

**2023-000243**

Klamath County, Oregon

01/11/2023 01:34:03 PM

Fee: \$187.00

MAIL TAX STATEMENTS TO:

No Change

AFTER RECORDING RETURN TO:**Heritage Bank**

700 Washington St., Ste. 708

Vancouver, WA 98660

**TRUST DEED, ASSIGNMENT OF RENTS, SECURITY
AGREEMENT, AND FIXTURE FILING - COMMERCIAL PROPERTY**

Principal	Loan Date	Maturity	Loan Number
\$457,500.00	12-19-2022	06-30-2033	

Grantor: Cherry Creek Solar, LLC
7455 Bridgeport Rd., Ste 200
Portland, OR 97224

Lender: Heritage Bank
700 Washington Street, Suite 708
Vancouver, WA 98660

Trustee: Saalfeld Griggs PC
PO Box 470
Salem, OR 97308

Date: December 19, 2022

This Deed of Trust is a LINE OF CREDIT INSTRUMENT. The maximum principal amount to be advanced pursuant to the Promissory Note is \$457,500.00. The term of the Promissory Note commences on the date of this Deed of Trust and matures on the Maturity Date.

For valuable consideration and to secure payment by the Grantor of the Obligations and performance by the Grantor of the covenants contained herein and in the Promissory Note by Grantor to be performed.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is hereby agreed by and between each of the parties hereto, as follows:

RECITALS:

- A. Grantor is the holder and owner of that certain leasehold interest in real property described in a Ground Lease Agreement dated March 22, 2022, (the "**Ground Lease**") a memorandum of which is recorded in the real property records for Klamath County, Oregon as instrument number 2022-003852 on March 30, 2022, together with all buildings, structures, improvements, goods

constituting fixtures and alternations located thereon. All of Grantor's rights, title or interest described in the Ground Lease together with all buildings, structures, improvements and alterations is hereinafter collectively referred to as the "**Trust Property**". A detailed legal description of the real property encumbered by the Ground Lease is attached hereto as **Exhibit A** and incorporated herein.

- B. Lender (also referred to herein as "**Beneficiary**") has agreed to lend to Grantor together with co-borrower Cherry Creek Project Manager, LLC (herein referred to as "**CCPM**") (Grantor and CCPM collectively are also the "**Borrowers**") and Borrowers have agreed to borrow from Lender, jointly and severally, the sum of Four Hundred Fifty Seven Thousand Five Hundred and 00/100 Dollars (\$457,500.00) upon the terms and conditions set out herein and in a Commercial Promissory Note (the "**Note**") dated concurrently with this Commercial Trust Deed with final payment due on June 30, 2033 which is the maturity date of this Commercial Trust Deed, unless accelerated by Lender. Grantor has agreed to deed to Trustee the Trust Property together with all rights to the buildings, structures, improvements, alterations and fixtures to secure punctual payment of the Note and any other Indebtedness owing by Borrowers to Lender and to secure performance of all the obligations under the Note, this Commercial Trust Deed and the Related Documents.

THEREFORE, to secure payment by Borrowers of the indebtedness as evidenced by the Note and as further defined in the Related Documents and in strict accordance with its terms, including payment of interest thereon and payment of any prepayment charge and late charges for which provision is made in the Note, and performance by the Grantor of the covenants contained herein and in the Note by Borrowers or Beneficiary to be performed, and to secure payment of any other Indebtedness of Borrowers to Beneficiary which arises directly or indirectly out of the Note, this Commercial Trust Deed or the Related Documents, Grantor hereby grants, bargains, sells and conveys to Trustee, in trust, with power of sale, the Trust Property and presently assigns the rents, revenues, income, issues and profits therefrom to Trustee, its successors and assigns, upon the terms set forth herein.

PROVIDED, HOWEVER, that until the occurrence of an event of default, Grantor may remain in control of and operate and manage the Trust Property and collect and enjoy the rents, revenues, income, issues, and profits therefrom;

PROVIDED, FURTHER, that if Borrowers shall make all payments for which provision is made in the Note in strict accordance with the terms thereof and Grantor shall perform all of the covenants contained herein, and shall make all payments due on any other Indebtedness and shall perform all of the covenants contained in the Note, this Commercial Trust Deed or the Related Documents, then Trustee shall execute and deliver to Grantor, without warranty, a reconveyance of the Trust Property; and

PROVIDED, FURTHER, that this Trust Deed is a "construction mortgage" for the purposes of Section 9-334 and 2A-309 of the Uniform Commercial Code, as those sections have been adopted by the State of Oregon.

