

**AGREEMENT BETWEEN THE
DEVELOPER OF A SOLAR ENERGY FARM
AND THE COUNTY OF WRIGHT**

THIS AGREEMENT is entered into on June 20, 2018, between Wright County (hereinafter “County”) and USS LandCo LLC and Minnesota Solar CSG 5, LLC. (hereinafter collectively “developer”)

WITNESSETH:

WHEREAS, Developer is the fee owner or lessee and developer of the real property described in Exhibit A, attached hereto and incorporated herein by reference, which real property is proposed to have a solar energy farm constructed on it and which real property is subject to the provisions of this Agreement; and

WHEREAS, Developer is proposing to construct a solar energy farm. Said construction which is to be governed by this Agreement and shall be hereinafter referred to in its entirety as “Solar Energy Farm” or “Subject Property”; and

WHEREAS, the County has granted the developer a Conditional Use Permit which is interim in nature for the Developer’s solar energy farm (attached hereto as Exhibit B) contingent upon compliance with certain County requirements including, but not limited to, matters set forth herein; and

WHEREAS, Wright County requires that a letter of credit, cash or other surety (as approved by the County Attorney) (in each case, the “Security”) be placed on file prior to the issuance of a building permit and that the terms for drawing on such Security be stated;

WHEREAS, this Agreement is entered into for the purpose of setting forth and memorializing for the parties and subsequent owners, the understandings and covenants of the parties concerning the development of said solar energy farm and the conditions imposed thereon.

NOW, THEREFORE, IT IS HEREBY AND HEREIN MUTUALLY AGREED, in consideration of each party's promises and considerations herein set forth, as follows:

1. **Construction and Maintenance of Solar Energy Farm.**

- A. Developer is authorized pursuant to the terms and conditions of the Condition Use Permit to construct a Solar Energy Farm. The Conditional Use Permit for a Solar Energy Farm is interim in nature and will expire in 30 years. Said improvements shall be constructed according to the plans on file with the Wright County Office of Planning and Zoning and in accordance to the terms and conditions of the Conditional Use Permit.
- B. The Developer warrants to the Township and the County that all of their road infrastructure shall suffer no measurable impairments, either to the structure or to the surface or other usable areas due to the construction, maintenance, or decommissioning of this Solar Energy Farm.

2. **Surety Requirements.**

- A. Developer will provide the County with a certified bank check which will be deposited and held in reserve by the County (or other surety as approved by the County Attorney) as security for the obligations of the Developer under this contract to be performed. Said cash deposit shall be in the amount of two hundred seventeen thousand, nine hundred ninety-one dollars (\$217,991.00). The County agrees it will credit interest to the cash deposit on a monthly basis. The interest will be calculated at the current bank rate obtained by Wright County. In the event the security is ever changed to a letter of credit, said letter of credit must meet the approval of the County Attorney as to form and issuing bank (the issuing bank must be an FDIC/NCUA insured bank located within 100 miles of the County of Wright), and must be available in its entirety to fulfill the obligations of the Developer under this Agreement. Any potential letter of credit to the County shall contain language requiring its automatic renewal prior to December 31 of each calendar year, unless the County specifically approves cancellation of the letter of credit in writing.
- B. The County may draw on the security after required written notice to complete work not performed by Developer (including but not limited to, decommissioning, reclamation, noxious weed removal, ongoing maintenance of the ground cover, fencing and screening and as required within the conditional use permit described above and other such measures to bring the conditions stated in the permit into compliance), to reimburse itself for costs incurred in the administration or enforcement of this Agreement, to repair or correct deficiencies or other problems which occur to the road improvements during the construction period, or to otherwise fulfill the obligations of Developer under this Agreement. Said Developer must maintain the security at all times at the level provided in paragraph 2A above

or a lesser amount authorized by the County Board pursuant to paragraph 2E, 3A or 3B below.

