

**DECOMMISSIONING AGREEMENT
ARAPAHOE COUNTY GREAT PLAINS SOLAR FACILITY
ARAPAHOE COUNTY PLANNING CASE NO. USR24-001**

This Decommissioning Agreement ("Agreement"), dated _____ ("Effective Date"), is entered to by and between the Board of County Commissioners of Arapahoe County, Colorado (the "County") and USS Great Plains Solar LLC, a Delaware limited liability company (the "Operator"), 323 N. Washington Ave, Suite 350, Minneapolis, MN 55401, and USS LandCo LLC, a Delaware limited liability company (the "Landowner"), 323 N. Washington Ave, Suite 350, Minneapolis, MN 55401, to provide for the decommissioning of the Great Plains Solar Facility.

RECITALS

WHEREAS, the Operator desires to build a solar-powered electric generating facility in unincorporated Arapahoe County and has applied pursuant to Chapter 5, Section 5-3.5 of the Arapahoe County Land Development Code (the "LDC") for a land use permit to install and operate a Small Solar Facility on the property located at the northwest corner of E. Hampden Avenue and E-470, Planning Case No. USR24-001 and which is more particularly described as: Parcel ID 1975-36-1-00-008 (the Property); and

WHEREAS, the Landowner owns the Property and has leased it to the Operator for the construction and operation of a Solar Facility; and

WHEREAS, the Operator and the Landowner are both wholly-owned subsidiaries of US Solar; and

WHEREAS, pursuant to Section 5-3.5.E.15 of the LDC, the Operator is required to provide for the decommissioning of the Solar Facility and reclamation of the Property within nine (9) months of ceasing operations, and for the provision by the Operator of financial assurance, in the form of a performance bond, to cover the estimated cost of decommissioning the Solar Facility and reclaiming the Property; and

WHEREAS, the County, the Operator, and the Landowner desire to enter into this Agreement to provide for and assure the decommissioning of the Solar Facility and the reclamation of the Property in accordance with the requirements of the LDC and to establish terms for the provision of financial assurance to guarantee the estimated cost of decommissioning the Solar Facility in accordance with the requirements of the LDC and upon the terms and conditions more fully set forth herein; and

WHEREAS, recognizing that the equipment and appurtenant facilities utilized for the Solar Facility may have a salvage value, to further account for such value and to provide that in

the event the Operator fails to complete the decommissioning in accordance with the LDC and the County or financial assurance provider performs the decommissioning and reclamation work on the Property, the County or financial assurance provider may, but shall not be required to, use the salvage value of the equipment and facilities located within the Solar Facility to cover the costs of decommissioning.

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

ARTICLE 1
DECOMMISSIONING PLAN AND COLLATERAL

Section 1.1. Agreement to Decommission the Solar Facility.

- a. Within nine (9) months of the cessation of the operation of the Solar Facility, the Operator shall complete the decommissioning of the Solar Facility pursuant to the terms of Section 1.5 of this Agreement and as provided under Section 5-3.5.E.15 of the LDC. The Operator shall decommission the Solar Facility and remove equipment, appurtenances and improvements as provided in section 1.5 of this Agreement. Upon cessation of operations as defined below, the Operator shall provide written notice of any intended cessation of operations to the County thirty (30) days in advance of the date planned for cessation of operations. The Operator shall provide written notice within ninety (90) days of the Facility having ceased the production of electricity to the County that the Solar Facility has ceased production of electricity. Such notice shall include a statement of the Operator's intent, and its plan as provided below in Section 1.1.b for resuming the production of electricity at the Facility.
- b. As used herein and for purposes of when to commence decommissioning under the LDC, "cessation of operation of the Solar Facility" shall be deemed to occur at such time as the Operator or any successor operator intends to cease operations and permanently discontinue use of the Solar Facility for the production of electricity or upon the failure of the Solar Facility to produce electricity consistently for a period of twelve (12) months, unless a plan outlining the steps and schedule for returning the Solar Facility to service is submitted and approved by the Director of the Arapahoe County Department of Public Works and Development ("the Director"), or such failure is a result of a Force Majeure event as defined below. As used herein, "the failure to consistently produce electricity for a period of twelve months" shall mean that the Facility does not operate and produce electricity during the twelve months following the cessation of operations and production of electricity during such period and that any short term temporary or sporadic operation and production during that period will not be considered as production of electricity for purposes of extending such twelve month period in the absence of an approved plan to return the Facility to full operations as described above. In the event that a cessation of operations or other discontinuation of the production of electricity by the Facility is the result of an event of Force Majeure and is reasonably expected to prevent the return to service of the Facility for a period of 12 months or more, the Operator shall within ninety (90) days of such event submit to the County for the Director's approval, its plan for returning the Solar Facility to

service. The approval by the Director of such a plan in either case may not be unreasonably withheld.