1. Grantor' Covenants And Warranties

1.1 Warranty of Title

Grantor warrants that it holds good and merchantable title to the Trust Property subject to no other liens or encumbrances other than those of record.

1.2 Hazardous Conditions

Grantor represents, covenants and warrants to the best of its knowledge:

1.2.1 There are no hazardous conditions existing on any of the Trust Property;

1.2.2 The Trust Property has never been used for the storage or disposal of hazardous substances as defined in State or Federal law or Administrative Regulations, other than those substances used in the agriculture or solar energy field project; and

1.2.3 To Grantor's knowledge, no part of the Trust Property constitutes an attractive nuisance.

1.3 Taxes and Assessments; Liens and Claims

1.3.1 *Payment.* Grantor shall pay when due all taxes and all assessments imposed against the Trust Property and all claims and demands arising from Grantor's use or occupancy of the Trust Property to the extent required under the Ground Lease.

1.3.2 *Protection of the Trust Property from Liens.* Grantor shall not permit any lien prior or equal to Trustee's title to be imposed upon the Trust Property, except liens for taxes or assessments assessed but not yet due and any financing obtained by Landlord as permitted in the Ground Lease and

1.3.3 *Grantor's Right to Contest.* Grantor may withhold payment of any taxes, assessments, claims or demands or may elect to contest any lien as permitted in the Ground Lease if Grantor is in good faith conducting appropriate proceedings to contest its obligation to pay and for so long as Trustee's interest in the Trust Property is not jeopardized. If the Trust Property is subjected to a lien which is not discharged within 30 days from the date that the notice of claim of lien is filed, Grantor shall deposit, or cause to be deposited with Beneficiary, a court, or other such depository reasonably satisfactory with Beneficiary, cash, a sufficient corporate surety bond or other security reasonably satisfactory to Beneficiary in an amount adequate to provide for discharge of the lien plus any interest, cost, attorney fees or other charges that could accrue to the lienor or Beneficiary as a result of foreclosure or sale. In any contest, Grantor shall, at Grantor's expense, defend itself, Trustee, and Beneficiary and shall satisfy any final adverse judgment before enforcement against the Trust Property can occur.

1.3.4 *Evidence of Payment of Taxes or Assessments.* Upon payment of real property taxes and assessments required under the Ground Lease, Grantor shall furnish to Beneficiary evidence of payment of such taxes and assessments. Grantor hereby authorizes the appropriate city or county official to deliver to Trustee and Beneficiary at any time a written statement of the taxes and assessments against the Trust Property.

1.4 Insurance

1.4.1 *Property Insurance.* Grantor shall procure and maintain required policies of insurance upon the Trust Property as detailed and required in the Related Documents. The amount of insurance coverage shall in no event be less than the amount of principal owed on the Note.

1.4.2 *Insurance Companies, Policies and Certificates.* Both the insurance company providing the policy required by this Section and the form of the policy must be acceptable to Beneficiary. Grantor shall deliver to Beneficiary a certificate of coverage from the insurer issuing the policy, containing a stipulation that coverage will not be canceled or diminished without a minimum of 30 days' advance written notice to Beneficiary. Grantor shall deliver to Beneficiary at least 21 days prior to expiration of any insurance policy required by Section 1.3, a certificate showing the placement of a renewal or substitute policy of insurance.

1.4.3 *Notice of Loss.* In the event of loss, Grantor shall immediately notify Beneficiary, which may make proof of loss if it is not made promptly by Grantor.

1.4.4 *Insurance Proceeds.* Insurance proceeds shall be paid directly to Beneficiary which may deal directly with any insurance company. If Beneficiary by reason of such insurance receives any money for loss or damage, such amount may, at the option of Beneficiary, either: (i) be retained and applied by Beneficiary toward payment of all or part of the indebtedness secured by this Commercial Trust Deed in such order as Beneficiary may determine, without regard to whether or not the security of Beneficiary is impaired, or (ii) be paid over wholly or in part to Grantor upon such conditions as Beneficiary may determine for the repair of buildings or improvements located on the Trust Property or for the erection of new buildings or improvements in their place or for any other purpose or object satisfactory to Beneficiary. If Beneficiary elects to pay all or a portion of the insurance proceeds to Grantor, Beneficiary shall not be obligated to see to the proper application of any amount paid to Grantor.

WARNING UNDER ORS 746.201: Unless you (Grantor) provide us (Beneficiary) with evidence of the insurance coverage as required by our contract or loan agreement, we may purchase insurance at your expense to protect our interest. This insurance may, but need not, also protect your interest. If the collateral becomes damaged, the coverage we purchase may not pay any claim you make, or any claim made against you. You may later cancel this coverage by providing evidence that you have obtained property coverage elsewhere.

