



Proposed Lea County Ordinance No. 94

AUTHORIZING THE ISSUANCE AND SALE OF LEA COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (TIP TOP SOLAR ENERGY CENTER LLC) SERIES 2019 IN THE MAXIMUM PRINCIPAL AMOUNT OF \$215,000,000 TO PROVIDE FUNDS TO FINANCE THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A SOLAR ENERGY GENERATING FACILITY; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A LEASE AGREEMENT, A BOND PURCHASE AGREEMENT, BOND, AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS AND THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE BOND AND THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

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LEA COUNTY, NEW MEXICO
BOARD OF COUNTY COMMISSIONERS
ORDINANCE NO. _____

AUTHORIZING THE ISSUANCE AND SALE OF LEA COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (TIP TOP SOLAR ENERGY CENTER LLC) SERIES 2019 IN THE MAXIMUM PRINCIPAL AMOUNT OF \$215,000,000 TO PROVIDE FUNDS TO FINANCE THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A SOLAR ENERGY GENERATING FACILITY; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A LEASE AGREEMENT, A BOND PURCHASE AGREEMENT, BOND, AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS AND THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE BOND AND THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

WHEREAS, Lea County (the “County”) is a legally and regularly created, established, organized and existing political subdivision of the State of New Mexico (the “State”); and

WHEREAS, pursuant to New Mexico Statutes Annotated, Sections 4-59-1 through 4-59-16 NMSA 1978, as amended (the “Act”), the County is authorized to acquire industrial revenue projects to be located within the County, to issue industrial revenue bonds and to use the proceeds of such bonds for the purpose of promoting the use of the natural resources of the State and promoting industry and developing trade or other economic activity to secure and maintain a balanced and stable economy in the county to promote public health, welfare, safety, convenience and prosperity; and

WHEREAS, Tip Top Solar Energy Center LLC (the “Company”), is a limited liability company organized under the laws of the State of Delaware and qualified to do business in the State of New Mexico; and

WHEREAS, the Company has presented to the Commission a proposal whereby the County would (a) issue its Taxable Industrial Revenue Bonds (Tip Top Solar Energy Center LLC), Series 2019 (the “Bonds”), and (b) acquire solar energy generating equipment and facilities and land leases related to the Project (collectively, the “Project Property”), located within a part of the County which is outside the corporate limits of any municipality in the County, to be used by the Company for the generation, transportation and delivery of electricity; and

WHEREAS, the Company has requested that the County issue industrial revenue bonds for the purpose of providing funds to finance the acquisition, construction, installation, and equipping, of a solar energy power generating facility (the “Project”). The County has been advised by the Company that, neither location approval nor a certificate of convenience and necessity are

required prior to commencing construction or operation of the facility pursuant to the laws of the State; and

WHEREAS, under the Company's proposal, the County would enter into an Indenture of Trust (the "Indenture") with Tip Top Solar Energy Center IRB Holdings LLC, a limited liability company organized under the laws of the State of Delaware (the "Purchaser") and a Depository acceptable to the County and the Purchaser pursuant to which, together with this ordinance (the "Bond Ordinance"), the County would issue the Bonds; and

WHEREAS, under the Company's proposal, the County and the Company would enter into a sublease pursuant to which the Company will sublease Project site to the County (the "Sublease Agreement") and a Lease (the "Lease"), pursuant to which the Company will lease the Project Property, including the Project Site, from the County and the Company will make lease payments sufficient to pay the principal of and interest on the Bonds and to pay all other obligations incurred pursuant to the provisions of the Lease and the Bond Ordinance; and

WHEREAS, the County is authorized to enter into, deliver and perform all of its obligations under the Bond Documents and to issue, execute and deliver the Bonds pursuant to the Act and the Bond Ordinance; and

WHEREAS, the Bonds in a principal amount not to exceed \$215,000,000 will be issued, sold and delivered by the County, in a private sale to the Purchaser, pursuant to a bond purchase agreement to be dated as of the initial date of delivery of the Bonds, among the County, the Purchaser and the Company (the "Bond Purchase Agreement"); and

WHEREAS, the proceeds of the Bonds shall be applied to pay the costs of the Project and to pay certain costs associated with the transaction; and

WHEREAS, the Commission has determined that it is in the best interest of the County to issue the Bonds and to execute and deliver the Bond Documents, defined below, and other documents related thereto; and

WHEREAS, the County will enter into the following documents in connection with the issuance of the Bond:

1. Lease
2. Indenture
3. Bond Purchase Agreement
4. Bonds
5. Sublease Agreement

The Lease, Indenture, Bond Purchase Agreement and Bonds are collectively referred to in the Bond Ordinance as the "Bond Documents"; and

WHEREAS, the County is authorized to issue the Bonds under the Act and after having considered the Company's proposal, has concluded that it is desirable at this time to authorize the issuance of the Bonds to finance the Project and that the County's issuance of the Bonds will constitute and be a valid public purpose; and

WHEREAS, this Commission has been advised Sutin Thayer & Browne, APC, in its capacity as Bond Counsel that the disclosure provisions of Rule 15c2-12 of the Securities and Exchange Commission are not applicable to this transaction inasmuch as the Bonds are being sold in a private sale without participation of an underwriter; and

WHEREAS, there has been published in the *Hobbs Sun News*, a newspaper of general circulation in the County, public notice of the Commission's intention to adopt this Bond Ordinance, which notice contained certain information concerning the ownership, purpose, location and size of the Project and the amount of the Bonds to be issued to finance the Project, which notice was published at least fourteen (14) days prior to final action upon this Bond Ordinance; and

WHEREAS, the acquisition of the Project Property has been approved by the [Jal Public] School District.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS, THE GOVERNING BODY OF LEA COUNTY, NEW MEXICO:

Section 1. RATIFICATION. All actions not inconsistent with the provisions of this Bond Ordinance previously taken by the Commission and the officials of the County directed toward approval of the issuance and sale of the Bonds be approved and the same hereby are ratified, approved and confirmed.

Section 2. FINDINGS.

A. General. The Commission hereby declares that it has considered all relevant information presented to it relating to the Bonds and the Project and hereby finds and determines that the issuance of the Bonds pursuant to the Bond Ordinance to provide funds for the Project is necessary and advisable and in the interest of and will promote the use of the natural resources of the State, industry and trade and a sound and proper balance in the State between agriculture, commerce and industry.

B. The Commission finds that:

- (1) The Bonds will be issued for the purpose of financing the Project.
- (2) The aggregate face amount of obligations to be issued with respect to financing the Project is not to exceed \$215,000,000.
- (3) The developer of the Project Property is the Company.

(4) The Project Property is located in the County outside the corporate limits of any municipality located in the County.

Section 3. BONDS - APPROVAL, AUTHORIZATION AND DETAIL.

A. Approval and Sale.

The issuance of the Bonds in a principal amount not to exceed \$215,000,000 and the use of the proceeds of the Bonds to finance the cost of the Project including payment of transaction expenses related thereto are hereby approved and confirmed. The sale of the Bonds at par at a purchase price not to exceed \$215,000,000 is approved.

B. Form and Terms.

Subject to the limitations set forth in this Bond Ordinance, the Bonds shall (i) be in the form and denomination and shall be numbered and dated as set forth in the Indenture, (ii) be payable as to principal and interest and subject to optional and mandatory redemption and defeasance in the amounts, upon the conditions and at the times and prices set forth in the Indenture; and (iii) be issued in a principal amount not to exceed \$215,000,000, bearing interest at the rate and maturing on the date set forth in the Indenture.

C. Execution. The Bonds shall be signed by the presiding officer of the Board of County Commissioners of the County (the "Presiding Officer").

D. Interest Rate. The interest rate on the Bonds shall be four percent (4%) per annum.

Section 4. AUTHORIZATION OF OFFICERS; APPROVAL OF DOCUMENTS; ACTIONS TO BE TAKEN. The Bond Documents in the form presented to the Commission are hereby approved. The presiding officer of the Board of County Commissioners of the County is authorized to approve the form, terms and provisions of the Bond Documents on behalf of the Commission, provided that such form, terms and provisions are consistent with this Bond Ordinance and to execute and deliver in the name and on behalf of the County, and the County Clerk or Deputy County Clerk is hereby authorized to attest, as necessary, the Bond Documents.

The County Clerk is further authorized to execute, authenticate and deliver such certifications, instruments, documents, letters and other agreements, including security agreements, subordination agreements, and to do such other acts and things, either prior to or after the date of delivery of the Bonds, as are necessary or appropriate to consummate the transactions contemplated by the Bond Documents.

The Presiding Officer, the County Manager and other officers of the County shall take such action as is necessary to effectuate the provisions of the Indenture and shall take such action as is necessary in conformity with the Act to finance the costs of the Project and for carrying out other

transactions as contemplated by this Ordinance, and the Bond Documents, including, without limitation, the execution and delivery of any closing documents to be delivered in connection with the sale and delivery of the Bonds.

The Presiding Officer and the County Clerk are further authorized to execute, authenticate and deliver such certifications, instruments, documents, letters and other agreements, including leases, subleases, security agreements and subordination agreements and instruments as requested from time to time by the Company or any lender or lenders providing financing for the Project, and to do such other acts and things, either prior to or after the date of delivery of the Bonds, as are necessary or appropriate to consummate the transactions contemplated by the Bond Documents and as are not inconsistent with the terms of this Ordinance.

Section 5. DELIVERY OF BONDS. Upon the execution of the Bond Documents, the satisfaction of the conditions set forth in the Bond Documents and upon receipt of the purchase price for the Bonds, the Bonds shall be executed, authenticated and delivered to the Purchaser. The Bonds shall not be valid for any purpose until the Bonds have been properly authenticated as set forth in the Indenture.

Section 6. FUNDS AND ACCOUNTS. There is established in the Indenture, and on and after the date on which the Bonds are issued there shall be maintained, the funds and accounts as set forth in the Indenture. Other funds and accounts may be established as are necessary under the Indenture.

Section 7. FINDINGS REGARDING PAYMENT OF PRINCIPAL AND OTHER MATTERS. The following determinations are made:

A. The maximum amount necessary in each year to pay the principal of and interest on the Bonds, assuming issuance of the Bonds as of July 30, 2021, in the maximum aggregate principal amount of \$215,000,000 and bearing an interest rate of 4% per annum, is as follows:

<u>Year</u>	<u>Total Debt Service</u>	<u>Principal</u>	<u>Interest</u>
2020	\$8,600,000	\$-0-	\$8,600,000
2021	\$8,600,000	\$-0-	\$8,600,000
2022	\$8,600,000	\$-0-	\$8,600,000
2023	\$8,600,000	\$-0-	\$8,600,000
2024	\$8,600,000	\$-0-	\$8,600,000
2025	\$8,600,000	\$-0-	\$8,600,000
2026	\$8,600,000	\$-0-	\$8,600,000
2027	\$8,600,000	\$-0-	\$8,600,000
2028	\$8,600,000	\$-0-	\$8,600,000
2029	\$8,600,000	\$-0-	\$8,600,000
2030	\$8,600,000	\$-0-	\$8,600,000

2031	\$8,600,000	\$-0-	\$8,600,000
2032	\$8,600,000	\$-0-	\$8,600,000
2033	\$8,600,000	\$-0-	\$8,600,000
2034	\$8,600,000	\$-0-	\$8,600,000
2035	\$8,600,000	\$-0-	\$8,600,000
2036	\$8,600,000	\$-0-	\$8,600,000
2037	\$8,600,000	\$-0-	\$8,600,000
2038	\$8,600,000	\$-0-	\$8,600,000
2039	\$8,600,000	\$-0-	\$8,600,000
2040	\$8,600,000	\$-0-	\$8,600,000
2041	\$8,600,000	\$-0-	\$8,600,000
2042	\$8,600,000	\$-0-	\$8,600,000
2043	\$8,600,000	\$-0-	\$8,600,000
2044	\$8,600,000	\$-0-	\$8,600,000
2045	\$8,600,000	\$-0-	\$8,600,000
2046	\$8,600,000	\$-0-	\$8,600,000
2047	\$8,600,000	\$-0-	\$8,600,000
2048	\$8,600,000	\$-0-	\$8,600,000
2049	\$8,600,000	\$-0-	\$8,600,000
2050	\$8,600,000	\$-0-	\$8,600,000
2051	\$223,600,000	\$215,000,000	\$8,600,000

B. The Bonds will bear interest at the rate of four percent (4%) per annum.

C. The Bonds may be redeemed at any time without premium.

D. It shall not be necessary to deposit any amount in a debt service reserve fund or a repair and replacement reserve fund for the maintenance of the Project Property.

E. The Lease requires that the Company maintain the Project Property in safe repair and in such operating condition as is needed for its operations and carry proper insurance with respect to the Project Property as provided in the Lease.

F. The Lease requires the Company to make lease payments in an amount sufficient to pay the principal of and interest on the Bonds as principal and interest become due and to pay all Related Costs.

G. The Bonds shall be issued on or before December 31, 2022.

Section 8. LIMITED OBLIGATIONS. The Bonds shall be a special limited obligation of the County, payable solely from the Basic Rent (as defined in the Lease) paid by the

Company to the County as described in the Indenture and any other property or interest of the County specifically pledged under the Indenture and shall never constitute a debt or indebtedness of the County or the State or any political subdivision thereof within the meaning of any provision or limitation of the State Constitution or statutes, and shall not constitute or give rise to a pecuniary liability of the County or a charge against its general credit or taxing power. Nothing contained in the Bond Ordinance or in the Bond Documents or any other instrument shall be construed as obligating the County (except with respect to the Project Property and the application of the revenues therefrom and the proceeds of the Bonds, all as provided in the Bond Documents), nor as incurring a pecuniary liability or a charge upon the general credit of the County or against its taxing powers, nor shall the breach of any agreement contained in the Bond Ordinance, the Bond Documents, the Bonds or any other instrument be construed as obligating the County (except with respect to the Project Property and the application of the revenues therefrom and the proceeds of the Bonds, all as provided in the Bond Documents), nor as incurring a pecuniary liability or a charge upon the general credit of the County or against its taxing power, the County having no power to pay out of its general funds, or otherwise contribute any part of the costs of constructing or equipping the Project Property, nor power to operate the Project Property as a business or in any manner except as lessor of the Project Property.

Section 9. APPROVAL OF INDEMNIFICATION. The Commission specifically requires that the Lease contain provisions relating to indemnification which provide that the Company shall indemnify and hold harmless the County and its Board of County Commissioners, officials, employees and agents against liability to the Company, or to any third parties, that may be asserted against the County or its Board of County Commissioners, officials, members, officers, employees or agents with respect to the County's ownership of the Project Property or the issuance of the Bonds and arising from the condition of the Project Property or the acquisition, construction and operation of the Project Property by the Company, except to the extent New Mexico Statutes Annotated Section 56-7-1, 1978 Compilation, would preclude such indemnity, and except claims for any loss or damage arising out of or resulting from the gross negligence or willful misconduct of the County or its Board of County Commissioners, or any official, employee or agent of the County.

Section 10. BOND ORDINANCE IRREPEALABLE. After the Bonds are issued, the Bond Ordinance shall be and remain irrevocable until the Bonds, including interest, are fully paid, canceled and discharged or there has been defeasance of the Bonds in accordance with the Indenture.

Section 11. REPEALER. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent with this Bond Ordinance are repealed by this Bond Ordinance but only to the extent of that inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, previously repealed.

Section 12. SEVERABILITY. If any section, paragraph, clause or provision of the Bond Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of that section, paragraph, clause or provision shall not affect any of the remaining provisions of the Bond Ordinance.

Section 13. RECORDING; AUTHENTICATION; PUBLICATION; EFFECTIVE DATE. This Ordinance, immediately upon its final passage and approval, shall be authenticated by the signature of the Presiding Officer, and by the signature of the County Clerk or any Deputy County Clerk, and shall be recorded in the Ordinance book of the County, kept for that purpose, and shall be in full force and effect thereafter in accordance with the laws of the State, and notice of adoption thereof shall be published once in a newspaper which maintains an office in, and is of general circulation in the County.

Done this ____ day of _____, 2019.

ATTEST:

LEA COUNTY, NEW MEXICO
BOARD OF COUNTY COMMISSIONERS

County Clerk

By _____
Chair

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

TIP TOP SOLAR ENERGY CENTER IRB HOLDINGS LLC,

LEA COUNTY, NEW MEXICO

and

TIP TOP SOLAR ENERGY CENTER LLC

BOND PURCHASE AGREEMENT

Dated _____, 2019

\$215,000,000

Lea County, New Mexico
Taxable Industrial Revenue Bonds
(Tip Top Solar Energy Center LLC Project)
Series 2019

BOND PURCHASE AGREEMENT

TIP TOP SOLAR ENERGY CENTER IRB HOLDINGS LLC (the “Purchaser”), **LEA COUNTY, NEW MEXICO** (the “Issuer”), and **TIP TOP SOLAR ENERGY CENTER LLC** (the “Company”), agree:

Section 1. Recitals. The Issuer, the Purchaser, the Company and The Bank of New York Mellon Trust Company, National Association, as depository (the “Depository”) have entered into an Indenture dated as of _____, 2019 (the “Indenture”). Pursuant to the Indenture, the Issuer will issue its Taxable Industrial Revenue Bonds (Tip Top Solar Energy Center LLC Project), Series 2019, in the maximum principal amount of \$215,000,000 (the “Bonds”). Capitalized terms used in this Bond Purchase Agreement (this “Agreement”) but not defined herein shall have the meanings assigned to such terms in the Indenture.

Section 2. Purchase and Delivery. On the basis of the representations and covenants contained in this Agreement and subject to the terms and conditions contained in this Agreement, the Purchaser will purchase the Bonds from the Issuer and the Issuer will sell the Bonds to the Purchaser. As consideration for the sale of the Bonds, the Purchaser will make advances on the Bonds at the times and under the conditions specified in Section 702 of the Indenture. The Issuer will deliver the Bonds to the Purchaser as provided in Section 403 of the Indenture, or at such other time as is mutually agreeable to the Purchaser and the Issuer (the “Closing Date”).

Section 3. Issuer Representations. The Issuer represents that, as of the date of this Agreement:

(a) Each of the representations of the Issuer in the Lease Agreement, dated as of _____, 2019 (the “Lease” and, together with the Indenture and this Agreement, the “Bond Documents”), between the Issuer and the Company, and the Indenture is true and correct as if made on and as of the date of this Agreement.

(b) Pursuant to Ordinance No. _____ duly adopted by the Board of County Commissioners of Lea County on ____ 2019 (the “Bond Ordinance”), the Issuer duly authorized and approved (i) the execution and delivery by the Issuer of the Bond Documents and the performance by the Issuer of its obligations under the Bond Documents, and (ii) the issuance, execution and delivery of the Bonds. The Bond Ordinance has not been amended, modified or repealed.

Section 4. Company Representations. The Company represents that as of the date hereof:

(a) Each of the representations of the Company in the Lease is true and correct as if made on and as of the date of this Agreement.

(b) This Agreement and the Lease constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors’ rights generally and general principles of equity.

(c) The Company is a Delaware limited liability company, duly organized, validly existing and in good standing under the law of the State of Delaware and is a duly registered foreign limited liability company authorized to do business in the State of New Mexico and has full legal capacity, right, power and authority to own the Company’s properties and conduct the Company’s

business. The Company has full legal capacity, right, power and authority to execute and deliver this Agreement and the Lease, to provide for the operation and management of the Project Property, and to take any and all such action as may be required on its part to carry out, give effect to and consummate the transactions contemplated by this Agreement and the Lease.

(d) Neither the execution and delivery of this Agreement and the Lease, nor the consummation of the transactions contemplated therein or the compliance with the provisions thereof, will conflict with, or constitute on the part of the Company a violation of, or a breach of or default under any material indenture, mortgage, commitment, note or other agreement or instrument to which the Company is a party or by which the Company is bound, or any material order, rule or regulation of any court or governmental agency or body having jurisdiction over the Company or any of its activities or properties. All consents, approvals, authorizations and orders of governmental or regulatory authorities (except as required under state securities laws) which are required for the Company's execution and delivery of, consummation of the transactions contemplated by, and compliance with the provisions of this Agreement and the Lease have been obtained.

(e) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or, to the best of the knowledge of the Company, threatened, against or affecting the Company, or the actions taken or contemplated to be taken by the Company, nor, to the best of the knowledge of the Company, is there any basis therefor, wherein an unfavorable decision, ruling or finding would materially adversely affect the business or financial condition of the Company, or the transactions contemplated by, or the validity or enforceability of, this Agreement or the Lease.

(f) No event has occurred and no condition exists which, upon issuance of the Bonds, would constitute (or with the giving of notice or lapse of time, or both, would constitute) an Event of Default under the Lease.

(g) The Company is not in violation of any provisions of, or in default under any statute, indenture, mortgage, commitment, note or other agreement or instrument to which it is a party or by which it is bound, or any order, rule, regulation or decision of any court or governmental agency or body having jurisdiction over it or any of its activities or properties, which violation would materially and adversely affect its business or financial condition.

Section 5. Purchaser Representations. The Purchaser represents and acknowledges that, as of the date of this Agreement:

(a) The Purchaser is purchasing the Bonds for its own account for investment and with no present intention of distributing or reselling the Bonds or any interest in the Bonds but without prejudice, however, to its right at all times to sell or otherwise dispose of all but not part of the Bond in compliance with the Securities Act of 1933, as amended, the regulations promulgated thereunder, applicable state securities laws and regulations and the terms of the Bonds, upon receipt of appropriate investor representations, an opinion of counsel experienced in securities law matters and satisfactory to the Issuer and in accordance with the applicable terms of the Indenture.

(b) The Purchaser understands that the Bonds are a special limited, and not general, obligation of the Issuer, are payable solely from the Basic Rent received under the Lease and from the security therefor as described in the Indenture but from no other sources. The Purchaser understands that the Bonds are not secured by any obligation or pledge of any monies received or to be received from taxation or from the State or any political subdivision, taxing district, or municipality thereof (including, without limitation, the Issuer), and that the Bonds will never represent or constitute a general obligation,

debt or bonded indebtedness of the Issuer, the State, any political subdivision or municipality thereof, and that no right will exist to have taxes levied by the Issuer, the State, any political subdivision or municipality thereof, for the payment of principal of, premium, if any, and interest on the Bonds. The Purchaser understands that payment of the Bonds depends upon the general credit of the Company, and upon the security granted in the Indenture for the Company's obligations under the Lease.

(c) The Purchaser is an affiliate of the Company and has been afforded the opportunity to discuss the business, assets and financial position of the Company with the officers, employees and auditors of the Company; and has received such information concerning the Company and its business, assets and financial position, and the Project (as defined in the Lease) as it deems necessary in making its decision to purchase the Bonds.

(d) The Purchaser is duly and legally authorized to purchase the Bonds, has such knowledge and experience in financial and business matters (including the ownership of municipal conduit obligations) as are required for, and is capable of, evaluating the merits and risks of its purchase of the Bonds, is aware of the intended use of proceeds of the Bonds, and understands that interest on the Bonds is not excludable from gross income for federal income tax purposes.

(e) The Purchaser understands that neither the Issuer nor any of its officials, counsel, consultants or agents has undertaken to furnish any information with respect to the Company or to ascertain the accuracy of any information furnished to the Purchaser with respect to the Company, and the Purchaser has not requested or received any representations from the Issuer with respect to any such information, its accuracy or completeness. The Purchaser waives any requirement of due diligence in investigation or inquiry on the part of the Issuer, its officials, counsel, agents and consultants and all claims, actions or causes of action which the Purchaser may have from and after the date hereof against the Issuer, its officials, counsel, agents and consultants growing out of any such action which any of the foregoing took, or could have taken, in connection with the authorization, execution, delivery, and sale of the Bonds to the Purchaser or in connection with any statement or representation by the Company which induced the Purchaser to purchase the Bonds.

(f) The Purchaser has received and reviewed copies of the Bond Documents and the Bond Ordinance.

(g) This Agreement constitutes the legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally and general principles of equity.

(h) The Purchaser has been informed by the Company and agrees that the Indenture has not been qualified under the Trust Indenture Act of 1939, and that the Bonds (i) are not being registered or otherwise qualified for sale under (a) the Securities Act of 1933, as amended, or (b) the "Blue Sky" laws and regulations of any state, (ii) will not be listed on any stock or other securities exchange, (iii) will not carry a rating from any rating service and (iv) will not be readily marketable. The Purchaser has been informed by the Company and agrees that a legend will be placed on the Bonds certificate or any other documents evidencing ownership of the Bonds to the effect that it has not been registered under the Securities Act of 1933, as amended, or the applicable state "Blue Sky" laws and that it may only be transferred in compliance with the Indenture and applicable securities laws.

(i) The execution, delivery and performance of this Agreement by the Purchaser will not constitute a default under any other agreement by which the Purchaser is bound.

(j) The Purchaser acknowledges that its purchase of the Bonds constitutes a transaction in a bond secured by the Indenture which is, among other things, a personal property security agreement, pursuant to which the Bonds are offered and sold as a unit.

Section 6. Indemnification.

(a) The Company and the Purchaser will, jointly and severally, indemnify, defend and hold harmless the Depository, as defined in the Indenture, each agent and employee of the Depository, the Issuer, each County Commission member, official, agent or employee of the Issuer and each person, if any, who has the power, directly or indirectly, to direct or cause the direction of the management and policies of the Issuer (each an “Indemnified Party” and, collectively, the “Indemnified Parties”) from and against any and all losses, claims, damages, liabilities, joint or several, or expenses related thereto arising out of or in connection with or caused by any offering, sale or resale of the Bonds in violation of any federal or state securities laws or by an untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact made to any person or caused by an omission or alleged omission of any material fact in connection with the Bonds or the sale, resale or delivery thereof.

(b) In case a claim is made or any action is brought against one or more of the Indemnified Parties based upon the matters described in the preceding paragraph and in respect of which indemnity is sought against the Company or the Purchaser pursuant to the preceding paragraph, the Indemnified Party or Parties seeking indemnity shall promptly notify the Company and the Purchaser, in writing, and the Company or the Purchaser shall promptly assume or cause the assumption of the defense thereof, including the employment of counsel chosen by the Company or the Purchaser and approved in writing by the Issuer (provided, that such approval by the Issuer shall not be unreasonably withheld), the payment of all expenses (including reasonable counsel fees and expenses) and the right to negotiate and consent to settlement. If the Company and the Purchaser fail to assume or cause the assumption of the defense of such action or to retain counsel reasonably satisfactory to the Issuer within a reasonable time after notice of the commencement of such action, the reasonable fees and expenses of counsel retained by the Indemnified Party shall be paid by the Company or the Purchaser. If any Indemnified Party is advised in a written opinion of counsel that the defenses of such Indemnified Party should be handled by separate counsel, the Company or the Purchaser shall not have the right to assume or cause the assumption of the defense of such Indemnified Party, but the Company and/or the Purchaser shall be responsible for the fees and expenses of such separate counsel (the “Separate Counsel”) retained by such Indemnified Party. Notwithstanding, and in addition to, any of the foregoing, any one or more of the Indemnified Parties shall have the right to employ separate counsel with respect to any such claim or in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be paid by such Indemnified Party or Indemnified Parties unless the employment of such counsel has been specifically authorized in writing by the Company and the Purchaser. Neither the Company nor the Purchaser shall be liable for any settlement of any such action effected without the written consent of the Company or the Purchaser, but if settled with the written consent of the Company and the Purchaser or if there is a final judgment for the plaintiff in any such action with or without consent, the Company and the Purchaser will indemnify and hold harmless the Indemnified Parties from and against any loss or liability by reason of such settlement or judgment.

(c) In order to provide for just and equitable contribution in circumstances in which the indemnity provided for in this Section 6 is for any reason held to be unavailable to the Indemnified Parties in accordance with its terms, the Purchaser and the Company shall contribute to the aggregate losses, liabilities, claims, damages and expenses of the nature contemplated by this Section 6 incurred by the Indemnified Parties in such proportions as determined by a court having jurisdiction of the matter.

(d) The covenants and agreements of the Purchaser and the Company under this Section 6 are joint and several.

