase and the Issuer will sell the Project Property for \$1.00 at the expiration or sooner termination of the Term pursuant to the provisions of this Agreement. The Company will give written notice to the Issuer and to the Purchaser, if the Bonds are then unpaid or provision for their payment has not been made, and will specify therein the date of termination and closing such purchase which date shall be the same date and which date will be not less than fifteen (15) nor more than ninety (90) days from the date such notice is mailed. At the closing of such purchase, the Issuer will, upon receipt of the purchase price, deliver to the Company or its nominee appropriate documents, including, but not limited to, a bill of sale, prepared by the Company at the Company's expense, conveying to the Company without representation or warranty the Issuer's interest in the Project Property, as it exists at the time of such purchase, subject only to: (i) those liens and encumbrances, if any, to which the Project Property was subject when conveyed to the Issuer; (ii) those liens and encumbrances created by the Company and/or to the creation or suffering of which the Company consented; (iii) those liens and encumbrances resulting from the failure of the Company to perform any of its obligations under this Agreement; and (iv) any other lien arising as a matter of law. The Company may exercise its rights under this Article X, only to the extent the Company is not in Default or an Event of Default has occurred and is continuing, so long as all Additional Payments and PILOT payments due to the Issuer and the School District are paid on or before the date of closing of such purchase. If the Company fails to take all necessary action to have the Project Property assessed for tax purposes in the name of the Company at the expiration of the Term, the Issuer may execute, deliver and cause to be recorded, at the expense of the Company a bill of sale with respect to the Project Property and other appropriate documents reflecting the termination of this Agreement.

If at the time of closing the Indenture has not been satisfied in full and released of record, a release by the Purchaser of the Indenture will also be delivered to the Company (or its designee).

The right to prepay granted to the Company in this Agreement is and will remain prior and superior to the Indenture.

## **ARTICLE XI MISCELLANEOUS**

**Section 11.1. Remedies.** No right or remedy conferred on any Party in this Agreement is intended to be exclusive of any other right or remedy conferred on such Party in this Agreement. Except as provided in Section 11.3, each such right or remedy is in addition to every other right or remedy provided in any of the Bond Documents or by law; provided, that the remedies of Purchaser and/or Issuer in respect of an Event of Default or other breach of any Bond Document by the Company shall be limited in all cases to those expressly provided in Article VIII hereof. No delay or omission of any Party to exercise any such right or remedy will impair any such right or remedy or be construed to be a waiver. Every such right or remedy may be exercised from time to time and as often as the relevant Party may deem expedient. No waiver by any Party of any right or remedy with respect to any Default or Event of Default will extend to or affect any other existing or subsequent Default or Event of Default.

**Section 11.2. Beneficiaries.** Nothing in this Agreement expressed or implied is intended or is to be construed to confer upon any Person other than the Parties and their successors and assigns (and, in the cases of Section 6.3 of this Agreement, the Indemnitees, and Section 6.4, the School District) any right, remedy or claim, legal or equitable.

**Section 11.3. Limitation of Issuer's Liability.** No agreements or provisions contained in the Bond Documents nor any agreement, covenant or undertaking by the Issuer contained in any document executed by the Issuer in connection with any property of the Company financed, directly or indirectly, out of Bond proceeds or the issuance, sale and delivery of the Bonds will give rise to any pecuniary liability of the Issuer, its officials, employees, agents or members of its governing body or constitute a charge against the Issuer's general credit, or obligate the Issuer financially in any way, except with respect to the revenues available under this Agreement or under the Indenture provided by the Company and pledged to the payment of the Bonds, and their application as provided under the Indenture. No failure of the Issuer to comply with any terms, covenants or agreements in this Agreement or in any document executed by the Issuer in connection with the Bonds will subject the Issuer, its officials, employees, agents and members of its governing body to any pecuniary charge or liability except to the extent that the same can be paid or recovered from the revenues available under this Agreement or under the Indenture provided by the Company and pledged to the payment of the Bonds. Nothing in this Agreement will preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Issuer for any failure to comply with any term, condition, covenant or agreement herein or in the Indenture; provided, that no costs, expenses or other monetary relief will be recoverable from the Issuer except as may be payable from the funds available under this Agreement or under the Indenture provided by the Company and pledged to the payment of the Bonds.

Notwithstanding any other provisions of this Agreement, none of the provisions of this Agreement shall require the Issuer to expend or risk its own funds or to otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder unless it shall have first been adequately indemnified to its satisfaction against the cost, expense and liability which may be incurred thereby.