You are responsible for the cost of any insurance purchased by us. The cost of this insurance may be added to your contract or loan balance. If the cost is added to your contract or loan balance, the interest rate on the underlying contract or loan will apply to this added amount. The effective date of coverage may be the date your prior coverage lapsed or the date you failed to provide proof of coverage.

The coverage we purchase may be considerably more expensive than insurance you can obtain on your own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law or this Trust Deed.

1.5 Use, Maintenance and Alterations

1.5.1 *Duty to Maintain.* Grantor shall maintain the Trust Property in good condition and repair and promptly perform all repairs and maintenance necessary to preserve its value.

1.5.2 *Waste; Nuisance; Hazardous Materials.* Grantor shall not conduct or permit any nuisance on the Trust Property nor commit or suffer any strip or waste thereof nor allow hazardous waste materials to be stored or disposed of on the Trust Property.

1.5.3 *Removal of Improvements.* Grantor shall not demolish or remove any improvements on the Trust Property without the prior written consent of Beneficiary, but Grantor may make alterations which it deems necessary including, but not limited to, replacement of modules and equipment.

1.5.4 *Beneficiary's Right to Enter and Inspect.* Grantor shall permit Beneficiary and its agents to enter upon the Trust Property at all reasonable times to inspect the Trust Property as further provided in the Ground Lease.

1.5.5 *Compliance with Governmental Requirements.* Grantor shall promptly comply with all laws, ordinances and regulations of all governmental authorities applicable to the use or occupancy of the Trust Property. Grantor may contest in good faith any such law, ordinance or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Beneficiary's and Trustee's interests in the Trust Property are not jeopardized. It shall be a default under this Agreement if there is possession or manufacture of a controlled substance, or any "**prohibited conduct**" which would lead to civil forfeiture under federal or state law.

1.6 Eminent Domain

1.6.1 *Notice of Taking or Condemnation Proceeding.* If the Trust Property, or any part thereof or interest therein, should be taken or damaged by reasons of any public improvement or condemnation proceeding, or if Grantor should receive any notice or other information regarding a condemnation proceeding or similar type of proceeding, Grantor shall immediately notify Beneficiary.

1.6.2 *Condemnation Proceeds.* Beneficiary shall be entitled to all compensation, awards and other payments or relief related to condemnation, and shall be entitled at its sole option to commence, appear in and prosecute in its own name any such action or proceeding. Beneficiary shall also be entitled to make any compromise or settlement in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds awarded to Grantor ("**Condemnation Proceeds**") are hereby assigned to Beneficiary, and Grantor agrees to execute such further assignments of the Condemnation Proceeds as Beneficiary may require. Beneficiary shall have the option, in its sole and absolute discretion, to either:

- 1.6.2.1 apply such Condemnation Proceeds, after deducting therefrom all costs and expenses (regardless of the particular nature thereof and whether incurred with or without suit), including attorney fees incurred by Beneficiary in connection with such condemnation proceeding, upon all or part of the indebtedness secured by this Commercial Trust Deed in such order as Beneficiary may determine, without regard to whether or not the security of Beneficiary is impaired; or

1.6.2.2 apply all such Condemnation Proceeds, after deducting all of Beneficiary's costs and expenses, to the restoration of the Trust Property upon such conditions as Beneficiary may determine.

1.7 Lease

1.7.1 *Default.* Grantor shall immediately furnish to Beneficiary notice of any default under the Ground Lease. Grantor shall ensure that Landlord complies with all notice requirements to Beneficiary under Section 32 of the Ground Lease.

1.7.2 *Lien Notices.* Grantor shall immediately furnish to Beneficiary any notice of a lien, or alleged right to lien, from any party concerning, related to or affecting, directly or indirectly, the Trust Property.

1.7.3 *Landlord Lender Non-Disturbance Agreement.* If Grantor becomes aware of or receives a request from Landlord under the Ground Lease or from a third-party finance provider for Landlord to approve financing, including a request for approval of a form of Non-Disturbance Agreement, Grantor shall inform Beneficiary of such request or financing and obtain Beneficiary's approval of any form of Non-Disturbance Agreement prior to approval.

1.7.4 *Certificates of Lessee(s).* Upon request of Beneficiary, but not more often than annually, Grantor shall obtain and furnish to Beneficiary an estoppel certificate as further provided in Section 31 of the Ground Lease.

1.7.5 *Leases.* Grantor shall not enter into an assignment or sublease, or amend any prior approved sublease, of the Trust Property, without the express written permission of Beneficiary. Upon request, Grantor will furnish to Beneficiary, copies of any proposed subleases covering any portion of the Trust Property after the date hereof for review and approval.

