

2021-019142

Klamath County, Oregon

12/28/2021 11:38:01 AM

Fee: \$132.00

WHEN RECORDED RETURN TO:

Royce Ann Simmons
Harvest Capital Lending, LLC
690 NW 1st Ave., Suite 101
PO Box 579
Canby, OR 97013

(space above reserved for recorder's use)

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

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT AND COLLATERAL ASSIGNMENT (this "**Agreement**"), made this 14 day of December, 2021, by PACIFIC METAL FAB, LLC, an Oregon limited liability company ("**PMF**"), whose address is 135 E. 1st Ave., Junction City, OR 97448, and LINDA L. LONG ("**Borrower**"), whose address is PO Box 545, Chiloquin, OR 97624, to and for the benefit of Harvest Capital Lending, LLC, a Delaware limited liability company ("**Lender**"), whose address is 690 NW First Ave., Suite 101, PO Box 579, Canby, OR 97013 and who holds the Mortgage (defined below).

WITNESSETH:

WHEREAS, Borrower is the sole owner of that real property located in Klamath County, Oregon more particularly described on **Exhibit A**, attached hereto and by this reference made a part hereof (such real property, the "**Property**"); and

WHEREAS, Peter M. Bourdet ("**Bourdet**"), Borrower and PGPV, LLC, an Oregon limited liability company ("**PGPV**"), entered into (a) that certain Solar Photovoltaic Hosting Agreement – System #1 dated November 8, 2013, which was assigned by PGPV to, and assumed by, PMF pursuant to that Assignment dated December 26, 2013, between PGPV, as assignor, and PMF, as assignee ("**System #1 Hosting Agreement**"), and (b) that certain Solar Photovoltaic Hosting Agreement – System #3 dated September 3, 2014, which was assigned by PGPV to, and assumed by, PMF pursuant to that Assignment dated June 1, 2015, between PGPV, as assignor, and PMF, as assignee ("**System #3 Hosting Agreement**", and collectively with the System #1 Hosting Agreement, as well as all other agreements pursuant to which PMF may occupy, access, use or maintain systems on any portion of the Property, including modifications, amendments, restatements, amendments and restatements, and replacements thereof, the "**Hosting Agreements**"), in each case affecting portions of the Property; and

WHEREAS, although not named as a Host (which term, as used here and elsewhere in this Agreement, has the meaning ascribed to it in the Hosting Agreements) in the preamble to the Hosting Agreements, Borrower executed the Hosting Agreements as Host together with Bourdet; and

WHEREAS, Bourdet is deceased and Borrower is the sole remaining Host under the Hosting Agreements; and

WHEREAS, the Hosting Agreements grant PMF the right to install, operate, and maintain solar

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Loan No. 40001959

photovoltaic energy systems on portions of the Property; and

WHEREAS, the Property is or is to be encumbered by a Mortgage, Assignment of Rents and Security Agreement and Fixture Filing, or other similar security agreement (the "**Mortgage**") from Borrower in favor of Lender to secure a loan (the "**Loan**"); and

WHEREAS, Lender does not wish to make the Loan secured by the Mortgage unless PMF (a) subordinates the Hosting Agreements and all of PMF's rights thereunder to the lien and provisions of the Mortgage and (b) collaterally assigns the Hosting Agreements to Lender pursuant to the provisions of this Agreement.

NOW, THEREFORE, PMF and Borrower agree as follows:

1. PMF represents and warrants to Lender that PMF has not granted any sublicenses or subleases of the Property to any third party.

2. The Hosting Agreements and all of the rights of PMF thereunder in respect of the Property are, and all other rights of PMF in and to the Property shall be, subject and subordinate, and are hereby subordinated, to the lien of the Mortgage and to all of the terms, conditions and provisions thereof, to all advances made or to be made thereunder, to the full extent of the principal sum and interest thereon from time to time secured thereby, and to any renewal, substitution, extension, modification or replacement thereof, including any increase in the indebtedness secured thereby or any supplements thereto. In the event that Lender or any other person acquires title to the Property pursuant to the exercise of any remedy provided for in the Mortgage or by reason of the acceptance of a deed in lieu of foreclosure (the Lender, any other such person and their participants, successors and assigns being referred to herein as the "**Purchaser**"), PMF covenants and agrees to attorn to and recognize and be bound to Purchaser as its new Host under the Hosting Agreements, in which event the Hosting Agreements shall continue in full force and effect as direct Hosting Agreements between PMF and Purchaser. The parties acknowledge and agree that (a) the term "Property" as used in this Agreement does not include any System (as that term is defined in each Hosting Agreement and collectively, the "**Systems**") that Host has not purchased pursuant to Section 7.1(2) of the applicable Hosting Agreement, (b) Systems not owned by Host are not part of the collateral secured by the Mortgage, (c) and the foregoing subordination does not subordinate PMF's interest in the Systems to the lien of the Mortgage.