- C. In the event that any cash or irrevocable letter of credit referred to herein is ever utilized and found to be deficient in amount to pay or reimburse the County in total as required herein, the Developer agrees that upon being billed by the County, Developer will pay within thirty (30) days of the mailing of said billing, the said deficient amount. If there should be an overage in the amount of utilized security, the County will, upon making said determination, refund to the Developer any monies, without interest, which the County has in its possession which are in excess of the actual costs of the project as paid by the County.
- D. Developer hereby agrees to allow the County to specially assess the Subject Property for any and all reasonable costs incurred by the County in enforcing any of the terms of this agreement or for enforcing any of the terms of the Conditional Use Permit should Developer's letter of credit or security prove insufficient or should Developer fail to maintain said letter of credit or security in the amount required above within 30 days of mailing of written request by the County.
- E. That portion of said cash, irrevocable letter of credit or other surety with respect to the protection of government infrastructure or road improvements shall be released upon certification of the County Engineer and approval of the Township and the County Board that all such infrastructure has not been damaged as a result of this construction.
- F. In the event the Security referred to herein is in the form of an irrevocable letter of credit, which by its terms may become null and void prior to the time at which all monetary or other obligations of the Developer are paid or satisfied, it is agreed that the Developer shall provide the County with a new letter of credit or other Security, acceptable to the County, at least forty-five (45) days prior to the expiration of the original letter of credit. If a new Security is not received as required above, the County may without notice to Developer declare a default in the terms of this Agreement and thence draw in part or in total, at the County's discretion, upon the expiring letter of credit or Security to avoid the loss of surety for the continued obligation. The County Attorney prior to its issuance must approve the form of any Security.
- G. In the event the Developer files bankruptcy or in the event a bankruptcy proceeding is filed against Developer by others and is not dismissed within 60 days, or in the event a court appoints a receiver for the Developer, the County may draw on its Security in its full amount to secure its surety position. The County shall then release the remainder of said Security to the bankruptcy court or receiver in the same manner that it would be required to release the Security under this Agreement.

3. **Surety Release.**

- A. When it is reasonably prudent, the Developer may request of the County that the surety be proportionately reduced for that portion of protecting the road infrastructure provided that the construction of the Solar Energy Farm has been fully completed and any payment for infrastructure damage has been resolved and made therefor. All such decisions shall be at the discretion of the County Board.
 - B. The Developer may request of the County a reduction or release of any surety as follows:
 - i. When another acceptable Security is furnished to the County to replace a prior letter of credit.
 - ii. As to all requests brought under this paragraph, the County Board shall have complete discretion whether to reduce or not to reduce said Security.
 - C. The costs incurred by the County in processing any reduction request shall be billed to the Developer and paid to the County within thirty (30) days of billing.
4. **Abandonment of Project, Decommissioning - Costs and Expenses.**
- A. In the event Developer should abandon the proposed development of the said Solar Energy Farm, the County's costs and expenses related to attorney's fees, professional review, drafting of this Agreement, preparation of any reports, plans and specifications, and any other expenses undertaken in reliance upon Developer's various assertions shall be paid by said Developer within thirty (30) days after receipt of a bill for such costs from the County. In addition, in the event the Developer abandons the project, in whole or in part, ceases substantial field work for more than nine (9) months, discontinues the operation of the Solar Energy Farm for a period of twelve (12) months, fails to provide sufficient ground-cover to prevent continuing soil erosion, fails to maintain the ground cover or keep the property free from noxious weeds, or fails to leave the abandoned property in a condition which can be mowed using conventional lawn mowing equipment, Developer agrees to pay all costs the County may incur in taking whatever action is reasonably necessary to maintain the subject property, to provide ground-cover and otherwise restore the Solar Energy Farm to the point where the infrastructure is removed and the grounds are level and covered with permanent vegetation sufficient to prevent continuing soil erosion from Said Solar Energy Farm and to facilitate mowing of Said Solar Energy Farm and parcel of land. In the event that said costs are not paid, the County may withdraw funds from the above-mentioned Security for the purpose of paying the costs referred to in this paragraph.
 - B. The Developer, at its own expense, agrees to decommission the solar farm pursuant to terms of the Wright County Zoning Ordinance, the conditional use permit and the plans on file with the Wright County Office of Planning and Zoning. Decommissioning means the removal of all infrastructure, utilities, and roads related to the Solar Energy Farm and includes restoring the land to its natural pre-development vegetated state. The decommissioning of the Solar Energy Farm shall immediately commence in the event

the Solar Energy Farm ceases all operations or is disconnected from the power grid for a period of twelve (12) months and shall be completed within six (6) months. The decommissioning of the Solar Energy Farm shall be completed no later than the expiration date of the interim conditional use permit. In the event the interim conditional use permit is revoked the developer agrees to decommission the Solar Energy Farm within six (6) months after the date of such revocation. Developer agrees to pay all costs the County may incur in taking whatever action is reasonably necessary to decommission the Solar Energy Farm to the point where the infrastructure, utilities, and roads are removed and the grounds are level and covered with permanent vegetation sufficient to prevent continuing soil erosion from Said Solar Energy Farm and to facilitate mowing of Said Solar Energy Farm and parcel of land. In the event that said costs are not paid, the County may withdraw funds from the above-mentioned Security for the purpose of paying the costs referred to in this paragraph. The County is authorized to credit any salvage value from the infrastructure against any cost incurred as a result of decommissioning the Solar Energy Farm. Any surplus salvage value after costs shall be return to the Developer. The County is authorized to salvage any infrastructure at a facility of its own choosing which is authorized to accept and process the infrastructure.