1.8 Security Agreement

This instrument shall constitute a security agreement with respect to any fixtures attached to the Trust Property to secure all indebtedness and obligations secured by this Commercial Trust Deed and all future advances and all future indebtedness and obligations of Borrowers to Beneficiary. This instrument shall also constitute a financing statement and may be filed for recording in the real estate records of the county where the Trust Property is located.

1.9 Construction Loan

If some or all of the proceeds of the Note including the Indebtedness are to be used to construct or complete construction of any improvements, including fixtures, and constitute Trust Property, the improvements must be completed no later than six months from the date of the Note (or such earlier date as Lender may reasonably establish) and Borrowers shall pay in full all costs and expenses in connection with the work. Lender will advance sums from the Note under such terms and conditions as Lender may deem reasonably necessary to ensure that the interest created by this Trust Deed shall have priority over all possible liens, including those of material suppliers and workmen. Lender may require, among other things, that advances and disbursement requests from the Note be supported by receipted bills, expense affidavits, waivers of liens, construction progress reports, and such other documents as Lender may reasonably request.

1.10 Reserves

If Borrowers have failed to perform their obligations under this Commercial Trust Deed, the Note or Related Documents, Beneficiary may require Grantor to maintain with Beneficiary a reserve for payment of taxes, assessments and insurance premiums. The reserve shall be created by monthly payments of a sum estimated by Beneficiary to be sufficient to produce, at least 30 days before due, an amount equal to the taxes, assessments and insurance premiums owing by Grantor under the Ground Lease. If 30 days before payment is due the reserve is insufficient, Grantor shall pay any deficiency to Beneficiary upon demand. The reserve shall be held by Beneficiary as a general deposit from Grantor and shall constitute a non-interest bearing debt from Beneficiary to Grantor which Beneficiary may satisfy by payment of the taxes, assessments and insurance premiums. If Beneficiary is required by law to pay interest on these funds, they shall earn interest at the lowest permissible rate, and Beneficiary shall impose any reasonable and lawful charge for holding and disbursing such funds. Nothing contained herein shall cause Beneficiary to be deemed a trustee of the reserve or to be obligated to pay any amounts in excess of the amount of funds deposited with Beneficiary pursuant to this section.

2. Due on Transfer; Sale or Transfer of Interest

2.1 The sale or transfer of any interest or possession of the Trust Property or any part thereof in any manner by Grantor, whether by deed, contract of sale, lease or similar agreement, shall cause, at the option of Beneficiary, all sums owed to be immediately due and payable.

The execution and delivery by Grantor after the Effective Date of this Commercial Trust Deed of any joint venture agreement, partnership agreement, declaration of trust, operating agreement of an LLC, option agreement or other instrument whereunder any other person may become entitled, directly or indirectly, to the possession or enjoyment of the Trust Property, or the income or other benefits derived or to be derived therefrom, shall in each case be deemed to be a sale or transfer of Grantor's interest in the Trust Property for the purposes of this section.

2.2 Personal Nature of this Commercial Trust Deed

This Commercial Trust Deed is personal between Borrowers, including Grantor, and Beneficiary. In entering into this Commercial Trust Deed, Beneficiary has relied on Borrowers' credit, and Borrowers' ability to pay and prevailing financial market conditions.

2.3 Duty to Obtain Prior Written Consent

Grantor agrees not to transfer possession, sell, assign or transfer any interest in the Trust Property without first obtaining the written consent of Beneficiary.

3. Events Of Default

Each of the following shall constitute an Event of Default under this Commercial Trust Deed:

3.1 Nonpayment

Borrowers fail to make any payment when due upon the Indebtedness including the Note, this Commercial Trust Deed and/or the Related Documents when due and such payment defaults, other than a failure to pay the Note at maturity, within five (5) business days of notice of such default.

3.2 Breach of Other Covenant in this Commercial Trust Deed

Borrowers, including Grantor, fail to comply with or to perform any other term, obligation, covenant or condition contained in this Commercial Trust Deed or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender, Borrowers and Grantor and such default is not cured within thirty (30) days from receipt of notice in writing from Beneficiary to Borrowers and Grantor of such an Event of Default, or if the cure reasonably requires a period of longer than thirty days, Beneficiary's approval of Borrowers and including Grantor's detailed plan and time frame required to cure the Event of Default.

3.3 Misinformation

Falsity in any material respect of any representation, warranty or information furnished to Beneficiary in connection with the Note this Commercial Trust Deed or the Related Documents and such default remains uncured within thirty (30) days written notice of such default.

3.4 Defective Collateralization.

This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason and such default remains uncured within five (5) business days written notice of such default.