Section 7. Conditions. The obligation of the Purchaser to purchase the Bonds and the obligation of the Issuer to sell the Bonds are subject to satisfaction of the following conditions precedent:

(a) The representations of the Issuer, the Purchaser and the Company in this Agreement will be true and correct on and as of the date the Bonds are issued (“Closing Date”) as if made on and as of the Closing Date.

(b) As of the Closing Date, no Default (as defined in the Indenture) or Event of Default (as defined in the Lease) will have occurred and be continuing, and no event will have occurred and be continuing which, with the lapse of time or the giving of notice or both, would constitute a Default or Event of Default.

(c) On or before the Closing Date, all actions required to be taken as of the Closing Date in connection with the Bonds, the Bond Ordinance and the Bond Documents by the Issuer, the Purchaser and the Company will have been taken, and the Issuer, the Purchaser and the Company will each have performed and complied with all agreements, covenants and conditions required to be performed or complied with by the Bond Ordinance and the Bond Documents.

(d) The Indenture will have been duly executed and delivered by the Issuer, the Purchaser and the Depository. The Lease will have been duly executed by the Issuer and the Company. Each of the Bond Documents, the Bond Ordinance and all other official action of the Issuer relating to the Bonds, the Project (as defined in the Lease) and the Bond Documents will be in full force and effect on the Closing Date and will not have been amended, modified or supplemented on or before the Closing Date.

(e) The Issuer, the Company and the Purchaser will have received the following, each dated the Closing Date:

(i) the approving opinion of Sutin Thayer & Browne, A Professional Corporation, Bond Counsel, substantially in the form of Exhibit A;

(ii) the opinion of counsel to the Company, substantially in the form of Exhibit B;

(iii) the opinion of the Attorney for the Issuer, substantially in the form set forth in Exhibit C;

(iv) the opinion of counsel to the Purchaser, substantially in the form set forth in Exhibit D;

(v) a certificate of and with reference to the Issuer and signed by a duly authorized officer of the Issuer to the effect set forth in subsections (a) and (c) of this Section 7 with respect to the Issuer;

(vi) a certificate of and with reference to the Company signed by a duly authorized officer of the Company to the effect set forth in subsections (a), (b) and (c) of this Section 7;

(vii) a certificate of and with reference to the Purchaser signed by a duly authorized officer of the Purchaser to the effect set forth in (a) and (c) of this Section 7;

(viii) a certificate of the Depositary signed by a duly authorized officer of the Depositary to the effect that (a) he or she is an authorized officer of the Depositary; (b) the Indenture has been duly executed and delivered by the Depositary; (c) the Depositary has all necessary corporate powers required to execute, deliver and perform its obligations under the Indenture; and (d) to the best of his or her knowledge, the execution and delivery by the Depositary of the Indenture and the performance by the Depositary of its obligations under the Indenture will not conflict with or constitute a breach of or default under any law, administrative regulation, consent decree or any agreement or other instrument to which the Depositary is subject or by which the Depositary is bound;

(ix) such additional legal options, certificates, proceedings, instruments and other documents as any such party or Bond Counsel may reasonably request; and

(x) an investment intent letter from the Purchaser in the form of the Certificate of Qualified Investor attached to the Indenture.

If any conditions to the obligations of the Purchaser or the Issuer under this Agreement are not satisfied and if the satisfaction of such conditions is not waived by the Purchaser and the Issuer, then, at the option of the Purchaser or the Issuer, respectively in accordance with their interests (x) the Closing Date will be postponed for such period, not to exceed five business days, as may be necessary for such conditions to be satisfied or (y) the obligations of the Purchaser and the Issuer under this Agreement will terminate, and neither the Purchaser nor the Issuer will have any further obligations or liabilities under this Agreement.

Section 8. Survival. All agreements, covenants and representations and all other statements of the Issuer and the Company and their respective officers set forth in or made pursuant to this Agreement will survive the Closing Date and the delivery of and payment for the Bonds.

Section 9. Notices. Any notice, demand, direction, request, consent, approval, report or other instrument authorized or required by any of the Bond Documents to be executed, given or filed will be in writing and will be deemed to have been sufficiently given or filed for all purposes of the Bond Documents when delivered by hand delivery or on the third Business Day following the day on which the same has been mailed by registered or certified mail, postage prepaid, addressed as follows:

If to the Issuer: Lea County, New Mexico
 100 North Main Avenue
 Lovington, New Mexico 88130
 Attn: County Manager

If to the Purchaser: Tip Top Solar Energy Center IRB Holdings LLC
 c/o Tip Top Solar Energy Center LLC

If to the Company: Tip Top Solar Energy Center LLC

Any Party may, by notice to each of the other Parties, designate any further or different addresses to which subsequent notices, certificates or other communications are to be sent. Receipt by the Issuer and the Company of a Certificate of Qualified Investor in the form attached to the Indenture as Exhibit E, from a transferee of the Bonds will constitute notice by the transferee of such a different address for the Purchaser.

Section 10. Remedies. Except as provided in Section 10, no right or remedy conferred on any party in this Agreement is intended to be exclusive of any other right or remedy. No delay or omission of any party to exercise any such right or remedy may be exercised from time to time and as often as the relevant party may deem expedient. No waiver by any party of any right or remedy with respect to any Default or Event of Default will extend to or affect any other existing or subsequent Default or Event of Default.

Section 11. Severability. In case any one or more of the provisions of this Agreement or of the Bonds are for any reason held to be illegal or invalid, such illegality or invalidity will not affect any other provision of any of this Agreement or of the Bonds, but this Agreement and the Bonds will be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement of the Issuer contained in this Agreement or the Bonds are for any reason held to be in violation of law, then such covenant, stipulation, obligation or agreement will be deemed to be the covenant, stipulation, obligation or agreement of the Issuer to the full extent permitted by law.

Section 12. Obligations of Issuer Not Obligations of Officials Individually. No obligation under any of the Bond Documents or the Bonds will be deemed to be an obligation of any present or future officer (including, without limitation, County Commissioners) or employee of the Issuer in his or her individual capacity, and no officer of the Issuer who executes the Bond will be personally liable on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

Section 13. Limitation of Issuer's Liability. No agreements or provisions contained in this Agreement nor any agreement, covenant or undertaking by the Issuer contained in any document executed by the Issuer in connection with any property of the Company financed, directly or indirectly, out of the Bond proceeds or the issuance, sale and delivery of the Bonds will give rise to any pecuniary liability of the Issuer, its officials, employees, agents or members of its governing body or constitute a charge against the Issuer's general credit, or will obligate the Issuer financially in any way, except with respect to the Basic Rent available under the Lease and the Indenture provided by the Company and pledged to the payment of the Bonds, and their application as provided under the Indenture. No failure of the Issuer to comply with any terms, covenants or agreements in this Agreement or in any document executed by the Issuer in connection with the Bonds will subject the Issuer, its officials, employees, agents and members of its governing body to any pecuniary charge or liability except to the extent that the same can be paid or recovered from the funds available under the Lease or the Indenture provided by the Company and pledged to the payment of the Bonds. None of the provisions of the Bond Documents will require the Issuer to expend or risk its own funds or to otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers under the Bond Documents. Nothing in this Agreement will preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Issuer for any failure to comply with any term, condition, covenant or agreement in any of the Bond Documents; provided, that no costs, expenses or other monetary relief will be recoverable from the Issuer except as may be payable from the funds available under the Lease or the Indenture provided by the Company and pledged to the payment of the Bonds.

Section 14. Title, Headings. The title and headings of the articles and sections of this Purchase Agreement have been used for convenience only and do not modify or restrict any of the terms or provisions hereof.

Section 15. Execution in Counterparts. This Agreement may be executed in counterparts, all of which taken together will constitute one instrument.

Section 16. Applicable Law. The validity, construction and effect of this Agreement will be governed by the law of the State of New Mexico.

Section 17. Expenses. All costs and expenses relating to the preparation, issuance, delivery and sale of the Bonds and the preparation, execution and delivery of the Bond Ordinance, the Bond Documents and all other agreements, documents and instruments related to the transactions contemplated by the Bond Documents, including the fees and expenses of Issuer's outside review counsel, are to be paid by the Company.

Section 18. Performance of the Parties. The respective obligations of the parties hereunder are subject to the performance by each other party hereto of its own obligations hereunder.

[Remainder of this page intentionally left blank]

DATED: _____, 2019

TIP TOP SOLAR ENERGY CENTER IRB
HOLDINGS LLC,
as Purchaser

By _____
Name: _____
Title: _____

TIP TOP SOLAR ENERGY CENTER LLC,
as Company

By _____
Name: _____
Title: _____

(Signature Page for Bond Purchase Agreement)

Attest:

(SEAL)

BOARD OF COUNTY COMMISSIONERS,
LEA COUNTY, NEW MEXICO

County Clerk

By _____
Its Chair

(Signature Page for Bond Purchase Agreement)

3382177_3.doc

Exhibit A

[Opinion of Bond Counsel]

_____, 2019

Lea County, New Mexico
Lovington, New Mexico

Tip Top Solar Energy Center IRB Holdings LLC

Tip Top Solar Energy Center LLC

The Bank of New York Mellon Trust Company,
National Association

\$215,000,000
Lea County, New Mexico
Taxable Industrial Revenue Bonds
(Tip Top Solar Energy Center LLC Project)
Series 2019

Ladies and Gentlemen:

We have acted as Bond Counsel in connection with the issuance and sale by Lea County, New Mexico (the “Issuer”) of its Taxable Industrial Revenue Bonds (Tip Top Solar Energy Center LLC Project) Series 2019 in the maximum principal amount of \$215,000,000 (the “Bonds”).

The Bonds will bear interest on the outstanding principal amount at a per annum rate equal to four percent (4%). Interest on the Bonds is payable each _____ 1 beginning _____, 20____, with the outstanding principal amount of the Bonds plus all interest thereon due and payable in full at their final maturity.

The Bonds are subject to redemption prior to maturity as described in the Indenture dated as of _____, 2019 (the “Indenture”) among the Issuer and Tip Top Solar Energy Center IRB Holdings LLC (the “Purchaser”), Tip Top Solar Energy Center LLC (the “Company”) and The Bank of New York Mellon Trust Company, National Association (the “Depository”).

The principal of, interest on and redemption price of the Bonds are not general obligations of the Issuer but special obligations payable solely from the revenues pledged under the Indenture. Neither the faith and credit nor the taxing power of the State of New Mexico or of any of its political subdivisions or municipalities, including the Issuer, is pledged to the payment of the principal of, interest on or redemption price of the Bonds. The principal of, interest on and redemption price of the Bonds will never constitute a debt or indebtedness of the Issuer within the meaning of any provision or limitation of the constitution or laws of the State of New Mexico. The Bonds will never constitute nor give rise to a pecuniary liability of the State of New Mexico, any of its political subdivisions or of the Issuer or a charge against their general credit or taxing powers.

In connection with the issuance of the Bonds, we have examined (a) a certified copy of an ordinance passed by the Lea County Commission on _____, 2019 authorizing the issuance of the

Bonds, pursuant to and under the provisions of Sections 4-59-1 through 4-59-16, New Mexico Statutes Annotated, 1978 Compilation, as amended (the “Act”); (b) the executed Bonds; (c) executed counterparts of the Indenture, the Lease Agreement dated as of _____, 2019 (the “Agreement”) between the Issuer and the Company and the Bond Purchase Agreement dated _____, 2019 (the “Bond Purchase Agreement” and, together with the Indenture and the Agreement, the “Bond Documents”) among the Purchaser, the Issuer and the Company; and (d) such other opinions, documents, certificates and letters as we deemed relevant in rendering this opinion.

Based on such examination, in our opinion:

1. The Issuer is a political subdivision of the State of New Mexico and has the power and authority, under the constitution and laws of the State of New Mexico, including the Act, to execute and deliver the Bond Documents, and to authorize, execute, issue and deliver the Bonds.

2. The terms and provisions of the Bonds and the Bond Documents comply in all respects with the requirements of the Act.

3. The Bonds have been validly authorized, executed and issued in accordance with the law of New Mexico and represent the valid and binding special obligation of the Issuer.

4. The Bond Documents have been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the other parties to the Bond Documents, constitute legal, valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors’ rights generally and general principles of equity.

5. Neither the offer nor sale of the Bonds to the Purchaser pursuant to the Bond Documents is required to be registered under any federal or New Mexico securities law. The Indenture is not required to be qualified under the Trust Indenture Act of 1939, as amended.

6. The issuance and sale of the Bonds to the Purchaser is not subject to Rule 15c2-12 of the Securities and Exchange Commission.

Our opinion in paragraph 4 above, insofar as it relates to the enforceability of the Indenture, is subject to the following qualifications:

(i) New Mexico law may require that notice of acceleration be given to the Company before foreclosure of the Indenture. Comer v. Hargrave, 93 N.M. 170, 598 P.2d 213 (1979).

(ii) We express no opinion as to title to or the priority of any lien on or security interest in any real or personal property.

The foregoing opinions represent our legal judgment based upon a review of existing legal authorities that we deem relevant to render such opinions and are not a guarantee of a result.

Very truly yours,

Exhibit B

[Opinion of Counsel to the Company]

_____, 2019

Lea County, New Mexico
Lovington, New Mexico

Tip Top Solar Energy Center IRB Holdings LLC

Tip Top Solar Energy Center LLC

The Bank of New York Mellon Trust Company,
National Association

Ladies and Gentlemen:

We have represented Tip Top Solar Energy Center LLC (the “Company”) in connection with (i) the Lease Agreement dated as of _____, 2019 (the “Agreement”) between Lea County, New Mexico (the “Issuer”) and the Company, (ii) the Bond Purchase Agreement (the “Bond Purchase Agreement”) dated _____, 2019 among Tip Top Solar Energy Center IRB Holdings LLC (the Purchaser”), the Issuer and the Company, pursuant to which the Purchaser has agreed to purchase the Issuer’s Taxable Industrial Revenue Bonds (Tip Top Solar Energy Center LLC Project) Series 2019 in the maximum principal amount of \$215,000,000 to be issued under the Indenture dated as of _____, 2019 (the “Indenture”) among the Issuer, the Purchaser, the Company and the Depository, and (iii) the Indenture. We have reviewed executed copies of the Bond Documents (as defined below), and certificates of officers of the Company and public officials and we have made such other investigations of law and fact as we have deemed necessary. The Agreement, the Indenture and the Bond Purchase Agreement are referred to herein as the Bond Documents.

Based upon the foregoing, in our opinion:

1. The Company is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware, is duly registered as a foreign limited liability company under the laws of New Mexico and has duly authorized the execution, delivery and performance of the Agreement, the Indenture and the Bond Purchase Agreement.
2. The execution, delivery and performance by the Company of the Agreement, the Indenture and the Bond Purchase Agreement will not conflict with, contravene, violate or constitute a breach of or default under the articles of organization or operating agreement of the Company or any law, rule, regulation, ordinance, or, to our knowledge, based on a certificate of an officer of the Company, any order, consent, decree, agreement or instrument to which the Company is a party or by which it or its properties, including the Project Property as defined in the Lease, is bound.
3. All necessary authorizations, approvals, consents and other orders of any governmental authority or agency for the execution and delivery by the Company of the Agreement, the Indenture and the Bond Purchase Agreement have been obtained and are in full force and effect.

4. There is no action, suit, proceeding, inquiry or investigation by or before any court, public board or body pending or, to our knowledge, threatened against the Company, which (i) seeks to or does restrain or enjoin the issuance or delivery of the Bond or the execution and delivery of any of the Bond Documents, (ii) in any manner questions the validity or enforceability of the Bonds or any of the Bond Documents, or (iii) questions the authority of the Company to own or operate any of the Project Property, as defined in the Lease.

Very truly yours,

Exhibit C

[Opinion of Counsel to Issuer]

_____, 2019

Lea County, New Mexico
Lovington, New Mexico

Tip Top Solar Energy Center IRB Holdings LLC

Tip Top Solar Energy Center LLC

The Bank of New York Mellon Trust Company,
National Association

Ladies and Gentlemen:

This opinion is being rendered to you in connection with the issuance by Lea County, New Mexico (the “Issuer”) of its Taxable Industrial Revenue Bond (Tip Top Solar Energy Center LLC Project) Series 2019 in the maximum principal amount of \$215,000,000 (the “Bonds”).

In our opinion:

1. The Issuer is a duly organized and validly existing political subdivision of the State of New Mexico under the Constitution and laws of the State of New Mexico.
2. Ordinance No. _____ was duly adopted by the Lea County Commission on _____, 2019 (the “Bond Ordinance”) in accordance with all applicable laws and has not been repealed or rescinded.
3. To our knowledge and without opining as to the legality, validity or enforceability of the Bond, the Indenture, the Lease Agreement and the Bond Purchase Agreement (all as defined in the Bond Ordinance), the adoption of the Bond Ordinance by the County Commission of the Issuer will not violate any provision of the Constitution or laws of the State of New Mexico.
4. To our knowledge, no litigation is now pending or threatened against the Issuer which seeks to or does restrain or enjoin the issuance or delivery of the Bonds, or in any manner questions the authority or proceedings for the issuance of the Bonds.

The foregoing opinions are limited to matters involving the law of the State of New Mexico and the Issuer, and we do not express any opinion as to the laws of any other jurisdiction.

Very truly yours,

Exhibit D

[Opinion of Counsel to the Purchaser]

_____, 2019

Lea County, New Mexico
Lovington, New Mexico

Tip Top Solar Energy Center IRB Holdings LLC

Tip Top Solar Energy Center LLC

The Bank of New York Mellon Trust Company,
National Association

Ladies and Gentlemen:

We have acted as counsel to Tip Top Solar Energy Center IRB Holdings LLC (the “Purchaser”) in connection with the Indenture dated as of _____, 2019 (the “Indenture”) among The Bank of New York Mellon Trust Company, National Association as depository (the “Depository”), Lea County (the “Issuer”), Tip Top Solar Energy Center LLC (the “Company”) and the Purchaser, and the Bond Purchase Agreement (the “Bond Purchase Agreement”) dated _____, 2019 among the Purchaser, the Issuer and the Company, pursuant to which the Purchaser has agreed to purchase the Issuer’s Taxable Industrial Revenue Bonds (Tip Top Solar Energy Center LLC Project) Series 2019 in the maximum principal amount of \$215,000,000 to be issued under the Indenture. The Indenture, the Bond Purchase Agreement, and the Lease Agreement dated as of _____, 2019 between the Company and the Issuer are referred to herein as the “Bond Documents.” In connection with this transaction, we have examined executed copies of the Bond Documents, certificates of officers of the Purchaser and certificates of public officials and have made such other investigations of law and fact as we have deemed necessary.

Based upon the foregoing, in our opinion:

1. The Purchaser is a limited liability company duly organized and validly existing and in good standing under the laws of Delaware.
2. The execution, delivery and performance by the Purchaser of the Indenture and the Bond Purchase Agreement will not conflict with, contravene, violate or constitute a breach of or default under the articles of organization or the operating agreement of the Purchaser or any law, rule, regulation, ordinance, or, to our knowledge, based on a certificate of an officer of the Purchaser, any order, consent, decree, agreement or instrument to which the Purchaser is a party or by which it or its property is bound.
3. All necessary authorizations, approvals, consents and other orders of any governmental authority or agency for the execution and delivery by the Purchaser of the Indenture and the Bond Purchase Agreement have been obtained and are in full force and effect.
4. There is no action, suit, proceeding, inquiry or investigation by or before any court, public board or body pending or, to our knowledge, threatened against the Purchaser, which (i) seeks to or does restrain or enjoin the issuance or delivery of the Bonds or the execution and

delivery of any of the Bond Documents, or (ii) in any manner questions the validity or enforceability of the Bonds or any of the Bond Documents.

This opinion has been delivered at your request for the purposes in connection with the Bond Documents. Without our prior written consent, this opinion is not to be utilized or quoted for any other purpose and no one other than you is entitled to rely thereon.

Very truly yours,

LEA COUNTY, NEW MEXICO
and
TIP TOP SOLAR ENERGY CENTER LLC

LEASE AGREEMENT

Dated as of _____, 2019

\$215,000,000
Lea County, New Mexico
Taxable Industrial Revenue Bonds
(Tip Top Solar Energy Center LLC Project)
Series 2019

LEA COUNTY, NEW MEXICO, a political subdivision of the State of New Mexico (together with its successors and assigns, the “Issuer”), as lessor, and TIP TOP SOLAR ENERGY CENTER LLC, a Delaware limited liability company (together with its successors and assigns, the “Company”), as lessee, agree:

ARTICLE I RECITALS

Section 1.1. Recitals.

A. The Company has requested that the Issuer issue its Taxable Industrial Revenue Bonds (Tip Top Solar Energy Center LLC Project), Series 2019 in the maximum principal amount of \$215,000,000 (the “Bonds”). The proceeds of the Bonds will be used to finance the Project (defined below).

B. The Issuer is authorized under Section 4-59-1 to 4-59-16, New Mexico Statutes Annotated, 1978 Compilation (the “Act”) to acquire certain projects and issue its industrial revenue bonds in payment therefor and has determined that it is desirable to acquire the Project (defined below) pursuant to Ordinance No. _____ (the “Bond Ordinance”) and has in the Bond Ordinance authorized the issuance of the Bonds.

C. The Bonds are to be issued under an Indenture dated as of _____, 2019 (together with any and all amendments and supplements, the “Indenture”) among the Issuer, Tip Top Solar Energy Center IRB Holdings LLC (together with its successors and assignees, and transferees of the Bonds, the “Purchaser”), the Company and The Bank of New York Mellon Trust Company, National Association, as Depository (the “Depository”). The Bonds will be a special limited obligation of the Issuer payable as therein provided and the Bonds will not constitute a debt or pledge of the credit of the Issuer, and the Purchaser or owners of the Bonds will have no right to have taxes levied by the Issuer or to require the Issuer to use any revenues for the payment of the Bonds, except for Basic Rent (as defined in this Agreement).

D. The proceeds of the Bonds will be used to finance the acquisition of the Project Property (defined below) leased to the Company under this Lease Agreement (together with all amendments and supplements, this “Agreement”).

E. The Company has subleased its rights under the Project Site Leases to the Issuer pursuant to that certain Sublease Agreement between the Company and the Issuer, dated as of the date hereof (the “Sublease”). The Project Property, which includes the leasehold interest in the Project Site, is to be leased to the Company pursuant to this Agreement.

F. The Bonds are to be purchased under a Bond Purchase Agreement dated as of _____, 2019 (together with any and all amendments and supplements, the “Bond Purchase Agreement”) among the Issuer, the Purchaser and the Company.

G. The Bonds will be secured by the Indenture which constitutes, among other things, a collateral pledge of this Agreement.

In consideration of the premises and the mutual representations and agreements hereinafter contained, the Issuer and the Company agree as follows (provided that any obligation of the Issuer created by or arising out of this Agreement will never constitute a general debt of the Issuer or give rise to any pecuniary liability of the Issuer, but will be payable solely out of Basic Rent).

ARTICLE II DEFINITIONS AND RULES OF CONSTRUCTION

Section 2.1. Definitions. All words and terms defined in the Indenture have the same meanings when used in this Agreement. In addition:

“Additional Payments” has the meaning assigned in Section 5.3(b).

“Additional Project Property” shall mean all Project Property, or portions thereof, acquired with or reimbursed with Excess Advances.

“Applicable Environmental Law” means any applicable law, statute, ordinance, regulation, order or rule relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or materials or pertaining to health or the environment, including, without limitation, CERCLA and RCRA, as each is amended and in effect from time to time.

“Basic Rent” has the meaning assigned in Section 5.3(a).

“CERCLA” means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

“Closing Date” means the date of execution and delivery of the Bonds.

“Company Financing” means a transaction or series of transactions involving credit agreements, loan documents, letters of credit, or other instruments evidencing financial obligations to which the Company or any subsidiary or affiliate of the Company is a party entered into or occurring at any time prior to the Closing Date (as defined in the Bond Purchase Agreement) or during the Term and after the date of initial delivery of the Bonds, for the use by the Company or any subsidiary or affiliate of the Company, together with any Company Financing Lien.

“Company Financing Lien” means any pledge, encumbrance or other lien on all or any portion of the Leased Property entered into in connection with a Company Financing.

“Contingent County PILOT Amount” shall mean a fixed amount equal to (A) the Projected Total Additional County Project Property Taxes divided by (B) the Remaining Term Years.

“Contingent School District PILOT Amount” shall mean a fixed amount equal to (A) the Projected Total Additional Project School District Property Taxes divided by (B) the Remaining Term Years.

“Construction Completion Date” has the meaning assigned in Section 4.4.

“County Taxing Authorities” means those taxing authorities, except for the School District, which would impose ad valorem property taxes on the Additional Project Property if the Additional Project Property was not owned by the Issuer.

“Eminent Domain” means the taking of title to, or the temporary use of; all or any part of the Project Property pursuant to eminent domain or condemnation proceedings, or by any settlement or compromise of such proceedings, or any voluntary conveyance of all or any part of the Project Property during the pendency of, or as a result of a threat of, such proceedings.

“Event of Default” has the meaning assigned in Section 8.1.

“Excess Advances” shall mean all Advances (as defined in the Indenture) made under the Indenture in excess of \$185,000,000.

“Facility” means a solar power generation facility located in Lea County, New Mexico, and its related supporting equipment and all improvements thereon for the generation and transmission of electricity.

“Indemnatee” has the meaning assigned in Article VI.

“Institutional Investor” means, collectively, any natural person(s) or any entity(ies) who acquire a direct or indirect interest in the Company or in the Project as a part of a transaction to ensure that the Project is owned at least in part by a person or entity able to use the federal renewable electricity production tax credits or investment tax credits and tax depreciation benefits associated with holding an ownership interest in the Project (including any subsequent transferees of any such person(s) or entity(ies)).

“Proceeds,” when used with respect to any insurance proceeds or any award resulting from, or other amount received in connection with, Eminent Domain, means the gross proceeds from the insurance or such award or other amount.

“Project” means the acquisition of the Company’s rights in the Project Site Leases and the acquisition, design, permitting, construction and equipping of the Facility made with the proceeds of the Bonds from time to time for use by the Company..

“Project Property” means (i) the Facility and all improvements suitable for use and used thereon, including all equipment and other personal property of any kind whether now owned or hereafter acquired with the proceeds of the Bonds prior to the Construction Completion Date as

further described in Exhibit A and (ii) any rights of the Company in, or related to, the Project Site now owned or hereafter acquired under easements, agreements or leases assigned to the Issuer.

“Project Site” means the real property in Lea County, New Mexico described in Exhibit A.

“Project Site Leases” means the lease agreements between the Company, as lessee, and owners of the Project Site, as lessors, which the Company has subleased to the Issuer pursuant to the Sublease.

“Projected Total Additional County Project Property Taxes” means the estimated aggregate amount of ad valorem taxes that would otherwise have been due and payable on the Additional Project Property from the date of acquisition of such property through the end of the Term, if the Additional Project Property was not owned by the Issuer. For the purposes of calculating such Projected Total Additional Project Property Taxes, the Company shall (x) multiply the taxable value of Additional Project Property (calculated as provided in the Property Tax Code, Sections 7-35-1 through 7-38-93 NMSA 1978, as amended from time), initially determined as of the January 1 of the year immediately following the date of the Company’s acquisition of such Additional Project Property (the “Initial Determination Date”) and each January 1 thereafter (reflecting depreciation) through the end of the Term multiplied by (y) the actual mill levy rates for business personal property imposed by the County Taxing Authorities effective as of such Initial Determination Date.

“Projected Total Additional School District Project Property Taxes” means the estimated aggregate amount of ad valorem taxes that would otherwise have been due and payable on the Additional Project Property from the date of acquisition of such property through the end of the Term, if the Additional Project Property was not owned by the Issuer. For the purposes of calculating such Projected Total Additional Project Property Taxes, the Company shall (x) multiply the taxable value of Additional Project Property (calculated as provided in the Property Tax Code, Sections 7-35-1 through 7-38-93 NMSA 1978, as amended from time), initially determined as of the January 1 of the year immediately following the date of the Company’s acquisition of such Additional Project Property (the “Initial Determination Date”) and each January 1 thereafter (reflecting depreciation) through the end of the Term multiplied by (y) the actual mill levy rates for business personal property imposed by the School District effective as of such Initial Determination Date.

