

Site Lease Agreement

This Site Lease Agreement ("Lease"), dated as of [e.g. October 8], 2020, is by and between Calibrant NY II, LLC, a Delaware limited liability company ("Lessee"), and County of Albany, a _____ ("Lessor") (each a "Party" and collectively, the ("Parties").

BACKGROUND

A. Concurrently herewith, Lessee and Lessor are entering into that certain Solar Energy Power Purchase Agreement, dated as of the date hereof (the "PPA"), pursuant to which Lessee has agreed to engineer, construct and install the System and sell to Lessor the Energy Output generated by the System, all in accordance with the terms thereof. Capitalized terms used herein but not defined herein (including in the recitals hereto) shall have the respective meanings ascribed thereto in the PPA.

B. In order to construct, install, and operate the System and sell the Energy Output, Lessee requires access to certain real property owned or leased by Lessor, as more particularly identified in Exhibit A attached hereto (such real property, including any improvements erected thereon, collectively, the "Premises").

C. In connection with the foregoing, Lessee desires to lease the Premises in furtherance of Lessee's obligations under the PPA and Lessor is willing to grant such lease to Lessee.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Lessee and Lessor hereby agree as follows:

1. Leased Premises and Related Rights.

(a) Lessor hereby leases to Lessee, in accordance with the terms and conditions hereinafter set forth, the Premises. Lessor hereby also grants to Lessee, for a period co-terminus with this Lease, access to Station Power and a right-of-way to access the Premises across or through any surrounding or nearby premises owned or leased by Lessor, including any structures or fixtures appurtenant to the Premises, passage through which is necessary or convenient to install or gain access to the System or the Premises.

(b) As more particularly set forth in the PPA, Lessee may choose at any time to expand or modify the System with Lessor's consent, such consent not to be unreasonably withheld. Such expansion or modification may require additional space at the Premises. Lessor shall consider in good faith any request by Lessee to provide any additional space at no cost to Lessee if required by Lessee. Any such additional space provided to Lessee shall automatically and without the need to amend this Lease be deemed part of the Premises.

2. Rents. Lessee shall pay Lessor one U.S. dollar (\$1.00) on the Commercial Operation Date as and for rent of the Premises for the full term of this Lease.

3. System Construction, Installation and Operation.

(a) Lessor hereby consents to the construction of the System by Lessee on the Premises, including, without limitation, solar panels, mounting substrates or supports, wiring and connections, power inverters, service equipment, metering equipment and utility interconnections. Lessor acknowledges that the portion of the System on the roofs of the building(s) may weigh in the

aggregate more than [Insert weight] pounds per square foot, consents to such specifications and warrants that the physical integrity of all structures, buildings and fixtures upon which the System will be constructed has not deviated from the As-Built Drawings provided to the Lessee and, therefore, is sufficient to bear the weight of the System and allow for safe installation of the same. Lessee may request written acknowledgement from Lessor pertaining to the final structural analysis related to the System.

- (b) Lessee shall also have the right from time to time during the term hereof:
 - (i) to install and operate the System on the Premises;
 - (ii) to maintain, clean, repair, replace and dispose of part or all of any System;
 - (iii) to add or remove the System or any part thereof;
 - (iv) to access the Premises with guests for promotional purposes during normal open hours and at other times as are acceptable to the Lessor in its reasonable business judgment; and,
 - (v) to perform (or cause to be performed) all tasks necessary or appropriate, as reasonably determined by Lessee, to carry out the activities set forth in this Section 3.

(c) Lessor acknowledges that the installation of all or a portion of the System may require installation to the ground and may require physically mounting and adhering the System to fixtures appurtenant to the Premises and consents to such mounting or adhering, as applicable.