3.5 Insolvency.

The dissolution or termination of Borrowers and including Grantor's existence as a going business, the insolvency of Borrowers and Grantor, the appointment of a receiver for any part of Borrowers including Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrowers, including Grantor.

3.6 Creditor or Forfeiture Proceedings.

Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrowers including Grantor or by any governmental agency against any collateral securing the Indebtedness. This includes a garnishment of any of Borrowers including Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrowers and including Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor give Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, In an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

3.7 Events Affecting Guarantor.

Any of the preceding events occurs and is not cured within the applicable cure period, if any, with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

3.8 *Adverse Change.*

A material adverse change occurs in Grantor's financial condition, which Lender in good faith believes will impair the prospect of payment or performance of the Indebtedness and such default remains after receipt of five (5) business days written notice.

3.9 *Insecurity.*

Lender in good faith believes itself insecure and such default remains after receipt of five (5) business days written notice.

4. Remedies In Case Of Default

If an Event of Default shall occur, Beneficiary or Trustee, as the case may be, and after notice of such an Event of Default and expiration any cure period after notice, if any, may exercise any of the following rights and remedies, in addition to any other remedies which may be available at law, in equity, or otherwise:

4.1 *Acceleration*

Beneficiary may declare all sums secured by this Commercial Trust Deed, including all late charges, interest and prepayment penalties, if any, to be immediately due and payable.

4.2 *Books and Records*

Beneficiary may examine all books, records and contracts of Borrowers pertaining to the Trust Property and make such memoranda thereof as may be desired.

4.3 *Receiver*

- 4.3.1 Beneficiary may have a receiver appointed for the Trust Property, whether or not the Commercial Trust Deed is non-judicially foreclosed by publication and sale or judicially foreclosed as a mortgage.
- 4.3.2 Grantor and Beneficiary stipulate and agree (and Grantor represents) that in the event a default occurs, Beneficiary shall have the unconditioned right, provisionally, before judgment, on the application of Beneficiary, to appointment of a receiver because, in the event of a default, Beneficiary's right to the Trust Property is probable and the Trust Property or its rents or profits will be in danger of being lost or materially injured or impaired.
- 4.3.3 On motion filed with the circuit court for the county where the property is located, Beneficiary shall be entitled to the appointment of a receiver as a matter of right whether or not the apparent value of all or any part of the Trust Property exceeds the amount of the indebtedness secured by this Commercial Trust Deed.

- 4.3.4 Employment by Trustee or Beneficiary shall not disqualify a person from serving as a receiver.
- 4.3.5 Borrowers, including Grantor waive all defenses and consents to the appointment of a receiver.
- 4.3.6 Borrowers, including Grantor waive any requirement that the receiver give security for the payment of any cost, damages, and attorney fees as may be sustained or suffered by any party due to the wrongful act of the receiver.

4.4 Possession

Beneficiary may, either through a receiver or as a lender-in-possession, take possession of all or any part of the Trust Property, and Borrowers shall peaceably surrender the same.

4.5 Assignment of Rents

Upon occurrence of an Event of Default, Grantor hereby absolutely and unconditionally assign and transfer to Beneficiary all the rents and revenues of the Trust Property, including those now due, past due, or to become due by virtue of any agreement for the occupancy or use of all or any part of the Trust Property. Grantor hereby authorize Beneficiary or Beneficiary's agents to collect the rents and hereby directs each tenant of the Trust Property to pay such rents to Beneficiary or to Beneficiary's agents; provided, however, that prior to written notice given to Grantor of the breach of any covenant or agreement of Grantor in this Commercial Trust Deed, Grantor shall collect and receive all rents of the Trust Property as trustee for the benefit of the parties. Grantor shall apply the rents so collected to the sums secured by this Commercial Trust Deed so long as no breach has occurred. This assignment of rents constitutes an absolute assignment and is not an assignment for additional security only.

Upon delivery of written notice to Grantor of the breach of any covenant or agreement of Grantor in this Commercial Trust Deed, and without the necessity of Beneficiary entering upon and taking and maintaining full control of the Trust Property in person, by agent or by a court-appointed receiver, Beneficiary shall immediately be entitled to collect and retain all rents as they become due and payable, and to notify each tenant to that effect, without any liability on the part of the tenant to inquire further as to the existence of a default by Grantor.

This assignment of rents shall not place responsibility for the control, care, management or repair of the Trust Property upon Beneficiary, nor make Beneficiary responsible or liable for any waste committed to the Trust Property by any person, nor impose upon Beneficiary any duty to collect rents, to make repairs or to perform maintenance.