“RCRA” means the Resource Conservation and Recovery Act of 1976.

“Related Costs” means expenditures incurred or to be incurred with respect to the Project, including, without limitation, the acquisition, installation and construction of the Project Property.

“Remaining Term Years” shall mean the number of years commencing on the Initial Determination Date and ending on January 1, _____ [*the final year of the IRB Lease*].

“Rent” means Basic Rent and any Additional Payments under this Agreement.

“School District” means the Jal Public School District.

“State” means the state of New Mexico.

“Sublease” has the meaning assigned in Recital E.

“Term” means the duration of the leasehold estate created by this Agreement pursuant to Section 5.1 hereof.

“TRD” means the New Mexico Taxation and Revenue Department.

Section 2.2. Rules of Construction.

(a) The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

(b) All references in this Agreement to particular articles, sections or exhibits are references to articles or sections of or exhibits to this Agreement unless some other reference is established.

(c) Any inconsistency between the provisions of this Agreement and the provisions of the Indenture will be resolved in favor of the provisions of this Agreement.

**ARTICLE III
REPRESENTATIONS**

Section 3.1. Issuer Representations. The Issuer represents that, as of the date of delivery of this Agreement:

(a) The Issuer is a political subdivision, organized and existing under the laws of the State.

(b) The Issuer has duly authorized by an ordinance of the governing body of the Issuer adopted at a meeting duly called and held by the affirmative vote of not less than a majority of its members, the execution, delivery and performance of the Bond Documents, the Bonds and the issuance of the Bonds, all for the purpose of financing the Project including the acquisition, construction and equipping of the Project Property and paying certain costs related to the issuance of the Bonds.

(c) To the knowledge of the Issuer, the execution, delivery and performance by the Issuer of the Bond Documents will not conflict with or create a material breach of or material default under the Act or any other law, rule, regulation or ordinance applicable to the

Issuer or any agreement or instrument to which the Issuer is a party or by which it is bound, and there is no action, suit, proceeding, inquiry or investigation by or before any court, public board or body, pending or threatened against the Issuer, which seeks to or does restrain or enjoin the issuance or delivery of the Bonds or the execution and delivery of any of the Bond Documents or in any manner questions the validity or enforceability of the Bonds or any of the Bond Documents.

(d) To the knowledge of the Issuer, this Agreement and the Indenture constitute legal, valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and general principles of equity and other applicable laws.

Section 3.2. Company Representations. The Company represents that, as of the date of delivery of this Agreement:

(a) The Company is a limited liability company duly organized and validly existing under the laws of Delaware, is in good standing under the laws of Delaware, is a duly registered foreign limited liability company authorized to do business in New Mexico, and has duly authorized the execution, delivery and performance of the Sublease, this Agreement and the Bond Purchase Agreement.

(b) The Company has full legal right, power and authority to carry out and consummate the transactions contemplated by the Sublease, this Agreement and the Bond Purchase Agreement, all of which have been duly authorized by all necessary action on the part of the Company.

(c) The execution, delivery and performance by the Company of the Sublease, this Agreement and the Bond Purchase Agreement and the application by the Company of the proceeds of the issuance and sale of the Bonds as provided in the Bond Documents do not and will not conflict with, contravene, violate or constitute a breach of or default under the articles of organization or operating agreement of the Company or any material agreement to which the Company is a party or by which the Company or its properties or the Project Property is bound or any law, rule, regulation, ordinance, order, consent, or decree, applicable to the Company, its properties or the Project Property if such conflict, contravention, violation, breach or default could materially affect the ability of the Company to perform its obligations under the Bond Documents.

(d) The Sublease, this Agreement and the Bond Purchase Agreement constitute legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and general principles of equity.

(e) No Default or Event of Default, or event or condition which, with notice or lapse of time or both, would constitute a Default or an Event of Default, with respect to the

Company has occurred and is continuing. The Company has not received any written notice of any currently existing material violation of any zoning, land use, environmental or other similar law or regulation applicable to the Project Site.

(f) There is no action, suit, proceeding, inquiry or investigation by or before any court, public board or body pending or, to the best of the knowledge of the Company, threatened against the Company, which (i) seeks to or does restrain or enjoin the issuance or delivery of the Bonds or the execution and delivery of any of the Bond Documents, (ii) questions the validity or enforceability of the Bonds or any of the Bond Documents, (iii) questions the authority of the Company to own, lease or operate any of the Project Property, or (iv) if adversely determined, would have a material adverse effect on the Project Property or the Company's ability to perform its obligations under the Bond Documents.

(g) All necessary authorizations, approvals, consents and other orders of any governmental authority or agency for the execution and delivery by the Company of this Agreement and the Bond Purchase Agreement have been obtained and are in full force and effect.

(h) The Company acknowledges that the Issuer has made no warranty or representation, express or implied, that the amount in the Acquisition Fund, as defined in Section 701 of the Indenture, will be sufficient to pay the Related Costs or that the Project Property will be suitable for the Company's needs.

(i) The Company will not use or operate the Project, or permit the Project to be used or operated, in any way which would adversely affect the qualification of the Project as a "project" under the Act.

(j) The acquisition, construction and installation of the Project Property by the Company and the operation thereof will comply in all material respects with applicable zoning, planning, building, environmental and other regulations of the governmental authorities having jurisdiction over the Facility, and all permits, licenses, consents and permissions necessary for the Facility have been or will be obtained in due course.

(k) The Project Property is located in that part of Lea County which is outside the corporate limits of any municipality and is or will be an electric generation facility which does not require location approval and a certificate of convenience and necessity prior to construction or operation of the facility pursuant to the New Mexico Public Utility Act, Sections 62-3-1, et seq., NMSA 1978.

(l) No representation made by the Company in this Agreement and no statement made by the Company in any written information, material or report furnished to the Issuer or the Purchaser in connection with the transactions contemplated by this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the representation or statement, in light of the circumstances under which it is made, not misleading.

(m) The representations of the Company in this Section 3.2 and in any other instrument delivered by the Company in connection with the transactions contemplated by the Bond Documents will survive the execution and delivery of this Agreement, the issuance, sale and delivery of the Bonds for one year as representations of facts existing as of the date of execution and delivery of the Bond Documents or other instrument containing such representation.

(n) Immediately prior to the effectiveness of this Agreement, the Project Site Leases (i) are valid and legally binding against the Company, and, to the knowledge of the Company, each Project Site Lease lessor, and (ii) allow the Company to sublease such Project Site Leases to the County pursuant to the Sublease and to use the Project Site for the purpose of developing, operating and maintaining the Project upon the terms and conditions set forth in the Project Site Leases.

ARTICLE IV THE PROJECT AND THE COMPANY

Section 4.1. Acquisition, Equipping and Completion. The Company will acquire, construct and install the Project Property as agent for the Issuer under the Act and applicable TRD regulations. To the extent necessary, after all proceeds of the issuance of the Bonds have been exhausted, the Company will finance the completion of the Facility with other funds. The Project Property will at all times during the Term be located within Lea County, New Mexico. The Issuer makes no warranty that the proceeds of the issuance and sale of the Bonds will be sufficient to pay all the Related Costs. The Company will obtain at the necessary time all licenses and permits required for the occupancy and operation of the Project Property.

Section 4.2. Plans and Specifications; Changes. The Company may make changes, supplements, amendments and additions, omissions or substitutions for components of the Project Property without the approval of the Issuer or the Purchaser. If the Company elects to make any such change, supplement, amendment, addition, omission or substitution which would make the description of the Project Property contained in Exhibit A materially inaccurate, the Company will revise the description of the Project Property set forth in Exhibit A, accordingly and will deliver a copy of such revised Exhibit A, certified by an Authorized Company Representative, to the Issuer and the Purchaser. The Issuer and Company will take such further actions as necessary to effect such change including executing, delivering, and recording a bill of sale, assignment and any amendments to the Bond Documents. Notwithstanding the foregoing, the Company will not make any changes, supplements, amendments, additions, omissions, or substitutions or otherwise change or operate the Project Property or permit the Project Property or the Facility to be operated so as to cause the Project Property not to be a “project” within the meaning of the Act as in effect on the date of issuance of the Bonds, and the Company will not take or omit to take any action which will result in the Bond proceeds being applied in violation of the Bond Documents.

Section 4.3. No Warranty of Condition or Suitability by Issuer. THE COMPONENTS OF THE PROJECT PROPERTY HAVE BEEN DESIGNATED AND SELECTED BY THE COMPANY. THE ISSUER HAS NOT MADE AN INSPECTION OF

ANY PORTION OF THE PROJECT PROPERTY. THE ISSUER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS, IMPLIED OR OTHERWISE, WITH RESPECT TO ANY PORTION OF THE PROJECT PROPERTY OR THE LOCATION, USE, DESCRIPTION, DESIGN, MERCHANTABILITY, FITNESS FOR USE FOR ANY PARTICULAR PURPOSE, CONDITION OR DURABILITY OF THE SAME, OR AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP IN THE SAME. ALL RISKS INCIDENT TO THE PROJECT PROPERTY ARE TO BE BORNE BY THE COMPANY. THE ISSUER WILL HAVE NO LIABILITY WITH REGARD TO OR ARISING OUT OF ANY DEFECT OR DEFICIENCY OF ANY NATURE IN ANY PORTION OF THE PROJECT PROPERTY, WHETHER PATENT OR LATENT. THE PROVISIONS OF THIS SECTION 4.3 HAVE BEEN NEGOTIATED AND ARE INTENDED TO BE A COMPLETE EXCLUSION AND NEGATION OF ANY WARRANTIES OR REPRESENTATIONS BY THE ISSUER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PORTION OF THE PROJECT PROPERTY, WHETHER ARISING UNDER THE UNIFORM COMMERCIAL CODE OR ANY OTHER LAW NOW OR HEREAFTER IN EFFECT.

Section 4.4. Construction Completion Date. The Company will use the commercially reasonable efforts to complete the construction of the Project as promptly as practicable and, in any event, by December 31, 2023. On the date the construction of the Project is complete and a certificate of occupancy has been obtained for the Facility (if such certificate is required to be obtained) (the “Construction Completion Date”), the Company will deliver to the Issuer and the Depositary a certificate signed by an Authorized Company Representative stating that, except for specified amounts remaining in the Acquisition Fund for any specified Related Costs incurred by the Company but not then due and payable, the Project is complete and all costs of labor, services, materials and supplies in connection with the Project have been paid for or provisions have been made for their payment. After the transfer of remaining moneys in the Acquisition Fund to the Company pursuant to Section 706 of the Indenture, the Company will have sole responsibility for the payment of any Related Costs in excess of the amount specified to be retained in the Acquisition Fund. Upon completion, the Project Property will comply in all material respects with all building codes, and other laws, ordinances, rules and regulations applicable to the Project Property or the Facility.

Section 4.5. Gross Receipts and Compensating Tax. The Company, either on its own behalf or as agent for the Issuer pursuant to Section 4.1 and this Section, will file returns for reporting and paying compensating tax which is due because of the Project and promptly will pay, as a Related Cost, any gross receipts or compensating tax due from the Issuer under any such returns. To the extent consistent with or required by State law, the Issuer will cooperate with the Company in the obtaining of Nontaxable Transaction Certificates from the TRD for delivery to suppliers with respect to the Project Property as may be applicable under the New Mexico Gross Receipts and Compensating Tax Act. It is the intention of the parties that the Non Taxable Transaction Certificates be issued to reduce gross receipts and compensating taxes on certain purchases of Project assets by the Company in its capacity as agent of the County, which taxes would otherwise be levied on the purchase of such Project assets. The Company will pay any gross receipts or compensating tax plus applicable penalty and interest which is found by the TRD to be due from the Company or the Issuer because of the purchase or use of the Project Property or any component of the Project Property by the Company or the Issuer. The Company,

at its sole expense, may request any rulings from the TRD which the Company determines might be necessary or desirable to clarify the New Mexico gross receipts and compensating tax results of transactions related to the Project and may dispute, at its sole expense, in any manner authorized by the New Mexico Tax Administration Act, any gross receipts or compensating tax liability imposed on the Company or the Issuer because of the Project. The Issuer will, at the sole expense of the Company, join in any reasonable modifications to this Agreement which are necessary or desirable to obtain Nontaxable Transaction Certificates or otherwise reduce the gross receipts and compensating tax imposed on the Company or the Issuer as a result of or in connection with the acquisition, construction and installation of the Project Property and will otherwise cooperate with the Company to address any reasonable request of the Company regarding issues raised by TRD with respect to Non-Taxable Transaction Certificates. The Company will employ Nontaxable Transaction Certificates solely to purchase Project Property and will not employ Nontaxable Transaction Certificates for purchases after the Construction Completion Date or for purchases in amounts greater than the proceeds of the Bonds.

Section 4.6. Compliance With Law. The Company will obtain or cause to be obtained all necessary permits and approvals, for the occupancy, operation and maintenance of the Project Property and will comply in all material respects with all Applicable Environmental Laws and all lawful requirements of any governmental body, agency or department regarding the use, condition or operation of the Project Property. The Company may in good faith contest the validity or the applicability of any such requirement. During the period of such contest and any related appeal, this Section 4.6 will be deemed satisfied with respect to the requirement so contested.

To the extent that the use which the Company makes or intends to make of the Project Property will result in the manufacturing, treatment, refining, transportation, generation, storage, disposal or other release or presence of any hazardous substance or solid waste on or to the Project Property, such use will be in accordance with all applicable law, including any applicable regulations. For purposes of this paragraph, the terms “hazardous substance” and “release” will have the meanings specified in CERCLA, and the term “disposal” (or “disposed”) will have the meaning specified in RCRA; provided, in the event either CERCLA or RCRA is amended so as to broaden the meaning of any term defined thereby, such broader meaning will apply subsequent to the effective date of such amendment, and provided, further, to the extent that the laws of the State establish a meaning for “hazardous substance,” “release,” or “disposal” which is broader than that specified in either CERCLA or RCRA, such broader meaning will apply subsequent to the effective date of such state action; provided, further, that the term “hazardous substance” will also include those listed in the U.S. Department of Transportation Table (49 C.P.R. 172.101) and amendments thereto from time to time.

The Company agrees to promptly notify the Purchaser and the Issuer of any violation of any Applicable Environmental Laws of which the Company becomes aware.

Company shall, at Company’s sole cost and expense, remove or take remedial action with regard to any hazardous substance for which any removal or remedial action is required pursuant to any Applicable Environmental Laws. Company shall indemnify, defend, protect and hold the Issuer and the Issuer’s commissioners, employees and agents free and harmless from any liability

(including, without limitation, costs, reasonable attorneys and consulting fees, investigation, laboratory fees and litigation expenses) arising out of (a) a release by the Company of any hazardous substance in, on or under the Project Site or (b) the violation by Company or its employees, agents or contractors of any Applicable Environmental Laws. The indemnity obligations stated in this Section are in addition to the other indemnity obligations of Company hereunder, and shall survive the termination of this Agreement.

Section 4.7. Nuisance Not Permitted. The Company will use use commercially reasonable efforts to not commit a nuisance in connection with its use or occupancy of the Project Property.

Section 4.8. Taxes and Utility Charges. The Company will pay or cause to be paid, as and when due, (i) all taxes, assessments, and governmental and other charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project Property, (ii) all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of the Project Property and (iii) all assessments and charges lawfully made by any governmental body for public improvements that may be secured by any lien on the Project Property. The Company may, in good faith, contest the amount or validity of any such levy, tax, assessment or other charge by appropriate legal proceedings. During the period of such contest and any related appeal, this Section 4.8 will be deemed satisfied with respect to any such levy, tax, assessment or other charge so contested.

Section 4.9. Maintenance. The Issuer will not be under any obligation to, and will not, operate, maintain or repair the Project Property. The Company will, at its own expense, keep the Project Property in safe repair and in such operating condition as is needed for its operations. The Company will not be under any obligation to renew, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable, inappropriate or unnecessary equipment.

Section 4.10. Replacement and Removal of Project Property. The Company may replace or remove and/or sell, trade in, exchange or otherwise dispose of any machinery, equipment or fixtures constituting a part of the Project Property, without any responsibility or accountability to the Issuer, and thereby acquire title to such machinery, equipment or fixtures, provided that such replacement or removal will not change the nature of the Project as a qualified “project” as defined in and as contemplated by the Act. Upon request and at the expense of the Company, the Issuer will deliver to the Company appropriate instruments evidencing the acquisition by the Company of title to any machinery, equipment or fixtures permitted by this Section 4.10 to be so replaced or removed. The provisions of Article X govern the delivery and form of any such instruments. The removal from the Project of any portion of the equipment, if any, pursuant to the provisions of this Section will not entitle the Company to any abatement or diminution in amount of the Basic Rent, Additional Payments, School PILOTs or County PILOTs payable under this Agreement. The Company may acquire machinery, equipment or other property (other than fixtures) which does not constitute a part of the Project Property and title to any such property will not thereby be transferred to the Issuer.

Section 4.11. Eminent Domain; Damage; Destruction. The Company will give prompt notice to the Issuer and the Purchaser of any material damage to or destruction of the

Project Property. If either the Issuer or the Company receives notice of the proposed taking of all or any part of the Project Property by Eminent Domain, it will give prompt notice to the other and the Purchaser. Any such notice will describe generally the nature and extent of such damage, destruction, taking or proposed taking. The Proceeds resulting from the exercise of Eminent Domain with respect to or from any damage to or destruction of all or any portion of the Project Property shall at the option of the Purchaser, be applied to the prepayment of the Bond or paid to the Company. All proceeds of insurance resulting from claims for losses to the Project and all proceeds of any condemnation award will be paid to the Company.

Section 4.12. Access and Inspection. The Company authorizes the Issuer and the Purchaser and their duly authorized agents during regular business hours, upon two (2) business days prior written notice, (i) such rights of escorted access to the Project Property as may be reasonably necessary to inspect the progress of the Project and (ii) the right of escorted entry onto the Project Site for any purpose contemplated by this Agreement. Such rights of access and entry will not be terminated, curtailed or otherwise limited by any sale, assignment, lease or other transfer of the Project Property by the Company to any other Person.

Section 4.13. Assessment in the Company's Name. If this Agreement has not been terminated on or before the thirtieth anniversary of this Agreement, the Company will take all necessary action to have the Project Property assessed for property tax purposes in the name of the Company on or within 30 days before the thirtieth anniversary of this Agreement, and the Company will pay all ad valorem taxes on the Project Property from and after such date. If the Project Property must be conveyed to the Company to accomplish such assessment, the Company will promptly notify the Issuer and the Issuer will convey the Project Property to the Company, and this Agreement will thereafter be construed to be an installment sale agreement and all terms and provisions of this Agreement will remain in full force and effect. The provisions of Article X govern the manner and form of any such conveyance. Notwithstanding the foregoing, if the Company fails to take all necessary action to have the Project Property assessed for property tax purposes in the name of the Company thirty (30) days before or on the thirtieth anniversary of this Agreement, the Issuer may terminate this Agreement and execute, deliver and cause to be recorded, at the expense of the Company, appropriate documents reflecting such termination. In anticipation of the conveyance of the Project Property by the Issuer to the Company, the Issuer will, upon the request of the Company, deliver to an escrow agent agreed to by the Issuer and the Company appropriate documents, including, but not limited to, a quitclaim deed, an assignment of easements and other real property rights and a bill of sale, prepared by the Company at the Company's expense, conveying to the Company the Issuer's interest in the Project Property; such documents to be delivered to the Company at the time of purchase of the Project Property.

Section 4.14. Use of Project Property. The Company will use the Project Property or cause the Project Property to be used during the Term so as to constitute a "project" within the meaning of the Act as in effect on the date of issuance of the Bonds. Temporary cessation of operations, or cessations of operations during holiday periods, for maintenance or retooling, for reasonable periods for the repair or replacement of facilities damaged or destroyed, resulting from labor disputes, strikes or because of short-term slack demand, riots or acts of God or the public enemy, shortages of materials or supplies or for any other reason beyond the reasonable

control of the Company, or under similar circumstances will not constitute a failure by the Company to comply with this Section 4.14.

Section 4.15. Existence. Unless its successor or the transferee of its assets, as the case may be, assumes in writing all of the obligations of the Company under the Bond Documents, the Company will maintain its existence as a limited liability company and will not dispose of all or substantially all of its assets, other than through execution of this Agreement. The Company shall have the right to change its organizational structure if such a change is necessary to permit the Company as restructured to remain eligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, provided such restructured organization assumes in writing all of the obligations of the Company under the Bond Documents. Original executed copies of such assumption will be delivered to each of the other Parties on or before the effective date of such succession or transfer. To the extent necessary under State law, the Company and its successors or transferees will become and remain authorized to transact business in the State and, if applicable, in good standing in the State.

Section 4.16. Subleases; Granting and Release of Easements; Amending or Modifying Subleases and Easements. The Company may at any time or times cause to be granted subleases, easements, licenses, rights-of-way (temporary or perpetual and including the dedication of public highways) subject to the Indenture and this Agreement, or the Company may cause to be amended, modified or released existing subleases, easements, licenses, rights-of-way and other rights or privileges in the nature of easements, held with respect to any property included in the Project Property with or without consideration, and the Issuer agrees that it will, at the expense of the Company, execute and deliver any instrument necessary or appropriate to confirm and grant, amend, modify or release any such sublease, easement, license, right-of-way or other right or privilege upon receipt of: (i) a copy of the instrument of grant, amendment, modification or release, and (ii) a written application of the Company signed by an authorized representative of the Company requesting such instrument and stating (1) that such grant, amendment, modification or release is not materially detrimental to the proper conduct of the business of the Company, and (2) that such grant, amendment, modification or release will not materially impair the effective use or materially interfere with the operation of the Project Property; will not materially diminish or impair the security intended to be given by or under this Agreement or the Indenture and will not materially diminish or impair the obligations of the Company under this Agreement or the Indenture.

Section 4.17 Insurance. [The Company will keep the Project Property continuously insured against such risks and in such amounts, with such deductible provisions, as are customary in connection with the operation of facilities of the type, location and size comparable to the Project, as reasonably determined by the Company. Each policy of such insurance will show the Company as loss payee and the Issuer as an additional insured under such policies as the respective interests of such parties may appear. Such insurance may, to the extent permitted under applicable law, be provided by blanket policies maintained by the Company, by a captive insurance company controlled by the Company or through self-insurance. Such insurance will include extended coverage insurance and general liability insurance against liability for (i) claims for injuries to or death of any person or damage to or loss of property arising out of or in any

way relating to the condition of the Project Property, and (ii) liability with respect to the Project Property under the workers' compensation laws of the State (unless the Company has complied with the requirements of the law of the State for self-insurance).]

Section 4.18 Project Site Leases. The Company will make all payments and perform all obligations of the lessee under the Project Site Leases. The Company may, in good faith, contest its obligation to pay or perform under the Project Site Leases in appropriate legal or other proceedings. During the period for such contest and any related appeal, this Section 4.18 will be deemed satisfied with respect to such payment or obligation so contested.

ARTICLE V LEASE; TERM; POSSESSION; RENT

Section 5.1. Lease of the Project Property; Term.

(a) The Issuer hereby leases the Project Property to the Company pursuant to the terms of this Agreement. This Agreement shall become effective upon its execution and delivery, and the leasehold estate created hereby and the Term shall then begin, and subject to the provisions of this Agreement, the Term shall expire on the earlier of (i) _____, 20__ or (ii) on such earlier date as the payment or redemption and discharge of the whole amount of the principal and interest on the Bonds at the time outstanding shall have been made as provided in the Indenture, or on such earlier date as arrangements satisfactory to the Issuer and the Purchaser for such payment or redemption and discharge of the Bonds shall have been made. The parties acknowledge that the Company may pay, discharge and redeem the Bonds by offsetting amounts owed under the Bonds to the Purchaser against monies owed to the Company by the Purchaser, including but not limited to monies advanced by the Company to the Purchaser in anticipation of making Bond advances under the Indenture.

(b) Upon the termination of this Agreement, all right, title and interest of the Issuer and the Purchaser under this Agreement shall thereupon cease, terminate and become void, the Bonds shall cease to be entitled to any benefit under this Agreement, and, except as otherwise provided in Section 6.7, all covenants, agreements and obligations of the Company to the Purchaser, the Issuer (except for the provisions pertaining to Issuer indemnification), and with respect to the School District, the School PILOTs, shall thereupon cease, terminate and become void.

Section 5.2. Quiet Enjoyment. So long as no Event of Default has occurred and is continuing, the Issuer will not take any action, other than pursuant to Section 4.11 or Article VIII, to prevent the Company from having quiet and peaceable possession and enjoyment of the Project Property during the Term (except as necessary with respect to Eminent Domain or condemnation for public projects and purposes) and will, at the request of the Company and at the Company's expense, including all expenses incident to any legal action, to the extent that the Issuer may lawfully do so, join in any legal action in which the Company asserts its right to such possession and enjoyment.

Section 5.3. Basic Rent and Additional Payments.

(a) The Company will pay to the Purchaser for the account of the Issuer such amounts at such times as are required to make all payments of principal of, interest on and redemption price of the Bonds in accordance with the terms of the Bonds and the Indenture as and when due (the “Basic Rent”), and the Company shall take all such actions relating to the withholding and reporting of interest as are required by the Internal Revenue Code of 1986, as amended. A copy of the anticipated payment schedule for the Bonds is attached hereto as Schedule 5.3(a). The parties acknowledge that the Company may pay, discharge and redeem the Bonds by offsetting amounts owed under the Bonds to the Purchaser against monies owed to the Company by the Purchaser, including but not limited to monies advanced by or on behalf of the Company to or on behalf of the Purchaser in anticipation of making Bonds advances under the Indenture.

(b) The Company will make payments (the “Additional Payments”): to or on behalf of the Issuer and the School Districts for all actual costs, expenses and taxes (including, but not limited to costs attributable to work performed by in-house staff and the fees of its outside advisors including counsel and its financial advisor) paid or incurred by the Issuer or the School Districts in connection with (i) the discussion, review, negotiation, preparation, approval, execution and delivery of the Bonds, the Indenture, this Agreement, and the other documents and instruments related hereto and thereto through the Closing Date, all of which amounts shall be paid in full on or before the Closing Date, (ii) any amendments or modifications to any of the foregoing documents, instruments or agreements and the negotiation, preparation, approval, execution and delivery of any and all documents necessary to effect such amendments or modifications, (iii) the enforcement by the Issuer or the School Districts, during or after the Term of any of the rights or remedies of the Issuer or the School Districts under any of the foregoing documents, instruments or agreements including without limitation, costs and expenses of collection, whether or not suit is filed, (iv) the servicing and administration of the Bonds during the Term or thereafter, and (v) any requested subordination of the Issuer’s interest in the Project Property to a Lender.

(c) Additional Payments that are not paid when due will bear interest at a rate equal to the prime rate as most recently published in the “Bonds, Rates and Yields” table of the Wall Street Journal, as in effect from time to time, plus 200 basis points until paid in full.

Section 5.4. Obligations Unconditional; Rights of Setoff.

(a) The obligation of the Company to pay Rent and to perform its other obligations under this Agreement is absolute and unconditional and, except as otherwise provided in 5.4(b) below, will not be subject to diminution by setoff, counterclaim, abatement or otherwise, whether as a result of Eminent Domain with respect to, damage to or destruction of or removal of all or any portion of the Project Property or any other event or condition. In the event the Issuer fails to perform its obligations under this Agreement, the Company may, subject to the limitations imposed by Section 11.3, institute such action against the Issuer as the Company may deem necessary to compel performance of those obligations of the Issuer set forth in Sections 4.5, 5.2, 7.1, 7.2, and Article X. The Company may also, at its own cost and expense and in its own name or, if necessary, in the name of the Issuer prosecute or defend any action or

proceeding or take any other action involving third parties which the Company deems reasonably necessary in order to secure or protect its title to or its right of possession, occupancy and use of the Project Property. In such event, if no Event of Default has occurred and is continuing, the Issuer will cooperate with the Company, so long as it is not the adverse party, upon receipt of indemnity satisfactory to the Issuer against any out-of-pocket cost, expense (including reasonable counsel fees and expenses) or liability the Issuer may incur or suffer as a result of or in connection with such cooperation.

