

AmeriTitle
MS 236213 An

2018-007089

Klamath County, Oregon

06/12/2018 11:23:00 AM

Fee: \$137.00

Recorded at the Request of and After Recording Return to:

Crestmark Bank
5480 Corporate Drive, Suite 350
Troy, Michigan 48098
Attn: Stacey Farmer

**SUBORDINATION, NON-DISTURBANCE
AND ATTORNMENT AGREEMENT**

Grantor #1: Cypress Creek Land Holdings 2, LLC, a Delaware limited liability company

Grantor #2 (Tenant): NorWest Energy 4, LLC, an Oregon limited liability company

Grantee: Crestmark Bank, a Michigan banking corporation

Abbreviated Legal Description:

Official Legal Description on Exhibit A

Tax Lot No.: R-3911-00000-02101-000

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT (the "Agreement") is made as of the 7th day of June, 2018, by and between:

Crestmark Bank
having an address at
5480 Corporate Drive, Suite 350
Troy, Michigan 48098
Attention: Stacey Farmer
("Lender"),

and

NorWest Energy 4, LLC
having an address at
c/o New Energy Solar US Corp
140 Broadway, 28th Floor
New York, NY 10005
Attention: Asset Manager
("Tenant").

INTRODUCTION

A. Tenant is the holder of a leasehold estate in a portion of those certain premises located in the County of Klamath, State of Oregon, and more particularly described on Exhibit A attached hereto and made a part hereof (the "Property") under and pursuant to the provisions of a certain Ground Lease Agreement dated December 22, 2017 (the "Lease") between Cypress Creek Land Holdings 2, LLC, a Delaware limited liability company, as successor in interest to Dogwood Creek Land Holdings, LLC, a North Carolina limited liability company, by that certain Assignment and Assumption of Ground Lease Agreement dated as of June 7, 2018 (the "Lease Assignment"), as landlord ("Landlord"), and Tenant, as tenant; and

B. The Lease is evidenced by that certain Memorandum of Ground Lease Agreement dated December 22, 2017, and recorded as Instrument Number 2017-014620 of the Klamath County Public Registry, and the Lease Assignment is recorded as Instrument Number 2018-007065 of the Klamath County Public Registry; and

C. Lender has made or intends to make a loan (the "Loan") to Landlord, evidenced by, among other documents, a promissory note made by Landlord to the order of Lender (the "Note") and secured or to be secured by a Term Loan Trust Deed, Assignment of Rents, Security Agreement and Fixture Filing (the "Security Instrument") granted by Landlord to or for the benefit of Lender and encumbering the Property; and

D. Tenant has agreed to subordinate the Lease to the Security Instrument and to the lien thereof and Lender has agreed to recognize the Lease and to grant non-disturbance to Tenant under the Lease on the terms and conditions hereinafter set forth.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Tenant and Lender agree as follows:

1. SUBORDINATION. Subject to the terms hereof, the Lease and all of the terms, covenants and provisions thereof and all rights, remedies and options of Tenant thereunder are and shall at all times continue to be subject and subordinate in all respects to the terms, covenants and provisions of the Security Instrument and to the lien thereof, including but not limited to, all renewals, increases, modifications, spreaders, consolidations, replacements and extensions thereof and to all sums secured thereby and advances made thereunder with the same force and effect as if the Security Instrument had been executed, delivered and recorded prior to the execution and delivery of the Lease. This Agreement is not intended and shall not be construed to subordinate the Lease to any other security documents or any other liens or encumbrances other than the Security Instrument as defined herein.

2. NON-DISTURBANCE. If any action or proceeding is commenced by Lender for the foreclosure of the Security Instrument or the sale or other liquidation of the Property or to otherwise enforce the Security Instrument, Tenant, nor any entity claiming by, through or under Tenant, shall not be named as a party therein unless such joinder shall be required by law; *provided, however,* no such joinder, action or proceeding or sale or liquidation pursuant thereto or in lieu thereof shall result in the termination of the Lease or disturb the Tenant's possession or use of the premises demised thereunder or any other interests or rights of Tenant (or of Federal T/E Investor or any other Additional Notice Party, as such terms are defined and used in the Lease) granted therein, and the sale or liquidation of the Property pursuant to or in lieu of any such action or proceeding and the exercise by Lender at all other times and in all other respects of any of its other rights under the Note, the Security Instrument or any other Loan Document (as defined below) shall be made subject to all interests and rights of Tenant (and of Federal T/E Investor and any other Additional Notice Party) under the Lease, provided that at the time of the commencement of any such action or proceeding or at the time of any such sale, liquidation or exercise of any such other rights Tenant shall not be in default under the terms of the Lease on Tenant's part to be observed or performed beyond any applicable notice or grace period (including but not limited to any notice or grace period applicable to Federal T/E Investor or any other Additional Notice Party). Notwithstanding anything contained herein the contrary, the Lease may be terminated in accordance with (and upon and subject to) the terms of the Lease and applicable law upon Tenant's uncured breach of its obligations under the Lease.