4. Access to Premises. Lessor shall provide Lessee with access to the Premises as reasonably necessary to allow Lessee to install, operate and maintain the System as contemplated in the PPA, including ingress and egress rights to the Premises for Lessee and its employees, contractors, sub-contractors and electric utility personnel and access to solar panels and conduits to interconnect the System with the Premises' electrical wiring. Lessor shall use commercially reasonable efforts to provide sufficient space for the temporary storage and staging of tools, materials and equipment and for the parking of construction crew vehicles and temporary construction trailers and facilities reasonably necessary during the furnishing, installation, testing, commissioning, deconstruction, disassembly, decommissioning and removal of the System and access for rigging and material handling. Lessor shall provide Lessee a reasonable area for construction laydown. Lessor and its authorized representatives shall at all times have access to and the right to observe the installation of the System, subject to compliance with Lessee's safety rules, but shall not interfere with the installation or handle any Lessee equipment or the System without written authorization from Lessee. Lessor shall provide necessary space for storing parts and supplies for the operation and maintenance of the System. Lessee shall operate and maintain the System in a manner that minimizes inconvenience to and interference with Lessor and Lessor's guests' and customers' use of the Premises to the extent commercially practical.

5. System and Output Ownership.

(a) Lessor acknowledges and agrees that Lessee or one of its affiliates is the exclusive owner and operator of the System, that all equipment comprising the System shall remain the personal property of Lessee and shall not become fixtures, notwithstanding the manner in which the System is or may be attached to any real property of Lessor and Lessor shall have no right, title or interest in the System or any component thereof, notwithstanding that any such System may be physically mounted or adhered to the Premises or structures, buildings and fixtures on the Premises.

(b) Lessor acknowledges that Lessee is the exclusive owner of electric energy generated by the System and owner of all Environmental Attributes and federal, state or local financial incentives or benefits attributable to the System. Without the express written consent of Lessee, Lessor shall not make or publish any public statement or notice regarding any Environmental Attributes or other financial incentives or benefits of the System or the energy output from the System. The System shall not be considered an electric public utility, an investor owned utility, a municipal utility, or a merchant power plant otherwise known as an exempt wholesale generator.

6. Representations and Warranties, Covenants of Lessor.

(a) Authorization; Enforceability. The execution and delivery by Lessor of, and the performance of its obligations under, this Lease have been duly authorized by all necessary action, do not and will not require any further consent or approval of any other person, and do not contravene any provision of, or constitute a default under, any indenture, mortgage or other material agreement binding on Lessor (including any lease in respect of the Premises as to which Lessor is the tenant) or any valid order of any court, or regulatory agency or other body having authority to which Lessor is subject. This Lease constitutes a legal and valid obligation of Lessor, enforceable against Lessor in accordance with its terms, except as may be limited by bankruptcy, reorganization, insolvency, bank moratorium or laws relating to or affecting creditors' rights generally and general principles of equity whether such enforceability is considered in a proceeding in equity or at law.

(b) Lessor's Title to Premises. Except for rights granted to the Federal Aviation Administration, Lessor represents, warrants and covenants that Lessor has lawful title to the Premises and that the Premises is free and clear of all liens, encumbrances, easements, leases, mortgages, deeds of trust, security interests, fractured interests, mineral, oil or gas rights, options to purchase or lease, claims and disputes (collectively, "Liens"), and, except for the Lessor and the Federal Aviation Administration, there are no tenants on or other parties in possession of the Premises. Lessee shall have quiet and peaceful possession of the Premises free from any claim of any entity or person of superior title thereto without hindrance to or interference with or molestation of Lessee's quiet enjoyment thereof, throughout the term of this Lease. Lessor shall not sell, lease, assign, mortgage, pledge or otherwise alienate or encumber the Premises unless Lessor shall have given Lessee at least 15 days' prior written notice thereof, which notice shall identify the transferee, the Premises to be so transferred and the proposed date of transfer. Lessor agrees that this Lease and the rights of way granted in Section 1 of this Lease shall run with the Premises and survive any transfer of any of the Premises. In furtherance of the foregoing, Lessor agrees that it shall cause any purchaser, lessee, assignee, mortgagee, pledge or party to whom a lien has been granted to execute and deliver to Lessee a document pursuant to which such party acknowledges and consents to the Lessee's rights in the Premises as set forth herein including, without limitation, an acknowledgement by the transferee that it has no interest in the System and shall not gain any interest in the System by virtue of the Lessor's transfer. Lessor shall defend, indemnify and hold harmless Lessee and its agents, employees, contractors, subcontractors, successors or assigns from and against losses, liabilities, damages, costs, claims, suits and causes of action, to the extent arising out the failure of the representations of the Lessor set forth in this Section 6(b) to be true and correct at all times during the term of the Lease, or failure of the Lessor to fully cooperate with and assist Lessee in removing any Liens.