4.6 Foreclosure

Beneficiary may, at its sole discretion:

- 4.6.1 Non-judicially foreclose this Commercial Trust Deed by publication and sale; or

4.6.2 Obtain a decree foreclosing Grantor's interest in all or any part of the Trust Property as a mortgage.

4.7 *Fixtures and Personal Property*

With respect to any fixtures or personal property subject to a security interest in favor of Beneficiary located on and/or constituting a portion of the Trust Property, Beneficiary may exercise all of the rights and remedies of a secured party under the Uniform Commercial Code.

4.8 *Abandonment*

Beneficiary may abandon any security afforded by this Commercial Trust Deed or any other security instrument by notifying Grantor of Beneficiary's election to do so.

4.9 *Power of Sale*

Beneficiary may direct Trustee, and Trustee shall be empowered, to foreclose the Trust Property by advertisement and exercise of the power of sale under applicable law.

4.10 *Sale of Collateral; Bid at Public Sale*

In exercising its rights and remedies, Beneficiary shall be free to sell all or any part of the collateral together or separately, or to sell certain portions of its collateral and refrain from selling other portions. Beneficiary shall be entitled to bid at any public sale for all or any portion of its collateral.

4.11 *Cumulative Remedies*

Election to pursue one remedy shall not exclude resort to any other remedy, and, unless the context otherwise requires, all remedies under this Commercial Trust Deed are cumulative and not exclusive. An election to cure shall neither prejudice the right to declare a default nor constitute a waiver of the breached term of or any of the remedies provided herein. No delay or omission in exercising any right or remedy shall impair that or any other right to remedy or shall be construed to be a waiver of the default.

5. Receiver Or Trustee-In-Possession

Upon taking possession of all or any part of the Trust Property, a receiver or Trustee or Beneficiary or Beneficiary's representative may:

5.1 *Management*

Use, operate, manage, control and conduct business on the Trust Property and make expenditures for such purposes and for maintenance and improvements as in its judgment are necessary.

5.2 *Rents and Revenues*

Collect all rents, income, issues and profits from the Trust Property and apply such sums to the expenses of use, operation, management, maintenance and improvements.

5.3 Construction

At its option, complete any construction in progress on the Trust Property, and in that connection pay bills, borrow funds, employ contractors and make any changes in plans and specifications as it deems appropriate.

5.4 Additional Indebtedness

If the revenues produced by the Trust Property are insufficient to pay expenses, including, without limitation, any disbursement made by Beneficiary or Trustee pursuant to this section, a receiver may borrow, or Beneficiary or Trustee may advance, such sums upon such terms as it deems necessary for the purposes stated in this section, and repayment of such sums shall be secured by this Commercial Trust Deed.

Amounts borrowed or advanced shall bear interest at a rate of ten (10%) percent per annum or the prime rate charged by Heritage Bank (or its successor) plus seven (7%) percent per annum or the highest rate then permitted by applicable law. Amounts borrowed or advanced and interest thereon shall be immediately payable by Grantor to Beneficiary or Trustee on demand.

6. Application of Proceeds

All proceeds realized from the exercise of the rights and remedies shall be applied as follows:

6.1 Costs and Expenses

To pay the costs of exercising such rights and remedies, including the costs of any sale and the costs, fees and expenses of any and all receivers or lenders-in-possession, and the costs and expenses provided for herein.

6.2 Indebtedness

To pay all other amounts owed by Grantor, payment of which is secured by this Commercial Trust Deed.

6.3 Surplus

The surplus, if any, shall be paid to the clerk of the court in the state in the case of a foreclosure by judicial proceeding, otherwise to the person or persons legally entitled thereto.

7. General Provisions

7.1 Priority of Lien

The priority granted to the lien of this Commercial Trust Deed at the time it is first received for recordation shall not be affected by any of the events recited in ORS 86.095 et. seq.

7.2 Uniform Commercial Code Security Agreement

This Commercial Trust Deed shall serve and is to be considered as a security agreement under the Uniform Commercial Code. Recordation of this Commercial Trust Deed shall perfect such

security agreement against and concerning all personal property constituting a fixture and located on or constituting a portion of the Trust Property.

7.3 *Reconveyance Upon Payment*

Upon written request of Beneficiary stating that all sums secured hereby have been paid, surrender of this Commercial Trust Deed and the Note to Trustee for cancellation and retention of its fees, Trustee shall reconvey, without warranty, the Trust Property then held hereunder. The recitals in any reconveyance executed under this Commercial Trust Deed of any matters of facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as ***"the person or persons legally entitled thereto."***

7.4 *Substitute Trustee*

In the event of dissolution or resignation of Trustee, Beneficiary may substitute, without notice to Grantor, one or more trustees to execute the trust hereby created, and the new trustee(s) shall succeed to all of the powers and duties of prior trustee(s).