3. ATTORNMENT. If Lender or any other subsequent purchaser of the Property shall become the owner of the Property by reason of the foreclosure of the Security Instrument, the acceptance of a deed or assignment in lieu of foreclosure or by reason of any other enforcement of the Security Instrument (Lender or such other purchaser being hereinafter referred to as "Purchaser") and the conditions set forth in Section 2 above have been met at the time Purchaser becomes owner of the Property, the Lease shall not be terminated or affected thereby but shall continue in full force and effect as a direct lease between Purchaser and Tenant upon all of the terms, covenants and conditions set forth in the Lease. In such event, Tenant agrees to attorn to Purchaser and Purchaser by virtue of such acquisition of the Property shall be deemed to have agreed to accept such attornment and, subject to Tenant not being in default beyond any applicable

notice and cure periods as set forth in the Lease (upon and subject to the terms and conditions set forth therein), Purchaser shall recognize the leasehold estate and the other interests and rights of Tenant under all the Lease for the remaining balance of the term with the same force and effect as if Purchaser were the lessor under the Lease; *provided, however*, that Purchaser shall not be:

(a) liable for the failure of any prior landlord (any such prior landlord, including Landlord and any successor landlord, being hereinafter referred to as a "Prior Landlord") to perform any of its obligations under the Lease which have accrued prior to the date on which Purchaser shall become the owner of the Property unless such failure to perform is a continuing failure to perform by Purchaser;

(b) subject to any offsets, defenses, abatement or counterclaims which shall have accrued in favor of Tenant against any Prior Landlord prior to the date upon which Purchaser shall become the owner of the Property;

(c) liable for the return of rental security deposits, if any, paid by Tenant to any Prior Landlord in accordance with the Lease unless such sums are actually received by Purchaser;

(d) bound by any payment of rents, additional rents or other sums which Tenant may have paid to any Prior Landlord more than one (1) month before the same shall have become due or payable unless (i) such sums are actually received by Purchaser or (ii) such prepayment shall have been expressly approved of by Purchaser with such approval not to be unreasonably withheld, conditioned or delayed;

(e) bound by any agreement terminating or amending or modifying the rent, term, commencement date or other material term of the Lease, or any voluntary surrender of the premises demised under the Lease, made without Lender's or Purchaser's prior written consent not to be unreasonably withheld, conditioned or delayed (except that no such consent shall be requested for Tenant's exercise of express rights pursuant to the Lease, such as any renewal rights); or

(f) responsible for the making of repairs in or to the Property in the case of damage or destruction to the Property or any part thereof due to fire or other casualty or by reason of condemnation unless Purchaser is obligated under the Lease to make such repairs and Purchaser receives insurance proceeds or condemnation awards sufficient to finance the completion of such repairs.

4. NOTICE TO TENANT. After notice is given to Tenant by Lender that the Landlord is in default under the Note and the Security Instrument, which notice expressly and specifically states that the rentals under the Lease should be paid to Lender pursuant to the terms of the Security Instrument, Tenant shall thereafter pay to Lender or as directed by the Lender, all rentals and all other monies due or to become due to Landlord under the Lease and Landlord hereby expressly authorizes Tenant to make such payments to Lender and hereby releases and discharges Tenant from any liability to Landlord (and shall otherwise hold Tenant harmless) on account of any such payments. Tenant shall have no liability to Lender for the payment of any rentals or other monies

to or on account of Landlord made at any time prior to Tenant's receipt of any such notice from Lender.

5. NOTICE TO LENDER AND LENDER'S RIGHT TO CURE LEASE DEFAULT.

(a) Lease Default Notice. Tenant shall, simultaneously with the giving of any notice of the occurrence of an event of default by Landlord under the Lease (such notice, a "Lease Default Notice", and such triggering event, a "Lease Event of Default"), give a duplicate copy thereof to Lender. Notwithstanding anything to the contrary herein, Lender hereby acknowledges and agrees that Tenant shall have no liability as a result of any failure or omission to send a Lease Default Notice; provided that no Lender Cure Periods (defined below) shall commence until the Lease Default Notice for such Lease Event of Default is delivered to the Tenant.

(b) Cure Rights. Lender shall have the right, but not the obligation, to cure the Lease Event(s) of Default listed in any Lease Default Notice, as and to the extent such rights are provided for below in this Section 5(b). With respect to any such Lender cure, Tenant shall accept performance by or on behalf of Lender or any of its members, as the case may be, as though, and with the same effect as if, it had been done or performed by Landlord.