- c. If the Operator's plan to return the Solar Facility to service following a cessation of operations or other discontinuation of the production of electricity pursuant to such plan or if the Operator's performance of its obligations to decommission the Facility is prevented, delayed, or otherwise impaired at any time due to any of the following causes, then the time for performance as herein specified shall be appropriately extended by the time of the delay actually caused by such circumstances: acts of God; extreme weather; damage to work in progress by reason of fire or other casualty; strikes, lock outs or other labor disputes; delays in transportation; inability to secure labor or materials in the open market; war, terrorism, sabotage, civil strife or other violence; or the effect of any law, proclamation, action, demand or requirement of any government agency (any such cause, a "Force Majeure event").

Section 1.2 Decommissioning Collateral, Amount and Form.

- a. Prior to putting the Solar Facility into operation, the Operator shall deliver to County, a surety bond to guaranty performance of the Operator's decommissioning obligations ("the Decommissioning Collateral"), in such amount as is approved by the County as provided herein. The County may consider and approve an alternate form of collateral including a letter of credit or escrowed funds. If, however, the form of the Decommissioning Collateral is a surety bond or letter of credit, such shall be issued by a financial institution licensed or registered to do business in the State of Colorado (the "Assurance Provider").
- b. The Operator shall not commence operations at the Solar Facility or bring the Facility on-line for electricity generation until the County has approved the form and amount of the Decommissioning Collateral and the Operator has provided said approved Decommissioning Collateral to the County and County has acknowledged receipt thereof in writing. The County shall be named as the beneficiary of the Decommissioning Collateral, provided, however, that the disbursement of and rights to the Decommissioning Collateral funds shall be governed by Article 2 below
- c. The amount of the Decommissioning Collateral shall be 100% of the estimated cost to decommission the facility in accordance with the requirements of the LDC and this Agreement ("the Decommissioning Cost Estimate"). The Operator shall provide to the County an estimate of all removal and restoration costs, which shall be prepared under the direct supervision of, and stamped by, a professional engineer licensed in the State of Colorado and shall be subject to review and approval of the County. Costs shall be based on the most recent cost data available and adjusted for the time value of money based on current construction cost indices for the most recent quarter and year at the time the estimate is prepared. The restoration cost shall include all costs associated with guaranteeing final stabilization. The anticipated salvage value of the equipment or materials used for the Solar Facility shall not be deducted from or credited against the Decommissioning Cost Estimate for purposes of determining the amount of the Decommissioning Collateral.
- d. Beginning with and within thirty (30) days of the fifth-year anniversary of the Effective Date of this Agreement and by the same time every five (5) years thereafter, the Operator shall provide an updated estimate of the Decommissioning Cost Estimate.

Said updated Cost Estimates shall be prepared under the direct supervision of, and stamped by, a professional engineer licensed in the State of Colorado, and the Operator shall furnish replacement or extended Decommissioning Collateral updated to the amount of such estimate, along with the documents governing the issuance of the replacement or extended and updated Decommissioning Collateral, which shall be subject to the approval of the County, such approval not to be unreasonably withheld.

Section 1.3 Decommissioning Collateral Annual or Periodic Renewal. The Operator shall maintain the Decommissioning Collateral in the amount as approved for each periodic update as provided in Section 1.2.d above and in the form as approved or such other form as may subsequently be approved by the Director continuously and through the full term of this Agreement as provided in Article 7 below. The Operator shall not allow the Decommissioning Collateral, if in the form of a letter of credit, bond, or other guaranty to expire and shall renew the Decommissioning Collateral as necessary to maintain the Collateral continuously through the term of this Agreement and the satisfactory completion of the decommissioning plan.

Section 1.4 Failure to Maintain Decommissioning Collateral. If the Operator fails to maintain the Decommissioning Collateral as provided in Sections 1.2 and 1.3, the County shall provide written notice to Operator and Operator shall be afforded thirty (30) business days' opportunity to cure prior to County's declaring a default under this Agreement. If Operator fails to provide the Decommissioning Collateral as provided in Sections 1.2 and 1.3 after such thirty (30) business days and the County declares an event of default hereunder, the County shall have the right to (a) seek any necessary injunctive or equitable relief available under applicable law to effect the providing of the Decommissioning Collateral or any other requirement under this Agreement, (b) pay any premium necessary to continue or establish the Decommissioning Collateral, in which case Operator shall reimburse the County for the amount of such premium, (c) draw on the Decommissioning Collateral, deposit the drawn funds in a bank account, and apply such funds to the decommissioning the Solar Facility, and (d) seek all remedies at law. Operator shall pay to County the County's reasonable attorney and professional fees and other costs with respect to the pursuit and implementation of such remedies.

