

2015-003085

Klamath County, Oregon

04/06/2015 09:56:39 AM

Fee: \$97.00

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Sun Edison LLC
44 Montgomery, Suite 2200
San Francisco, CA 94104
Attention: General Counsel

NCS - 671879 - NRG (Above Space for Recorder's Use Only)

SUBORDINATION, NONDISTURBANCE AND ATTORNMENMENT AGREEMENT

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENMENT AGREEMENT is made and entered into this 9 th day of OCTOBER, 2014, by and between United States of America, acting through Farm Service Agency FKA Farmers Home Administration ("Lender"), and Bevan's Point Holdings, LLC, a Delaware limited liability company ("Developer").

RECITALS

A. Lender is the sole current holder of those three certain mortgages (the "**Security Instruments**") granted by Richard V. Rajnus and Denise M Paulsen, husband and wife ("**Owner**"), and recorded in the official records of Klamath County, Oregon, encumbering all or a portion of the real property described in Exhibit A attached hereto (the "**Property**"), together with the promissory note or other evidence of indebtedness secured thereby, and described as follows:

1. Mortgage recorded on June 14, 2000, in Volume M00, Page 21518;
2. Mortgage recorded on June 2, 2005, in Volume M05, Page 40885;
3. Mortgage recorded on August 26, 2013, as Instrument No. 2013-9762.

B. Owner, as lessor, and Developer, as lessee, are parties to that certain Land Lease and Solar Easement pertaining to the Property dated as of May 7, 2013, as amended by that certain First Amendment to Land Lease and Solar Easement dated as of February 12, 2014 (as it may be further amended, the "**Lease**"), and evidenced by a Memorandum of Lease recorded in the official records of Klamath County, Oregon on APRIL 6, 2015, as Instrument No. 2015-003079. Developer's estate and interest in the Property as more particularly described in the Lease is referred to herein as the "**Lease Property**."

C. The Lease grants to Developer certain rights, including without limitation access rights, on, over, under and across the Property to install and/or construct, operate and maintain a solar-powered electrical generating facility for the conversion of solar energy into electrical energy, and associated transmission, road and ancillary facilities, all as more particularly described in the Lease (the "**Facilities**").

D. Developer would not develop the Facilities on the Property unless Lender assures Developer and any holder of a Lease Mortgage (as defined below) of the continued, undisturbed use of the Property under the terms of the Lease, notwithstanding any future default in the performance by Owner (or any successor in title to Owner) of any term, covenant or condition of the Security Instruments, or in the event of foreclosure by Lender (through judicial or non judicial proceedings) upon said Security Instruments.

E. Lender and Developer desire to enter into this Agreement in order to provide for (a) limitation of the enforceability of the Security Instruments as to the Facilities and the Lease Property with respect to the interest of the Developer and any holder of a Lease Mortgage in the same subject to the continuing priority of the lien of the indebtedness of the Security Instruments with respect to Owner's remaining interest in the Property, (b) the attornment of the Developer to the Lender and any Transferee (as defined below), and (c) the waiver by the Lender of all liens arising under the law with respect to the Facilities, all upon the terms and conditions hereinafter set forth.

AGREEMENT

1. Approval of Lease. Lender hereby approves the terms and provisions of the Lease.

2. Subordination; Nondisturbance of Lease. Lender agrees for the benefit of Developer, its successors and assigns and any Lease Lender, that the lien of the Security Instruments and any amendments thereto and extensions thereof (a) does not and shall not encumber the Facilities or Developer's interests in the Lease Property pursuant to the Lease, or other interests of Developer therein, and (b) is and shall be subordinate to Developer's interests in the Property under the Lease and any amendments thereto and extensions thereof and is and shall be junior in right of payment to the rights of any holder of any deed of trust or mortgage or other Security instruments granted by Developer with respect to the Lease Property. Lender agrees that in the event of any foreclosure, trustee's sale or conveyance in lieu of foreclosure or trustee's sale of the Security Instruments or in any action to enforce any rights under the Security Instruments or any obligation secured thereby, neither Developer nor any Lease Lender shall be named as a defendant therein. The use by Developer of the Lease Property and Developer's rights and interests under the Lease, and the lien of any Lease Mortgage on the Lease Property, shall not be disturbed, affected or impaired by (x) any suit, action or proceeding upon the Security Instruments or any obligation secured thereby, or for the foreclosure of the Security Instruments or the enforcement of any rights under the Security Instruments or other documents held by Lender, or any deed in lieu of foreclosure, or by the exercise of any other rights given to Lender under the Security Instruments or under any other documents as a matter of law, or (y) any default under the Security Instruments, or any bond or note or other obligation secured thereby. Except as expressly provided herein, this Agreement shall not affect or subordinate any of the terms or provisions of the Security Instruments and the lien of the Security Instruments shall remain unaffected as regards the Owner's remaining interest in the Property.