5. **Maintain Public Property Damaged or Cluttered During Construction.**

Developer agrees to assume full financial responsibility for any damage or repairs which may occur to public property including but not limited to streets, street sub- base, base, bituminous surface, curb, utility system including but not limited to watermain, sanitary sewer or storm sewer when said damage occurs as a result of the construction activity which takes place during the development of Said Solar Energy Farm. The Developer further agrees to pay all costs required to repair the streets, utility systems and other public property damaged or cluttered with debris when occurring as a direct or indirect result of said construction that takes place in Said Solar Energy Farm.

Developer agrees to clean the streets on a daily basis if required by the County. Developer further agrees that any damage to public property occurring as a result of construction activity on Said Solar Energy Farm will be repaired immediately if deemed to be an emergency by the County. Developer further agrees that any damage to public property as a result of construction activity on Said Solar Energy Farm will be repaired within 14 days if not deemed to be an emergency by the County. The Developer agrees it will be responsible for additional damages in the event the Developer or its contractors fail to comply with posted road restrictions and seasonal load requirements.

If Developer fails to so clean the streets or repair or maintain said public property, the County may immediately undertake making or causing it to be cleaned up, repaired or maintained. When the County undertakes such activity, the Developer shall reimburse the County for all of its expenses within thirty (30) days of its billing to the Developer. If the Developer fails to pay said bill within thirty (30) days, then the County may specially assess such costs against the Subject Property and/or take necessary legal action to recover such

costs and the Developer agrees that the County shall be entitled to attorney's fees incurred by the County as a result of such legal action.

6. **Miscellaneous.**

- A. Developer agrees that all conditions listed in the Conditional Use Permit, and maintenance and decommissioning items required under this Agreement are items for which Developer is responsible for completing and all work shall be done at Developer's expense.
- B. If any portion, section, subsection, sentence, clause, paragraph or phrase of this Contract is for any reason held invalid by a Court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Contract.
- C. The action or inaction of the County shall not constitute a waiver or amendment to the provisions of this Agreement. To be binding, amendments or waivers shall be in writing, signed by the parties and approved by written resolution of the County Board. The County's failure to promptly take legal action to enforce this Agreement shall not be a waiver or release.
- D. This Agreement shall run with the land and shall be recorded against the title to the property.
- E. The Developer represents to the County that Said Solar Energy Farm complies with all county, state and federal laws and regulations, including but not limited to: zoning ordinances, the building code, and environmental regulations. If the County determines that Said Solar Energy Farm does not comply, the County may, at its option, refuse to allow construction or development work authorized under the Solar Energy Farm Condition Use Permit until the Developer so complies. Upon the County's demand, the Developer shall cease work until there is compliance.
- F. The Conditional Use Permit issued on January 11, 2018 is interim in nature and shall expire on January 11, 2048.
- G. In addition to the other terms and conditional contained herein, the County is authorized to enter upon the property and inspect the Said Solar Energy Farm for compliance with the Conditional Use Permit or this agreement upon seven (7) days mailed notice.
- H. The County is authorized to seek injunctive or any other relief deemed appropriate from the Wright County District Court to enforce the terms of this contract.