Section 1.5 Decommissioning Requirements. The Operator shall decommission the Solar Facility by removing all solar arrays, facilities, structures and obstructions, footers or foundations, access roads, wiring, and equipment, including but not limited to racking, conduits, utility boxes, inverters, panels, meters, batteries, controllers, monitoring systems, and distribution systems, and all other related improvements and appurtenances associated with, used for, or installed on the Property for the Solar Facility, whether above or below ground, and shall restore and reclaim the Property substantially to the condition it existed prior to installation of the Facility and shall dispose or recycle all such materials and equipment removed in the decommissioning process in accordance with all applicable Federal, State and Local laws and regulations. The Operator shall be responsible to provide stormwater management best management practices for the site in accordance with the approved Grading, Excavation, and Sediment Control (GESC) Plan for the project. The Operator shall re-vegetate the Property in accordance with the approved GESC Plan or, if the site is leased, in accordance with the Lessor's specifications for soil amendments, stabilization, and seed mix for the re-vegetation and shall perform all such work as is reasonably necessary to restore the Property to substantially the same condition as existed prior to the installation of the Solar Facility. In accordance with the LDC, such decommissioning and

restoration as described above shall be completed within nine (9) months following the ceasing of operations of the Solar Facility.

ARTICLE 2

DISBURSEMENT OF SECURITY

Section 2.1 Rights of County. In the event of cessation of operations of the Solar Facility as defined above, if the Operator fails to decommission the Solar Facility in accordance with the requirements of the LDC, the County may, in its sole election, undertake the decommissioning of the Solar Facility. In the event the County elects to undertake the decommissioning of the Solar Facility, it may make a claim or claims upon the Decommissioning Collateral to the Assurance Provider for use of the Decommissioning Collateral for decommissioning the Facility subject to the limitations set forth herein. Any claim made by the County upon the Decommissioning Collateral shall be limited to all expenses incurred by the County in decommissioning of the Solar Facility and reclamation of the Property as set forth in the LDC and this Agreement, including reasonable professional fees.

Section 2.2 County Cooperation. In the event of Discontinuation of Use, if the County elects not to undertake or complete the decommissioning of all or any portion of the Solar Facility and authorizes in writing some other entity to perform such work, the County agrees to act in good faith and execute all documentation reasonably required or requested by the Decommissioning Collateral, the Assurance Provider, the Landowner, the Operator, and/or its lenders necessary to allow the use of the Decommissioning Collateral by such entity.

Section 2.3 Landowner Agreements. In executing and as a party to this Agreement, the Landowner agrees:

- a. In the event that the decommissioning work is to be performed by the County or the Assurance Provider, the Landowner hereby grants a license to the County or Assurance Provider and their respective contractors performing such work as is reasonably necessary to perform and complete the decommissioning work as required under the Land Development LDC and this Agreement.

Section 2.4 Release of Decommissioning Collateral. The Decommissioning Collateral may be released when the Operator has demonstrated to the reasonable satisfaction of the County that the decommissioning requirements as specified herein, and within the LDC, have been satisfied.

ARTICLE 3

SALVAGE VALUE AND LICENSE FOR ACCESS

Section 3.1 County's Right to Salvage Value of Solar Facility. If the Operator fails to decommission the Solar Facility in accordance with the terms of the LDC and this Agreement in the event of a cessation of operations as defined in Section 1.1.b of this Agreement, or if the Operator fails to maintain the Decommissioning Collateral in the amounts and in the form as required under this Agreement, and does not cure such failure as provided in Section 1.4 of this Agreement, then, in addition to any rights to make a claim upon the Decommissioning Collateral, the Solar Facility shall be deemed abandoned and the County is hereby afforded a license to enter the Solar Facility to remove Solar Facility equipment and improvements and shall be entitled to

any and all salvage value of the Solar Facility in order to recover incurred direct and indirect costs in decommissioning the Solar Facility. Provided, however, in no event shall salvage value be retained by the County if the Decommissioning Collateral is adequate to cover the Decommissioning Obligations, and any amount recovered by the County in excess of its actual incurred decommissioning costs, the costs incurred by the County in selling the Solar Facility to collect the salvage value, and any and all other expenses and damages incurred by the County as a result of the Operator's failure to decommission the Solar Facility or additional default of the Operator under this Agreement shall be promptly refunded by the County to the Operator.