(b) Notwithstanding the above paragraph, it is the intention of this Agreement that the Company shall make Basic Rent payments to the Purchaser for the account of the Issuer, in such amounts and at such times as are required to make payments of principal of, interest on and redemption price of the Bond in accordance with the terms of the Bond Documents as and when due, and the parties acknowledge that all such Basic Rent payments may be offset against any monies due and payable to the Company from the Purchaser in connection with any funds advanced by or on behalf of the Company to or on behalf of the Purchaser in anticipation of any Advances to the Acquisition Account (as defined in the Indenture) as provided for under Section 702 of the Indenture. The Purchaser will look only to the Company for payment of the Bonds and upon the security granted in the Indenture for the Company's obligations under this Agreement. As described in Section 7.1, the Issuer will assign and pledge to the Purchaser certain of its rights, title and interests in and to this Agreement including the right to receive payments of Basic Rent hereunder.

Section 5.5. Net Lease. This Agreement will be deemed and construed to be a "net lease," and the Company will pay Rent, absolutely net, and except as set forth in Section 5.4(b) hereof, free of any deductions and without abatement, diminution or setoff.

ARTICLE VI SPECIAL COVENANTS

Section 6.1. Recording and Filing; Further Assurances. The Company will, at the expense of the Company, take all actions that at the time are and from time to time may be reasonably necessary to perfect, preserve, protect and secure the interests of the Issuer and the Purchaser in and to the Rent and in the Project Property, including, without limitation, the recordation of this Agreement and the Indenture, the filing of financing statements and continuation statements and the execution, acknowledgment, delivery, filing and recordation of such other instruments as may reasonably be required in carrying out the intention of or facilitating the performance of this Agreement.

Section 6.2. Claims; Liens. The Company will pay and discharge and will indemnify and hold harmless the Issuer from (a) any lien or charge upon payments by the Company to, or for the account of, the Issuer under this Agreement (other than the Indenture) and (b) any taxes, assessments, impositions and other charges in respect of the Project Property. If any such lien or charge upon payments, or any such taxes, assessments, impositions or other charges, are sought to be imposed, the Issuer will give prompt notice to the Company of any such lien, taxes, assessments, impositions or other charges of which the Issuer has actual notice, and the

Company will have the sole right and duty to assume the defense of the same and will have the power to litigate, compromise or settle the same.

Section 6.3. Release and Indemnification.

The Company releases the Issuer, its Commissioners, officials, employees and agents (each an “Indemnitee”) from, and will indemnify each Indemnitee against all liabilities, claims, costs and expenses imposed upon, incurred or asserted against any Indemnitee on account of: (a) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the installation, maintenance, operation and use of the Project Property; (b) the inaccuracy of any representation by the Company (regardless of whether the Company was aware of such inaccuracy at the time the representation was made) or any breach or default on the part of the Company in the performance of any representation, covenant or agreement of the Company under this Agreement, or any related document, or arising from any acts or failure to act by the Company, or any of its agents, contractors, servants, employees or licensees; (c) the Company’s failure to materially comply with any requirements of this Agreement; (d) suits, legal or administrative proceedings, demands, losses, liabilities, damages, claims, causes of action, costs and expenses resulting from or in any way connected with the presence, release or disposal in or under the Project Site of, any hazardous substances (as defined in CERCLA), hazardous wastes (as defined in RCRA), oils, radioactive materials, asbestos in any form or condition, any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials or substances within the meaning of any Applicable Environmental Law; (e) any liability, whether under federal or state securities laws or otherwise, that may arise as a result of inaccurate information supplied by the Company in connection with the issuance of the Bonds or any subsequent sale of the Bonds; (f) any other loss, claim, damage, penalty, liability, disbursement, litigation expenses and attorneys’ fees or court costs arising out of or in any way relating to the execution or performance of this Agreement, actions taken under the Indenture, the ownership or leasing of the Project Property or any other cause whatsoever pertaining to the Project Property; and (g) any claim, action or proceeding brought with respect to the matters set forth in clauses (a) through (f). The Issuer will not be liable to the Company, and the Company releases and discharges the Issuer from any liability for any and all losses, costs, expenses (including attorneys’ fees), damages, judgments, claims and causes of action paid, incurred or sustained by the Company as a result of or relating to any action, or failure or refusal to act on the part of the Purchaser or the Depositary with respect to the Bonds, the Bond Documents or the transactions contemplated thereby, including without limitation the exercise by the Purchaser of any of its rights thereunder. This Section 6.3 is not intended in any way to detract from provisions of the Bond Documents to the effect that the Issuer is not to incur any pecuniary liability with respect to the transactions contemplated by the Bond Documents.

Notwithstanding the fact that it is the intention of the parties that the Issuer will not incur pecuniary liability by reason of this Agreement or the undertakings of the Issuer under this Agreement, by reason of the issuance of the Bonds, the execution of the Bond Documents, the performance of any act required of it by the Bond Documents, the performance of any act related to the Bond Documents or the Bonds requested of it by the Company or its position as owner or lessor of the Project Property, nevertheless if the Issuer incurs any such pecuniary liability or the same is claimed or sought, then in such event the Company will indemnify and hold harmless the

Issuer against all claims by or on behalf of any person arising out of the same and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon notice from the Issuer, the Company will defend the Issuer in any such action or proceeding.

In case any action or proceeding is brought against any Indemnitee in respect of which indemnity may be sought hereunder, such Indemnitee will give notice of the action or proceeding to the Company, and the Company, upon receipt of that notice, will have the obligation and the right to assume the defense of the action or proceeding; provided that failure of an Indemnitee to provide such notice will not relieve the Company from any of its obligations under this Section unless that failure prejudices the defense of the action or proceeding by the Company, in which case the liability of the Company under this Section shall be reduced only by an amount equal to the amount of the loss sustained by the Company solely as a result of such failure to notify. The Company will have no obligation to indemnify any Indemnitee with respect to any settlement entered into by such Indemnitee without the prior consent of the Company (which consent will not be unreasonably withheld).

The provisions of this Section will be enforceable by the Issuer to the full extent permitted by law, but will not include the gross negligence or willful misconduct of the Indemnitees. The provisions of this Section will survive the payment of the Bonds and the termination of this Agreement.

Section 6.4 Payments to the Issuer. So long as this Agreement remains in effect, the Company agrees to make annual payments in lieu of taxes to the Issuer consisting of (i) the Fixed County PILOT and (ii) the Contingent County PILOT, each as described below.

A. **The Fixed County PILOT.** The Company will make an annual fixed payment in lieu of taxes to the Issuer (the “Fixed PILOT”) in the amount of \$638,777.38 on the first anniversary date of this Agreement and, thereafter, on each succeeding anniversary of this Agreement until this Agreement is terminated or expires (each such payment date, a “PILOT Payment Date”).

B. **The Contingent County PILOT.** If any Excess Advances (as defined below) are made under the Indenture, on each PILOT Payment Date following the date of such Excess Advances, the Company shall make additional PILOT payments to the Issuer in an amount equal to the Contingent County PILOT Amount (the “Contingent County PILOT”). For all PILOT Payment Dates occurring prior to the Construction Completion Date, at least one month prior to the payment of each Contingent County PILOT, the Company shall provide the Issuer with a certificate calculating the Contingent County PILOT in accordance with the terms of this Section 6.5 (the “Contingent PILOT Certificate”). For all PILOT Payment Dates occurring after the Construction Completion Date, the Contingent County PILOT shall be fixed through the remainder of the Term in an amount as set forth in a Contingent PILOT Certificate submitted by the Company to the Issuer immediately following the Construction Completion Date.

Section 6.5. Payments to School District. So long as this Agreement remains in effect, the Company agrees to make annual payments in lieu of taxes to the School District

consisting of (i) the Fixed School District PILOT and (ii) the Contingent School District PILOT, each as described below.

A. The Fixed School District PILOT. The Company will make an annual fixed payment in lieu of taxes to the Issuer for subsequent distribution to the School District (the “Fixed School PILOT”) in the amount of \$195,985.62 on the first anniversary date of this Agreement and, thereafter, on each succeeding anniversary of this Agreement until this Agreement is terminated or expires (each such payment date, a “PILOT Payment Date”).

B. The Contingent School District PILOT. If any Excess Advances are made under the Indenture, on each PILOT Payment Date following the date of such Excess Advances, the Company shall make additional PILOT payments to the Issuer for subsequent distribution to the School District in an amount equal to the Contingent School District PILOT Amount (the “Contingent School District PILOT”). Prior to the Construction Completion Date, the Contingent PILOT Certificate delivered pursuant to section 6.4 above shall include a calculation of the Contingent School District PILOT. After the Construction Completion Date, the Contingent School District PILOT shall be fixed in an amount as set forth in the last Contingent PILOT Certificate submitted by the Company to the Issuer for the PILOT Payment Date immediately preceding the Construction Completion Date.

ARTICLE VII ASSIGNMENT, LEASING AND SELLING

Section 7.1. Assignment of Rights by the Issuer. Concurrently with issuance of the Bonds, the Issuer will assign to the Purchaser certain of the Issuer’s rights, title and interests in and to this Agreement, pursuant to the Indenture, as security for payment of the principal of, interest on and redemption price of the Bonds. Thereafter, the Purchaser will be vested with, and authorized to exercise, such rights of the Issuer and the Purchaser under this Agreement. The Company consents to such assignment.

Section 7.2. No Other Transfer by Issuer. Except for the assignment described in Section 7.1 and Article X hereof or transfer to the Company in accordance with Section 4.13 or 8.3, the Issuer will not sell, assign, transfer or convey its rights, title or interests in this Agreement or the Project Property, or its obligations under this Agreement. Except for liens created or permitted by the Company, the Issuer will not cause or create any liens on the Project Property or the Project Site and will cooperate with the Company to defend the Project Property, the Project Site and the Company from and against any claims of lien.

Section 7.3. Assignment, Lease, Mortgage and Sale by the Company. The rights of the Company under this Agreement may be assigned, and the rights of the Company in the Project Property may be assigned, subleased, mortgaged or sold as a whole or in part by the Company. The Company may, without the consent of the Issuer, sublease, mortgage or sell the Project Property and assign its rights under this Agreement, in whole or in part. Notwithstanding the foregoing, any assignment, sublease, mortgage or sale of Project Property which purports to relieve the Company from liability for making payments of Rent and for the performance of its other obligations under this Agreement and its obligations for the Project Property, will require

the assumption in writing by any assignee, sublessee or purchaser of the obligations of the Company under this Agreement, and, only to the extent of the Company's relief from liability for making payments of Rent and for the performance of its other obligations under this Agreement and its obligations for the Project Property, the consent of the Issuer, which consent shall not be unreasonably withheld, conditioned or delayed. Any mortgagee or assignee that does not directly hold an interest in the Project Property or whose interest is held solely for security purposes shall have no obligation or liability under this Agreement prior to the time the mortgagee or assignee directly holds an interest in this Agreement or the mortgagee or assignee directly succeeds to absolute title to the Company's interest. A mortgagee or the assignee shall be liable to perform obligations under this Agreement only for and during the period it directly holds such interest or absolute title; provided, however, that such liability shall not include any liability for claims of the Issuer against the Company arising from the Company's failure to perform during the period prior to such mortgagee's or assignee's succession to the Company's interest in and under this Agreement. Notwithstanding any other provisions in this Agreement to the contrary, except as otherwise set forth in the immediately preceding sentence and Section 8.6(c), no mortgagee or assignee shall be liable for the performance or observance of any of the obligations or duties of the Company under this Agreement and the collateral assignment of this Agreement by the Company to any mortgagee or assignee shall not give rise to any duties or obligations whatsoever on the part of such mortgagee or assignee owing to the Issuer. In the event that any mortgagee or assignee is liable under this Agreement, liability in respect of any and all obligations of any such party under this Agreement shall be limited solely to such party's interest in the Project (and no officer, director, employee, shareholder or agent thereof shall have any liability with respect thereto).

Section 7.4 Leasehold Security Deeds / Cooperation of Issuer. The Issuer acknowledges the right of the Company to mortgage and/or give security interests in this Agreement under one or more leasehold security deeds (as the same may be amended, modified, consolidated, extended or refinanced, collectively, the "Leasehold Security Deed") and assign this Agreement, or any part or parts thereof, as collateral security for the Leasehold Security Deed. The Issuer hereby agrees to and will, at the Company's option and at the Company's sole expense, join in the Leasehold Security Deed in order to subject its fee interest in the Project to the lien of such Leasehold Security Deed provided that such Leasehold Security Deed will be fully non-recourse to the Issuer and the Issuer will, subject to obtaining all necessary approvals of the Issuer's County Commission to the extent required under applicable state laws, deliver such resolutions, or other documents or instruments as the holder of the Leasehold Security Deed reasonably requires in connection therewith. If the Company gives a Leasehold Security Deed with respect to this Agreement, or any part or parts hereof, the holder of the Leasehold Security Deed (the "Leasehold Mortgagee") will provide the Issuer and the Purchaser (as assignee of the Issuer under the Indenture) with notice of the Leasehold Security Deed and the name and address of the Leasehold Mortgagee.

Section 7.5 Company Financing Liens. The Company may from time to time grant one or more Company Financing Liens. The Issuer shall reasonably cooperate, at the expense of the Company, in connection with any such grant. In addition, the Issuer will grant such Company Financing Liens on its interest in the Project Property as the Company may from time to time reasonably request, all at the Company's expense, and only so long as the such Company

Financing Lien does not involve any pecuniary liability or obligation of the Issuer except with respect to the Project Property and the application of the revenues therefrom.

ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES

Section 8.1. Events of Default Defined. Each of the following events is an “Event of Default”:

(a) Failure by the Company to (i) make any Rent payment (excluding PILOT payments) or Additional Payments when due which continues unremedied for a period of 30 days after the provision by the Issuer, the School District or the Purchaser of written notice of non-payment, or (ii) make any PILOT payment when due which continues unremedied for a period of 15 days after the provision by the Issuer, the School District or the Purchaser of written notice of non-payment.

(b) Any representation of the Company in any Bond Document or in any document or agreement delivered to any of the other Parties in connection with the transactions contemplated by any Bond Document proves to have been incorrect in any material respect when made and remains incorrect for a period of 30 days after written notice specifying such error and requesting that it be remedied is given by the Issuer unless such error cannot be remedied within 30 days and the Company has instituted corrective action within 30 days after such notice and diligently pursues such action until such failure is remedied.

(c) A decree or order for relief by a court of competent jurisdiction is entered in an involuntary case under any federal or state bankruptcy, insolvency or similar law, or appointing a receiver, liquidator, assignee, custodian, trustee, sequestrator or similar official of the Company or for any substantial part of its property, or ordering the winding-up or liquidation of its affairs and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days, or the commencement by the Company of a voluntary case under such law, or the consent by the Company either to the appointment of or taking possession by a receiver, liquidator, assignee, trustee, custodian, sequestrator (or other similar official) of the Company or for any substantial part of its property, or the making by it of any assignment for the benefit of creditors, or the taking of action by the Company to authorize or effect any of the foregoing. Provided, however, neither the bankruptcy nor the insolvency of the Company shall be grounds for default as long as all Basic Rent payments, PILOT payments and Additional Payments, and all other monetary charges payable by the Company under this Agreement are paid in accordance with this Agreement.

(d) Failure by the Company to perform any of its obligations under this Agreement, other than the payment of Basic Rent, PILOT payments and Additional Payments for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to the Company by the Issuer or the Purchaser, unless such failure is of a type which cannot be reasonably remedied within 30 days and the Company has instituted corrective action within 30 days after such notice and diligently pursues such action until such failure is remedied.

Section 8.2. Remedies on Default. If an Event of Default occurs and is continuing, the Purchaser (or its assignee), as the assignee of the Issuer under the Indenture and on behalf of the Issuer, may, but is not required to, take any one or more of the following remedial steps:

(a) By written notice to the Company declare all amounts of Basic Rent payable for the remainder of the Term as are required to provide for the Payment of the Bond and all Additional Payments then owed to be immediately due and payable, whereupon the same will be immediately due and payable; or

(b) Take whatever action at law or in equity may appear necessary or desirable to collect the Rent then due and thereafter to become due or to enforce the performance and observance of any obligation of the Company under this Agreement or the Indenture; or

(c) Exercise any remedies provided for in the Indenture; or

(d) Terminate this Agreement.

As the assignee of the Issuer, subject to Section 8.3, the Purchaser (or its assignee) has the sole right and responsibility for the exercise of any remedies if an Event of Default occurs and is continuing.

Section 8.3. Issuer Remedies. If:

(a) the Company fails to comply with its obligations set forth in Sections 4.4, 4.5, 4.6, 4.7, 4.8, 4.12, 4.14, 4.15, 4.16, 5.3(b), 6.3, 6.4, or 6.5, and such failure continues for 30 days after the Issuer gives the Company written notice of such failure; or

(b) the Company fails to comply with its obligations under 5.3(b), such failure continues for 30 days after the Issuer or Purchaser or its assignee gives the Company written notice of such failure, and the Purchaser or its assignee exercises any of the remedies provided in Section 8.2 with respect to such failure; or

(c) any representation of the Company in any Bond Document or any document or agreement delivered to any of the other Parties in connection with the transactions contemplated by the Bond Documents proves to have been incorrect in any material respect when made;

then, subject to Section 8.6 hereof, the Issuer may, in addition to exercising any other remedy, immediately terminate this Agreement and reconvey the Project Property to the Company. Provided however if any conditions described in paragraphs 8.3(a) (b) or (c) cannot be cured within the time allotted for cure, if the Company initiates and proceeds with due diligence to effect a cure, a default will not be deemed to have occurred as long as the Company cures the default.

Section 8.4. Notice of Default. The Company will promptly give notice to the Purchaser and Issuer of the occurrence of any Event of Default or an event or condition (of which it has actual knowledge) which, with the passage of time or the giving of notice, or both, and in the absence of any corrective action, would result in an Event of Default.

Section 8.5. Agreement to Pay Attorneys' Fees and Expenses. If an Event of Default, or an event which with the giving of notice or the passage of time, or both, would constitute an Event of Default, occurs, and the Issuer incurs expenses, including attorneys' fees, in connection with the enforcement or administration of this Agreement, the Company will reimburse the Issuer for the reasonable expenses so incurred, upon request. Such amounts are deemed to be Additional Payments under Section 5.3.

Section 8.6. Right to Cure Defaults.

(a) To prevent termination of this Agreement, the Purchaser, any Institutional Investor and any mortgagee or assignee of the Company that holds an interest in the Project Property as security shall have a right, but not the obligation, at any time to perform any act necessary to cure any default and to prevent the termination of this Agreement. The Issuer will not terminate or suspend its performance under this Agreement until it first gives written notice of such default to the Purchaser, and any Institutional Investor and any mortgagee or assignee of which the Issuer has been given written notice and allows the Purchaser, any Institutional Investor and such mortgagee or assignee the right to cure such default within the applicable cure period under this Agreement. In addition, if the Purchaser, any Institutional Investor or such mortgagee or assignee gives the Issuer written notice prior to the expiration of the applicable cure period of the Purchaser's, any Institutional Investor's or such mortgagee's or assignee's intention to cure such default (which notice shall include a reasonable description of the time during which it anticipates to cure such default) and is diligently proceeding to cure such default, notwithstanding the applicable cure period under this Agreement the Purchaser, any Institutional Investor or the mortgagee or assignee shall have a period of ninety (90) days (or if such default is for failure by the Company to pay an amount to the Issuer which is due and payable under this Agreement, forty-five (45) days) from the Purchaser's, any Institutional Investor's or the mortgagee's or assignee's receipt of the notice of such default from the Issuer to cure such default.

(b) If any default by the Company under this Agreement cannot be cured without obtaining possession of all or part of the Project Property, then any such default shall be deemed remedied if the Purchaser, any Institutional Investor, a mortgagee or assignee (a) in the time period provided in Section 8.3(a) and 8.3(b) and 8.6(a) (including the aggregate cure period provided under Section 8.6(a)) begins appropriate judicial or non-judicial proceedings to obtain the same; (b) diligently prosecutes any such proceedings to completion; and (c) after gaining possession of all or part of the Project Property, diligently proceeds to cure and perform all other obligations as and when the same are due in accordance with the terms of this Agreement. If the Purchaser, any Institutional Investor, a mortgagee or assignee is prohibited by any Court or by operation of any bankruptcy or insolvency laws from commencing or prosecuting the proceedings described above, the period specified above for commencing proceedings shall be extended for the period of such prohibition.

(c) If the Purchaser, any Institutional Investor, mortgagee or assignee (or a receiver requested by a mortgagee) succeeds to the interest of the Company in the Project Property, such successor party shall pay or cause to be paid the Basic Rent, PILOT payments, Additional Payments and all other monetary charges payable by the Company under this Agreement from the date in which the Purchaser, Institutional Investor, mortgagee or assignee (or a receiver requested by a mortgagee) succeeds to such interest and those which accrue thereafter during the term of this Agreement.

Section 8.7. Discontinuance of Proceedings on Default; Position of Parties Restored. In case the Issuer shall have proceeded to enforce any right under this Agreement and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Issuer, then and in every such case, unless otherwise determined in such proceeding or agreed by the Issuer and the Company, the Issuer and the Company will be restored to their former positions and rights under this Agreement with respect to the Project Property and all rights, remedies, and powers of the Issuer will continue as if no such proceedings had been taken.

Section 8.8. Proofs of Claim. In the case of any insolvency, bankruptcy, reorganization, arrangement, adjustment, composition, or other judicial proceedings affecting the Company, the Issuer will, to the extent permitted by law, be entitled to file such proofs of claims and other documents as may be necessary or advisable in order to have claims of the Issuer allowed in such proceedings for the entire amount due and payable by the Company to the Issuer under this Agreement, as the case may be, at the date of the institution of such proceedings and for any additional amounts which may become due and payable after such date.

ARTICLE IX PREPAYMENTS

The Company may at any time (including after the occurrence and during the continuance of an Event of Default) and for any reason cause all or any portion of the Bond to be redeemed in accordance with the provisions of the Indenture by giving notice of such redemption to the Issuer, the Purchaser and, if there are monies on deposit in the Acquisition Account (as defined in the Indenture), to the Depositary not less than forty-five (45) days before the redemption date. Such notice will specify the redemption date and the principal amount of the Bonds to be redeemed. On the redemption date the Company will prepay the Rent in an amount equal to such principal amount plus accrued interest on such principal amount to the redemption date by payment of such amounts to the Purchaser, will pay all Additional Payments, plus interest, if any, owed to the Issuer, will pay all PILOT payments, if any, owed to the Issuer and the School District, and will pay all payments due under Section 6.7. The parties acknowledge that the Company may prepay, discharge and redeem the Bonds by offsetting amounts owed under the Bonds to the Purchaser against monies owed to the Company by the Purchaser, including but not limited to monies advanced by the Company to the Purchaser in anticipation of making Bond advances under the Indenture.

ARTICLE X

PURCHASE OF PROJECT PROPERTY

The Company will purchase and the Issuer will sell the Project Property for \$1.00 at the expiration or sooner termination of the Term. The Company will give written notice to the Issuer and to the Purchaser, if the Bonds are then unpaid or provision for their payment has not been made, and will specify therein the date of termination and closing such purchase which date shall be the same date and which date will be not less than 15 nor more than 90 days from the date such notice is mailed. At the closing of such purchase, the Issuer will, upon receipt of the purchase price, deliver to the Company or its nominee appropriate documents, including, but not limited to, assignment of easements and other real property rights and a bill of sale, prepared by the Company at the Company's expense, conveying to the Company without representation or warranty the Issuer's interest in the Project Property, as it exists at the time of such purchase, subject only to: (i) those liens and encumbrances, if any, to which the Project Property was subject when conveyed to the Issuer; (ii) those liens and encumbrances created by the Company and/or to the creation or suffering of which the Company consented; (iii) those liens and encumbrances resulting from the failure of the Company to perform any of its obligations under this Agreement; and (iv) any other lien arising as a matter of law. The Company may exercise its rights under this Article X, whether or not a Default or an Event of Default has occurred and is continuing, so long as all Additional Payments and PILOT payments due to the Issuer and the School Districts are paid on or before the date of closing of such purchase. If the Company fails to take all necessary action to have the Project Property assessed for tax purposes in the name of the Company at the expiration of the Term, the Issuer may execute, deliver and cause to be recorded, at the expense of the Company a bill of sale with respect to the Project Property and other appropriate documents reflecting the termination of this Agreement.

If at the time of closing the Indenture has not been satisfied in full and released of record, a release by the Purchaser of the Indenture will also be delivered to the Company (or its designee).

The right to prepay granted to the Company in this Agreement is and will remain prior and superior to the Indenture.

ARTICLE XI MISCELLANEOUS

Section 11.1. Remedies. No right or remedy conferred on any Party in this Agreement is intended to be exclusive of any other right or remedy conferred on such Party in this Agreement. Except as provided in Section 11.3, each such right or remedy is in addition to every other right or remedy provided in any of the Bond Documents or by law; provided, that the remedies of Purchaser and/or Issuer in respect of an Event of Default or other breach of any Bond Document by the Company shall be limited in all cases to those expressly provided in Article VIII hereof. No delay or omission of any Party to exercise any such right or remedy will impair any such right or remedy or be construed to be a waiver. Every such right or remedy may be exercised from time to time and as often as the relevant Party may deem expedient. No waiver by any Party of any right or remedy with respect to any Default or Event of Default will extend to or affect any other existing or subsequent Default or Event of Default.

Section 11.2. Beneficiaries. Nothing in this Agreement expressed or implied is intended or is to be construed to confer upon any Person other than the Parties and their successors and assigns (and, in the cases of Section 6.3 of this Agreement, the Indemnitees, and Section 6.4, the School Districts) any right, remedy or claim, legal or equitable.

Section 11.3. Limitation of Issuer's Liability. No agreements or provisions contained in the Bond Documents nor any agreement, covenant or undertaking by the Issuer contained in any document executed by the Issuer in connection with any property of the Company financed, directly or indirectly, out of Bond proceeds or the issuance, sale and delivery of the Bonds will give rise to any pecuniary liability of the Issuer, its officials, employees, agents or members of its governing body or constitute a charge against the Issuer's general credit, or obligate the Issuer financially in any way, except with respect to the revenues available under this Agreement or under the Indenture provided by the Company and pledged to the payment of the Bonds, and their application as provided under the Indenture. No failure of the Issuer to comply with any terms, covenants or agreements in this Agreement or in any document executed by the Issuer in connection with the Bonds will subject the Issuer, its officials, employees, agents and members of its governing body to any pecuniary charge or liability except to the extent that the same can be paid or recovered from the revenues available under this Agreement or under the Indenture provided by the Company and pledged to the payment of the Bonds. Nothing in this Agreement will preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Issuer for any failure to comply with any term, condition, other monetary relief will be recoverable from the Issuer except as may be payable from the funds available under this Agreement or under the Indenture provided by the Company and pledged to the payment of the Bonds.

Notwithstanding any other provisions of this Agreement, none of the provisions of this Agreement shall require the Issuer to expend or risk its own funds or to otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder unless it shall have first been adequately indemnified to its satisfaction against the cost, expense and liability which may be incurred thereby.

Section 11.4. No Violation of Public Policies Regarding Indemnity. To the extent, if at all, a court of competent jurisdiction determines that Section 56-7-1 NMSA 1978 applies to any indemnification provisions in this Agreement, including certain types of insurance coverage as set forth in Section 56-7-1 NMSA 1978, such provisions shall not apply to or extend to liability, claims, damages, losses or expenses, including attorney fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligence, act or omission of the indemnitee or additional insured, as the case may be, its officers, employees or agents and shall further be limited, if required, by the provisions of Section 56-7-2 NMSA 1978.