3. Attornment. Developer agrees that if Lender or a purchaser of the Property from or through Lender pursuant to a foreclosure proceeding or otherwise ("**Transferee**") acquires title to the Property by foreclosure or trustee's sale of the Security Instruments or any conveyance in lieu thereof it shall recognize such Transferee as the Owner under the Lease so long as the Transferee continues to hold such title. If a Transferee succeeds to the interest of Owner under the Lease, then, from and after Transferee's succession to the interest of Owner:

(i) Transferee shall be bound to Developer under all of the terms, covenants and conditions of the Lease and the Lease shall continue in full force and effect, without necessity for executing any new Lease, as a direct Lease between Developer, as grantee, and the Transferee, as grantor, upon all of the same terms, covenants and provisions contained in the Lease; and (ii) Transferee shall assume and perform (or cause to be assumed and performed) all the terms, covenants and provisions of the Lease to be performed by Owner. Notwithstanding the foregoing, in the event Transferee becomes bound to the terms of the Lease as a successor to Owner as provided in this Agreement, upon the written request of either Developer or Transferee, Developer and Transferee shall execute a new Lease that shall contain all of the same terms, covenants and provisions of the Lease or shall execute such other instrument(s) which may be necessary or appropriate to evidence such attornment.

4. Lender's Liability. Developer agrees that this Agreement shall not impose upon Lender any liability under the Lease, and if Lender acquires title to the Property it shall have no liability for the defaults, breaches, acts or omissions of any prior owner, including any of the persons who executed the Lease as Owner, and Lender shall only be responsible for the performance of Owner's obligations that are attributable to the period during which it holds title to the Property. Upon the conveyance of such title to any third party, Lender shall automatically be released from any liability under the Lease which pertains to any period following the date of such conveyance.

5. Lease Lender. Developer, and/or its successor(s), assignee(s) and/or designee(s) shall have the right to hypothecate, mortgage, pledge or alienate the Facilities and/or Developer's Lease estate and rights under the Lease and in and to the Lease Property to one or more lenders or financing parties ("**Lease Lender**"). Such Lease Lender shall be considered a third party beneficiary under this Agreement, provided such Lease Lender shall have notified the parties hereto in writing of its name and address, or have recorded or filed a lien in the official records of the County in which the Property is located. Upon identification of the Lease Lender, Lender hereby agrees to execute an instrument acknowledging that such Lease Lender shall be considered a party to this Agreement. Lease Lender, and/or its successor(s), assignee(s) and/or designee(s) shall have the right to assign all of its interest in this Agreement and the Lease, as the case may be, to another person or entity, provided such transferee assumes the obligations of Developer or its successor(s), assignee(s) and/or designee(s) under this Agreement and the Lease, as the case may be. Upon such assignment, Lease Lender (including its agents and employees) shall be released from any further liability thereunder to the extent of the interest assigned.

6. Consent to Facilities; Waiver of Lien. Lender hereby consents to the installation of the Facilities on the Lease Property and agrees that the Facilities shall be and remain personal property subject to the lien and security interest of any holder of a Lease Mortgage notwithstanding the manner of their annexation to the Property, their adaptability to the uses and purposes for which the premises are used, or the intentions of the Party making the annexation. Lender hereby waives, for the benefit of any holder of a Lease Mortgage, any and all claims, rights or liens which the Trustee may hereafter acquire on or in the Facilities, no matter how arising, including without limitation, all statutory and common law liens or security interests, and all rights to levy distraint, execute or sell the Facilities to the extent such claims, rights or liens could be deemed prior to the interest of the holder of a Lease Mortgage.

7. Enforcement. The parties intend that this Agreement be specifically enforceable.

8. Notices. Any notices given in connection with this Agreement shall be sent by certified mail, return receipt requested, with postage prepaid and addressed to the recipient at the address stated below its signature herein.