7.5 *Commercial Trust Deed Binding on Successors and Assigns*

This Commercial Trust Deed shall be binding on and inure to the benefit of the successors and permitted assigns of Trustee and Beneficiary.

7.6 *Indemnity*

Borrowers shall hold Beneficiary and Trustee harmless from any and all loss and expense, including but not limited to attorney fees and court costs, in any suit, action or proceeding or any appeal therefrom brought against Trustee or Beneficiary by a third party resulting from or attributable to Beneficiary's ownership of the Note, this Commercial Trust Deed or Trustee's interest under this Commercial Trust Deed.

7.7 *Notice*

7.7.1 Any notice required or permitted to be given under this Commercial Trust Deed by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if delivered in person to the address set forth below for the party to whom the notice is given, or placed in the United States mail, return receipt requested, addressed to such party at the address specified here and with proper postage affixed.

7.7.2 The address of Grantor for all purposes under this Commercial Trust Deed and for all notices under it shall be:

Grantor: Cherry Creek Solar, LLC
7455 Bridgeport Rd., Ste 200
Portland, OR 97224

- 7.7.3 The address of Beneficiary for all purposes under this Commercial Trust Deed and for all notices under it shall be:

Beneficiary: Heritage Bank
700 Washington St., Ste. 708
Vancouver, WA 98660

- 7.7.4 From time to time either party may designate another address within the United States for all purposes of this Commercial Trust Deed by giving the other party not less than thirty (30) days' advance notice of such change of address in accordance with the provisions of this Commercial Trust Deed.

7.8 Expenses and Attorneys' Fees

If this Commercial Trust Deed is placed in the hands of an attorney due to default in the payment or performance of any of its terms, each of the defaulting parties shall pay, immediately upon demand, the other party's reasonable attorneys' fees, collection costs, experts expenses, the cost of environmental assessments, and costs of either a litigation or foreclosure report, even though no suit or action is filed thereon.

If suit, action or arbitration is instituted to enforce or interpret any of the terms of this Commercial Trust Deed, or if suit or action is instituted in a bankruptcy court for a United States District Court to enforce or interpret any of the terms of this Commercial Trust Deed, to seek relief from an automatic stay, to obtain adequate protection or to otherwise assert the interest of Beneficiary in a bankruptcy proceeding, the party not prevailing shall pay the prevailing party's costs and disbursements, experts fees and expenses, the cost of an environmental assessment, the cost of a litigation or foreclosure report and such sums as the court or arbitrator may determine to be reasonable for the prevailing party's attorneys' fees connected with the trial and any appeal thereof.

For purposes of this Commercial Trust Deed, the term "*attorneys' fees*" includes all charges of the prevailing party's attorneys and their staff and post-petition fees in a bankruptcy court.

7.9 Beneficiary's Right to Cure & Expenses

If Borrowers fail to perform any obligation required of them under this Commercial Trust Deed, the Ground Lease or the Related Documents, Beneficiary may, without notice, take any steps necessary to remedy such failure. Beneficiary may be required from time to time, including but not limited to, following an Event of Default, to take such actions and to obtain such third-party professional assistance as required to necessary to ensure Beneficiary's interest in the Trust Property remains secure. This may include, for example, retaining an appraiser. Grantor agrees to reimburse Beneficiary for all such expenses and such expenses may be added to the balance on the Note. Grantor shall reimburse Beneficiary for all amounts expended in so doing on demand with interest at the rate of the prime rate charged by Heritage Bank (or any successor), plus seven (7%) percent per annum until paid in full. Such action of Beneficiary shall not constitute a waiver of the default or any other right or remedy which Beneficiary may have on account of Grantor' default.

7.10 Governing Law and Venue

The parties hereby submit to jurisdiction in Klamath County, Oregon and agree that any and all disputes arising out of or related to this Commercial Trust Deed shall be litigated exclusively in the Circuit Court for Klamath County, Oregon and the U.S. District Court for the District of Oregon and no other federal or state court.

7.11 Time of Essence

Time is of the essence of this Commercial Trust Deed.

7.12 Headings

The headings to the Sections of this Commercial Trust Deed are included only for the convenience of the parties and shall not have the effect of defining, diminishing or enlarging the rights of the parties or affecting the construction or interpretation of any portion of this Commercial Trust Deed.