Section 11.5. Notices. Any notice, demand, direction, request, consent, approval, report or other instrument authorized or required by this Agreement or the Bond Ordinance to be executed, given or filed will be in writing and will be deemed to have been sufficiently given or filed for all purposes of this Agreement when delivered by hand delivery or by overnight courier

or on the third business day following the day on which the same has been mailed by registered or certified mail, postage prepaid, addressed as follows:

If to the Issuer: Lea County, New Mexico

If to the Purchaser: Tip Top Solar Energy Center IRB Holdings LLC
c/o Tip Top Solar Energy Center LLC

If to the Company: Tip Top Solar Energy Center LLC

Any Party may, by notice to the other Parties, designate any further or different addresses to which subsequent notices, certificates or other communications are to be sent.

Section 11.6. Severability. In case any one or more of the provisions of this Agreement is for any reason held to be illegal or invalid, such illegality or invalidity will not affect any other provision of this Agreement, but this Agreement will be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement of the Issuer or the Company contained in this Agreement is for any reason held to be in violation of law, then such covenant, stipulation, obligation or agreement will be deemed to be the covenant, stipulation, obligation or agreement of the Issuer or the Company to the full extent permitted by law.

Section 11.7. Successors. Wherever the Issuer is referred to in this Agreement, it will be deemed to include its successors and all covenants and agreements in this Agreement will bind and inure to the benefit of the Issuer's successors. Wherever the Company is referred to in this Agreement, it will be deemed to include its successors in interest to the Project Property and all covenants and agreements in this Agreement will bind and inure to the benefit of such successors.

Section 11.8. Title, Headings. The title and headings of the articles, section and subdivisions of this Agreement have been used for convenience only and do not modify or restrict any of the terms or provisions of this Agreement.

Section 11.9. Execution in Counterparts. This Agreement may be executed in multiple counterparts, all of which taken together will constitute one instrument.

Section 11.10. Applicable Law. The validity, construction and effect of this Agreement will be governed by the law of the State of New Mexico applicable to agreements made and to be performed in the State of New Mexico.

Section 11.11. Obligations of Issuer Not Obligations of Officials Individually. No obligation under any of the Bond Documents or the Bonds will be deemed to be an obligation of any present or future officer (including, without limitation, County Commissioners) or employee of the Issuer in his or her individual capacity, and no officer of the Issuer who executes the Bonds will be personally liable on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

Section 11.12. Payments Due on Days That Are Not Business Days. If the date for any payment due hereunder is not a Business Day, as defined in the Indenture, then such payment will be made on the next Business Day and no interest on such payment will accrue for such period.

Section 11.13. Federal Income Tax Treatment of Lease. The Issuer and the Company acknowledge that this Agreement constitutes a financing for federal income tax purposes and not a lease of the Project Property, to the extent permitted by law. The Issuer and the Company further acknowledge that the Company shall, to the extent permitted by law, be entitled to all federal income tax attributes attributable to ownership of the Project Property, including the right to claim depreciation or cost recovery deductions and the right to claim any federal tax credits (or federal grants in lieu thereof) arising from ownership of the Project Property. Each of the Issuer and the Company agree not to file tax returns inconsistent with this Section 11.13.

Section 11.14. Amendments. Except for Section 6.4 which may be amended only by an instrument executed by the applicable School District, the Company and the Issuer, this Agreement may be amended only by an instrument executed by the Issuer and the Company and consented to by the Purchaser.

Section 11.15. Further Assurances and Corrective Instruments. The Issuer and the Company agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements and amendments to this Agreement and such further instruments as may reasonably be required for carrying out the intention or facilitating the performance of this Agreement.

The Company may cause a memorandum of this Agreement, in form and substance satisfactory to the Company and the Issuer, in the Issuer's reasonable judgment, to be kept, recorded and filed in such manner and in such places as may be required by law to fully evidence, preserve and protect the leasehold estate of the Company.

[SIGNATURE PAGES FOLLOW]

DATED AS OF _____, 2019.

(SEAL)

BOARD OF COUNTY COMMISSIONERS,
LEA COUNTY, NEW MEXICO

Attest:

Lea County Clerk

By _____
Its Chair

STATE OF NEW MEXICO)
)
COUNTY OF LEA)

This instrument was acknowledged before me on this _____ day of _____, 2019, by _____, as Chair of the Lea County Board of County Commissioners, governing body of Lea County, a political subdivision of the State of New Mexico.

Notary Public

My Commission Expires: _____

(Signature Page for Lease Agreement)

EXHIBIT A
Project Property and Project Site

Project Property:

1. Company's leasehold interest in the Project Site under the Project Site Leases.
2. EQUIPMENT AND IMPROVEMENTS: To the extent acquired with the proceeds of the Bonds:

All solar generation equipment including solar tracking hardware and software, photovoltaic panels and inverters, support structures, and associated electrical generation equipment used to generate electricity from solar energy and related equipment including transformers, circuit breakers and switching and metering equipment used to connect the solar electrical generation plant to the electric grid; meteorological data acquisition equipment, power source, storage facility, and above-ground and underground data lines, electrical lines, meters, monitoring and control equipment, switches, transformers, batteries and other devices for storage of electrical energy, equipment enclosures, fencing, security devices, electrical and communications equipment necessary to condition and increase the voltage of electricity, telecommunication lines, space boxes, spare parts, consumables, and all other equipment and personal property which is now or hereafter acquired with bond proceeds or located at the Project Site and used in connection with the Project.

Project Site:

SCHEDULE 5.3(a)

PAYMENT SCHEDULE
 LEA COUNTY, NEW MEXICO
 TAXABLE INDUSTRIAL REVENUE BOND
 (TIP TOP SOLAR ENERGY CENTER LLC PROJECT)
 SERIES 2019-\$215,000,000

<u>Year</u>	<u>Maximum Total Debt Service</u>	<u>Principal Payments Required in such Period</u>	<u>Maximum Interest for such Period</u>
2020	\$8,600,000	\$-0-	\$8,600,000
2021	\$8,600,000	\$-0-	\$8,600,000
2022	\$8,600,000	\$-0-	\$8,600,000
2023	\$8,600,000	\$-0-	\$8,600,000
2024	\$8,600,000	\$-0-	\$8,600,000
2025	\$8,600,000	\$-0-	\$8,600,000
2026	\$8,600,000	\$-0-	\$8,600,000
2027	\$8,600,000	\$-0-	\$8,600,000
2028	\$8,600,000	\$-0-	\$8,600,000
2029	\$8,600,000	\$-0-	\$8,600,000
2030	\$8,600,000	\$-0-	\$8,600,000
2031	\$8,600,000	\$-0-	\$8,600,000
2032	\$8,600,000	\$-0-	\$8,600,000
2033	\$8,600,000	\$-0-	\$8,600,000
2034	\$8,600,000	\$-0-	\$8,600,000
2035	\$8,600,000	\$-0-	\$8,600,000
2036	\$8,600,000	\$-0-	\$8,600,000
2037	\$8,600,000	\$-0-	\$8,600,000
2038	\$8,600,000	\$-0-	\$8,600,000
2039	\$8,600,000	\$-0-	\$8,600,000
2040	\$8,600,000	\$-0-	\$8,600,000
2041	\$8,600,000	\$-0-	\$8,600,000
2042	\$8,600,000	\$-0-	\$8,600,000
2043	\$8,600,000	\$-0-	\$8,600,000
2044	\$8,600,000	\$-0-	\$8,600,000
2045	\$8,600,000	\$-0-	\$8,600,000
2046	\$8,600,000	\$-0-	\$8,600,000
2047	\$8,600,000	\$-0-	\$8,600,000
2048	\$8,600,000	\$-0-	\$8,600,000
2049	\$8,600,000	\$-0-	\$8,600,000
2050	\$8,600,000	\$-0-	\$8,600,000
2051	\$223,600,000	\$215,000,000	\$8,600,000

LEA COUNTY, NEW MEXICO,

TIP TOP SOLAR ENERGY CENTER IRB HOLDINGS LLC,
as Purchaser

TIP TOP SOLAR ENERGY CENTER LLC

and

THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION,
as Depositary

INDENTURE

Dated as of _____, 2019

Securing

\$215,000,000
Lea County, New Mexico
Taxable Industrial Revenue Bonds
(Tip Top Solar Energy Center LLC Project)
Series 2019

LEA COUNTY, NEW MEXICO, a political subdivision existing under the laws of the State of New Mexico (together with its successors and assigns, the “Issuer”) and TIP TOP SOLAR ENERGY CENTER IRB HOLDINGS LLC, a Delaware limited liability company, (together with its successors and assigns, and transferees of the Bonds (defined below), the “Purchaser”), TIP TOP SOLAR ENERGY CENTER LLC, a Delaware limited liability company authorized to do business in New Mexico (the “Company”) and THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION, (together with its successors and assigns, the “Depositary”), agree:

ARTICLE I - RECITALS

Section 101. The Act. Pursuant to Sections 4-59-1 through 4-59-16, New Mexico Statutes Annotated, 1978 Compilation, as amended (collectively, the “Act”), the Issuer is authorized to acquire, construct and equip certain industrial or commercial projects and to issue industrial revenue bonds to finance such projects and certain related costs. Such bonds are payable by the Issuer solely out of revenue of the leasing of such projects. Such bonds may be further secured by, among other things, a mortgage and lien upon the properties acquired, constructed and equipped as part of the project. Under the Act, a project may include land, buildings, machinery, equipment and other property deemed necessary in connection with such project.

Section 102. Government Proceeding. The Company has presented to the Lea County Commission, a proposal relating to the issuance of taxable industrial revenue bonds and the development and equipping of a solar power generation facility. The Issuer, by County Commission Ordinance No. _____ adopted on _____, 2019 (the “Ordinance”), authorized, among other matters, (i) the issuance of its Lea County, New Mexico, Taxable Industrial Revenue Bonds (Tip Top Solar Energy Center LLC Project), Series 2019 (the “Bonds”), in the principal amount not to exceed \$215,000,000 and substantially in the form of Exhibit A and (ii) the execution and delivery of this Indenture.

Section 103. Indenture; Lien; Collateral Pledge. The Bonds are to be issued under this Indenture (together with any and all amendments and supplements, (this “Indenture”), which constitutes a collateral pledge of the Agreement (defined below).

Section 104. The Agreement. The Issuer has entered into a Lease Agreement (together with any and all amendments and supplements, the “Agreement”), dated as of the date of this Indenture, with the Company under which the Issuer has leased the Project Property to the Company, and the Company has agreed to make rental payments in amounts sufficient to pay the principal of, interest on and redemption price of the Bonds. For the purpose of providing security for the payment of the principal of, interest on and redemption price of the Bonds, the Issuer wishes to assign to the Purchaser certain of its interests in the Agreement but reserving its rights under the Agreement to certain payments, reimbursement for certain costs and expenses, and to give consents and to be indemnified.

Section 105. Conditions Precedent Performed. The Issuer is not aware of any act, condition and thing required on the part of the Issuer by the Constitution and laws of the State of New Mexico to happen, exist or be performed precedent to and in the execution and delivery of this Indenture, the Agreement and the issuance of the Bonds, except such as do exist and have happened and been performed.

**ARTICLE II - DEFINITIONS AND OTHER PROVISIONS OF
GENERAL APPLICATION**

Section 201. Meanings of Words and Terms. All capitalized words and terms defined in the Agreement have the same meanings when used in this Indenture if not also defined in this Indenture. Defined terms in all Bond Documents have consistent meanings unless otherwise expressed. In addition:

“Acquisition Fund” has the meaning assigned in Section 701.

“Act” has the meaning assigned in Section 101.

“Agreement” has the meaning assigned in Section 104.

“Authorized Company Representative” means any one of the persons at the time designated to act on behalf of the Company in a certificate furnished to the Issuer and the Depository containing the specimen signatures of such persons and signed on behalf of the Company by an officer of the Company.

“Bonds” have the meaning assigned in Section 102.

“Bond Documents” means this Indenture, the Agreement and the Bond Purchase Agreement.

“Bond Fund” has the meaning assigned in Section 602.

“Bond Purchase Agreement” means the Bond Purchase Agreement dated the date of the execution and delivery of this Indenture among the Purchaser, the Issuer and the Company.

“Business Day” means any day that is not a Saturday or Sunday or a day on which banking institutions in the State or in the County of payment are authorized or required to close.

“Company” has the meaning assigned in the first paragraph of this Indenture.

“Certificate of Qualified Investor” means the certificate attached hereto as Exhibit E.

“Completion Certificate” means a certificate by the Company certifying that the Project is complete and all costs have been paid for or provisions have been made for their payment, in the form attached hereto as Exhibit D.

“Depository” has the meaning assigned in the first paragraph of this Indenture.

“Event of Default” has the meaning assigned in Section 901.

“Final Maturity Date” means _____, 20__.

“Indenture” has the meaning assigned in Section 103.

“Issue Date” means the date of issuance and delivery of the Bond to the Purchaser.

“Issuer” has the meaning assigned in the first paragraph of this Indenture.

“Ordinance” has the meaning assigned in Section 102.

“Parties” means the Company, the Issuer, the Purchaser and the Depository.

“Party” means any one of the Parties.

“Payment Date” means _____, 20__.

“Payment of the Bonds” means payment in full of the principal of, interest on and redemption price of the Bonds in accordance with their terms and the provisions of this Indenture and payment of all fees and expenses of the Issuer, the Purchaser and the Depository payable by the Company under this Indenture, the Agreement or the Bond Purchase Agreement.

“Person” means any individual, corporation, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or political subdivision.

“Record Date” means each _____ while the Bonds are outstanding.

“Related Costs” means expenditures incurred or to be incurred by the Company with respect to the Project, including, without limitation, the acquisition, installation, construction and commissioning of the Project Property.

“State” means the State of New Mexico.

Section 202. Rules of Construction.

(a) The captions and headings in this Indenture are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Indenture.

(b) All references in this Indenture to particular articles, sections or exhibits are references to articles or sections of or exhibits to this Indenture unless some other reference is established.

(c) Any inconsistency between the provisions of the Agreement and the provisions of this Indenture will be resolved in favor of the provisions of the Agreement.

Section 203. Bond Not General Obligations of Issuer. Neither the faith and credit nor the taxing power of the State or of any of its political subdivisions, including the Issuer, is pledged to the payment of the principal of, interest on or redemption price of the Bonds. The Bonds will be payable by the Issuer solely out of the Basic Rent, proceeds and receipts and other security pledged hereby. The principal of, interest on and redemption price of the Bonds will never constitute a debt or indebtedness or general obligation of the Issuer within the meaning of any State constitutional provision or statutory limitation. The Bonds will never constitute or give rise to a pecuniary liability of the Issuer or be a charge against its general credit or a charge against the general credit or the taxing powers of the State or any political subdivision thereof.

ARTICLE III- GRANT

Section 301. Assignment and Pledge. In consideration of the purchase of the Bonds by the Purchaser, and in order to secure the payment of the principal of (including, without limitation, all sums advanced by the Purchaser, with interest thereon, in accordance with the terms of this Indenture and the other Bond Documents (all references in this Indenture to the payment of principal of the Bonds shall include such sums)), interest on and redemption price of the Bonds, and in order to secure the performance by the Issuer of its obligations under this Indenture and the Bonds, the Issuer assigns and

pledges to the Purchaser and grants a mortgage and a security interest to the Purchaser in (i) all the Issuer's right, title and interest in and to the Agreement and any other easement, lease, sublease, license, concession or other grant of a possessory or use interest in the Project Property to the extent the Issuer has any interest therein but reserving its rights under the Agreement to payments under Sections 5.3(b), 6.2, 6.3, 6.4 and 6.5 of the Agreement, to reimbursement for certain costs and expenses, to receive notices, to give consents and to be indemnified; (ii) the moneys and investments in the Acquisition Fund and the Bond Fund and all reserves payable to the Issuer pursuant to the Agreement or this Indenture (including, without limitation, insurance and eminent domain proceeds) with respect to the Project Property; (iii) all lease rentals, revenues, profits, and receipts receivable by or on behalf of the Issuer from the Project Property and (iv) the Project Property.

Section 302. Release. If (i) the principal of and interest on the Bonds are paid by the Issuer in full to the Bond Fund, as provided for herein, (ii) the Purchaser has received all sums due it under the Bond Documents, and (iii) the Issuer keeps, performs and observes all agreements, covenants and provisions under this Indenture, then all obligations of the Issuer as to the Bonds under this Indenture will terminate, and the Purchaser will cancel and discharge the lien of this Indenture and execute and deliver to the Issuer and the Company such instruments in writing as may be required to evidence such discharge. The Clerk and/or the County Manager of the Issuer are authorized to accept a certificate of the Purchaser, that all principal and interest due on the Bonds has been paid as evidence of the satisfaction of this Indenture.

ARTICLE IV- AUTHORIZATION, FORM, EXECUTION AND DELIVERY OF BONDS

Section 401. Authorization; Authorized Amount of the Bonds. The Bonds are hereby authorized to be issued under this Indenture and secured by this Indenture. The Bonds will be issued as a single fully registered bond without coupons, in the maximum principal amount not to exceed \$215,000,000. The Bonds will be numbered consecutively beginning with R-1. The Bonds may not be issued under this Indenture except in accordance with this Article.

Section 402. Form of Bond. The Bonds will be in substantially the form of Exhibit A. The Bonds will be dated the date of the execution and delivery of this Indenture and will bear interest on Advances made pursuant to Section 702 at the rate of four percent (4%). All interest on the Bonds will be calculated from the date of advance for all periods on the basis of a 360-day year of twelve thirty-day months. Accrued interest shall be payable on the Payment Date, with the outstanding principal amount of the Bonds plus all interest thereon due and payable in full on the Final Maturity Date. Principal and interest, as applicable, will be payable by the Issuer from the Basic Rent received from the Company to the owner of the Bonds on the immediately preceding Record Date upon presentation of the Bonds for cancellation at the offices of the Issuer. All payments will be made in lawful money of the United States.

Section 403. Execution and Delivery; Payment. The Bonds will be signed by the Chairman of the Board of County Commissioners of the Issuer and delivered to the Purchaser on the date of the execution and delivery of this Indenture. Subject to the terms and conditions of the Bond Purchase Agreement, the Purchaser will purchase the Bonds and will pay the purchase price of the Bonds to the Issuer as set forth in Section 701.

Section 404. Registration and Transfer of the Bond. The Company on behalf of the Issuer will cause to be kept at its office a book for the registration and transfer of the Bonds. The registration book will be open to inspection by the Issuer upon advance notice during the Company's normal business hours.

The Bonds, together with the obligation to fund advances thereunder, may be transferred by the Purchaser in whole, but not in part, in person or by duly authorized attorney, in the registration book upon (i) surrender of the Bonds, (ii) delivery of a written transfer instrument, and (iii) compliance with Securities Act of 1933, as amended (the “Federal Securities Act”), and applicable state securities laws as established to the satisfaction of the Issuer, and delivery to the Issuer and the Company of (A) an opinion, in form and substance satisfactory to the Issuer, from legal counsel experienced in securities laws matters, which counsel must be satisfactory to the Issuer, to the effect the transfer complies with the Federal Securities Act and applicable state securities laws and (B) written representations from the transferee, in form and substance satisfactory to the Issuer (including, but not limited to the form of Certificate of Qualified Investor), necessary to establish such compliance all as further set forth in the Bonds form attached as Exhibit A. Such Issuer approval shall be in writing. In the case of a transfer under this Section 404, the Issuer agrees that it will cooperate in delivering a new Bond, registered in the name of the transferee. The person requesting the transfer will pay any tax or fee or other charge imposed on the transfer and will pay the Issuer’s expenses in connection therewith. The Issuer may deem and treat the person in whose name the Bond is registered as the absolute owner thereof for the purpose of receiving payment and for all other purposes, and all such payments made to any such registered owner or upon its written order will be valid and effectual to satisfy and discharge the liability upon the Bond, to the extent of the sum or sums paid; and the Issuer will not be affected by any notice to the contrary.

The Issuer acknowledges that the Purchaser may assign its rights to receive payments of principal, interest and any amounts due under the Bonds to any party without the consent of the Issuer.

Section 405. Lost, Stolen, Destroyed and Mutilated Bond. If the Issuer receives satisfactory evidence that any Bonds have been lost, stolen, destroyed or mutilated and receives satisfactory indemnity, and the mutilated Bonds are surrendered and cancelled, then the Issuer will execute and deliver new Bonds. The applicant for new Bonds will pay any charges and expenses in connection with the issuance of the new Bonds. New Bonds issued under this Section will be an original contractual obligation of the Issuer and will be entitled to all of the benefits of this Indenture. The provisions of this Section with respect to the replacement of the lost, stolen, destroyed or mutilated bonds are exclusive.

Section 406. Cancellation and Destruction of the Bonds by Issuer. If the Bonds are delivered to the Issuer for cancellation, the Bonds will be cancelled immediately and destroyed by the Issuer.

Section 407. Application of Payments for Bonds. All payments received by the Issuer under the Agreement with respect to the Bonds will be applied first to accrued interest on the Bonds on the next date for the payment of such interest and, second, to the unpaid principal of the Bonds. If such payments exceed accrued interest on and the unpaid principal of the Bonds, and any other amounts owed, the excess will be paid to the Company. The parties acknowledge that the Company may pay, discharge and redeem the Bonds by offsetting amounts owed under the Bonds to the Purchaser against monies owed to the Company by the Purchaser, including but not limited to monies advanced by or on behalf of the Company to or on behalf of the Purchaser in anticipation of making Bond advances under this Indenture.

ARTICLE V- REDEMPTION

Section 501. Redemption. If the Company gives notice to the Issuer, the Depository and the Purchaser pursuant to Article IX of the Agreement that the Company has elected to cause redemption of the Bonds in full or in part and the Company pays the redemption price, all or such portion of the Bonds will be deemed redeemed by the Issuer on the date indicated in such notice at a redemption price equal to the principal amount to be redeemed plus accrued interest on such principal amount to the redemption

date. If the Company redeems the Bonds in full before the Completion Date, any monies held in the Acquisition Account shall be returned to the Company.

ARTICLE VI- BOND REVENUES AND FUNDS

Section 601. Source of Payment of the Bonds. The Bonds and all payments by the Issuer under this Indenture are not general obligations of the Issuer, and shall never constitute indebtedness of the Issuer, but are the limited, special obligations of the Issuer payable solely from revenues and receipts derived from the leasing of the Project Property under the Agreement and other security pledged to payment of the Bonds under this Indenture. The Project Property has been leased under the Agreement and the Basic Rent is to be remitted by the Company directly to the Purchaser on or before the Payment Date, subject to the rights of offset set forth in Section 5.4(b) of the Agreement. The portion of the Basic Rent necessary to pay amounts owing on the Bonds is to be deposited in the Bond Fund (except for any payments which are satisfied pursuant to the exercise of the right of offset as set forth in Section 5.4(b) of the Agreement). The Basic Rent is sufficient in amount to insure the prompt payment of the principal and accrued interest on the Bonds and the entire amount of the Basic Rent is pledged to the payment of principal and accrued interest on the Bonds.

Section 602. Creation of the Bond Fund, Payments. A fund shall be created for the benefit of Issuer by the Company and designated “Tip Top Solar Energy Center LLC Project Series 2019 Bond Fund” (the “Bond Fund”). There will be deposited into the Bond Fund, as and when received (i) the Basic Rent (except to the extent offset pursuant to Section 5.4(b) of the Agreement), and (ii) all other moneys required to be deposited into the Bond Fund pursuant to this Indenture and the Agreement. The interest and other income received on investments of the Bond Fund moneys as provided in Section 708 will be retained in the Bond Fund. The Company covenants that so long as the Bonds are outstanding, it will deposit or cause to be deposited solely from the sources stated in Section 601, into the Bond Fund for Issuer’s account, sufficient sums from revenues and receipts from the Project Property promptly to meet and pay the installments of interest, or of principal and interest, as applicable, on the Bond (except to the extent that any payments of principal, interest or redemption price are to be made pursuant to the right of offset set forth in Section 5.4(b) of the Agreement). The Parties acknowledge that Section 4-59-3 NMSA provides that it is not intended that any county itself be authorized to operate any manufacturing, industrial or commercial enterprise under the Act and, accordingly, the Issuer has no intention of taking possession of or operating the Project Property.

Section 603. Use and Custody of the Bond Fund. The moneys in the Bond Fund will be used solely for payment of principal of and interest on the Bonds, except as provided in Sections 604 and 905. The Bond Fund will be in the custody of the Company, and the Company will withdraw sufficient funds from the Bond Fund to pay the installments of principal and interest on the Bonds as due (except to the extent that any payments of principal, interest or redemption price are to be made pursuant to the right of offset set forth in Section 5.4(b) of the Agreement).

Section 604. Repayment to the Company from the Bond Fund. Any amounts remaining in the Bond Fund after actual payment in full of the Bonds, the fees, charges and expenses of the Issuer and the Purchaser, administrative expenses and other amounts required to be paid by the Company under the Agreement will be paid to the Company upon expiration of the Agreement.

Section 605. Investments. Moneys on deposit in the Bond Fund may be invested and reinvested by the Company. Such investments will be deemed at all times to be a part of the Bond Fund. Any interest received on any such investment and any profit realized from such investment will be credited to the Bond Fund. Any loss resulting from any such investment will be charged to the Bond Fund. The Company will use all reasonable efforts to sell at the best price obtainable or present for

redemption any such investment when necessary in order to provide cash to meet any payment or transfer from the Bond Fund.

Section 606. Non-presentment of the Bond. If the Bonds are not presented for payment when the final payment of principal and interest is due, and if there are funds sufficient to make such final payment deposited with the Company, all liability of the Issuer for payment of the Bonds will cease. Interest shall not accrue after the Final Maturity Date. The Purchaser will be restricted to such funds for any claim against the Issuer relating to the Bonds.

Section 607. No Liability. Issuer will not be liable or responsible for any misapplication of funds, loss, liability or expense (or failure to realize profits) with respect to the Bond Fund and Company shall indemnify and hold Issuer harmless from and against all claims, liabilities or whatsoever nature arising from or relating to the Bond Fund or Company's management of the Bond Fund.

ARTICLE VII- ACQUISITION FUND

Section 701. Creation of the Acquisition Fund; Deposits. A fund is hereby created with the Depository and designated "Tip Top Solar Energy Center LLC Project Series 2019 Acquisition Fund." Subject to the terms of the Bond Purchase Agreement, the Purchaser will purchase the Bonds on the date of execution and delivery of the Indenture and will pay the purchase price of the Bonds through the Advances described in Section 702. The proceeds of the sale of the Bonds, the interest and other income received on investments of the Acquisition Fund moneys as provided in Section 708 will be retained in the Acquisition Fund. The moneys in the Acquisition Fund will be held by the Depository and will be applied to the payment of Related Costs and, pending such application, will be subject to a lien in favor of the Purchaser or its assignee to secure payment of principal and accrued interest on the Bonds. The Acquisition Fund will be in the custody of the Depository, and the Depository is authorized and directed to wire from or issue checks on the Acquisition Fund for the payment of Related Costs pursuant to Section 702.

Section 702. Disbursements. The Company may request Advances from time to time to finance the Project (each, an "Advance") by delivery of a Requisition Notice to the Purchaser and the Depository in the form attached hereto as Exhibit C (the "Requisition Notice"). On or before the fifth business day following receipt of the Requisition Notice from the Company requesting an Advance, so long as no Event of Default has occurred and is continuing, the Purchaser will pay or cause to be paid the amount of the Advance requested in such Requisition Notice to the Depository for deposit in the Acquisition Fund, provided, however, that the aggregate amount of such Advances shall not exceed \$215,000,000. The Depository will make payments of Related Costs from the Acquisition Fund not later than the business day following the date of receipt of payment of the amount of the Advance from Purchaser, provided that immediately available funds are on deposit therein. The Requisition Notice signed by an Authorized Company Representative shall state to whom the payment is to be made, the general purpose for which the obligation to be paid was incurred, and that:

(a) obligations in the stated amounts were incurred for Related Costs and are due and payable (or, if the Company is indicated as the payee, were duly paid by the Company) and that each item is a proper charge against the Acquisition Fund and has not been the subject of a previous withdrawal from the Acquisition Fund; and

(b) to the best knowledge of such Authorized Company Representative there has not been filed with or served upon the Issuer or the Company notice of any lien, right or attachment upon, or claim, other than such lien, right, attachment or claim as are filed or made in the ordinary course of constructing and operating the Project, affecting the right of any such payees to receive payment of, the

respective amounts stated in such requisition which has not been released or will not be released simultaneously with the payment of such obligation; and

(c) with respect to any item for payment for labor or to contractors, builders or materialmen, (i) the obligations stated have been properly incurred, (ii) such work was actually performed or such materials or supplies were actually furnished or installed in or about the Project, and (iii) either such materials or supplies are not subject to any lien or security interest or any such lien or security interest will be released or discharged upon payment of the requisition.