(c) No Interference With and Protection of System. Lessor will not conduct activities on, in or about the Premises that have a reasonable likelihood of causing damage, impairment or otherwise adversely affecting the System. Lessor shall take all reasonable steps to limit access to the Premises to Lessee and Lessee's employees, invitees, agents and

representatives and shall not permit Lessor's employees, invitees, agents and representatives, and other unrelated third-parties, to access the System, or otherwise or adversely affect the System. Lessor covenants that it will obtain a non-disturbance agreement ("NDA") from any third party who now has or may in the future obtain an interest in the Premises, including, without limitation, any lenders to Lessor, Lessor's Landlord or the owner of the Premises, which NDA shall (a) acknowledge and consent to Lessee's rights in the Premises and the Delivery Point, (b) acknowledge that the third party has no interest in the System and shall not gain any interest in the System by virtue of the Parties' performance or breach of this Lease and (c) subordinates any lien the third party may have in and to the System and other property that is or may from time to time hereafter be located at the Premises or Delivery Point.

(d) Maintenance of Premises. Lessor shall keep areas of the Premises that are under its control neat, clean and in good order and condition. Lessor shall give Lessee prompt notice of any damage to or defective condition in any part or appurtenance of the Premises (including mechanical, electrical, plumbing, heating, ventilating, air conditioning and other equipment facilities and systems located within or serving the Premises), of which Lessor has actual notice. Lessor shall exercise reasonable care to warn those lawfully on the Premises of existing dangers.

(e) Utilities. Lessor shall provide Lessee with Station Power during the term of this Lease.

(f) Insolation. Lessor acknowledges and agrees that access to sunlight ("insolation") is essential to the value to Lessee of the leasehold interest granted hereunder and is a material inducement to Lessee in entering into this Lease. Accordingly, Lessor shall not permit any interference with insolation on and at the Premises. Without limiting the foregoing, Lessor shall not construct or permit to be constructed any structure on the Premises that could adversely affect insolation levels, permit the growth of foliage that could adversely affect insolation levels, or take any action that could adversely affect insolation levels. In the event Lessor fails to maintain excess foliage on the Premises, Lessee, at Lessor's cost, is authorized to maintain, trim, or mow such foliage as is necessary to maintain insolation levels. If Lessor becomes aware of any potential development or other activity on adjacent or nearby properties that could diminish the insolation to the Premises, Lessor shall advise Lessee of such information and reasonably cooperate with Lessee in measures to preserve existing levels of insolation at the Premises. Notwithstanding any other provision of this Lease, the Parties agree that (i) Lessee would be irreparably harmed by a breach of the provisions of this Section 6(f), (ii) an award of damages would be inadequate to remedy such a breach, and (iii) Lessee shall be entitled to equitable relief, including specific performance, to compel compliance with the provisions of this Section 6(f).

(g) Notice. Each Party shall notify the other within twenty-four (24) hours following the discovery by it of any material malfunction of the System or interruption in the supply of electricity from the System. Each Party shall designate and advise the other Party of personnel to be notified in the event of such an emergency. Lessee shall correct, or cause to be corrected, the conditions that caused the emergency as soon as reasonably possible in light of the circumstances following the giving of notice to Lessee by Lessor or upon discovery of such emergency by Lessee.

7. Representations and Warranties, Covenants of Lessee.

(a) Authorization; Enforceability. The execution and delivery by Lessee of, and the performance of its obligations under, this Lease have been duly authorized by all necessary action, do not and will not require any further consent or approval of any other person, and do not contravene any provision of, or constitute a default under, any indenture, mortgage or other material

agreement binding on Lessee or any valid order of any court, or regulatory agency or other body having authority to which Lessee is subject. This Lease constitutes a legal and valid obligation of Lessee, enforceable against Lessee in accordance with its terms, except as may be limited by bankruptcy, reorganization, insolvency, bank moratorium or laws relating to or affecting creditors' rights generally and general principles of equity whether such enforceability is considered in a proceeding in equity or at law.