3. So long as the Hosting Agreements have not been terminated:

a. Lender shall not name or join PMF as a defendant in any exercise of Lender's rights and remedies arising upon a default under the Mortgage unless applicable law requires PMF to be made a party thereto as a condition to proceeding against Borrower or prosecuting such rights and remedies. In the latter case, Lender may join PMF as a defendant in such action only for such purpose and not to terminate the Hosting Agreements or otherwise adversely affect PMF's rights under the Hosting Agreement in such action.

b. (i) Purchaser shall not terminate or disturb PMF's access to and use of the Property under the Hosting Agreements, except in accordance with the terms of the Hosting Agreements and this Agreement; (ii) Purchaser shall be bound to PMF under all the terms of the Hosting Agreements (except as provided in this Agreement); and (iii) the Hosting Agreements will continue in full force and effect in accordance with their terms (except as provided in this Agreement) between Purchaser and PMF.

c. The provisions in this Section are effective and self-operative without the need for Purchaser or PMF to execute any further documents. Purchaser and PMF shall, however, confirm the provisions of this Section and Section 2 in writing upon written request by either of them.

4. In no event shall Lender or any other Purchaser be:

a. liable for any act or omission of Borrower or any prior Host under the Hosting Agreements;

b. subject to any offsets or defenses which the PMF might have against Borrower or any prior Host;

c. bound by any payment of rent or additional rent which PMF might have paid to Borrower or any prior Host more than thirty (30) days in advance of its due date;

d. bound by any amendment, modification or termination of the Hosting Agreements without Lender's or such other Purchaser's prior written consent;

e. personally liable under the Hosting Agreements, Lender's liability being limited to Lender's interest in the Property;

f. bound by any indemnity of Borrower or any prior Host in favor of PMF with respect to hazardous materials used, stored, disposed of or transported on the Property prior to the date Lender or such other Purchaser takes title to and possession of the Property or any portion thereof.

5. PMF and Borrower acknowledge and affirm that, although Borrower is not named as a Host in the preamble to the Hosting Agreements, Borrower holds title to the Property, executed the Hosting Agreements and has operated as a Host under the Hosting Agreements since the Effective Date (as defined in each Hosting Agreement) of each Hosting Agreement. PMF and Borrower acknowledge and affirm that Borrower is the current sole owner of the Property and current sole Host under the Hosting Agreements. PMF hereby certifies that the Hosting Agreements are in full force and effect as of the date hereof, that neither PMF nor Host have breached the terms of the Hosting Agreements as of the date hereof, and that as of the date hereof PMF is not aware of any existing facts or circumstances that could give rise to a breach of the terms of the Hosting Agreements.

6. PMF agrees to give prompt written notice to Lender of any default by Host under any of the Hosting Agreements.

7. To the extent that the Hosting Agreements are construed as leases, PMF acknowledges that the Mortgage includes an assignment of leases and rents conveying the rentals under the Hosting Agreements that are payable to and may be retained by Host as additional security for the Loan secured by the Mortgage, and PMF hereby expressly consents to such assignment and has no notice of a prior assignment of the leases or the rents or other payments thereunder. Borrower has agreed under the Mortgage that rentals or other payments that are payable to and may be retained by Host under the Hosting Agreements, if they are construed as leases, shall be paid directly by PMF to Lender upon an event of default by Borrower under the Mortgage. After receipt of notice from Lender to PMF (at PMF's address set forth in the preamble above) that such rents or other payments that are payable to and may be retained by Host under the Hosting Agreements should be paid to Lender, PMF shall pay to Lender all such monies due to Host under the Hosting Agreements.

8. PMF hereby certifies that it has no right or option of any nature whatsoever to purchase the Property or any portion thereof or any interest therein, and to the extent that PMF has had, or hereafter acquires, any such right or option, the same is hereby acknowledged to be subject and subordinate, and is hereby subordinated, to the Mortgage and is hereby waived and released as against Lender.

9. PMF agrees that it will not, without the prior written consent of Lender, subordinate or permit subordination of the Hosting Agreements to any lien subordinate to the Mortgage.

10. PMF agrees to certify in writing to Lender, upon request, whether or not any default on the part of Borrower exists under the Hosting Agreements and the nature of any such default.