**Section 11.4. No Violation of Public Policies Regarding Indemnity.** To the extent, if at all, a court of competent jurisdiction determines that Section 56-7-1 NMSA 1978 applies to any indemnification provisions in this Agreement, including certain types of insurance coverage as set forth in Section 56-7-1 NMSA 1978, such provisions shall not apply to or extend to liability, claims, damages, losses or expenses, including attorney fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligence, act or omission of the indemnitee or additional insured, as the case may be, its officers, employees or agents and shall further be limited, if required, by the provisions of Section 56-7-2 NMSA 1978.

**Section 11.5. Notices.** Any notice, demand, direction, request, consent, approval, report or other instrument authorized or required by this Agreement or the Bond Ordinance to be executed, given or filed will be in writing and will be deemed to have been sufficiently given or filed for all purposes of this Agreement when delivered by hand delivery or by overnight courier or on the third business day following the day on which the same has been mailed by registered or certified mail, postage prepaid, addressed as follows:

If to the Issuer:           City of Roswell, New Mexico  
                                  425 N. Richardson Ave.  
                                  Roswell, New Mexico 88201

If to the Purchaser:    Gallagher Solar Holdings, LLC  
                                  c/o Gallagher Solar LLC  
                                  [Address]

If to the Company:     Gallagher Solar LLC  
                                  [Address]

Any Party may, by notice to the other Parties, designate any further or different addresses to which subsequent notices, certificates or other communications are to be sent.

**Section 11.6. Severability.** In case any one or more of the provisions of this Agreement is for any reason held to be illegal or invalid, such illegality or invalidity will not affect any other provision of this Agreement, but this Agreement will be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement of the Issuer or the Company contained in this Agreement is for any reason held to be in violation of law, then such covenant, stipulation, obligation or agreement will be deemed to be the covenant, stipulation, obligation or agreement of the Issuer or the Company to the full extent permitted by law.

**Section 11.7. Successors.** Wherever the Issuer is referred to in this Agreement, it will be deemed to include its successors and all covenants and agreements in this Agreement will bind and inure to the benefit of the Issuer's successors. Wherever the Company is referred to in this Agreement, it will be deemed to include its successors in interest to the Project Property and all covenants and agreements in this Agreement will bind and inure to the benefit of such successors.

**Section 11.8. Title, Headings.** The title and headings of the articles, section and subdivisions of this Agreement have been used for convenience only and do not modify or restrict any of the terms or provisions of this Agreement.

**Section 11.9. Execution in Counterparts.** This Agreement may be executed in multiple counterparts, all of which taken together will constitute one instrument.

**Section 11.10. Applicable Law.** The validity, construction and effect of this Agreement will be governed by the law of the State of New Mexico applicable to agreements made and to be performed in the State of New Mexico and the proper venue shall be Chaves County.

**Section 11.11. Obligations of Issuer Not Obligations of Officials Individually.** No obligation under any of the Bond Documents or the Bonds will be deemed to be an obligation of any present or future officer (including, without limitation, City Councilors) or employee of the Issuer in his or her individual capacity, and no officer of the Issuer who executes the Bonds will be personally liable on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

**Section 11.12. Payments Due on Days That Are Not Business Days.** If the date for any payment due hereunder is not a Business Day, as defined in the Indenture, then such payment will be made on the next Business Day and no interest on such payment will accrue for such period.

**Section 11.13. Federal Income Tax Treatment of Lease.** The Issuer and the Company acknowledge that this Agreement constitutes a financing for federal income tax purposes and not a lease of the Project Property, to the extent permitted by law. The Issuer and the Company further acknowledge that the Company shall, to the extent permitted by law, be entitled to all federal income tax attributes attributable to ownership of the Project Property, including the right to claim depreciation or cost recovery deductions and the right to claim any federal tax credits (or federal grants in lieu thereof) arising from ownership of the Project Property. Each of the Issuer and the Company agree not to file tax returns inconsistent with this Section 11.13.

**Section 11.14. Amendments.** This Agreement may be amended only by an instrument executed by the Issuer and the Company and consented to by the Purchaser.

**Section 11.15. Further Assurances and Corrective Instruments.** The Issuer and the Company agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements and amendments to this Agreement and such further instruments as may reasonably be required for carrying out the intention or facilitating the performance of this Agreement.

The Company may cause a memorandum of this Agreement, in form and substance satisfactory to the Company and the Issuer, in the Issuer's reasonable judgment, to be kept, recorded and filed in such manner and in such places as may be required by law to fully evidence, preserve and protect the leasehold estate of the Company.