(b) **Hazardous Materials.** Lessee shall not introduce or use any hazardous, toxic or dangerous materials on, in or under the Premises in violation of any applicable law or regulation. If Lessee becomes aware of any such hazardous, toxic or dangerous materials, Lessee shall promptly notify Lessor of the type and location of such materials in writing. Lessee agrees to assume full responsibility for (and protect, indemnify and defend Lessor against) any liability or cleanup obligations for any contamination or pollution or breach of environmental laws related to the use of any hazardous, toxic or dangerous materials on, in or under the Premises that are directly attributable to the actions of Lessee.

8. Term and Termination. The term of this Lease shall commence on the date hereof and terminate on the date that is 180 days after the termination of the PPA; provided, however, that if Lessee is pursuing the remedy set forth in Section 9.4(b) of the PPA, this Lease shall continue for so long as Lessee shall continue to sell the electricity produced by the System to persons other than Customer or until the 25th anniversary of the Commercial Operation Date, whichever occurs sooner. In such event, Lessor shall continue to perform its obligations under this Lease, including permitting Lessee to utilize the Delivery Point or arrange for an alternate delivery point with the Local Distribution Company. Lessee may terminate this Lease at Lessee's sole discretion at any time upon three months' written notice to Lessor. In addition, Lessee may terminate this Lease effective upon provision of written notice to Lessor if, within 180 days of the date hereof, Lessee determines that a System cannot be installed and operated according to Lessee's investment criteria. Within 180 days after any termination of this Lease, Lessee shall remove the System. In connection with such removal, Lessor shall continue to provide Lessee (and its affiliates and subcontractors) with access to the Premises without payment of further rent or consideration.

9. Insurance. Each of Lessee and Lessor shall obtain and maintain the insurance coverages required under the PPA.

10. Taxes. Lessee shall pay all real estate or personal property taxes, possessory interest taxes, business or license taxes or fees, service payments in lieu of such taxes or fees, annual or periodic license or use fees, excises, assessments, bonds, levies, fees or charges of any kind which are assessed, levied, charged, confirmed, or imposed by any public authority due to Lessee's occupancy and use of the Premises (or any portion or component thereof). Lessor shall pay all (i) real and personal property taxes relating to the real property on which the Premises is situated, (ii) inheritance or estate taxes imposed upon or assessed against the Premises, or any part thereof or interest therein, (iii) taxes computed upon the basis of the net income or payments derived from the Premises by Lessor or the owner of any interest therein, and (iv) taxes, fees, service payments, excises, assessments, bonds, levies, fees or charges of any kind which are adopted by any public authority after the date hereof. **For purposes of clarity as to subsection iv, where the Lessor is a tax exempt entity and the public authority removes the tax exempt status of the Premises, any such real estate taxes shall be paid by the Lessor and the Lessee shall not be liable to reimburse the Lessor for payment of such taxes.**

11. Reserved.

12. Casualty or Condemnation. In the that Lessee does not elect to terminate this Lease as a result of a casualty or condemnation affecting the Premises, Lessor shall exercise commercially reasonable efforts to repair the damage to the Premises and return the Premises to its condition prior to such damage or destruction, except that Lessor shall in no event be required to repair, replace or restore any property of Lessee comprising part of the System, which replacement or restoration shall be Lessee's responsibility as provided in the PPA. In the event of an award related to eminent domain or condemnation of all or part of the Premises, each Party shall be entitled to take from such an award that portion as allowed by law for its respective property interest appropriated as well as any damages suffered thereby.

13. Assignment.

(a) The Parties shall not, without the prior written consent of the other, assign, pledge or transfer all or any part of, or any right or obligation under, this Lease, whether voluntarily or by operation of law, and any such assignment or transfer without such consent will be null and void. Notwithstanding the foregoing, (i) changes in control of Lessee shall not be deemed an assignment of this Lease, (ii) Lessee shall be entitled to assign its rights and interests in this Lease for collateral purposes in connection with any equity or debt financing of Lessee or its Affiliates, and (iii) Lessee may sell, assign, transfer and convey Lessee's right, title and interest in, under and to this Lease to one of its Affiliates; provided, however that Lessee shall remain liable to perform all of the obligations set forth in this Lease, unless Lessee is released by Lessor.