(i) Right to Cure. Lender shall have the right to cure any Lease Event of Default during a period commencing with the receipt of the Lease Default Notice and, for (A) Lease Event of Defaults that can be cured by the payment of money, ending thirty (30) days after expiration of the applicable cure period under the Lease (the "Monetary Cure Period"), and, (B) for other Lease Events of Default, ending sixty (60) days after expiration of the applicable cure period under the Lease (the "Non-Monetary Cure Period" and, together with the Monetary Cure Period, the "Lender Cure Periods") provided, however, that such Lender Cure Periods shall commence upon the later of Lender's receipt of the Lease Default Notice and the expiration of the relevant cure period afforded to Landlord under the Lease. Notwithstanding the foregoing, any Non-Monetary Cure Period shall exist or apply only if (1) such Lease Event of Default is capable of being cured, and (2) Lender diligently pursues such corrective action to cure such Lease Event of Default.

(ii) Actions During Lease Cure Periods. During any Lease Cure Period, Tenant shall not terminate the Lease or exercise any and all of its other rights and remedies available to it under the Lease or applicable law as a result of a Lease Event of Default. After the expiration of the applicable Lender Cure Period, unless the applicable Lease Event of Default has been fully cured to the reasonable satisfaction of Tenant, Tenant may exercise any and all of its rights and remedies available to it under the Lease or applicable law.

6. NOTICES. Except as provided in Sections 5 and 8, all notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable

overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Tenant: NorWest Energy 4, LLC
c/o New Energy Solar US Corp
140 Broadway, 28th Floor
New York, NY 10005
Attention: Asset Manager

If to Lender: Crestmark Bank
5480 Corporate Drive, Suite 350
Troy, Michigan 48098
Attention: Stacey Farmer

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section 6, the term "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in the state where the Property is located. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

7. ACKNOWLEDGMENT OF TENANT'S PERSONAL PROPERTY. Landlord and Lender each hereby acknowledge that all installations or features constructed by or for Tenant on or in the Property or on Landlord's adjacent property, and all of the Tenant's machinery, fixtures, trade fixtures, furniture, equipment, and other personal property installed or placed on or in the Property by or for Tenant including, without limitation, the photovoltaic generating system (collectively, "Tenant's Property", which term shall also include all "Tenant's Property" as such term is defined and used in the Lease and all sale, insurance, condemnation and other proceeds in respect thereof or in respect of Tenant's interests in or under the Lease), are regardless of the manner of attachment to the Property or the improvements thereon, are and at all times shall remain the personal property of Tenant within the meaning of Article 9 of the Uniform Commercial Code of the State of Oregon and in no event shall Tenant's Property be subject to the lien of the Security Instrument and/or any other security interest in favor of Lender or any other Lender affiliate. For the avoidance of doubt, Landlord and Lender each hereby acknowledge, disclaim and waive, any and all interest in Tenant's Property or any part thereof.

8. NOTICE TO TENANT AND TENANT'S RIGHT TO CURE LOAN DEFAULTS.

(a) Loan Default Notice. Lender shall, simultaneously with the giving of any notice of the occurrence of an event of default under the Loan (such notice, a "Loan Default Notice", and such triggering event, a "Loan Event of Default"), give a duplicate copy thereof to Tenant. Notwithstanding anything to the contrary herein, Tenant hereby acknowledges and agrees that Lender shall have no liability as a result of any failure or omission to send a Loan Default Notice; provided that no Tenant Cure Periods (defined below) shall commence until the Loan Default Notice for such Loan Event of Default is delivered to the Tenant.

(b) Cure Rights. Tenant shall have the right, but not the obligation, to cure the Loan Event(s) of Default listed in any Loan Default Notice, as and to the extent such rights are provided for below in this Section 8(b). With respect to any such Tenant cure, Lender shall accept performance by or on behalf of Tenant or any of its members, as the case may be, as though, and with the same effect as if, it had been done or performed by Landlord.

(i) Right to Cure. Tenant shall have the right to cure any Loan Event of Default during a period commencing with the receipt of the Loan Default Notice and, for (A) Loan Event of Defaults attributable to the failure of Landlord to make any payment of principal, interest, prepayment premium or other amounts due and payable to Lender or make payments for ground rent, insurance, taxes or other operating expenses, ending thirty (30) days after expiration of the applicable cure period (the "Monetary Cure Period") under Lender's loan documents (the "Loan Documents") and, (B) for other Loan Events of Default, ending sixty (60) days after expiration of the applicable cure period under the Loan Documents (the "Non-Monetary Cure Period") and, together with the Monetary Cure Period, the "Tenant Cure Periods") provided, however, that such Tenant Cure Periods shall commence upon the later of Tenant's receipt of the Loan Default Notice and the expiration of the relevant cure period afforded to Landlord under the Loan Documents. Notwithstanding the foregoing, any Non-Monetary Cure Period shall exist or apply only if (1) such Loan Event of Default is capable of being cured, and (2) Tenant diligently pursues such corrective action to cure such Loan Event of Default.