Section 3.2 Salvage Value. For purposes of this Agreement, the salvage value is the net value of the solar arrays, equipment, wiring, structures or other improvements installed on the Property in connection with or used for the operation of the Solar Facility, and including all other saleable parts and commodities which make up the Solar Facility, whether sold as used parts or on a commodity/scrap basis, or any combination thereof (whichever is greater) after deducting the amount necessary to pay and satisfy all liens, security interests, and other encumbrances attaching to the solar arrays, equipment, wiring, structures or other improvements installed on the Property and the sum of all costs incurred in connection with the sale of such arrays, equipment Solar Facility, including advertising and reasonable professional fees.

ARTICLE 4 OTHER RIGHTS OF COUNTY

Section 4.1 Other Relief. If the Operator fails to decommission the Solar Facility in accordance with the terms of the LDC and this Agreement in the event the facility ceases operations as defined in Section 1.1.b of this Agreement, fails to maintain the Decommissioning Collateral in the amounts and in the form as required under Section 1.4 of this Agreement, then, in addition to any other rights and remedies granted herein, the County shall have the right to seek any injunctive relief available under applicable law to effect or complete the decommissioning of the Solar Facility. In addition, the County shall have the right to seek reimbursement from Operator, its successors, or assigns, for any and all costs of decommissioning the Solar Facility incurred by the County in excess of the funds available under the Decommissioning Collateral of the Solar Facility, including reasonable attorney fees incurred in seeking and prevailing on such injunctive relief.

ARTICLE 5. REPRESENTATIONS AND WARRANTIES

Section 5.1 Representations, Warranties, and Covenants of County. The County represents and warrants to the Operator and the Landowner as follows:

- a. The County has full power and authority to execute, deliver, and perform this Agreement and to take all actions necessary to carry out the transactions contemplated by this Agreement.
- b. This Agreement has been duly executed and delivered by the County and constitutes the legal, valid, and binding obligation of the County, enforceable against the County in accordance with its terms.

Section 5.2 Representations, Warranties, and Covenants of Operator. The Operator represents and warrants to the County and the Landowner as follows:

- a. The Operator has full power and authority to execute, deliver and perform this Agreement and to take all actions necessary to carry out the transactions contemplated by this Agreement.
- b. This Agreement has been duly executed and delivered by the Operator and constitutes the legal, valid, and binding obligation of the Operator, enforceable against the Operator in accordance with its terms.

Section 5.3 Representations, Warranties and Covenants of Landowner. The Landowner represents and warrants to the County and the Operator as follows:

- a. The Landowner has full power and authority to execute, deliver and perform this Agreement and to take all actions necessary to carry out the transactions contemplated by this Agreement.
- b. This Agreement has been duly executed and delivered by the Landowner and constitutes the legal, valid, and binding obligation of the Landowner enforceable against the Landowner in accordance with its terms.

ARTICLE 6 DISPUTES; DETERMINATIONS

.Section 6.1 Default: Disputes. The breach of or default under this Agreement by the Operator shall constitute a breach of the LDC, and any remedies set forth under the LDC shall be in addition to the remedies set forth in this Agreement. In the event of any dispute as to any amount to be paid pursuant to this Agreement, the right of the County to the Decommissioning Collateral funds and to use the salvage value of the Solar Facility as provided in Article 3, Section 3.1 above, shall take priority over the rights of the Landowner or any successor Landowner as set forth in this Agreement or otherwise in any agreement between the Operator and the Landowner.

ARTICLE 7 TERM

Section 7.1 Term. The term of this Agreement shall commence on the effective date of this Agreement defined in the first paragraph of this Agreement and shall terminate upon the completion of the decommissioning of the Solar Facility in accordance with the terms of this Agreement. Upon the satisfactory completion of the decommissioning requirements outlined herein, as determined by the County, upon request to the County, the County agrees to cooperate in good faith and execute such documentation as is necessary or reasonably required to release claims to the Decommissioning Collateral and the salvage value of the Solar Facility, to the extent not used by the County or Assurance Provider in whole or part for payment of decommissioning costs as provided herein.

ARTICLE 8
MISCELLANEOUS

Section 8.1 No Waiver Remedies Cumulative. No failure on the part of any party hereto to exercise, and no delay in exercising, any right, power, or remedy shall operate as a waiver thereof. No single or partial exercise by any party hereto of any such right, power or remedy hereunder shall preclude any other further exercise of any right, power or remedy hereunder. The rights, powers and remedies herein expressly provided are cumulative and not exclusive of any rights, powers or remedies available under applicable law.