11. To the extent that the Hosting Agreements are construed as licenses, Borrower hereby assigns to Lender, as collateral security for the Loan, and grants to Lender a security interest in all of Borrower's rights, title and interest in, to and under the Hosting Agreements. Notwithstanding anything to the contrary in the Hosting Agreements, PMF hereby consents to the foregoing assignment of the Hosting Agreements as security for the Loan. Neither this Agreement nor anything contained herein shall operate to relieve, release or discharge Borrower from the obligation to perform all of the terms, conditions and covenants contained in the Hosting Agreements, or from any of the liabilities of Borrower under the Hosting Agreements. If the Hosting Agreements are construed as licenses, Borrower and PMF agree that all payments that are payable to and may be retained by Host under the Hosting Agreements shall be paid directly by PMF to Lender upon an event of default by Borrower under the Mortgage. After receipt of notice from Lender to PMF (at PMF's address set forth in the preamble above) that payments to Host under the Hosting Agreements should be paid to Lender, PMF shall pay to Lender all such monies due to Host under the Hosting Agreements.

12. Any notice to Lender under this Agreement shall be in writing and shall be effective when either delivered in person or, if mailed, shall be deemed effective when deposited as registered or certified mail, postage prepaid, addressed to the party at the address set forth below.

Royce Ann Simmons
Harvest Capital Lending, LLC
690 NW 1st Ave., Suite 101
PO Box 579
Canby, OR 97013

13. The provisions hereof shall be self-operative and effective without the execution of any further instruments on the part of PMF. However, PMF agrees to execute and deliver to Lender, or to any person to whom PMF herein agrees to attorn, such other instruments as either shall request in order to effectuate said provisions.

14. The agreements herein contained shall be binding upon and shall inure to the benefit of the parties hereto, their respective participants, successors, and assigns, and, without limiting such, the agreements of Lender shall specifically be binding upon any purchaser of the Property at foreclosure or at a sale under power of sale.

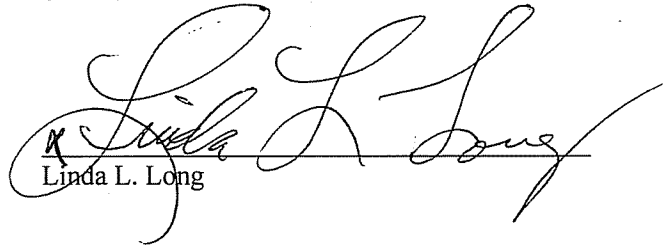
15. This Agreement may not be modified other than by an agreement in writing signed by the parties hereto or their respective successors.

16. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable, the remaining terms and provisions hereof shall not be affected thereby, but each term and provision hereof shall be valid and enforceable to the fullest extent permitted by law.

[signatures on following pages]

IN WITNESS WHEREOF, Borrower and PMF have caused this Subordination Agreement and Collateral Assignment to be executed as of the day and year first above written.

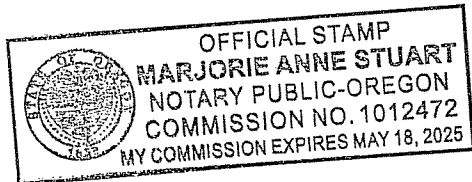
Borrower:

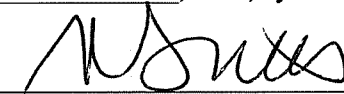

Linda L. Long

STATE OF OREGON

COUNTY OF Klamath) ss.

This instrument was acknowledged before me 12/23, 2021, by Linda L. Long.




Notary Public for Oregon
My commission expires: 5/18/25

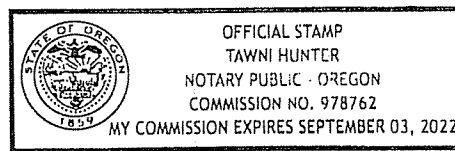
IN WITNESS WHEREOF, Borrower and PMF have caused this Subordination Agreement and Collateral Assignment to be executed under seal as of the day and year first above written.

PMF:

PACIFIC METAL FAB, LLC, an Oregon limited liability company

By: [Signature]
Name: Troy Vitus
Title: member

STATE OF Oregon)
COUNTY OF Lane) ss.



This instrument was acknowledged before me on ¹⁹~~November~~ December 19, 2021, by _____, as _____ of PACIFIC METAL FAB, LLC, an Oregon limited liability company.

[Signature]
Notary Public for Oregon
My commission expires: 9/3/2021

EXHIBIT A

Property Description

PARCEL 1:

INTENTIONALLY REMOVED

PARCEL 2:

All in Township 36 South, Range 7 East, Willamette Meridian, Klamath County, Oregon.

Section 4: The S1/2 of Government Lot 13, EXCEPT that portion lying in Modoc Point Highway (SR 427); the S1/2 of Government Lot 14; Government Lots 18, 19, 23, 26 and 31. That portion of Government Lots 22, 27 and 30, described as follows: E1/2; E1/2 E1/2 W1/2; E1/2 E1/2 W1/2 E1/2 W1/2; E1/2 E1/2 W1/2 E1/2 W1/2 E1/2 W1/2; E1/2 E1/2 W1/2 E1/2 W1/2 E1/2 W1/2 E1/2 W1/2.