Section 703. Records. The Depositary will keep and maintain all Requisition Notices and adequate records pertaining to the Acquisition Fund, and payments made therefrom, which will be open to inspection by the Issuer, the Purchaser, the Company, or their agents, upon advance notice, during normal business hours.

Section 704. Depositary May Rely on Requisitions. All writings, requisitions and certificates received by the Depositary as conditions of payment from the Acquisition Fund, and which are proper and complete on their face, may be conclusively relied upon by the Depositary and will be retained by the Depositary, subject at all reasonable times, upon advance notice, to examination by the other Parties and their respective agents and representatives.

Section 705. Status Reports. At least annually, the Depositary will make a written report covering all receipts and moneys then on deposit in the Acquisition Fund, and will report any investments of such moneys and all transfers and disbursements of such moneys as of and for the preceding year. The reports will be prepared in conformity with the provisions of this Indenture, and copies of each report will be filed with the Purchaser, the Company, and, if requested by the Issuer, with the Issuer, not later than the fifteenth day of the month following the year covered by the report.

Section 706. Completion Date. Upon receipt of a certificate substantially in the form of Exhibit D signed by an Authorized Company Representative establishing the Construction Completion Date, as established in Section 4.4 of the Agreement, the Depositary will set aside in the Acquisition Fund the moneys necessary for the payment of the Related Costs incurred by the Company but not then due or payable as set forth in such certificate, and then will transfer any other moneys remaining in the Acquisition Fund to the Company or its assignee.

Section 707. Payment on Acceleration. If the Purchaser declares the unpaid principal of and accrued interest on the Bond to be immediately due and payable pursuant to Section 902(a), the Depositary will promptly, upon receipt of notice of such declaration from the Purchaser or its assignee, return all moneys then held for the credit of the Acquisition Fund in accordance with Section 905 to the Purchaser or its assignee for application to the unpaid principal of and accrued interest on the Bonds.

Section 708. Investments. Moneys on deposit in the Acquisition Fund may be invested and reinvested by the Depositary, at the written direction of an Authorized Company Representative. Such investments will be deemed at all times to be a part of the Acquisition Fund. Any interest received on any such investment and any profit realized from such investment will be credited to the Acquisition Fund. Any loss resulting from any such investment will be charged to the Acquisition Fund. The Depositary will use all reasonable efforts to sell at the best price obtainable or present for redemption any such investment when necessary in order to provide cash to meet any payment or transfer from the Acquisition Fund. Neither the Depositary nor the Issuer will be responsible for any loss, liability or expense (or failure to realize profits) resulting from any such investment. The Depositary may make any such investment through its own or its affiliated bond or investment department, unless otherwise directed in writing by an Authorized Company Representative.

Section 709. No Liability. Issuer will not be liable or responsible for any misapplication of funds, loss, liability or expense (or failure to realize profits) with respect to the Acquisition Fund and the Company shall indemnify and hold Issuer harmless from and against all claims, liabilities or whatsoever nature arising from or relating to the Acquisition Fund or the Company's management of the Acquisition Fund.

ARTICLE VIII- PARTICULAR COVENANTS AND PROVISIONS

Section 801. Extent of Covenants; Disclaimer of Liability. It is expressly made a condition of this Indenture that any covenants, stipulations, obligations, representations or agreements herein contained or contained in the Bonds or this Indenture do not and will never give rise to a personal or pecuniary liability of any present or future officer, employee or agent of the Issuer, or be a charge against the general credit or taxing powers of the Issuer, and in the event of a breach of such covenant; stipulation, obligation, representation or agreement, no personal or pecuniary liability of any present or future officer, employee or agent of the Issuer, or charge payable by the Issuer directly or indirectly from the revenues of the Issuer, other than the Basic Rent, will arise therefrom. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OR OF ANY OF ITS POLITICAL SUBDIVISIONS, INCLUDING THE ISSUER, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, INTEREST ON OR REDEMPTION PRICE OF THE BONDS. THE PRINCIPAL OF, INTEREST ON AND REDEMPTION PRICE OF THE BONDS WILL NEVER CONSTITUTE A DEBT OR INDEBTEDNESS OR GENERAL OBLIGATION OF THE ISSUER WITHIN THE MEANING OF ANY PROVISION OR LIMITATION OF THE CONSTITUTION OR LAWS OF THE STATE. THE BONDS OR THIS INDENTURE WILL NEVER CONSTITUTE NOR GIVE RISE TO A PECUNIARY LIABILITY OF THE STATE, ANY OF ITS POLITICAL SUBDIVISIONS OR OF THE ISSUER OR A CHARGE AGAINST ITS GENERAL CREDIT OR TAXING POWERS. NONE OF THE PROVISIONS OF THIS INDENTURE SHALL REQUIRE THE ISSUER TO EXPEND OR RISK ITS OWN FUNDS OR TO OTHERWISE INCUR FINANCIAL LIABILITY IN THE PERFORMANCE OF ANY OF ITS DUTIES OR IN THE EXERCISE OF ANY OF ITS RIGHTS OR POWERS HEREUNDER.

Section 802. Performance; Authority. The Issuer covenants that it will faithfully perform all covenants and provisions contained in this Indenture and in the Bonds. The Issuer represents that it is duly authorized under the Constitution and laws of the State of New Mexico, including the Act, to issue the Bonds, to execute and deliver this Indenture, to grant a security interest in the property described in this Indenture, to pledge the rentals and other revenues described in this Indenture and that it has, to its knowledge, taken all actions required on its part for the issuance of the Bond, and for the execution and delivery of this Indenture and the Agreement.

Section 803. Office or Agency. The Issuer will maintain an office or agency in Lea County, New Mexico, while the Bonds are outstanding and where demands with respect to this Indenture or the Bonds may be made. The office of the County Manager of the Issuer will be such agency until further notice.

Section 804. Obligations Under the Agreement. The Issuer: (i) will perform all of its obligations under the Agreement; (ii) will not execute or agree to any change, amendment or modification of or supplement to the Agreement except in accordance with the provisions thereof and Section 1101 of this Indenture; and (iii) will not agree to any abatement, reduction or diminution of the Basic Rent without the written approval of the Purchaser. The parties acknowledge that the Issuer has no obligation to enforce the Agreement but any actions taken by the Issuer to enforce the Agreement shall be at the expense of the Company.

Section 805. Use and Possession by the Company. So long as not otherwise provided in this Indenture or the Agreement, the Company will be permitted to possess, use and enjoy the Project Property so as to carry out its obligations under the Agreement.

Section 806. Instruments of Further Assurance. The Issuer will, at the expense of the Company or the Purchaser, execute, acknowledge, deliver and perform such supplemental indentures or such further acts, instruments, documents and transfers as the Depository or the Purchaser may reasonably require for better assuring, transferring, mortgaging and pledging unto the Depository or the Purchaser all the property and revenues and receipts pledged to the payment of the Bond under this Indenture.

Section 807. Recording of Indenture. Supplemental Indentures and Other Documents. The Company will cause this Indenture, the Agreement, and all supplements to this Indenture and the Agreement, as well as all security instruments, financing statements, continuation statements and any other instruments as may be required, to be recorded or filed in such manner and places as required to fully preserve and protect the security of the Purchaser and the rights of the Depository, including recording in the real estate records of Lea County, New Mexico. The Depository will have no responsibility to make any such filings except for filings as the Company may from time to time request, and the Issuer will have no responsibility to make any such filings.

ARTICLE IX- EVENTS OF DEFAULT AND REMEDIES

Section 901. Events of Default. Each of the following events is an “Event of Default:”

(a) Failure to pay any installment of principal or interest due under the Bonds when due and such failure continues unremedied for a period of 30 days after the provision by the Issuer or the Purchaser of written notice of non-payment;

(b) An Event of Default under the Agreement or any other Bond Document (other than this Indenture) occurs and is continuing;

(c) The Company fails to perform any covenant contained in this Indenture or the Bond Documents, other than as specified in subsections (a) and (b) above, and such failure is not cured within 30 days after receipt by the Company of the written notice of such failure unless the Purchaser shall agree in writing to the extension of such time prior to its expiration.

Section 902. Remedies on Events of Default. Upon the occurrence of an Event of Default, the Purchaser will have the following rights and remedies:

(a) Acceleration. The Purchaser or its assignee may, by written notice given to the other Parties, declare the principal amount of the Bond outstanding to be immediately due and payable and principal and interest thereon will become immediately due and payable; provided, however, that the Purchaser or its assignee, by written notice to the other Parties, may annul such declaration and destroy its effects and waive any such default: (i) if all covenants, conditions and agreements with respect to which such default shall have been made shall be fully performed, (ii) all arrears shall have been paid on any installment of interest and principal which has been theretofore due, plus (to the extent permitted by law) interest thereon from the due dates, and (iii) all reasonable charges and expenses of the Issuer, the Purchaser, the Depository and their agents and counsel shall have been paid or provided for. Any such declaration that the Bond is due and payable will be deemed to be a redemption of the Bond; and

(b) **Suit for Judgment on the Bonds.** The Purchaser will be entitled to sue either for the specific enforcement of any covenant or agreement contained herein, or in any of the Bond Documents, or in and of the execution of any power herein granted and/or for and recover judgment, either before or after or during the pendency of any proceedings for the enforcement of the lien of this Indenture or for the enforcement of any of its rights, but any such judgment against the Issuer will be enforceable only against the funds and accounts related to and held under this Indenture for the Bonds. There will not be authorized any deficiency judgment against the Issuer. No recovery of any judgment by the Purchaser will in any manner or to any extent affect the lien of this Indenture or any rights, powers or remedies of the Purchaser hereunder, but such lien, rights, powers and remedies of the Purchaser will continue unimpaired; and

(c) **Enforcement of Rights Under Agreement.** The Purchaser or its assignee may, as assignee of specified interests of the Issuer in the Agreement, enforce any remedy available to the Issuer under the Agreement (except the remedies of the Issuer pursuant to Section 8.3 of the Agreement) and under any other lease, sublease, license or other grant of a possessory or use interest in the Project Property.

No right or remedy confirmed on any Party hereunder is intended to be exclusive of any other right or remedy confirmed on such Party hereunder, but each and every such right or remedy will be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or by statute; provided, that the remedy of Purchaser in respect of an Event of Default or other breach hereunder or any other Bond Document shall be limited in all cases to those expressly provided in Section 902.

Section 903. Rights and Remedies of Purchaser. The Purchaser will not have the right to institute any suit, action or proceeding in equity or at law for the enforcement of this Indenture or for the execution of any trust related thereto or for the appointment of a receiver or any other remedy hereunder, unless an Event of Default has occurred and is continuing of which the Company has been notified, it being understood and intended that the Purchaser will not have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture by its actions or to enforce any right hereunder except in the manner herein provided. Nothing in this Indenture will, however, affect or impair the right of the Purchaser to enforce the payment of the principal of and interest on the Bond, when due or at and after the maturity thereof, or the obligation of the Issuer to pay the principal and interest on the Bonds at the time and place and from the revenues provided in this Indenture or in the Bonds.

Section 904. Issuer and Depositary Not Responsible. Neither the Issuer nor the Depositary has any responsibility or right to act on behalf of the Purchaser with respect to any Event of Default. All rights and remedies arising from or related to any Event of Default are solely the rights and remedies of the Purchaser; provided that, upon request and at the expense of the Purchaser, the Issuer will cooperate with the Purchaser in the lawful enforcement of such rights and remedies upon receipt of indemnity satisfactory to the Issuer in the Issuer's sole discretion against any out-of-pocket costs and expenses incurred by the Issuer in its sole discretion (including any counsel fees and expenses) or liability the Issuer may incur or suffer as a result of or in connection with such cooperation.

Section 905. Application of Moneys. All moneys received by the Issuer or the Purchaser pursuant to any right given or action taken under the provisions of this Article will, after payment of the cost and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities, and expenses incurred or made by the Issuer and the Purchaser, will be applied first to pay the fees and expenses of the Issuer and the Depositary; then to the payment of charges due the Purchaser pursuant to the Bond Documents, and then to the payment of interest and principal due and unpaid on the

Bonds. Whenever moneys are to be applied pursuant to the provisions of this Section, such moneys will be applied at such times, and from time to time, as the Issuer will determine.

Whenever the Bonds and interest thereon have been paid under the provisions of this Section and all expenses and charges of and payments due to the Purchaser, the Issuer and the Depository (and their respective counsel and agents) under this Indenture and the Agreement have been paid, any balance remaining will be paid to the Company or its assignee as provided in Section 604.

Section 906. Purchaser to File Proofs of Claim. In the case of any insolvency, bankruptcy, reorganization, arrangement, adjustment, composition, or other judicial proceedings affecting the Project Property or the Company, the Purchaser and the Issuer will, to the extent permitted by law, be entitled to file such proofs of claims and other documents as may be necessary or advisable in order to have claims of the Purchaser or the Issuer, respectively, allowed in such proceedings for the entire amount due and payable by the Issuer, or by the Company, as the case may be, under the Indenture or the Agreement, at the date of the institution of such proceedings and for any additional amounts which may become due and payable after such date.

Section 907. Delay or Omission; No Waiver. No delay or omission of the Purchaser to exercise any right or power accruing upon any Event of Default will exhaust or impair any such right or power or shall be construed to be a waiver of any such Event of Default, or acquiescence therein; and every power and remedy given by this Indenture to the Purchaser may be exercised from time to time and as often as may be deemed expedient by the Purchaser.

Section 908. No Waiver of One Default to Affect Another. No waiver of any Event of Default by the Purchaser will extend to or affect any subsequent or any other then existing Event of Default or shall impair any rights or remedies consequent thereon.

Section 909. Discontinuance of Proceedings on Default; Position of Parties Restored. In case the Purchaser shall have proceeded to enforce any right under this Indenture by foreclosure, entry, or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to the Purchaser, then and in every such case the Issuer and Purchaser will be restored to their former positions and rights under this Indenture with respect to the Project Property and all rights, remedies, and powers of the Purchaser will continue as if no such proceedings had been taken.

Section 910. Waivers of Events of Default. The Purchaser may, in its discretion, waive any Event of Default and its consequences and rescind any declaration of maturity of principal of and interest on the Bonds. In case of any such waiver or rescission, or in case any proceeding taken by the Purchaser on account of any such Event of Default shall have been discontinued or abandoned or determined adversely to the Purchaser, then in every such case the Issuer and the Purchaser shall be restored to their former respective positions and rights hereunder, and the Event of Default which was waived will be considered to be cured, but no waiver or rescission shall extend to any subsequent or other Event of Default, or impair any right consequent thereon.

ARTICLE X-THE DEPOSITARY

Section 1001. Acceptance of Duties. The Depository accepts the duties imposed on it by this Indenture, but only on the following express terms and conditions:

(a) The Depository undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations will be read into this Indenture against the Depository.

(b) In the absence of negligence or willful misconduct on its part, the Depositary may conclusively rely on certificates or notices furnished to the Depositary and conforming to the requirements of this Indenture or the Agreement, as the case may be; but if any such certificates or notices are specifically required to be furnished to the Depositary under this Indenture or the Agreement, the Depositary will examine the same to determine whether they conform to the requirements of this Indenture or the Agreement, as the case may be.

(c) The Company hereby indemnifies and holds harmless the Depositary from and against any and all loss, liability, cost, damage and expense, including, without limitation, reasonable counsel fees, which the Depositary may suffer or incur by reason of any action, claim or proceeding brought against the Depositary arising out of or relating in any way to this Indenture or any transaction to which the Indenture relates unless such action, claim or proceeding is the result of the negligence or willful misconduct of the Depositary. The indemnification shall survive the resignation, removal and termination of the Depositary. No provision of this Indenture will be construed to relieve the Depositary from liability for its own negligence or willful misconduct.

(d) The Depositary may consult with counsel and other professionals and the advice of such counsel and other professionals shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by the Depositary hereunder in good faith and in reliance thereon.

(e) The Depositary shall be under no obligation to take any action or exercise any right or power under the Indenture unless the Company shall first have provided to the Depositary, its directors, officers, agents and employees, security or indemnity satisfactory to the Depositary against the costs (including without limitation reasonable fees of attorneys), expenses and liabilities that might be incurred by the Depositary in connection herewith.

Section 1002. Compensation. The Company will pay directly to the Depositary its reasonable fees and charges and all of its reasonable expenses (including reasonable counsel fees and expenses).

Section 1003. Qualification. The Depositary must be an association or a corporation organized and doing business under the laws of the United States of America or of any state and be subject to supervision or examination by federal or state banking authorities. If at any time the Depositary ceases to be eligible in accordance with the provisions of this Section 1003, it will resign immediately in the manner and with the effect specified in Section 1004.

Section 1004. Resignation and Removal.

(a) No resignation or removal of the Depositary and no appointment of a successor Depositary will become effective until the acceptance of appointment by the successor Depositary under Section 1005.

(b) The Depositary may resign at any time upon 10 business days' written notice to the other Parties. If an instrument of acceptance by a successor Depositary has not been delivered to the retiring Depositary within 30 days after the giving of such notice of resignation, the retiring Depositary may petition any court of competent jurisdiction for the appointment of a successor Depositary.

(c) The Depositary may be removed at any time by the Company upon 10 business days' written notice to the other Parties.

(d) The Depositary will be automatically removed on the occurrence of the Completion Date of the Project and the application of all moneys on deposit in the Acquisition Fund as provided in Section 706. No successor Depositary will thereafter be appointed and each reference to the Depositary in this Indenture and the Agreement will thereafter be ineffective.

(e) If the Depositary resigns or is removed (except as provided in subsection (d) of this Section 1004), the Company will promptly appoint a successor Depositary and give written notice of such appointment to the Issuer, the Purchaser and the retiring or removed Depositary.

Section 1005. Successor Depositary.

(a) Every successor Depositary appointed under this Indenture will execute, acknowledge and deliver to its predecessor and the other Parties an instrument accepting such appointment, and thereupon such successor Depositary, without any further act, will become fully vested with all the rights, and be subject to all the obligations, of its predecessor; but such predecessor will, nevertheless, on the request of its successor, the Issuer, the Company or the Purchaser execute and deliver an instrument transferring to such successor Depositary all the rights of such predecessor under this Indenture. Every predecessor will deliver all property, including all records relating hereto, and moneys held by it under this Indenture to its successor. The Issuer and the Purchaser will execute, acknowledge and deliver any instrument, satisfactory to each of them, required by any successor Depositary to more fully and certainly vest in such Depositary the rights vested in the predecessor Depositary by this Indenture.

(b) Notwithstanding any of the foregoing provisions of this Article, any Person qualified to act as Depositary under this Indenture with or into which the Person acting as Depositary may be merged or consolidated, or to which the assets and business of such Person may be sold, will automatically become the successor Depositary.

ARTICLE XI-SUPPLEMENTS AND AMENDMENTS TO INDENTURE

Section 1101. Other Supplemental Indentures. This Indenture may be supplemented or amended only by one or more instruments executed by the Issuer, the Purchaser and the Depositary.

Section 1102. Consent of the Company. Any supplemental indenture affecting the rights of the Company will not be effective unless and until the Company and, for so long as any obligations are outstanding under the Financing Agreement, the Bank, shall have consented in writing to the execution and delivery of such supplemental indenture.

ARTICLE XII- MISCELLANEOUS PROVISIONS

Section 1201. Notices. Any notice, demand, direction, request, consent, report or other instrument authorized or required by any of the Bond Documents to be executed, given or filed (excluding Uniform Commercial Code filings, recordings and other governmental filings) will be in writing and will be deemed to have been sufficiently given or filed for all purposes of the Bond Documents when delivered by hand delivery or on the third Business Day following the day on which the same has been mailed by registered or certified mail, postage prepaid, addressed as follows:

If to the Issuer: Lea County, New Mexico

If to the Purchaser: Tip Top Solar Energy Center IRB Holdings LLC
c/o Tip Top Solar Energy Center LLC

If to the Company: Tip Top Solar Energy Center LLC

If to the Depository: The Bank of New York Mellon Trust Company, National Association

Any Party may, by notice to each of the other Parties, designate any further or different addresses to which subsequent notices, certificates or other communications are to be sent. Receipt by the Issuer, the Company and the Depository of a notice from a transferee of the Bond will constitute notice of such a different address for the Purchaser.

Section 1202. Remedies. No right or remedy conferred on any Party in any of the Bond Documents is intended to be exclusive of any other right or remedy conferred on such Party in any of the Bond Documents. Each such right or remedy is in addition to every other right or remedy provided in any of the Bond Documents, or any other applicable agreement or contract; provided, that the remedy of the Issuer or the Purchaser in respect of an Event of Default or other breach hereunder or any other Bond Document shall be limited in all cases to those expressly provided in Section 902 hereunder or Article VIII of the Agreement, as the case may be. No delay or omission of any Party to exercise any such right or remedy will impair any such right or remedy or be construed to be a waiver. Every such right or remedy may be exercised from time to time and as often as the relevant Party may deem expedient. No waiver by any Party of any right or remedy with respect to any default or Event of Default will extend to or affect any other existing or subsequent default or Event of Default.

Section 1203. Beneficiaries. Nothing in any of the Bond Documents expressed or implied is intended or is to be construed to confer upon any Person other than the Parties any right, remedy or claim, legal or equitable.

Section 1204. Severability. In case any one or more of the provisions of any of the Bond Documents or of the Bonds are for any reason held to be illegal or invalid, such illegality or invalidity will not affect any other provision of any of the Bond Documents or of the Bonds, but the Bond Documents and the Bonds will be construed and enforced as if such illegal or invalid provision had not been contained therein. In case any covenant, stipulation, obligation or agreement of the any Party contained in any of the Bond Documents or the Bonds is for any reason held to be in violation of law, then such covenant, stipulation, obligation or agreement will be deemed to be the covenant, stipulation, obligation or agreement of such Party to the full extent permitted by law.

Section 1205. Obligations of Issuer Not Obligations of Officials Individually. No obligation under any of the Bond Documents or the Bonds will be deemed to be an obligation of any present or future officer (including, without limitation, County Commissioners) or employee of the Issuer in his or her individual capacity, and no officer of the Issuer who executes the Bonds will be personally liable on the Bonds or be subject to any personal liability or accountability by reason of the issuance of the Bonds.

Section 1206. Payments Due on Days That Are Not Business Days. If the date for any payment called for under any of the Bond Documents or the Bonds is not a Business Day, then such payment will be made on the next Business Day and no interest on such payment will accrue for the period after the scheduled date for such payment.

Section 1207. Limitation of Issuer's Liability. No agreements or provisions contained in any Bond Document nor any agreement, covenant or undertaking by the Issuer contained in any document executed by the Issuer in connection with any property of the Company financed, directly or indirectly, out of Bond proceeds or the issuance, sale and delivery of the Bonds will give rise to any pecuniary

liability of the Issuer, its officers, employees, agents or members of its governing body or constitute a charge against the Issuer's general credit, or obligate the Issuer financially in any way, except with respect to the Basic Rent, and its application as provided under this Indenture. No failure of the Issuer to comply with any terms, covenants or agreements in any Bond Document or in any document executed by the Issuer in connection with the Bonds will subject the Issuer, its officers and members of its governing body to any pecuniary charge or liability except to the extent that the same can be paid or recovered from the Basic Rent. Without limiting the requirement to perform its duties or exercise its rights and powers under the Bond Documents upon receipt of appropriate indemnity or payment, none of the provisions of any Bond Document will require the Issuer to expend or risk its own funds or otherwise to incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers under any Bond Document.

Section 1208. Successors. Wherever a Party is referred to in this Indenture, it shall be deemed to include its successors, and all covenants and agreements in this Indenture will bind and inure to the benefit of the such Party's successors.

Section 1209. Title, Headings. The title and headings of the articles, sections and subdivisions of this Indenture have been used for convenience only and will not modify or restrict any of the terms or provisions of this Indenture.

Section 1210. Consents and Approvals. In any action requiring the consent or approval of a party to this Indenture, such consent or approval will not be unreasonably withheld.

Section 1211. Execution in Counterparts. Each of the Bond Documents may be executed in multiple counterparts, all of which taken together will constitute one instrument. Any Party may execute any of the Bond Documents by executing any such counterpart of such Bond Document.

Section 1212. Applicable Law. The validity, construction and effect of each of the Bond Documents will be governed by and construed in accordance with the laws of the State applicable to agreements made and to be performed in the State of New Mexico.

[Remainder of Page Intentionally Left Blank]

DATED AS OF _____, 2019.

(SEAL)

BOARD OF COUNTY COMMISSIONERS,
LEA COUNTY, NEW MEXICO

Attest:

County Clerk

By _____
Its Chair

STATE OF NEW MEXICO)
)
COUNTY OF ROOSEVELT)

This instrument was acknowledged before me on this _____ day of _____, 2019, by _____, as Chair of the Lea County Board of County Commissioners, governing body of Lea County, a political subdivision of the State of New Mexico.

Notary Public

My Commission Expires: _____

(Signature Page for Indenture)

TIP TOP SOLAR ENERGY CENTER LLC

By _____

Name: _____

Title: _____

STATE OF)

)

COUNTY OF)

This instrument was acknowledged before me on this ____ day of _____, 2019, by ____
_____, as ____ of Tip Top Solar Energy Center LLC, a Delaware limited liability
company.

(Signature Page for Indenture)

THE BANK OF NEW YORK MELLON TRUST
COMPANY, NATIONAL ASSOCIATION,
as Depositary

By _____
Name: _____
Title: _____

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

This instrument was acknowledged before me on this ____ day of _____, 2019, by
_____, _____ of The Bank of New York Mellon Trust
Company, National Association.

Notary Public

My Commission Expires: _____

(Signature Page for Indenture)

EXHIBIT A
THIS BOND IS TRANSFERABLE ONLY UPON COMPLIANCE
WITH THE RESTRICTIVE TERMS PROVIDED BELOW

No. R-1

Up to \$215,000,000

United States of America
State of New Mexico

Lea County, New Mexico
Taxable Industrial Revenue Bonds
(Tip Top Solar Energy Center LLC Project)
Series 2019

Registered Owner: TIP TOP SOLAR ENERGY CENTER IRB HOLDINGS LLC

FINAL MATURITY DATE	INTEREST RATE	ISSUE DATE
_____, 20____	4%	November __, 2019

Lea County, a political subdivision of the State of New Mexico existing under the Constitution and laws of the State of New Mexico (the "Issuer"), for value received, promises to pay, solely from the sources described below, to Tip Top Solar Energy Center IRB Holdings LLC (together with its successors and assigns, and transferees as permitted below, the "Purchaser") Two Hundred Fifteen Million Dollars (\$215,000,000) (subject to prior optional redemption as described below) or so much of such amount as has been advanced by the Purchaser and is outstanding and to pay, solely from such sources, to the Purchaser, interest on principal amounts advanced with respect to this Bond from the dates of such Advances at the Interest Rate specified above (computed on the basis of a 360-day year consisting of twelve 30-day months) until payment of such principal amount. Accrued interest in the amount of four percent (4%) of the outstanding principal amount of the Bonds shall be payable on the Payment Date, with the outstanding principal amount of the Bonds due and payable in full on the Final Maturity Date.