[SIGNATURE PAGES FOLLOW]



DATED AS OF \_\_\_\_\_, 2026.

(SEAL)

CITY OF ROSWELL, NEW MEXICO

Attest:

By: \_\_\_\_\_  
Amalia Martinez, City Clerk

By: \_\_\_\_\_  
Timothy Z. Jennings, Mayor

STATE OF NEW MEXICO       )  
                                          ) ss.  
COUNTY OF CHAVES        )

This instrument was acknowledged before me on \_\_\_\_\_, 2026,  
by Timothy Z. Jennings, as Mayor of the City of Roswell, New Mexico.

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

My                      commission                      expires:

\_\_\_\_\_

*(Signature Page for Lease Agreement)*

GALLAGHER SOLAR LLC  
as Company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

This instrument was acknowledged before me on \_\_\_\_\_, 2026,  
by \_\_\_\_\_, as \_\_\_\_\_ of Gallagher Solar LLC.

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

My \_\_\_\_\_ commission expires:  
\_\_\_\_\_

*(Signature Page for Lease Agreement)*

## **EXHIBIT A**

### **PROJECT PROPERTY AND PROJECT SITE**

#### Project Property:

*Power Generation Property.* All solar generation equipment including solar tracking hardware and software, photovoltaic panels and inverters, support structures, and associated electrical generation equipment used to generate electricity from solar energy and related equipment including transformers, circuit breakers and switching and metering equipment used to connect the solar electrical generation plant to the electric grid and all other equipment and personal property which is now or hereafter acquired with Bond Proceeds and located at the Project Site.

#### Project Site Lease:

[NTD: Project Site Description]

The Site Lease covers the real property described below:

#### LEGAL DESCRIPTION:

## EXHIBIT B

PAYMENT SCHEDULE  
CITY OF ROSWELL, NEW MEXICO  
TAXABLE INDUSTRIAL REVENUE BOND  
(GALLAGHER SOLAR LLC PROJECT)  
SERIES 2026 – \$4,800,000

| <u>Year</u> | <u>Total Debt Service</u> | <u>Principal</u> | <u>Interest</u> |
|-------------|---------------------------|------------------|-----------------|
| 1           | \$225,600                 | \$-0-            | \$225,600       |
| 2           | \$225,600                 | \$-0-            | \$225,600       |
| 3           | \$225,600                 | \$-0-            | \$225,600       |
| 4           | \$225,600                 | \$-0-            | \$225,600       |
| 5           | \$225,600                 | \$-0-            | \$225,600       |
| 6           | \$225,600                 | \$-0-            | \$225,600       |
| 7           | \$225,600                 | \$-0-            | \$225,600       |
| 8           | \$225,600                 | \$-0-            | \$225,600       |
| 9           | \$225,600                 | \$-0-            | \$225,600       |
| 10          | \$225,600                 | \$-0-            | \$225,600       |
| 11          | \$225,600                 | \$-0-            | \$225,600       |
| 12          | \$225,600                 | \$-0-            | \$225,600       |
| 13          | \$225,600                 | \$-0-            | \$225,600       |
| 14          | \$225,600                 | \$-0-            | \$225,600       |
| 15          | \$5,025,600               | \$4,800,000      | \$225,600       |

**EXHIBIT C**  
**PILOT PAYMENTS**

| <b>Year</b> | <b>Total PILOT</b> | <b>City<br/>PILOT</b> | <b>Roswell *<br/>School District<br/>PILOT</b> |
|-------------|--------------------|-----------------------|------------------------------------------------|
| 1           | \$7,839.20         | \$-                   | \$-                                            |
| 2           | \$5,599.43         | \$-                   | \$-                                            |
| 3           | \$3,359.66         | \$-                   | \$-                                            |
| 4           | \$2,239.77         | \$-                   | \$-                                            |
| 5           | \$2,239.77         | \$-                   | \$-                                            |
| 6           | \$2,239.77         | \$-                   | \$-                                            |
| 7           | \$2,239.77         | \$-                   | \$-                                            |
| 8           | \$2,239.77         | \$-                   | \$-                                            |
| 9           | \$2,239.77         | \$-                   | \$-                                            |
| 10          | \$2,239.77         | \$-                   | \$-                                            |
| 11          | \$2,239.77         | \$-                   | \$-                                            |
| 12          | \$2,239.77         | \$-                   | \$-                                            |
| 13          | \$2,239.77         | \$-                   | \$-                                            |
| 14          | \$2,239.77         | \$-                   | \$-                                            |
| 15          | \$2,239.77         | \$-                   | \$-                                            |