7.13 Severability

If any provision of this Commercial Trust Deed shall be held to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect any other provision of this Commercial Trust Deed, but this Commercial Trust Deed shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

7.14 Entire Agreement

This Commercial Trust Deed, the Note and the Related Documents contain the entire agreement of the parties with respect to the matters covered by the Commercial Trust Deed, the Note and the Related Documents and no other previous agreement, statement or promise (written or oral) made by any party to this Commercial Trust Deed which is not contained in its terms or in the terms of the Note or Related Documents shall be binding or valid.

7.15 Rule of Construction

Any rule of construction interpreting this instrument against its drafter shall be inapplicable.

7.16 Authority to Sign

The Parties represent and warrant that the undersigned are duly authorized to execute this Commercial Trust Deed on behalf of the respective entities.

7.17 Definitions

Capitalized words and terms in **bold** and *italics* shall have the meanings assigned to them in this Commercial Trust Deed. If a term is capitalized and has not been defined in this Commercial Trust Deed, that term shall have the meaning given to it in the Note, including the Related Documents, as defined therein. Words and terms used in the singular shall include the plural, and the plural shall

include the singular, as the context may require. In the event of a conflict between definitions defined in this Commercial Trust Deed or Related Documents, the definitions contained in this Commercial Trust Deed shall be used to interpret this Commercial Trust Deed.

7.18 *Employment of Attorneys*

The law firm of Saalfeld Griggs PC of Salem, Oregon has been employed by Beneficiary to prepare the documents in conjunction with the Related Documents, and such attorneys represent only Beneficiary in this matter. Borrowers are encouraged to seek legal counsel prior to executing this agreement.

UNDER OREGON LAW, MOST AGREEMENTS, PROMISES AND COMMITMENTS MADE BY US (LENDER) CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY THE BORROWER'S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION AND BE SIGNED BY US TO BE ENFORCEABLE.

IN WITNESS WHEREOF, Grantor has caused this Commercial Trust Deed to be executed as of the day and year first above written.

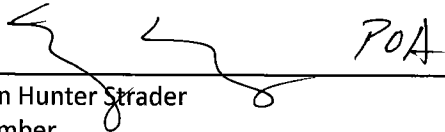
(Signature Pages Follow)

CHERRY CREEK SOLAR, LLC
an Oregon Limited Liability Company

By: **RP HOLDCO, LLC**, an Oregon Limited Liability Company
Member of Cherry Creek Solar, LLC

By: **GKS RP INVESTMENT, LLC**, an Oregon Limited Liability Company
Member of RP Holdco, LLC

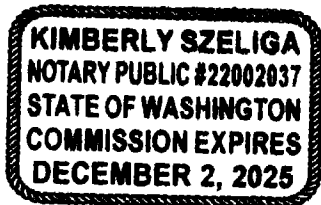
By: **GREENKEY SOLAR, LLC**, a Delaware Limited Liability Company
Sole Member of GKS RP Investment, LLC


By: John Hunter Strader
Its: Member

State of Washington)
~~Oregon~~)
County of Clark) ss.

On this 20 day of December, 2022, personally appeared ^{Troy Snyder POA for} John Hunter Strader, who being duly sworn, did say that he is the Member of GreenKey Solar, LLC, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors and acknowledged said instrument to be its voluntary act and deed.

Before me:




Notary Public for the State of Oregon
My Commission Expires: 12-2-25

CHERRY CREEK SOLAR, LLC
an Oregon Limited Liability Company

By: **RP HOLDCO, LLC**, an Oregon Limited Liability Company
Member of Cherry Creek Solar, LLC

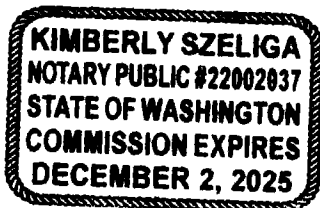
By: **TLS RP INVESTMENT, LLC**, an Oregon Limited Liability Company
Member of RP Holdco, LLC

By: **TLS CAPITAL INC.**, an Oregon Corporation
Sole Member of TLS RP Investment, LLC


By: Troy Snyder
Its: Member

State of Washington)
~~Oregon~~) ss.
County of Clark)

On this 20 day of December, 2022, personally appeared Troy Snyder, who being duly sworn, did say that he is the Member of TLS Capital Inc., and that said instrument was signed on behalf of said corporation by authority of its Board of Directors and acknowledged said instrument to be its voluntary act and deed.



Before me:


Notary Public for the State of Oregon
My Commission Expires: 12-2-25

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

The East 1/2 of the East 1/2 of Government Lot 9, in Section 14, Township 36 South, Range 10 East of the Willamette Meridian, Klamath County, Oregon.

EXCEPTING THEREFROM that portion deeded to the County of Klamath in Volume 85 Page 618, deed records of Klamath County, Oregon.

4857-3510-4324, v. 3