This Bond is issued under and pursuant to the Constitution and laws of the State of New Mexico, particularly Sections 4-59-1 to 4-59-16, NMSA 1978, as amended, and under and pursuant to Ordinance No. _____ duly adopted by the Issuer on _____, 2019.

The principal of, interest on and redemption price of this Bond are payable solely from Basic Rent derived by the Issuer from the Lease Agreement dated as of _____, 2019 (the "Agreement") between the Issuer and Tip Top Solar Energy Center LLC (the "Company"), which has been pledged and assigned by the Issuer to the Purchaser under the Indenture, dated as of _____, 2019 (together with any amendments and supplements, the "Indenture") among the Issuer, the Purchaser, the Company and The Bank of New York Mellon Trust Company, National Association, as Depository (the "Depository").

Reference is made to the Indenture and the Agreement for the provisions, among others, with respect to the custody and application of the proceeds of the sale of this Bond, the collection and disposition of income and other revenues, a description of the account charged with and pledged to the payment of the principal of, interest on and redemption price of this Bond, the nature and extent of the security, the terms and conditions under which this Bond is issued and amounts are to be advanced with respect to this Bond by the Purchaser, and the rights, duties and obligations of the Issuer, the Company, the Purchaser and the Depositary.

NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OF NEW MEXICO OR OF ANY OF ITS POLITICAL SUBDIVISIONS, INCLUDING THE ISSUER, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, INTEREST ON OR REDEMPTION PRICE OF THIS BOND. THE PRINCIPAL OF, INTEREST ON AND REDEMPTION PRICE OF THIS BOND WILL NEVER CONSTITUTE A DEBT OR INDEBTEDNESS OF THE ISSUER WITHIN THE MEANING OF ANY PROVISION OR LIMITATION OF THE CONSTITUTION OR LAWS OF THE STATE OF NEW MEXICO. THIS BOND WILL NEVER CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE STATE OF NEW MEXICO, ANY OF ITS POLITICAL SUBDIVISIONS OR OF THE ISSUER OR A CHARGE AGAINST THEIR GENERAL CREDIT OR TAXING POWERS.

This Bond may be called for redemption as provided in the Indenture, at the option of the Company as a whole or in part on any date selected by the Company, at a redemption price equal to the principal amount to be redeemed plus interest accrued on such principal amount to the redemption date.

If an Event of Default (as defined in the Indenture) occurs, the Purchaser may cause the then unpaid principal amount of this Bond and all accrued interest to be immediately due and payable as provided in the Indenture. Neither the Issuer nor the Depositary has any right or responsibility to act on behalf of the Purchaser with respect to any Event of Default.

This Bond may be transferred in whole but not in part. SUBJECT TO THE LAST PARAGRAPH OF SECTION 404 OF THE INDENTURE AND NOTWITHSTANDING ANY PROVISION OF THIS BOND TO THE CONTRARY, NEITHER THIS BOND NOR ANY INTEREST IN THIS BOND MAY BE, DIRECTLY OR INDIRECTLY, OFFERED, SOLD, HYPOTHECATED, ENCUMBERED OR OTHERWISE TRANSFERRED OR DISPOSED OF (INDIVIDUALLY AND COLLECTIVELY, A "TRANSFER") EXCEPT IN COMPLIANCE WITH SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), AND APPLICABLE STATE SECURITIES LAWS AS ESTABLISHED TO THE SATISFACTION OF THE ISSUER, AND ANY SUCH PURPORTED TRANSFER OF THIS BOND WILL NOT BE EFFECTIVE UNLESS THE TRANSFEROR PROVIDES TO THE ISSUER, THE DEPOSITARY AND THE COMPANY (A) AN OPINION, IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER, FROM LEGAL COUNSEL EXPERIENCED IN SECURITIES LAWS MATTERS, WHICH COUNSEL MUST BE SATISFACTORY TO THE ISSUER, TO THE EFFECT THE TRANSFER COMPLIES WITH THE ACT AND APPLICABLE STATE SECURITIES LAWS AND (B) WRITTEN REPRESENTATIONS FROM THE TRANSFEREE, IN FORM AND SUBSTANCE SATISFACTORY TO THE ISSUER, NECESSARY TO ESTABLISH SUCH COMPLIANCE.

All acts, conditions and things required to happen, exist and be performed precedent to and in the issuance of this Bond and the execution of the Indenture have happened, exist and have been performed as so required.

The validity, construction and performance of this Bond are governed by the law of New Mexico applicable to agreements made and to be performed in New Mexico.

LEA COUNTY, NEW MEXICO

By: _____
Chair, Lea County
Board of County Commissioners

Attest

Lea County Clerk

(Seal)

SCHEDULE OF ADVANCES AND PAYMENTS

<u>Date</u>	<u>Amount Of Advance</u>	<u>Amount of Principal Payment or Redemption</u>	<u>Resulting Principal Amount</u>	<u>Notation Made By</u>
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**EXHIBIT B
PROJECT SITE**

The project site encompasses approximately _____ secured through ____ leases in Lea County, New Mexico.

[include description of location of project site]

EXHIBIT C
REQUISITION AND CERTIFICATE NO.

To: Tip Top Solar Energy Center IRB Holdings LLC, as Purchaser
The Bank of New York Mellon Trust Company, National Association, as Depository

The undersigned, pursuant to the Indenture dated as of _____, 2019 (the "Indenture"), among Lea County, New Mexico (the "Issuer"), Tip Top Solar Energy Center IRB Holdings LLC (the "Purchaser"), Tip Top Solar Energy Center LLC (the "Company") and The Bank of New York Mellon Trust Company, National Association (the Depository), requests on behalf of the Company, the disbursement of \$_____ from the Acquisition Fund (as defined in the Indenture) to pay the following costs and expenses (or to reimburse the Company for payment of such costs and expenses) related to the Project (as defined in the Indenture) or to the issuance of the Bonds (as defined in the Indenture):

<u>Amount</u>	<u>General Classification Of Expenditure</u>	<u>Payee</u>
\$		
Amount of this requisition:	\$ _____	

The undersigned certifies that:

(1) obligations in the stated amounts were incurred for Related Costs (as defined in the Indenture) and are due and payable (or, if the Company is indicated as the Payee, were duly paid by the Company) and that each item is a proper charge against the Acquisition Fund and has not been the subject of a previous withdrawal from the Acquisition Fund; and

(2) to the best knowledge of the undersigned there has not been filed with or served upon the Issuer or the Company notice of any lien, right or attachment upon, or claim affecting the right of any such payee to receive payment of, the respective amounts stated in such requisition which has not been released or will not be released simultaneously with the payment of such obligation; and

(3) with respect to any item for payment for labor or to contractors, builders or materialmen, (i) the obligations stated have been properly incurred, (ii) such work was actually performed or such materials or supplies were actually furnished or installed in or about the Project, and (iii) either such materials or supplies are not subject to any lien or security interest or any such lien or security interest will be released or discharged upon payment of this requisition.

DATED: _____

TIP TOP SOLAR ENERGY CENTER LLC

By _____
Name: _____
Title: _____
Authorized Company Representative

EXHIBIT D
COMPLETION CERTIFICATE

The undersigned Authorized Company Representative, pursuant to Section 706 of the Indenture, dated as of _____, 2019 (the "Indenture"), among Lea County, New Mexico, Tip Top Solar Energy Center IRB Holdings LLC, as Purchaser, Tip Top Solar Energy Center LLC (the "Company") and The Bank of New York Mellon Trust Company, National Association, as Depositary, states that, except for specified amounts remaining in the Acquisition Fund for any specified Related Costs as described in Appendix A hereto incurred by the Company, but not now due and payable, the Project is complete and all costs of labor, services, materials and supplies in connection with the Project Property have been paid for or provisions have been made for their payment. After the transfer of remaining moneys in the Acquisition Fund to the Company pursuant to Section 706 of the Indenture, the Company will have sole responsibility for the payment of any Related Cost in excess of the amount specified to be retained in the Acquisition Fund.

Moneys set aside for payment of pending expenses equal \$ _____
and total disbursements equal \$ _____

DATED: _____, _____

TIP TOP SOLAR ENERGY CENTER LLC

By _____
Name: _____
Title: _____
Authorized Company Representative

EXHIBIT E
CERTIFICATE OF QUALIFIED INVESTOR

Lea County, New Mexico

The Bank of New York Mellon Trust Company, National Association, as Depository

Tip Top Solar Energy Center LLC

Re: Lea County, New Mexico
Taxable Industrial Revenue Bonds
(Tip Top Solar Energy Center LLC Project), Series 2019

Please be advised that the undersigned is purchasing the captioned Bonds (hereinafter referred to as the “Bonds”). Such purchase is for the account of the undersigned, for the purpose of investment and not with a present intent for distribution or resale. In the event that the undersigned transfers such Bonds, the undersigned shall comply with all provisions of the Indenture dated as of _____, 2019 (as amended from time to time, the “Indenture”), among Lea County, New Mexico (the “Issuer”), Tip Top Solar Energy Center IRB Holdings LLC, as Purchaser, Tip Top Solar Energy Center LLC (the “Company”) and The Bank of New York Mellon Trust Company, National Association, as Depository (the “Depository”), as described in the Bonds. The undersigned assumes all responsibility for complying with any applicable federal and state securities laws in such regard and must present to the Depository, the Issuer and the Company a Certificate of Qualified Investor executed by the proposed transferee, among other things as may be required by the agreements authorizing the Bonds, before such transfer will be effective.

The undersigned acknowledges that it is one of the following:

1. a bank as defined in Section 3(a)(2) of the Securities Act of 1933, as amended (the “Securities Act”), or savings and loan association or other institution as defined in Section 3(a)(S)(A) of the Securities Act, whether acting in its individual or fiduciary capacity; broker or dealer registered pursuant to Section 15 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”); insurance company as defined in Section 2(13) of the Securities Act; insurance company as registered under the Investment Company Act of 1940 or a business development company as defined in Section 2(a)(48) of that Act; Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958; plan established and maintained by a state, its political subdivision, or any agency or instrumentality of a state or its political subdivision, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000; employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974 if the investment decision is made by a plan fiduciary, as defined in Section 3(21) of such Act, which is either a bank, savings and loan association, insurance company, or registered investment adviser, or if the employee benefit plan has total assets in excess of \$5,000,000 or, if a self directed plan, with investment decisions made solely by persons that are accredited investors;

2. a private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940;

3. an organization described in Section 501(c)(3) of the Internal Revenue Code with total assets in excess of \$5,000,000;

4. a natural person whose individual net worth, or joint net worth with that person's spouse, at the time of this purchase exceeds \$1,000,000, excluding the value of the primary residence of such person;

5. a natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with the person's spouse in excess of \$300,000 in each of those years and who reasonably expects reaching the same income level the current year; or

6. one or more of the following, as indicated, that it is acting for its own account or the accounts of other Qualified Institutional Buyers and that it in the aggregate owns and/or invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with the Company:

(a) an insurance company, as defined in Section 2(13) of the Securities Act;

(b) an investment company registered under the Investment Company Act of 1940, as amended, or any business development company as defined in Section 2(a)(48) of that Act;

(c) a Small Business Investment Company licensed by the U.S. Small Business Administration under Section 301(c) or (d) of the Small Business Investment Act of 1958;

(d) a plan established and maintained by a state, its political subdivision or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees;

(e) an employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974;

(f) a trust fund whose trustee is a bank or trust company and whose participants are exclusively plans of the types identified in Paragraph (d) or (e) above, and not a trust fund that includes as participants individual retirement accounts or H.R. 10 plans;

(g) a business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 (the "Investment Advisers Act");

(h) an organization described in Section 501(c)(3) of the Internal Revenue Code, a corporation (other than a bank as defined in Section 3(a)(2) of the Securities Act or a savings and loan association or other institution referenced in Section 3(a)(5)(A) of the Securities Act or a foreign bank or savings and loan association or equivalent institution), partnership or similar business trust; or

(i) an investment adviser registered under the Investment Advisers Act;

7. a dealer registered pursuant to Section 15 of the Exchange Act, acting for its own account or the accounts of other qualified institutional buyers, that in the aggregate owns and invests on a discretionary basis at least \$10 million of securities of issuers that are not affiliated with the dealer, provided that securities constituting the whole or a part of an unsold allotment to or subscription by a dealer as a participant in a public offering shall not be deemed to be owned by such dealer; or

8. a dealer registered pursuant to Section 15 of the Exchange Act acting in a riskless principal transaction on behalf of a qualified institutional buyer; or

9. an investment company registered under the Investment Company Act, acting for its own account or for the accounts of other qualified institutional buyers, that is part of a family of investment companies which own in the aggregate at least \$100 million in securities of issuers, other than issuers that are affiliated with the investment company or are part of such family of investment companies. “Family of investment companies” means any two or more investment companies registered under the Investment Company Act, except for a unit investment trust whose assets consist solely of shares of one or more registered investment companies, that have the same investment adviser (or, in the case of unit investment trusts, the same depositor), provided that, for purposes of this section:

(a) each series of a series company (as defined in Rule 18f-2 under the Investment Company Act) shall be deemed to be a separate investment company; and

(b) investment companies shall be deemed to have the same adviser (or depositor) if their advisers (or depositors) are majority-owned subsidiaries of the same parent, or if one investment company’s adviser (or depositor) is a majority-owned subsidiary of the other investment company’s adviser (or depositor);

10. an entity, all of the equity owners of which are qualified institutional buyers, acting for its own account or the accounts of other qualified institutional buyers; or

11. a bank as defined in Section 3(a)(2) of the Securities Act, any savings and loan association or other institution as referenced in Section 3(a)(5)(A) of the Securities Act, or any foreign bank or savings and loan association or equivalent institution, acting for its own account or the accounts of other qualified institutional buyers, that in the aggregate owns and invests on a discretionary basis at least \$100 million in securities of issuers that are not affiliated with it and that has an audited net worth of at least \$25 million as demonstrated in its latest annual financial statements, as of a date not more than 16 months preceding the date of sale in the case of a U.S. bank or savings and loan association, and not more than 18 months preceding such date of sale for a foreign bank or savings and loan association or equivalent institution; or

12. any entity that is acquiring the Bond for the purpose of facilitating investment therein by “qualified institutional buyers” as defined under Rule 144A promulgated under the Securities Act; or

13. Tip Top Solar Energy Center LLC, the parent or subsidiary thereof, or any affiliated entity.

The undersigned further acknowledges that (i) interest on the Bonds is not exempt from gross income for federal income tax purposes, and (ii) an opportunity was available to obtain and that the undersigned has obtained all materials which were regarded as necessary to evaluate the merits and risks of investment in the Bonds and after such evaluation, the undersigned understands and knows that investment in the Bonds involves certain risks, including, but not limited to, those related to limited security and source for payment of the Bonds and the probable lack of any secondary market for the Bonds.

The undersigned acknowledges, warrants and represents that the undersigned is experienced in transactions such as those relating to the Bonds and that the undersigned is knowledgeable and fully capable of independently evaluating the risks involved in investing in the Bonds. The undersigned further acknowledges that neither the Issuer nor any of its officials, counsel, agents or consultants is responsible for any information contained in or omitted from the materials furnished, whether directly or by any other

means, relating to the Bonds and acknowledges that the undersigned will not look and has not looked to any of them to obtain such information on its behalf.

TIP TOP SOLAR ENERGY CENTER IRB
HOLDINGS LLC,
as Purchaser

By _____
Name: _____
Title: _____

Address for Notices and
Payment of principal and interest:



Lea County Board of County Commissioners Regular Meeting

Thursday, May 2, 2019 9:00 A.M.

Lea County Courthouse - Commission Chambers – 100 North Main Avenue, Lovington, New Mexico

Notice of this Meeting has been given to the Public in Compliance with Section 10-15-4 NMSA 1978

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Lea County Manager's office located in the Lea County Courthouse in Lovington, New Mexico at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Lea County Manager's Office at the Lea County Courthouse if a summary or other type of accessible format is needed.

AGENDA

Call to Order ~ Roll Call ~ Pledge of Allegiance ~ Invocation

ITEM 01: COMMISSION

- Consideration of Lea County Resolution No. 19-MAY-126R Approving the Following Meeting Minutes:
 - ❖ April 18, 2019 Special Meeting (Certify Canvass)
 - ❖ April 18, 2019 Regular Meeting
- Public Comments (*Non Agenda Items*).
- Commissioners and Manager Comments.
- Recognition of County Employees – Professional Achievement Award:
 - ❖ Deputy Vivian Martinez (Sheriff's Office) - National Recognition for Excellence in Managing Sex Offender Registry (*Corey Helton, County Sheriff*)
- Consideration of Lea County Resolution No. 19-MAY-127R Approving the Lea County Board of County Commissioners *Revised Meeting Dates and Times for the Remainder of 2019.*
- Consideration of Lea County Proclamation Proclaiming Thursday, May 2, 2019 as Intellectual/Developmental Disabilities Awareness Day. (*Commissioner Jonathan Sena, District 4*)
- Consideration of Lea County Proclamation Proclaiming Saturday, May 4, 2019 as Grupo Barak Day. (*Commissioner Jonathan Sena, District 4*)

ITEM 02: ACTION ITEMS

- Consideration of Lea County Resolution No. 19-MAY-128R Authorizing the Donation of Used Gym Equipment to the Tatum Municipal Schools. (*Corey Helton, County Sheriff*)

- Consideration of Lea County Resolution No. 19-MAY-129R Authorizing and Directing the Publication by Title and General Summary of the Subject Matter of the Proposed Ordinance Authorizing the Issuance of \$215,000,000.00 Lea County Taxable Industrial Revenue Bonds (Tip Top Solar Project) Series 2019 be Published in a Newspaper of General Circulation Within the County. *(Michael Gallagher, County Manager)*
- Consideration of Lea County Resolution No. 19-MAY-130R Adopting Lea County's Preliminary Budget for Fiscal Year 2019 - 2020. *(Michael Gallagher, County Manager)*

ITEM 03: OTHER BUSINESS

ADJOURN

**STATE OF NEW MEXICO
COUNTY OF LEA
RESOLUTION NO. 19-MAY-129R**

RESOLUTION DIRECTING THE PUBLICATION OF NOTICE OF THE TITLE AND GENERAL SUMMARY OF THE SUBJECT MATTER OF AN ORDINANCE AUTHORIZING THE ISSUANCE OF LEA COUNTY TAXABLE INDUSTRIAL REVENUE BONDS (TIP TOP SOLAR ENERGY CENTER LLC – TIP TOP SOLAR ENERGY CENTER PROJECT) SERIES 2019 (THE “BONDS”) AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE INDENTURE, LEASE AGREEMENT, BOND PURCHASE AGREEMENT, BONDS AND OTHER DOCUMENTS ASSOCIATED WITH THE ISSUANCE OF THE BONDS

WHEREAS, the Lea County Board of Commissioners (the “Board”) met upon notice of meeting duly published at the Lea County Courthouse in the Commission Chambers, located at 100 North Main Avenue, Lovington, New Mexico 88260 on May 2, 2019, at 9:00 a.m. as required by law; and

WHEREAS, NMSA 1978, Section 4-37-7(A) (1981) provides that ordinances shall not be submitted to the Board “until a majority of the members have directed that the title and a general summary of the subject matter of the proposed ordinances be published one time in a newspaper of general circulation within the county at least two weeks prior to the meeting of the Board at which the ordinance is proposed for final passage. The date and time of the meeting at which the ordinance is to be considered shall also be published and

WHEREAS, the New Mexico County Industrial Revenue Bond Act, NMSA 1978, Sections 4-59-1 to -16, as amended (the “Act”) authorizes Lea County, New Mexico (the “County”) to issue industrial revenue bonds to acquire “projects” as defined in the Act; and

WHEREAS, Section 4-59-2(F)(4)(b) defines a “project” under the Act to include, among other things, “any electric generation facility other than one for which both location approval and a certificate of convenience and necessity are required prior to commencing construction or operation of the facility, pursuant to the Public Utility Act [Articles 1 through 6 and 8 through 13 of Chapter 62 NMSA 1978];” and

WHEREAS, the County desires to promote industry and trade by inducing manufacturing, industrial and commercial enterprises to locate or expand in the County, to promote the use of natural resources and to promote a sound and proper balance in the County between agriculture, commerce and industry; and

WHEREAS, Tip Top Solar Energy Center LLC (the “Company”), is a limited liability company organized under the laws of the State of Delaware and qualified to do business in the State of New Mexico; and

WHEREAS, the Company has presented to the Commission a proposal whereby the County would (a) issue its Taxable Industrial Revenue Bonds (Tip Top Solar Energy Center LLC), Series 2019 (the “Bonds”), and (b) acquire solar energy generating equipment and facilities and land leases related to the Project (collectively, the “Project Property”), located within a part of the County which is outside the corporate limits of any municipality in the county, to be used by the Company for the generation, transportation and delivery of electricity; and

WHEREAS, the company has requested that the County issue industrial revenue bonds for the purpose of providing funds to finance the acquisition, construction, installation, and equipping, of a solar energy power generating facility (the "Project"). The County has been advised by the Company that, neither location approval nor a certificate of convenience and necessity are required to commencing construction or operation of the facility pursuant to the laws of the State; and

WHEREAS, the Board constitutes the governing body of the County within the meaning of the Act; and

WHEREAS, on November 15, 2018, the Board adopted Resolution No. 18-NOV-250R, relating to the Project, as presented by the Company, and which resolution is hereby incorporated by reference, in its entirety, into this Resolution No. 19-MAY-129R; and

WHEREAS, the Project has been considered by the Board and the Board has determined that the Proposal and Project will promote the local health, general welfare, safety, convenience and prosperity of the inhabitants of the County, and the Board desires to proceed with the issuance of the Bonds for the financing of the Project; and

WHEREAS, prior to issuing the Bonds and acquiring the Project, the County will have negotiated annual in-lieu tax payments (the "PILOT" or "PILOTS") to be made on behalf of the Jal School District and other applicable taxing jurisdictions, as directed by the County, that are located in the County (collectively, the "Taxing Jurisdictions"); and

WHEREAS, concurrently with the issuance of the Bonds, the Company will enter into a lease or other financing agreement with the County providing for the payment of lease rentals or other payments for the Project sufficient to pay the debt service on the Bonds, subject to the prior adoption by the Board of an ordinance approving such agreement and other related documents and authorizing the issuance of the Bonds (the "Bond Ordinance"); and

WHEREAS, the County and the Company understand that the adoption of this Resolution shall not obligate the Board or the County to adopt the Bond Ordinance, to issue the Bonds or obligate the Company to proceed with the Project, except pursuant to the terms of the Bond Ordinance and related bond documents in forms satisfactory to the County as presented by the Company prior to the issuance of the Bonds.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEA COUNTY, NEW MEXICO:

1. The County Manager or County Clerk are hereby authorized to put the consideration of the adoption of the Bond Ordinance authorizing the issuance of Lea County Taxable Industrial Revenue Bonds (Tip Top Solar Energy Center LLC – Tip Top Solar Energy Center Project) Series 2019 and authorizing the execution and delivery of the Indenture, Lease Agreement, Bond Purchase Agreement, Bonds and other documents associated with the issuance of the Bonds on the Board's May 23, 2019, Regular Meeting agenda in accordance with County procedures.

2. The Company's Bond Counsel is hereby authorized to publish notice of the title and a general summary of the subject of the proposed Bond Ordinance and the date and time of the meeting at which the proposed Bond Ordinance will be considered, in substantially the form attached

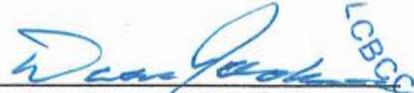
hereto as Exhibit A, one time in The Lovington Leader and one time in The Hobbs News-Sun, newspapers of general circulation within Lea County, at least two weeks prior to the meeting at which the Bond Ordinance is proposed for final passage. This authorization is in compliance with NMSA 1978, Section 4-37-7 (1981).

PASSED, ADOPTED, SIGNED AND APPROVED on this 2nd day of May, 2019, by the Lea County Board of County Commissioners in an open meeting in Lovington, New Mexico.

LEA COUNTY BOARD OF COUNTY COMMISSIONERS



Rebecca Long (District 2), Chair
Voted: Yes No Abstain



Dean Jackson (District 1), Vice Chair
Voted: Yes No Abstain



Gary G. Eldson (District 3), Member
Voted: Yes No Abstain

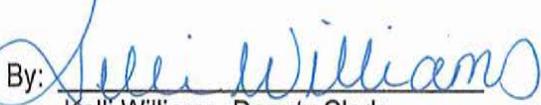


Jonathan Sena (District 4), Member
Voted: Yes No Abstain

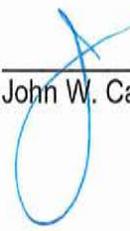


Richard Don Jones (District 5), Member
Voted: Yes No Abstain

ATTEST: Keith Manes
Lea County Clerk

By: 
Kelli Williams, Deputy Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:


John W. Caldwell, County Attorney

Lea County

MAY 02 2019

LCBCC Meeting



Exhibit A

NOTICE OF MEETING, PUBLIC HEARING AND INTENT TO ADOPT BOND ORDINANCE FOR PUBLICATION

Lea County, New Mexico Notice of Meeting, Public Hearing and Intent to Adopt Bond Ordinance

The Board of Commissioners of Lea County, New Mexico hereby gives notice of a regular City Council meeting for May 23, 2019 at 9:00 a.m. at the Lea County Courthouse, 100 North Main, Lovington, New Mexico. At such meeting the Board of Commissioners will hold a public hearing concerning and will consider for adoption the Ordinance described below. Complete copies of the proposed Ordinance are available for public inspection during the normal and regular business hours of the County Clerk, Lea County Courthouse, 100 North Main, Lovington, New Mexico.

The title of the proposed Ordinance is:

LEA COUNTY, NEW MEXICO
BOARD OF COUNTY COMMISSIONERS

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF LEA COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (TIP TOP SOLAR ENERGY CENTER LLC) SERIES 2019 IN THE MAXIMUM PRINCIPAL AMOUNT OF \$215,000,000 TO PROVIDE FUNDS TO FINANCE THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF A SOLAR ENERGY GENERATING FACILITY; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A LEASE AGREEMENT, A BOND PURCHASE AGREEMENT, BOND, AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS AND THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE BOND AND THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

The title sets forth a general summary of the subject matter contained in the Ordinance. This Notice constitutes compliance with Section 4-37-7 NMSA 1978.

Consideration of Lea County Resolution No. 19-MAY-129R
Authorizing and directing the Publication by Title and General
Summary of the Subject Matter of the Proposed Ordinance
Authorizing the Issuance of \$215,000,000 Lea County Taxable
Industrial Revenue Bonds (Tip Top Solar Project) Series 2019
to be Published in a Newspaper of General Circulation within
the County

Lea County Board of County Commissioners Regular Meeting

May 2, 2019

Mike Gallagher, ICMA-CM

County Manager

LC Resolution No. 19-MAY-129R (IRB Basics)

- **What is an Industrial Revenue Bond (IRB)?** An IRB is a loan by a lender / bond purchaser. The loan proceeds and loan repayments flow through a government issuer. This allows a company that gets an IRB tax benefits.
- **What is NOT an IRB?** A loan with public dollars or an investment from the County or any type of guarantee from the County for debt or project financing
- **What is the purpose of an IRB?** To encourage existing business expansion, or the attraction of new business / industry to grow local economy
- **What is the process for an IRB?** All action takes place in open public meetings. Typically three action items: 1. inducement resolution, 2. authorization to publish IRB ordinance, 3. consideration of IRB ordinance. Along with required notification to taxing jurisdictions and in some cases action needed by local school district. Also, involves meetings with taxing entities, company representatives and legal review. A process that may span several months.