(b) Any assignee of Lessee or Lessor agrees to assume the obligations of the assignor and such assignee shall bound by the terms of this Lease.

14. Reserved.

15. Defaults and Remedies.

(a) An "Event of Default" means, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

- (i) the breach of any representation or warranty or any material covenant or obligation set forth in this Site Lease (except to the extent constituting a separate Event of Default), if such breach is not remedied within thirty (30) days after receipt of written notice (or such longer period not to exceed sixty (60) days, provided such breach is capable of being cured within such sixty (60) day period and the Defaulting Party is diligently attempting performance);
- (ii) such Party becomes Bankrupt;
- (iii) such Party fails to provide or maintain in full force and effect any required insurance;
- (iv) Lessor makes a Transfer without prior written notice to Lessee as provided herein, or such Lessor transferee does not agree to be bound by the terms of this Lease, or both; or,
- (v) an Event of Default (as defined in the PPA) has occurred under the PPA.

(b) **Remedies.** The non-Defaulting Party shall have and shall be entitled to exercise any and all remedies provided in the PPA.

16. Notices. Any notice required or permitted to be given in writing under this Lease shall be mailed by certified mail, postage prepaid, return receipt requested, or sent by overnight air courier service, or personally delivered to a representative of the receiving party, or sent by facsimile (provided an identical notice is also sent simultaneously by mail, overnight courier, or personal delivery as otherwise provided in this Section 16). All such communications shall be mailed, sent or delivered, addressed to the party for whom it is intended, at its address set forth below:

If to Lessor: County of Albany
[Insert Lessor street]
[Insert Lessor city, state,zip]
Attn: [Insert Lessor Contact Person]
[Insert Lessor Contact Person Title or Dept]
E-mail: [Insert Lessor contact e-mail address]

If to Lessee: Calibrant NY II, LLC
311 N. Bayshore Drive
Safety Harbor, FL 34695
Attn: General Counsel

E-mail: legal@calibrantenergy.com

17. Waiver. The waiver by either party of any breach of any term, condition, or provision herein contained shall not be deemed to be a waiver of such term, condition, or provision, or any subsequent breach of the same, or any other term, condition, or provision contained herein.

18. Remedies Cumulative. No remedy herein conferred upon or reserved to Lessee or Lessor shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

19. No Third Party Beneficiaries. This Lease is solely for the benefit of the Parties hereto and no right or cause of action shall accrue by reason hereof for the benefit of any third party not a party hereto, except as expressly set forth herein or in the PPA.

20. Headings. The headings in this Lease are solely for convenience and ease of reference and shall have no effect in interpreting the meaning of any provision of this Lease.

21. Choice of Law. This Lease shall be construed in accordance with the laws of the State of New York (without regard to its conflict of laws principles).

22. Binding Effect. This Lease and its rights, privileges, duties and obligations shall inure to the benefit of and be binding upon each of the parties hereto, together with their respective successors and permitted assigns.

23. Counterparts. This Lease may be executed in counterparts, which shall together constitute one and the same agreement. Facsimile or "pdf" signatures shall have the same effect as original signatures and each party consents to the admission in evidence of a facsimile or photocopy of this Lease in any court or arbitration proceedings between the parties.

24. Entire Lease. This Lease and the PPA represent the full and complete agreement between the parties hereto with respect to the subject matter contained herein and therein and supersede all prior written or oral agreements between said parties with respect to said subject matter. In the event of any conflict between the provisions of this Lease and the provisions of the PPA, the provisions of the PPA shall govern and control.

25. Amendments. This Lease may be amended only in writing signed by Lessee and Lessor or their respective successors in interest.

26. Further Assurances. Upon the receipt of a written request from the other party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this section. At the request of Lessee, Lessor agrees to execute and deliver in recordable form, a memorandum of this Lease for recording in the title records of the county where the Premises are located or other applicable government office.