(ii) Actions During Tenant Cure Periods. During any Tenant Cure Period, Lender shall not terminate the Lease or exercise any and all of its other rights and remedies available to it under the Loan Documents or applicable law as a result of a Loan Event of Default. After the expiration of the applicable Tenant Cure Period, unless the applicable Loan Event of Default has been fully cured to the reasonable satisfaction of Lender, but subject in all events to Section 2 of this Agreement, Lender may exercise any and all of its rights and remedies available to it under Lender's loan documents or applicable law.

(iii) Tenant's Right to Purchase Loans. Lender agrees that if a Loan Event of Default has occurred and is continuing under the Loan Documents, until the expiration of the Tenant Cure Periods, Tenant (or its designee) may purchase the Loan and Lender's rights under all of the Loan Documents for a price equal to the sum of (A) the then-outstanding principal balance of the Loan plus (B) all accrued and unpaid interest and fees due thereon.

9. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of Lender, Landlord, Tenant and Purchaser and their respective successors and assigns. Notwithstanding Section 1 or any other term or provision of this Agreement, this Agreement shall not be construed as an assumption by Tenant of any obligation under the Note, the Security Instrument, or any other Loan Document or as impairing or modifying the Lease or any term or provision thereof.

10. GOVERNING LAW. This Agreement shall be deemed to be a contract entered into pursuant to the laws of the State of Michigan and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Michigan.

11. MISCELLANEOUS. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

(Signature pages follow this page.)

IN WITNESS WHEREOF, Lender and Tenant have duly executed this Agreement as of the date first above written.

LENDER:

CRESTMARK BANK

By: J. Wesley Barrett
Name: J. Wesley Barrett
Its: Assistant Vice President

STATE OF Michigan
COUNTY OF Oakland

Before me personally appeared J. Wesley Barrett and acknowledged the foregoing instrument to be his/her free act and deed as Asst. Vice President of Crestmark Bank and the free act and deed of said Michigan banking corporation.

Linda M. Barrett
Notary Public

My Commission Expires: 04.29.2019

LINDA M. BARRETT
NOTARY PUBLIC, STATE OF MI
COUNTY OF OAKLAND
MY COMMISSION EXPIRES Apr 29, 2019
ACTING IN COUNTY OF Oakland

(Signatures continue on next page.)

TENANT:

NORWEST ENERGY 4, LLC

By: 
Name: Jonathan Buttles
Its: Authorized Person

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

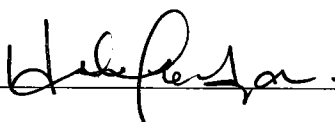
County of Los Angeles

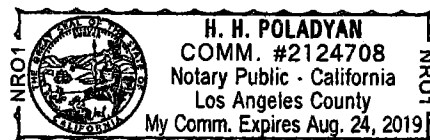
On 6/4/2018 before me, H.H. POLADYAN, NOTARY PUBLIC
(insert name and title of officer)

personally appeared JONATHAN BUTTLES, 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 California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 



(Seal)

(Signatures continue on next page.)

The undersigned hereby joins in the execution of this Agreement in order to evidence its acceptance of, and agreement to, the provisions of this Agreement.

LANDLORD:

CYPRESS CREEK LAND HOLDINGS 2,
LLC

By: [Signature]
Name: Jonathan Buttles
Title Authorized Person

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles

On 6/4/2018 before me, H. H. POLADYAN, NOTARY PUBLIC
(insert name and title of officer)

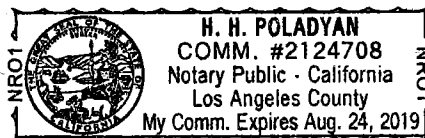
personally appeared JONATHAN BUTTLES, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) 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 California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

[Signature]



(Seal)

(The balance of this page intentionally is blank.)

Exhibit A
(Legal Description)

Parcel A:

Parcel 2 of Land Partition 48-06, located in the S 1/2 and the S 1/2 N 1/2 of Section 1, and the SE 1/4 NE 1/4 and NE 1/4 SE 1/4 of Section 2 and the N 1/2, and N 1/2 SE 1/4 and NE 1/4 SW 1/4 of Section 12, Township 39 South, Range 11 East of the Willamette Meridian, Klamath County, Oregon.

Parcel B:

Easement 1 as dedicated and described on Land Partition 48-06, recorded as Instrument 2006-22243, Klamath County Official Records.

Parcel C:

Easement 2 as dedicated and described on Land Partition 48-06, recorded as Instrument 2006-22243, Klamath County Official Records.