Section 9: That portion of Government Lot 1, described as follows:

Beginning at the Northwest corner of said Government Lot 1; thence East, along the North line of said Government Lot 1, 233 feet, more or less, to a point from which a tree bears North 25 feet, more or less and West 10 feet; thence Southerly 660 feet to a fence corner on the South line of said Government Lot 1; thence West 233 feet to the Southwest corner of said Government Lot 1; thence North 660 feet to the point of beginning.

Government Lots 2, 7, 8, 9, 10, 15, 16, 17 and 24; Government Lot 18 EXCEPT that portion lying in Modoc Point Highway (SR 427); ALSO EXCEPTING that portion of Government Lot 18 lying West of Modoc Point Hwy (SR 427); all that portion of Government Lots 3, 6, 11 and 14, and the E1/2 of Government Lot 23 lying East of Modoc Point Highway (SR 427).

PARCEL 3:

The following described real property situate in Klamath County, Oregon:

TOWNSHIP 36 SOUTH, RANGE 7 EAST OF THE WILLAMETTE MERIDIAN

Section 9: Lots 25, 32 and the E1/2 of Government Lot 31, lying Easterly of Modoc Point Road

Section 10: Lots 13, 20, 21, 28 and 29 and those portions of Lots 5, 11, 12, 14, 19, 22, 27 and 30, lying West of the Southern Pacific Railroad right of way.

Section 15: Lots 4 and 5 and those portions of Lots 12 and 13 lying Northerly of Highway 427; all those portions of Lots 3, 6, 11 and 14 lying West of the Southern Pacific Railroad Right of Way, and that portion of Lot 19 lying North of Highway 427 and West of a line in a 20 foot canal running North 01° 35' 15" West from a point on Highway 427 as disclosed by Survey Number 2667 filed with the Klamath County Surveyor's Office.

Section 16: All those portions of Lots 1, 9 and the East half of Lot 8, lying Northerly of Highway 427.

PARCEL 4:

Government Lot 33 in Section 20, Township 35 South, Range 7 East, Willamette Meridian, in Klamath County, Oregon.

PARCEL 5:

A parcel of land situated in the SW1/4 of Section 20, Township 35 South, Range 7 East, Willamette Meridian, Klamath County, Oregon, more particularly described as follows:

Beginning at a 5/8 inch iron pin in an existing east-west fence line from which the fence corner marking the South 1/4 Section corner of Section 20, Township 35 South, Range 7 East, Willamette Meridian bears North 89° 39' 05" East 165.95 feet distant; thence North 4 degrees 50' 15" East 665.53 feet to a 5/8 inch iron pin in the Southerly fence of an existing roadway; thence North 4° 50' 15" East 18.25 feet to a point on the apparent centerline of said existing roadway; thence North 89° 40' 10" West 540.60 feet along said centerline to a point; thence South 16.37 feet to a 5/8 inch iron pin in the Southerly road fence; thence South 667.07 feet to a 5/8 inch iron pin in an existing east-west fence; thence South 89° 52' 45" East 482.94 feet to the point of beginning. SAVING AND EXCEPTING THEREFROM any portion thereof in Government Lot 33 in Section 20, Township 35 South, Range 7 East, Willamette Meridian.

PARCEL 6:

A piece or parcel of land situate in portions of Government Lots 36 and 37, Section 20, Township 35 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon, being more particularly described as follows:

Beginning at the quarter section corner common to Sections 20 and 29, Township 35 South, Range 7 East of the Willamette Meridian, Klamath County, Oregon, as established by an existing fence corner; thence South 89° 39' 05" West 165.95 feet to a point marked by a 5/8 inch iron pin; thence North 4° 50' 15" East, 665.53 feet to a 5/8 inch iron pin in the Southerly fence of an existing roadway; thence North 4° 50' 15" East, 18.25 feet to a point on the apparent center-line of said existing roadway; thence South 89° 40' 10" East along said roadway center-line 154.74 feet to a point on the apparent center-line of an existing North-South road; thence South 0° 30' 00" West along the centerline of said North-South road 678.86 feet to a point on the South line of Section 20, marked by a 5/8 inch iron pin; thence South 89° 09' 10" West along the Section line 40.53 feet to the point of beginning.

PARCEL 7:

Government Lots 32 and 37 also known as SW1/4 SE1/4 of Section 20, Township 35 South, Range 7 East of the Willamette Meridian, in Klamath County, Oregon.