9. Successors. The terms and provisions of this Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and assigns and are specifically intended to be relied upon and enforceable by any person holding a Security Instrument or deed of trust against the Lease. Developer and/or its lender(s), successor(s), assignee(s) and/or designee(s) shall have the right to assign all of its interest in this Agreement and the Lease, as the case may be, to another person or entity, provided such transferee assumes the obligations of Developer or its lender(s), successor(s), assignee(s) and/or designee(s), as the case may be, under this Agreement and the Lease. Upon such assignment, Developer (including its agents and employees) shall be released from any further liability thereunder to the extent of the interest assigned.

10. Entire Agreement. This Agreement supersedes all previous oral and written understandings and agreements with respect to the priority of the Security Instruments and the Lease, the effect of a foreclosure of the Security Instruments on the Lease, and the extent of the Lender's liability under the Lease, and comprises the entire agreement of the parties with respect thereto. No provisions of this Agreement may be modified or waived except through the execution and recordation of a subsequent written agreement by the party to be charged therewith.


11. Execution in Counterparts. This Agreement may be executed in counterparts, both of which shall constitute but one and the same contract.

12. Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the state in which the Property is located.

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

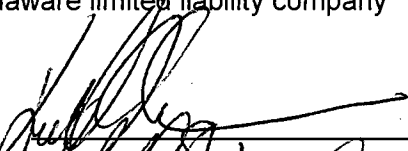
LENDER:

UNITED STATES OF AMERICA,
ACTING THROUGH THE FARMERS HOME ADMINISTRATION

By: 
Name: Chris Kirby
Title: farm loan officer

DEVELOPER:

BEVAN'S POINT HOLDINGS, LLC
a Delaware limited liability company

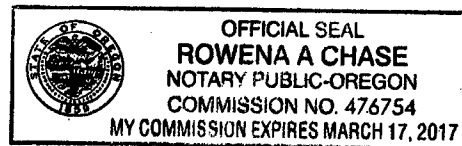
By: 
Name: Secretary & General Counsel
Title: Secretary & General Counsel

STATE OF Oregon)
) ss
COUNTY OF KLAMATH)

On Oct. 9, 2014, before me, Rowena A. Chase, Notary Public, personally appeared Chris Kirby, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument, and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of Oregon that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Rowena A. Chase
Notary Public

(Seal)

STATE OF _____)
) ss
COUNTY OF _____)

On _____, before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of _____ that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public

(Seal)

STATE OF CALIFORNIA

)

) ss

COUNTY OF SAN FRANCISCO

)

On December 16, 2014, before me, Mary K. Dulalia, Notary Public, personally appeared Karleen O. Stern, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Mary K Dulalia
Notary Public

(Seal)

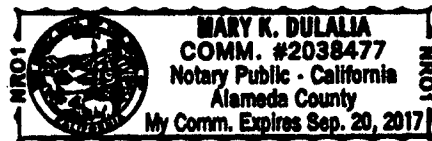


Exhibit A
to
Subordination, Nondisturbance and Attornment
Agreement

Legal Description of Property

Real property in the County of Klamath , State of Oregon, described as follows:

THOSE PORTIONS OF GOVERNMENT LOTS 3 AND 6, SECTION 16, TOWNSHIP 41 SOUTH, RANGE 12 EAST OF THE WILLAMETTE MERIDIAN, KLAMATH COUNTY, OREGON, LYING NORTH OF THE MERRILL-MALIN HIGHWAY.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO PACIFIC POWER & LIGHT COMPANY BY INSTRUMENT RECORDED IN VOLUME 67, PAGE 224, DEED RECORDS OF KLAMATH COUNTY, OREGON;

ALSO EXCEPT THE FOLLOWING DESCRIBED PARCEL: BEGINNING AT THE NORTHEAST CORNER OF ABOVE DESCRIBED PARCEL; THENCE SOUTH 425 FEET; THENCE WEST 600 FEET; THENCE NORTH 425 FEET; AND THENCE EAST 600 FEET TO THE POINT OF BEGINNING.

AND ALSO EXCEPTING THAT PORTION CONVEYED TO UNITED STATES OF AMERICA BY WARRANTY DEED RECORDED NOVEMBER 14, 1991 IN VOLUME M91, PAGE 23879, DEED RECORDS OF KLAMATH COUNTY, OREGON. |