27. Estoppel. Either Party hereto, without charge, at any time and from time to time, within five (5) business days after receipt of a written request by the other party hereto, shall deliver a written instrument, duly executed, certifying to such requesting party, or any other person, firm or corporation specified by such requesting party:

(a) That this Lease is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as so modified, and identifying any such modification;

(b) Whether or not to the knowledge of any such party there are then existing any offsets or defenses in favor of such party against enforcement of any of the terms, covenants and conditions of this Lease and, if so, specifying the same and also whether or not to the knowledge of such party the other party has observed and performed all of the terms, covenants and conditions on its part to be observed and performed, and if not, specifying the same;

(c) The dates to which amounts due have been paid; and

(d) Such other information as may be reasonably requested by a Party hereto.

Any written instrument given hereunder may be relied upon by the recipient of such instrument, except to the extent the recipient has actual knowledge of facts contained in the certificate.

[signature page to follow]

IN WITNESS WHEREOF, the parties have executed this Lease on the day and year first above written.

Lessor: County of Albany

By: _____

Name: _____

Title: _____

Lessee: Calibrant NY II, LLC

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

EXHIBIT A

Description of Premises

All that Lot, Piece or parcel of land situate lying and being in the Town of Colonie (formerly Town of Watervliet), in the county of Albany and State of New York, bounded and described as follows: Beginning at a stone Monument standing on the northerly side of the Troy- Shaker read about 2550 feet from the mill which is opposite the large shaker Pond and which Monument also is on the westerly line of premises now of formerly of J. Bode and runs thence across and beyond said read on a course south 90 8' west 2424.16 feet to a corner post, and thence north 400 4' west 335.28 feet to a stone Monument near the easterly side of the Albany-Shaker Read and Thence across said road and for a distance along the Northerly boundary of Property supposed to belong to the Young south 560 11' west 1693.56 feet to a stone Monument Property and thence South 520 47' West 1116.21 feet to a corner Post and thence South 320 41' West 750 feet to lands of the Adirondack Power & Light corporation the Same First also being the Northwesterly corner of property supposed to belong to the Fred Smith and thence along Said Adirondack Power & Light Corporation North 420 17' west 957.74 feet to a post and thence north 140 4' west 110.28 feet to a post and thence for the following five courses along lands of the south Family of Shakers; North 530 26' east 623.26 feet thence North 420 11' east 995.60 feet, thence north 270 11' east 900 feet to a Post and thence North 710 45' west 1658.16 feet to a post and thence north 110 4' east 1765.08 feet to the center of said Trey-Shaker Read and thence Alen R the center of the same north 790 45' west 1313.73 feet to a point 20 feet easterly of Property of One Nailey, formerly the West Family of Shakers and thence North 40 14' east parallel to and 20 feet easterly from said Bailey' s line 2384.38 feet to a post, and thence south 790 33' east 800 feet of a post and thence along lands of One Bekl, formerly the North Family of Shakers, North 430 33' east 359 feet to a corner at and thence still along Bekl for the following five courses; south 760 11' east 691.20 feet to the southwesterly side of the right-of-way here in after referred to and thence north 15016' east 962.30 feet to a post, thence north thirty degrees 26' west 638 feet to a post, thence north 40 3' east 576 feet to a post, thence North 280 5' east 367, 77 feet to land supposed of belong to One Philips and thence a long Philips south 720 20 ' east 991.21 feet to the westerly side of the highway leading from the Shaker Pend to Stop #25 on the Troy-Schenectady Highway and thence south 710 24 ' east 425.55 feet to a post, thence North 840 25' east 1075.97 feet to a post, thence south 340 38' east 213.13 feet to a post thence south 40 33' west 915.48 feet to a post, thence south 790 22' east 817.06 feet to a post and thence a south 630 11' minutes east 913.26 feet to a two rod read here in after mentioned and thence south 380 53' east 858 feet to a corner post, thence south 16022' west 1885.82 feet to a post, thence south 590 48' west 390.71 feet to a post in the boundary of the lands of One J. Bode aforesaid, thence along Bode North 420 13' West 902.72 feet to a corner Post, and thence along & Bade south 80 7' west 1522 feet to a stone Monument at the Place of beginning containing about 773.5 acres of land.