LC Resolution No. 19-MAY-129R (Invenergy)

- www.invenergyllc.com
- North America's largest independent, privately held renewable energy provider
- Develops, owns and operates energy facilities in the United States, Canada, Latin America, Japan & Europe
- Developed more than 20,000 MW of clean energy projects in operation, in construction or contracted
- 92 wind, 17 solar, 12 natural gas and 6 advanced energy storage facilities
- Tip Top Solar Energy Center LLC
- Julia Kimmerly, Manager, Renewable Development

LC Resolution No. 19-MAY-129R (The Project)

- Tip Top Solar Energy Center
- West of Jal, and near NM 128 at Delaware Basin
- 200 MW solar project
- Approximately 1,385 acres of privately owned land
- Commercial operations of December 2022
- Large influx of jobs during construction
- Few permeant jobs
- Minimal traffic

LC Resolution No. 19-MAY-129R (Timeline)

- Step 1: Inducement Resolution approved, LC Resolution No. 18-NOV-250R at the **November 15, 2018 board meeting**
- Step 2: Approved by the Jal School District at their **April 10, 19 board meeting**
- Step 3: Notice of Consideration of Ordinance for Proposed Industrial Revenue Bonds sent on **April 22, 2019** to each taxing jurisdiction within Lea County via certified mail
- Step 4: **Today, May 2, 2019** Authorizing and directing the Publication by Title and General Summary of the Subject Matter of the Proposed Ordinance Authorizing the Issuance of \$215,000,000 Lea County Taxable Industrial Revenue Bonds (Tip Top Solar Project) Series 2019 to be Published ion a Newspaper of General Circulation within the County
- Step 5: Public Hearing and Consideration of adopting the Ordinance at the **May 23, 2019 board meeting**
- Step 6: Ordinance effective 30 days after adoption
- Step 7: Bond closing and signing of documents
- Step 8: Construction

LC Resolution No. 19-MAY-129R (IRB Details)

- Directly impacted taxing jurisdictions: Lea County, NMJC, Jal School District, Jal Hospital District, & State of NM
- IRB Amount: \$215,000,000 (no public funds, not backed by Lea County, does not impact County finances, no guarantee by County)
- IRB Term: 30 years
- Abatement of property tax, gross receipts & compensating tax
- **Company will have to pay a fixed “Payment In Lieu of Taxes” (PILT) equal to the otherwise owed property tax over 30 years: School district, NMJC, Hospital District and County**

LC Resolution No. 19-MAY-129R (Current Tax)

- Current property tax rate is 26.08
- Current annual property tax on the 1,385 acres is \$6,856 which is an average tax of \$4.95 per acre per year.
- The \$6,856 amount is divided between the entities: State of NM, Jal School District, Jal Hospital District, NMJC and Lea County
- Over the next 30 years the current property tax will provide a total of approximately \$205,680 in property taxes (assuming tax rate and valuation stays current)
- Gross receipts tax: 5.5% : 0.375% is for the Lea County, remaining 5.125% goes to the State

LC Resolution No. 19-MAY-129R (Proposed IRB Payment in Lieu of Taxes)

- Estimated valuation of Tip Top Solar Energy Center \$185,000,000
- Property taxes for project valued at \$185,000,000 over a 30 year period (applying depreciation) with a tax rate of 26.08, will generate approximately \$25,042,891 in property tax revenue, or an annual average tax payment of \$834,763.06
- The Payment in Lieu of Taxes for Tip Top Solar will be \$834,763.06 per year for 30 years, which will total \$25,042,891
- The annual payment will increase if the project valuation is greater than \$185,000,0000

LC Resolution No. 19-MAY-129R (Who Gets \$\$)

- The Payment in Lieu of Taxes for Tip Top Solar will be **\$834,763.06 per year for 30 years, which will total \$25,042,891**

Jal Hospital District: \$96,008 annually, for a total of \$2,880,259

Jal School District: \$195,985.62 annually for a total of \$5,879,568.7

NMJC: \$160,014.39 annually for a total of \$4,800,431.67

Lea County: \$339,230.5 + \$43,523.91 (redirect of State's portion) for a total of \$11,482,632.54

- **Current total annual property tax on the 1,385 acres is \$6,856** divided between State of NM, Jal School District, Jal Hospital District, NMJC and Lea County
- This project will **INCREASE dollars to the public entities by \$827,907 per year.** (\$834,763.06 -\$6,856)

LC Resolution No. 19-MAY-129R (Summary)

- **No public funding / investment / debt / loan / for the project**
- IRB of \$215,000,000 , a term of 30 years with fixed payments, abatement of GRT & compensating tax
- Current property tax is \$6,856 divided among the taxing entities
- Increased revenue to public entities, a total of **\$834,763.06 per year for 30 years, which will total \$25,042,891 - will increase accordingly with any increase in value.**
- Low demand on public facilities: this development is in a high traffic area, but will not generate much traffic
- Low demand on public services but will add revenue: this development will pay **\$195,985 a year for the Jal School District** but will not increase the student population and will pay **\$96,008 a year for Jal Hospital**
- Revenue stabilization for the public entities: fixed annual payments
- Approved by the Jal School District at their **April 10, 2019 board meeting**
- Notice of Consideration of Ordinance for Proposed Industrial Revenue Bonds sent on **April 22, 2019** to each taxing jurisdiction within Lea County via certified mail
- Approval would allow for a Public Hearing and Consideration of adopting the Ordinance at the **May 23, 2019 board meeting**



Lea County Board of County Commissioners Special Meeting

Thursday, November 15, 2018 9:00 A.M.

Lea County Courthouse - Commission Chambers – 100 North Main Avenue, Lovington, New Mexico

Notice of this Meeting has been given to the Public in Compliance with Section 10-15-4 NMSA 1978

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Lea County Manager's office located in the Lea County Courthouse in Lovington, New Mexico at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Lea County Manager's Office at the Lea County Courthouse if a summary or other type of accessible format is needed.

AGENDA

Call to Order ~ Roll Call ~ Pledge of Allegiance ~ Invocation

ITEM 01: COMMISSION

- Consideration of Lea County Resolution No. 18-NOV-220R Approving the Following Meeting Minutes:
 - ❖ November 1, 2018 Regular Meeting
 - ❖ November 7, 2018 Special Meeting (Open Canvass of November 6, 2018 General Election)
 - ❖ November 7, 2018 Special Meeting (Libba Land Subdivision)
 - ❖ November 9, 2018 Special Meeting (Certify Canvass of November 6, 2018 General Election)
- Public Comments (*Non Agenda Items*).
- Commissioners and Manager Comments.
- Recognition of County Employee – Service Awards.
 - ❖ One Year
 - Raul Villegas, Facilities Department
 - Tiffany Sexton, Detention Center
 - Kaitlyn Rager, Sheriff's Office
 - Amanda Lara, Assessor's Office
 - Arturo Navarrette, DWI/Probation Department
 - ❖ Fifteen Years
 - Vivian Martinez, Sheriff's Office
- Consideration of Lea County Resolution No. 18-NOV-221R Approving the Lea County Board of County Commissioners Meeting Dates for 2019.

ITEM 02: ACTION ITEMS

- Consideration of Lea County Resolution No. 18-NOV-222R Approving Recommendation from the Lea County Fair & Rodeo Board for Approval of Agreement Between Lea County and Andy Stewart as Rodeo Announcer at the 2019 84th Annual Lea County Fair & PRCA Rodeo. (*Larry Wheeler, Chair, Fair & Rodeo Board*)

- Consideration of Lea County Resolution No. 18-NOV-223R Approving Recommendation from the Lea County Fair & Rodeo Board for Approval of Agreement Between Lea County and Cody Sosebee as Rodeo Barrelman at the 2019 84th Annual Lea County Fair & PRCA Rodeo. *(Larry Wheeler, Chair, Fair & Rodeo Board)*
- Consideration of Lea County Resolution No. 18-NOV-224R Approving Recommendation from the Lea County Fair & Rodeo Board for Approval of Agreement Between Lea County and Ted Harbin as Rodeo Media Specialist at the 2019 84th Annual Lea County Fair & PRCA Rodeo. *(Larry Wheeler, Chair, Fair & Rodeo Board)*
- Consideration of Lea County Resolution No. 18-NOV-225R Approving Recommendation from the Lea County Fair & Rodeo Board for Approval of Agreement Between Lea County and Peggy Gander, DBA Cowboy Images as Rodeo Photographer at the 2019 84th Annual Lea County Fair & PRCA Rodeo. *(Larry Wheeler, Chair, Fair & Rodeo Board)*
- Consideration of Lea County Resolution No. 18-NOV-226R Approving Recommendation from the Lea County Fair & Rodeo Board for Approval of Agreement Between Lea County and Ryan Killingsworth as Rodeo Sound Producer at the 2019 84th Annual Lea County Fair & PRCA Rodeo. *(Larry Wheeler, Chair, Fair & Rodeo Board)*
- Consideration of Lea County Resolution No. 18-NOV-227R Approving Recommendation from the Lea County Fair & Rodeo Board for Approval of Agreement Between Lea County and Reita Creek Scoreboards as Rodeo Video Screen/Scoreboard Provider at the 2019 84th Annual Lea County Fair & PRCA Rodeo. *(Larry Wheeler, Chair, Fair & Rodeo Board)*
- Consideration of Lea County Resolution No. 18-NOV-228R Approving Recommendation from the Lea County Fair & Rodeo Board for Approval of Award of Request for Proposal No. 05 2018 – 2019 Entertainment Booking Agent for the 2019 84th Annual Lea County Fair & PRCA Rodeo. *(Larry Wheeler, Chair, Fair & Rodeo Board)*
- Consideration of Lea County Resolution No. 18-NOV-229R Adopting Lea County's 2019 Legislative Priorities. *(Michael Gallagher, County Manager)*
- Consideration of Lea County Resolution No. 18-NOV-230R Supporting the New Mexico Counties 2019 Legislative Priorities. *(Michael Gallagher, County Manager)*
- Consideration of Lea County Resolution No. 18-NOV-231R Approving Lea County's Annual Membership into the New Mexico Counties (NMC) for FY 2018 - 2019. *(Michael Gallagher, County Manager)*

- Consideration of Lea County Resolution No. 18-NOV-232R Authorizing In State Travel to Attend the New Mexico Counties Annual Legislative Conference and State Legislative Meetings, January 14 – 17, 2019 to Santa Fe, New Mexico. *(Michael Gallagher, County Manager)*
- Consideration of Lea County Resolution No. 18-NOV-233R Authorizing In State Travel to Attend the 50th Annual New Mexico Governor's Prayer Breakfast, January 23 - 24, 2019 to Santa Fe, New Mexico. *(Michael Gallagher, County Manager)*
- Consideration of Lea County Resolution No. 18-NOV-234R Authorizing In State Travel to Attend the Evening with Lea County, January 31 – February 1, 2019 to Santa Fe, New Mexico. *(Michael Gallagher, County Manager)*
- Consideration of Lea County Resolution No. 18-NOV-235R Approving Memorandum of Agreement Between Lea County and the City of Jal for Emergency and Facility Equipment. *(Michael Gallagher, County Manager)*
- Consideration of Lea County Resolution No. 18-NOV-236R Approving Memorandum of Agreement Between Lea County and the City of Eunice for Facility Improvements. *(Michael Gallagher, County Manager)*
- Consideration of Lea County Resolution No. 18-NOV-237R Approving Facility Provision, Management and Operations Agreement Between Lea County and The GEO Group, Inc. *(John W. Caldwell, County Attorney)*
- Consideration of Lea County Resolution No. 18-NOV-238R Award Bid No. 04 2018 – 2019 Lea County Regional Airport Terminal Expansion to Lasco Construction. *(Corey Needham, Assistant County Manager - Operations)*
- Consideration of Lea County Resolution No. 18-NOV-239R Authorizing a Grant Agreement Between Lea County and New Mexico Department of Transportation for Terminal Expansion at the Lea County Regional Airport. *(Corey Needham, Assistant County Manager - Operations)*
- Consideration of Lea County Resolution No. 18-NOV-240R Approving an Agreement Between Lea County and J&H Services to Complete Bennett Water Line Improvements – Phase 1. *(Corey Needham, Assistant County Manager - Operations)*
- Consideration of Lea County Resolution No. 18-NOV-241R Approving Cooperative Educational Services (CES) Task Order with Constructors, Inc. to Widen and Rehabilitate Nadine Roadway. *(Corey Needham, Assistant County Manager - Operations)*
- Consideration of Lea County Resolution No. 18-NOV-242R Authorizing Out of State Travel to Transport Lea County Sheriff's Office Vehicle, December 14 - 15, 2018 to Victoria, Texas. *(Corey Needham, Assistant County Manager - Operations)*

- Consideration of Lea County Resolution No. 18-NOV-243R Approving Cooperative Educational Services (CES) Agreement Between Lea County and Lynco Electric for Light Replacement in the Yucca, Zia, Chaparral and Steer Barn at the Lea County Fairgrounds. *(Erich Francke, Facilities Director)*
- Consideration of Lea County Resolution No. 18-NOV-244R Approving Cooperative Educational Services (CES) Agreement Between Lea County and Lynco Electric for Electrical Design and Work to Improve Electrical Service at the Lea County Fairgrounds. *(Erich Francke, Facilities Director)*
- Consideration of Lea County Resolution No. 18-NOV-245R Approving the Cost of Service from Lea County Electric Cooperative to Furnish Transformers and Underground Wire Service to the Lea County Fairgrounds. *(Erich Francke, Facilities Director)*
- Consideration of Lea County Resolution No. 18-NOV-246R Approving Cooperative Educational Services (CES) Agreement Between Lea County and Honeywell to Complete the HVAC Automation of the Lea County Event Center. *(Erich Francke, Facilities Director)*
- Consideration of Lea County Resolution No. 18-NOV-247R Approving Change Order No. 012 Between Lea County, RMKM Architecture, P.C. and HB Construction for the Lea County Judicial Complex Courtroom Benches. *(Erich Francke, Facilities Director)*
- Consideration of Lea County Resolution No. 18-NOV-248R Approving Recommendations from the Freeholders Committee Regarding the Vacation of Midway Road Right of Way in Lea County, New Mexico. *(Bruce Reid, County Planner)*
- Consideration of Lea County Resolution No. 18-NOV-249R Approving Findings and Proposed Disposition of Inventory. *(Deanna Gomez, Finance Accountant)*

ITEM 03: DISCUSSION ITEMS

- Discussion of Lea County's Financial Report. *(Micha Caldwell, Finance Buyer)*
- Discussion of Lea County's Accounts Payable. *(Micha Caldwell, Finance Buyer)*

ITEM 04: EXECUTIVE SESSION

- COMMISSION MAY CONVENE IN CLOSED SESSION to Discuss the Acquisition of Real Property Located in Southwest Lea County; as Authorized by the NMSA 1978 § 10-15-1 H (8).

COMMISSION MAY CONVENE IN OPEN SESSION to take Action, if any, on the Closed Session Item.

ITEM 05:

OTHER BUSINESS

- Consideration of Lea County Resolution No. 18-NOV-250R Approving an Industrial Revenue Bond Inducement for Invenergy, LLC for the Project Known as the Tip Top Solar Energy Center.

ADJOURN

STATE OF NEW MEXICO
COUNTY OF LEA
RESOLUTION NO. 18-NOV-250R

A RESOLUTION DECLARING THE INTENT OF LEA COUNTY TO ISSUE AN INDUSTRIAL REVENUE BOND ENTITLED LEA COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (TIP TOP SOLAR ENERGY CENTER LLC PROJECT), SERIES 2019, IN AN AGGREGATE PRINCIPAL AMOUNT OF UP TO \$200,000,000 IN CONNECTION WITH THE CONSTRUCTION OF SOLAR ENERGY GENERATING FACILITIES TO BE LOCATED IN THE UNINCORPORATED PORTION OF LEA COUNTY, NEW MEXICO, FOR THE PURPOSE OF INDUCING TIP TOP SOLAR ENERGY CENTER LLC OR ITS SUCCESSORS OR ASSIGNS, TO ACQUIRE AND CONSTRUCT THE PROJECT AND TO REIMBURSE TEMPORARY ADVANCES MADE FOR CAPITAL EXPENDITURES FROM PROCEEDS OF THE BONDS; AND CONCERNING RELATED MATTERS.

WHEREAS, the New Mexico "County Industrial Revenue Bond Act" (the "Act"), being NMSA 1978, Sections 4-59-1 through 4-59-16, as amended, authorizes Lea County, New Mexico (the "County") to issue industrial revenue bonds and to acquire projects as defined in the Act; and

WHEREAS, the County desires to promote industry and develop trade or other economic activity to secure and maintain a balanced and stable economy in the County and to promote public health, welfare, safety, convenience and prosperity; and

WHEREAS, Section 4-59-2(F)(2)(b) of the Act defines "project" to include, among other things, an electric generation facility other than one for which both location approval and a certificate of convenience and necessity are required prior to commencing construction or operation of the facility, pursuant to the Public Utility Act (Sections 62-13-1 et seq. NMSA 1978) and the Electric Utility Industry Restructuring Act of 1999 (Sections 62-3A-1 et seq.); and

WHEREAS, Tip Top Solar Energy Center LLC, a Delaware limited liability company (together with its successors and assigns, including, but not limited to, subsidiaries or affiliates, the "Company") have made a proposal to the County (the "Proposal") whereby the County will acquire and construct solar energy generating facilities to be located in the unincorporated portion of Lea County, New Mexico, i.e., not within the corporate limits of any municipality, for use by the Company in generating electricity, as described herein (the "Project"); and

WHEREAS, the Project consists of the construction of solar energy generating facilities, which is an authorized project as defined under the Act; and

WHEREAS, the issuance of its taxable industrial revenue bond or bonds (the "Bonds") by the County to finance all or a part of the Project, will constitute one of the inducements whereby the Company will determine to acquire the Project in the County; and

WHEREAS, the Board of County Commissioners (the "Board") of the County constitutes the governing body of the County within the meaning of the Act; and

WHEREAS, the Project has been considered by the Board and it has been determined by the Board that the Proposal and Project will promote the local health, general welfare, safety, convenience and prosperity of the inhabitants of the County, and the Board desires to indicate its intent to proceed with the issuance of the Bonds for the financing of the Project; and

WHEREAS, prior to issuing the Bonds and acquiring the Project, the County and the Company will negotiate an annual in-lieu tax payment to be made to the County and the applicable school districts (the "School Districts") in which the Project is located (collectively, the "PILOT"); and

WHEREAS, concurrently with the issuance of the Bonds, the Company would enter into a lease or other financing agreement with the County providing for the payment of lease rentals or other payments on the Project sufficient to pay the debt service on the Bonds, subject to the prior adoption by the Board of an ordinance approving such agreement and other related documents and authorizing issuance of the Bonds (the "Bond Ordinance"); and

WHEREAS, the County and the Company understand that the adoption of this Resolution shall not obligate the Board or the County to adopt the Bond Ordinance, to issue the Bonds or obligate the Company to proceed with the Project, except pursuant to the terms of the Bond Ordinance and related bond documents in forms satisfactory to the County as presented by the Company prior to the issuance of the Bonds;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF LEA COUNTY, NEW MEXICO:

Section 1. All actions (not inconsistent with the provisions hereof) heretofore taken by the Board and the officers and employees of the County related to the Proposal, the acquisition of the Project, and the sale and issuance of the Bonds, are hereby ratified, approved and confirmed.

Section 2. The Board has been informed by the Company that:

A. The Project will be located in the unincorporated portions of Lea County generally described in Exhibit A hereto. The Project will consist of the construction of solar energy generation facilities and related assets and all necessary and useful equipment which will be constructed and installed in Lea County and used for such purposes.

B. The maximum aggregate face amount of the Bonds to be issued with respect to the Project is \$200,000,000.00.

C. The initial developer of the facilities for the Project is the Company.

D. The initial operator of the Project will be the Company.

Section 3. In order to promote the local health and general welfare, safety, convenience and prosperity of the inhabitants of the County, it is the Board's intent to take all necessary and advisable steps to effect the issuance of the Bonds in an aggregate principal amount up to \$200,000,000 in order to defray part or all of the costs of the Project. The Bonds are to be entitled substantially as follows "Lea County, New Mexico Taxable Industrial Revenue Bonds (**TIP TOP SOLAR ENERGY CENTER LLC PROJECT**), Series 2019" provided that in the Bond Ordinance the Board may designate a different Bond title, including but not limited to the Series designation. It is the intention of the Board that the Bonds will be issued with a term of not exceeding thirty (30) years but the Board may increase or decrease such term in the Bond Ordinance to be adopted. This expression of the Board's intent is conditioned upon the issuance of the Bonds on or before five years from the date of the adoption of this Resolution.

Section 4. The Bonds for the acquisition and construction of the Project shall be payable from the revenues derived from the lease between the Company and the County for the occupancy of the property to be acquired with the proceeds of the Bonds (the "Project Property") or other moneys payable by the Company, with respect thereto, and shall not constitute a debt or indebtedness of the County within the meaning of any provision or limitation of the Constitution or statutes of the State of New Mexico. The lease shall include provisions for an annual in-lieu tax payment to be made by the Company to the County and the School Districts (collectively, the "Taxing Jurisdictions"), in an amount to be negotiated by the County Manager, and the Taxing Jurisdictions in which the Project is located, and approved by the Board of County Commissioners in connection with the issuance of the Bonds. In addition, if the Bonds are issued, the Company shall indemnify and hold harmless the County, the Board and their respective officers, employees, designated representatives and agents (collectively, the "Indemnified Persons") from and against any liability to the Company, or to any third parties that may be asserted against the County with respect to the County's ownership of the Project Property. Nothing contained in this Resolution or in any other instrument shall be considered as obligating the County to any pecuniary liability or a charge upon the general credit of the County or against its taxing power, it being understood that no costs are to be borne by the County and that all costs incurred by the County in connection with the Bonds are to be promptly reimbursed by the Company as appropriate. The County's adoption of this Resolution shall not be deemed a conclusion or expression of approval by the County or any Indemnified Person of the Company or the Project.

Section 5. The Company, as agent for the County and consistent with Taxation and Revenue Department Regulation 3.2.212.22 NMAC (the "Regulation"), will acquire the Project. The Company will to the extent required by law and consistent with New Mexico law and as agent for the County, apply to the Taxation and Revenue Department for Type 9 Nontaxable Transaction Certificates ("Certificates"). If, and to the extent required to allow for a deduction from New Mexico gross receipts tax, the Company will deliver a Certificate to each person selling tangible personal property to the Company for the Project as applicable under the New Mexico Gross Receipts and Compensating Tax Act and the Regulation. For this purpose, by adoption of this Resolution, the County authorizes the Company to act as agent for the County with respect to the acquisition of

the Project. The Company shall not use the Certificates other than for the purchase of capital equipment and other tangible personal property for the Project, nor shall the Company use such Certificates after the completion of the Project. Prior to the use of such Certificates by the Company as agent for the County, the County Manager and the Company will agree to certain procedures regarding the use of the Certificates and protection of the County from any unfunded tax liability. This Resolution is intended to be an "inducement resolution" as that term is used in, and for the purposes of, the Regulation.

Section 6. The County Manager and County Attorney are hereby authorized and directed to negotiate the PILOT with the Company, the details of which shall be included in the Lease and Purchase Agreement and/or the forms of transaction documents approved therein.

Section 7. The Board and other appropriate County officials and employees are hereby authorized and empowered to take such steps and to do such things as may be necessary to achieve the purposes of this Resolution; provided, however, the issuance of the Bonds and the execution and delivery of any documents to which the County is a party in connection therewith shall be subject to the approval and authorization by the Board pursuant to the Bond Ordinance, to be adopted following public notice of the Board's intent to adopt such Bond Ordinance at least fourteen (14) days prior to the consideration of the Bond Ordinance by the Board at a public meeting, such public notice to specify the time, date and place of the Board's meeting. Such notice may be in substantially the form set forth in Exhibit B attached hereto, to be published one time in the Hobbs News Sun, a newspaper that maintains an office in the City of Hobbs and is of general circulation in the County, at least two weeks before the meeting of the Board at which the Bond Ordinance is to be adopted. This authorization is in compliance with Section 4-37-7 NMSA, 1978. In particular, no provision of this Resolution shall in any way obligate the County or any other person to issue the Bonds, any other bonds or in any way finance the Project; and the County retains full and complete discretion with respect thereto.

Section 8. This Resolution shall not give rise to a pecuniary liability of the County and shall not give rise to a charge against its general credit or taxing powers.

Section 9. The County Manager is hereby authorized and directed to give notice of the County's intent to consider the Bond Ordinance for adoption, which notice shall be provided to the County Assessor and each entity located within the County authorized to levy taxes on property in the County, so that comments can be transmitted by such entities to the County, such notice to be provided by certified mail, return receipt requested, at least 30 calendar days prior to the meeting at which final action is to be taken on the Bond Ordinance, as provided in Section 4-59-4.1(A) NMSA 1978.

Section 10. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 11. All orders and resolutions, or parts thereof, in conflict with this Resolution are hereby repealed; this repealer shall not be construed to revive any order, resolution or part thereof, heretofore repealed.

Section 12. The adoption of this Resolution shall not require any further action by the County regarding the issuance of the Bonds or the terms and conditions of their issuance.

PASSED, APPROVED and ADOPTED on this 15th day of November, 2018, by the Lea County Board of County Commissioners in an open meeting in Lovington, New Mexico.

LEA COUNTY BOARD OF COUNTY COMMISSIONERS

Ron Black

Ron Black, Chairman

Voted: Yes No Abstain

Rebecca Long

Rebecca Long, Vice Chairman

Voted: Yes No Abstain

Dean Jackson

Dean Jackson, Member

Voted: Yes No Abstain

Jonathan Sena, Member

Voted: Yes No Abstain

Don Jones

Don Jones, Member

Voted: Yes No Abstain

ATTEST: Keith Manes
Lea County Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: Kelli Williams
Kelli Williams, Deputy

John W. Caldwell
John W. Caldwell, County Attorney



Exhibit A
(Property Description)

Land residing in Sections 11-14 Township 24S Range 33 East, including parcel numbers 4940212112255, 4000516950001, and 4000516950004.

EXHIBIT B

LEA COUNTY,
NEW MEXICO

NOTICE OF PUBLIC HEARING AND CONSIDERATION OF AN ORDINANCE

The County Board of Commissioners (the "Board") of Lea County, New Mexico (the "County") hereby gives notice of its regular meeting to be held at the Lea County Courthouse, 100 North Main Street, Lovington, New Mexico 88260, on February 7, 2019, at the hour of 9:00 a.m. (local time). At such meeting, the Board will consider for adoption a proposed ordinance (the "Ordinance") relating to the amendment by the County of its Industrial Revenue Bond (Tip Top Solar Energy Center LLC Project) Series 2019. All interested citizens are invited to attend the meeting.

The title of the proposed Ordinance is:

AUTHORIZING THE ISSUANCE AND SALE OF LEA COUNTY, NEW MEXICO TAXABLE INDUSTRIAL REVENUE BONDS (TIP TOP SOLAR ENERGY CENTER LLC PROJECT) SERIES 2019, IN AN AGGREGATE PRINCIPAL AMOUNT OF UP TO \$200,000,000 TO PROVIDE FUNDS TO FINANCE THE ACQUISITION AND CONSTRUCTION OF A SOLAR ENERGY FACILITY AND RELATED ASSETS, TO BE LOCATED IN THE UNINCORPORATED PORTION OF LEA COUNTY, NEW MEXICO, TO BE USED BY TIP TOP SOLAR ENERGY CENTER LLC AND ITS SUCCESSORS OR ASSIGNS; AUTHORIZING THE EXECUTION AND DELIVERY OF AN INDENTURE, A LEASE, A BOND PURCHASE AGREEMENT, THE BONDS AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE OF THE BONDS AND THE PROJECT; MAKING CERTAIN DETERMINATIONS AND FINDINGS RELATING TO THE BONDS AND THE PROJECT; RATIFYING CERTAIN ACTIONS TAKEN PREVIOUSLY; AND REPEALING ALL ACTIONS INCONSISTENT WITH THIS ORDINANCE.

A general summary of the subject matter of the Ordinance is contained in its title.

A copy of the Ordinance in draft form is on file in the office of the County Clerk, 100 N. Main, Lovington, New Mexico, and will be available for inspection during normal business hours. All members of the public are invited to attend the hearing, and will be provided the opportunity to ask questions about, and to express their opinions concerning, the proposed Ordinance.

This notice is given pursuant to Section 4-37-7 NMSA 1978.

Dated: _____, 2018