7. **Violation of Agreement.**

- A. In the case of default by the Developer, its successors or assigns, of any of the conditions, covenants, and agreements herein contained, the County shall give Developer thirty (30) days mailed notice thereof (via certified mail), and if such default is not cured within said thirty (30) day period, the County is hereby granted the right and the privilege to declare any deficiencies governed by this Agreement due and payable to the County in full. The thirty (30) day notice period shall be deemed to run from the date of deposit in the United States Mail. Upon failure to cure by Developer, the County may thence immediately and without notice or consent complete some or all of the Developer's obligations under this Agreement, and bring legal action against the Developer to collect any sums due to the County pursuant to this Agreement, plus all costs and attorney's fees incurred in enforcing this agreement. The County may also specially assess all said costs incurred upon default against the properties in Said Solar Energy Farm pursuant to the terms of this agreement.
- B. Notwithstanding the 30-day notice period provided for in paragraph 7(A) above, in the event that a default by Developer will reasonably result in irreparable harm to the environment or to public property, or result in an imminent and serious public safety hazard, the County may immediately exercise all remedies available to it under this agreement in an effort to prevent, reduce or otherwise mitigate such irreparable harm or safety hazard, provided that the County makes good-faith, reasonable efforts to notify the Developer as soon as is practicable of the default, the projected irreparable harm or safety hazard, and the intended actions of the County to remedy said harm.
- C. Paragraph 7A of this section shall not apply to any acts or rights of the County under the preceding paragraph 2F, and no notice need be given to the Developer as a condition precedent to the County declaring a default or drawing upon the expiring irrevocable letter of credit or security as therein authorized. The County may elect to give notice to Developer of the County's intent to draw upon the Security without waiving the County's right to draw upon the Security at a future time without notice to the Developer.
- D. Breach of any of the terms of this Contract by the Developer shall be grounds for denial of building permits.

11. **Indemnity.**

Developer shall hold the County and its officers and employees harmless from claims made by Developer and third parties for damages sustained or costs incurred resulting from Said Solar Energy Farm approval and development. The Developer shall indemnify the County and its officers and employees for all costs, damages or expenses that the County may pay or incur in consequence of such claims, including attorney's fees. Third parties shall have no recourse against the County under this Agreement.

12. **Assignment of Contract.** The Developer can assign the obligations of the Developer under this Agreement. However, the Developer shall not be released from its obligations under this contract without the express written consent of the County Board through County Board resolution.
13. **Limited Approval.** Approval of this Agreement by the County Board in no way constitutes approval of anything other than that which is explicitly specified in this Agreement.
14. **Professional Fees.** The Developer will pay all reasonable professional fees incurred by the County as a result of County efforts to enforce the terms of this Agreement. Said fees include attorney's fees, engineer's fees, planner's fees, and any other professional fees incurred by the County in attempting to enforce the terms of this Agreement. The Developer will also pay all reasonable attorneys and professional fees incurred by the County in the event an action is brought upon a letter of credit or other surety furnished by the Developer as provided herein.
15. **Integration Clause, Modification by Written Agreement Only.** This Agreement represents the full and complete understanding of the parties and neither party is relying on any prior agreement or statement(s), whether oral or written. Modification of this Agreement may occur only if in writing and signed by a duly authorized agent of both parties.
16. **Notification Information.** Any notices to the parties herein shall be in writing, delivered by hand (to the County Coordinator for the County) or certified mail addressed as follows to the following parties:

Wright County Coordinator
Attn: Lee Kelly
10 – 2nd Street N.W., Rm C235
Buffalo, MN 55313

Permitting Department
Minnesota Solar CSG 5, LLC
100 N. 6th Street, Suite 218C
Minneapolis, MN 55403
17. **Agreement Effect.**

This Agreement shall be binding upon and extend to the representatives, heirs, successors and assigns of the parties hereto.
18. **Representation on Authority of Parties/Signatories.**

Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

IN WITNESS WHEREOF, the County and the Developer have caused this agreement to be duly executed on the day and year first above written.

DEVELOPER

USS LandCo LLC
By: Reed Richerson
Its: Vice President

Minnesota Solar CSG 5, LLC
By: Reed Richerson
Its: Vice President

COUNTY OF WRIGHT

Mark Daleiden, County Board Chair

Lee Kelly, County Coordinator

STATE OF MINNESOTA)
) ss.
COUNTY OF WRIGHT)

The foregoing instrument was acknowledged before me this _____ day of _____,
20_____, by Reed Richerson of USS LandCo LLC, Its Vice President.

Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF WRIGHT)

The foregoing instrument was acknowledged before me this _____ day of _____,
20_____, by Reed Richerson of Minnesota Solar CSG 5, LLC, Its Vice President.

Notary Public

STATE OF MINNESOTA)
) ss.
COUNTY OF WRIGHT)

The foregoing instrument was acknowledged before me this _____ day of _____,
20_____, by Mark Daleiden, Chair of the County Board, and Lee Kelly, County Coordinator on
behalf of Wright County, State of Minnesota and pursuant to the authority of the County Board.