Section 8.2 Notices. All notices, requests and other communications provided for herein (including any modifications, or waivers or consents under this Agreement) shall be given or made in writing (including by telecopy) delivered to the intended recipient at the address set forth below or, as to any party, at such other address as shall be designated by such party in a notice to the other party. Except as otherwise provided herein, all notices and communications shall be deemed to have been duly given when transmitted by telecopier with confirmation of receipt received, personally delivered, delivered by overnight courier upon confirmation receipt, or in the case of a mailed notice, upon receipt, in each case given or addressed as provided herein.

If to Operator:

USS Great Plains Solar LLC
323 N Washington Ave, Suite 350
Minneapolis, MN 55401

Attn: Operations

If to the County:

Arapahoe County Department of Public Works and Development
6924 S. Lima Street
Centennial, Colorado 80112

Attention: Director

All notices to the County shall include a copy to:

Arapahoe County Attorney
5334 S. Prince Street
Littleton, Colorado 80120

Section 8.3 Amendments. This Agreement may be amended, supplemented, modified, or waived only by an instrument in writing duly executed and agreed by each of the parties hereto.

Section 8.4 Successors and Assigns.

- a. This Agreement shall (i) remain in full force and effect until the termination hereof pursuant to Section 7.1 herein; and (ii) be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.
- b. The Landowner in executing this Agreement agrees that this Agreement and the respective rights and obligations of the Landowner stated herein, shall be a covenant that runs with ownership of the Property and shall be recorded in the Arapahoe County land records as an encumbrance on the Property and shall bind all successors in ownership until the termination of the Agreement as provided in Article 7.
- c. Except as provided in subsection (d) below, neither the Operator nor the County shall assign, transfer, delegate, or encumber this Agreement or any or all of its rights, interests, or obligations under this Agreement without the prior written consent of the other. In those instances in which the approval of a proposed assignee or transferee is required or requested, such approval shall not be unreasonably withheld, conditioned, or delayed.
- d. The County may, without the need for consent of the Operator, but upon notice to the Operator, assign or transfer this Agreement, in whole or in part, or any or all of its rights, interests, and obligations under this Agreement to any municipality that annexes the Property.
- e. Any transfer or assignment by the Operator to a successor Operator shall be subject to the transferee or assignee agreeing in writing to be bound by the terms of this Agreement to the extent of the assigned rights, interests, and obligations hereunder and such transfer or assignment shall not become effective until the County has accepted the agreement to be bound and consented to the assignment in writing as provided above.
- f. The Operator shall provide the County with not less than forty-five (45) days advance written notice of such proposed transfer or assignment, which notice shall set forth contact information for the transferee or assignee and the basis for the assignment. The Operator agrees to provide at the County's request such information concerning the proposed transferee or assignee and as is reasonably necessary for the County to evaluate and determine whether to consent to the proposed transfer or assignment.

Section 8.5 Counterparts: Effectiveness. This Agreement may be executed in any number of counterparts, all of which when taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart. This Agreement constitutes the entire agreement and understanding among the parties hereto with respect to matters covered by this Agreement and supersedes any and all prior agreements and understandings, written or oral, relating to the subject matter hereof.

Section 8.6 Severability. If any provision hereof is invalid or unenforceable in any jurisdiction, then, to the fullest extent permitted by applicable law: (a) the other provisions hereof shall remain in full force and effect in such jurisdiction in order to carry out the intentions of the parties hereto as nearly as may be possible; and (b) the invalidity or unenforceability of any

provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

Section 8.7 Headings. Headings appearing herein are used solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

Section 8.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Venue for any action related to this Agreement shall be in a court of appropriate jurisdiction located in Arapahoe County, Colorado.

Section 8.9 Government Immunity. The County is entitled to government immunity in accordance with Sections 24-10-101, *et seq.*, Colorado Revised Statutes. Nothing in the Agreement is intended to or shall be interpreted as a waiver of such government immunity and the County fully intends and has the right to rely on such government immunity as provided under said statutes.

Section 8.10 Attorney Fees. In the event of litigation or other mutually agreed alternate dispute resolution process between the parties hereto to enforce the terms of this Agreement, each party shall be responsible for its own fees, costs, and expenses associated therewith.

IN WITNESS WHEREOF, this Agreement has been duly executed on the date and year first written above.

Arapahoe County Board of County Commissioners

Chair

Operator of Small Solar Facility

Representative

Property Owner

Representative