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:
Greg T. Kryzer
Assistant Wright County Attorney
10 – 2nd Street N.W., Room 400
Buffalo, MN 55313

EXHIBIT A

**LEGAL DESCRIPTION OF
PROPERTY**

**The Northeast $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 26, Township 121, Range 25,
Wright County, Minnesota
(Monticello Township)**

EXHIBIT B
CONDITIONAL USE PERMIT

HW

Doc. No. A1364935

OFFICE OF THE COUNTY RECORDER
WRIGHT COUNTY, MINNESOTA
Certified Filed and/or Recorded on

March 01, 2018 12:25 PM

Fee: \$0

Ck# Code No Fee

Tanya West, County Recorder

STATE OF MINNESOTA

WRIGHT COUNTY PLANNING COMMISSION

COUNTY OF WRIGHT

CONDITIONAL USE PROCEEDINGS

APPLICANT: MINNESOTA SOLAR CSG 5, LLC

PROPERTY OWNER: Franklin E. Denn Revocable Trust

Petitions for a Conditional Use Permit to allow construction of a solar farm, proposed is 5 contiguous 1 MW solar gardens as regulated in Section 155.029, 155.048 & 155.108 of Chapter 155, Title XV, Land Usage & Zoning of the Wright County Code of Ordinances.

ORDER GRANTING CONDITIONAL USE PERMIT

The above entitled matter came on to be heard before the Wright County Planning Commission this 11th of January, 2018, on a petition for a Conditional Use Permit pursuant to the Wright County Zoning Ordinance, for the following described property:

NE ¼ of SE ¼, Section 26, Township 121, Range 25, Wright County, Minnesota.
(Monticello Twp.)

IT IS ORDERED that a Conditional Use Permit be granted upon the following conditions or reasons:

Commission granted a Conditional Use Permit to locate a 5 MW solar farm in accord with the plans and narratives on file with the following conditions: 1) panels to be mounted using the existing conditions of landscape and limit the amount of service roads to what is shown on the plan noting all internal roads created will be created in a fashion to meet the standards of Subsection 155.108 (C) (12) of the Wright County Code of Ordinances and minimize impacts to return the property back to a similar condition and use at the end of project life; 2) the applicant must keep up with ongoing vegetative and system maintenance, noting that noxious weeds are not allowed in the project area under any circumstance; 3) proper building permits (along with any required State permits) are obtained prior to work started on the site; 4) proper access permits are obtained from the Township and a road use agreement is established in accord with Monticello Township policies and ordinances; 5) must conform to all setbacks noting current plans show it meets that setback requirements; 6) if drain tiles do exist on the property they must be replaced or maintained to allow drainage at the current capacity; 7) an agreement must be entered into with Wright County for decommissioning and financial security in accord with Subsection 155.108 (14) (a) (b) and (c) of the Wright County Ordinance, which must include an approved decommissioning plan in accord with 155.108 15(g); 8) the agreement shall take into consideration any potential Township public road damages; 9) the Conditional Use Permit for Solar Energy Farms shall expire at the same time the Solar Energy Farm lease, but in no case shall exceed 30 years; 10) the pole number and configuration on the plan must meet requirements of one pole per 1 MW and one overall general on-site utility pole, for a total of 6 poles; 11) onsite internal power and communication lines shall be buried underground; 12) the applicant is responsible in assuring all final utility interconnection approvals from Excel Energy are obtained and followed for this project and before obtaining a building permit; 13) Wright County Soil & Water Conservation District to review and approve the storm water and erosion protection plan prior to project commencement and all wetland regulations must be followed with Wright County Soil & Water Conservation District allowed proper access for project compliance; 14) the perimeter fencing in the plan shall be set back 20' from the east and south property lines and all buffer trees shall be planted at least 15 feet from said property lines; 15) annual Township review yearly unless schedule changed by the Township; and, 16) if there are substantial changes to the plans submitted and approved a new conditional use permit hearing would be required.

STATE OF MINNESOTA)

WRIGHT COUNTY OFFICE

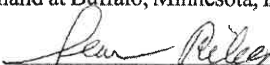
) ss.

COUNTY OF WRIGHT)

OF PLANNING AND ZONING

I, Sean Riley, Zoning Administrator for the County of Wright, with and in for said County, do hereby certify that I have compared the foregoing copy and Order granting a Conditional Use Permit with the original record thereof preserved in my office, and have found the same to be a correct and true transcript of the whole thereof.

IN TESTIMONY WHEREOF, I have hereunto subscribed my hand at Buffalo, Minnesota, in the County of Wright on the 28th day of February, 2018.


Wright County Zoning Administrator