

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 10-K**

(Mark One)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2016

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Commission File Number 001-36642

**VIVINT SOLAR, INC.**

(Exact name of Registrant as specified in its Charter)

Delaware  
(State or other jurisdiction of  
incorporation or organization)

45-5605880  
(I.R.S. Employer  
Identification No.)

1800 West Ashton Blvd.

Lehi, UT 84043

(Address of principal executive offices) (Zip Code)

(877) 404-4129

(Registrant's telephone number, including area code)

Securities registered pursuant to Section 12(b) of the Act:

Common Stock, Par Value \$0.01 Per Share;

Common stock traded on the New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act:

None

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. YES  NO

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. YES  NO

Indicate by check mark whether the Registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. YES  NO

Indicate by check mark whether the Registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the Registrant was required to submit and post such files). YES  NO

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K (§229.405) is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K.

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definition of "large accelerated filer", "accelerated filer", and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer  Accelerated filer

Non-accelerated filer  (Do not check if a small reporting company) Small reporting company

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). YES  NO

As of June 30, 2016, the last business day of the registrant's most recently completed second quarter, the aggregate market value of voting stock held by non-affiliates of the registrant based on the closing price of \$3.07 for shares of the registrant's common stock as reported by the New York Stock Exchange, was approximately \$78.4 million .

As of March 1, 2017, there were 110,262,711 shares of registrant's common stock outstanding.

Portions of the Registrant's Definitive Proxy Statement relating to the Annual Meeting of Shareholders, scheduled to be held on June 20, 2017, are incorporated by reference into Part III of this report.

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## PART I

### Forward-looking Statements

This report, including the sections entitled “Business,” “Risk Factors,” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and certain information incorporated by reference into this report contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. Forward-looking statements are identified by words such as “believe,” “anticipate,” “expect,” “intend,” “plan,” “will,” “may,” “seek” and other similar expressions. You should read these statements carefully because they discuss future expectations, contain projections of future results of operations or financial condition or state other “forward-looking” information. These statements relate to our future plans, objectives, expectations, intentions and financial performance and the assumptions that underlie these statements.

These forward-looking statements include, but are not limited to:

- federal, state and local regulations and policies governing the electric utility industry;
- the regulatory regime for our offerings and for third-party owned solar energy systems;
- technical limitations imposed by operators of the power grid;
- the continuation of tax rebates, credits and incentives, including changes to the rates of the investment tax credit, or ITC, beginning in 2020;
- the price of utility-generated electricity and electricity from other sources;
- our ability to finance the installation of solar energy systems;
- our ability to efficiently install and interconnect solar energy systems to the power grid;
- our ability to manage growth, product offering mix and costs;
- our ability to further penetrate existing markets and expand into new markets;
- our ability to develop new product offerings and distribution channels;
- our ability to increase solar energy system sales;
- our relationships with our sister company APX Group, Inc., or Vivint, and The Blackstone Group L.P., our Sponsor;
- our ability to manage our supply chain;
- the cost of solar panels and the residual value of solar panels after the expiration of our long-term customer contracts;
- the course and outcome of litigation and other disputes; and
- our ability to maintain our brand and protect our intellectual property.

In combination with the risk factors we have identified, we cannot assure you that the forward-looking statements in this report will prove to be accurate. Further, if our forward-looking statements prove to be inaccurate, the inaccuracy may be material. In light of the significant uncertainties in these forward-looking statements, you should not regard these statements as a representation or warranty by us or any other person that we will achieve our objectives and plans in any specified time frame, or at all, or as predictions of future events. Moreover, neither we nor any other person assumes responsibility for the accuracy and completeness of the forward-looking statements. We undertake no obligation to publicly update any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law.

## **Item 1. Business.**

### **BUSINESS**

#### **Overview**

We offer distributed solar energy — electricity generated by a solar energy system installed at or near customers' locations — to residential customers through a customer-focused and neighborhood-driven direct-to-home sales model. Through investment funds, we own a substantial majority of the solar energy systems we install and provide solar electricity pursuant to long-term contracts with our customers. Additionally, we wholly own a smaller number of solar energy systems outside of investment funds. Increasingly, we also sell solar energy systems outright to customers.

Customers that enter long-term contracts pay little to no money upfront, typically receive material savings on solar-generated electricity rates relative to utility-generated electricity rates following system interconnection to the power grid, and continue to benefit from locked-in energy prices over the term of their contracts, insulating them against unpredictable increases in utility rates. The majority of these customers sign 20-year contracts for solar electricity generated by our systems and pay us directly over the term of their contracts.

Our 20-year customer contracts generate predictable, recurring cash flows and establish a long-term relationship with homeowners. As of December 31, 2016, the average estimated nominal contracted payment for our long-term customer contracts was approximately \$28,000, and there is the potential for additional payments if customers choose to renew their contracts at the end of the term. The ownership of the solar energy systems we install under long-term customer contracts allows us and the other fund investors to benefit from various local, state and federal incentives. We obtain financing based on cash flows from customers and these incentives. When customers decide to move or sell the home prior to the end of their contract term, the customer contracts allow our customers to transfer their obligations to the new home buyer, subject to a creditworthiness determination. If the home buyer is not creditworthy or does not wish to assume the customer's obligations, the contract allows us to require the customer to purchase the system. Our sources of financing are used to offset our direct installation costs and most, if not all, of our allocated overhead expenses. As of February 28, 2017, we had raised 20 investment funds to which investors such as banks have committed to invest approximately \$1.3 billion, which will enable us to install solar energy systems of total fair market value approximating \$3.3 billion. As of February 28, 2017, we had remaining tax equity commitments to fund approximately 80 megawatts of future deployments, which we estimate to be sufficient to fund solar energy systems with a total fair market value of approximately \$310 million.

In 2015, we began offering our customers the option to purchase solar energy systems for cash or through third-party loan financing, which we anticipate becoming an increasingly significant portion of our business. Selling solar energy systems allows us to address customers who prefer to own the solar energy system and assume the long-term benefits and risks of system ownership. Customers who choose this option are generally eligible for various local, state and federal incentives, which may help to offset the cost of their solar energy system.

We have developed an integrated approach to providing residential distributed solar energy where we fully control the lifecycle of our customers' experience including the initial professional consultation, design and engineering process, installation, and ongoing monitoring and service. We deploy our sales force on a neighborhood-by-neighborhood basis, which allows us to cultivate a geographically concentrated customer base that reduces our costs and increases our operating efficiency. We couple this model with repeatable and scalable processes to establish warehouse facilities, assemble and train sales and installation teams and open new offices. We believe that our processes enable us to expand within existing markets and into new markets. We also believe that our direct sales model and integrated approach represent a differentiated platform, unique in the industry, that aids our growth by maximizing sales effectiveness, delivering high levels of customer satisfaction and driving cost efficiency.

From our inception in May 2011 through December 31, 2016, we have installed solar energy systems with an aggregate of 681.1 megawatts of capacity at approximately 99,600 homes in 14 states for an average solar energy system capacity of approximately 6.8 kilowatts. Of our 222.2 megawatts installed in 2016, approximately 94% were installed under long-term contracts and 6% were sold outright to customers.

## Our Approach

The key elements of our integrated approach to providing distributed solar energy include:

- *Professional consultation* . We deploy our direct-to-home sales force to provide in-person professional consultations to prospective customers to evaluate the feasibility of installing a solar energy system at their residence. Our sales closing and referral rates are enhanced by homeowners' responsiveness to our direct-to-home, neighborhood-by-neighborhood outreach strategy.
- *Design and engineering* . We have developed a process that enables us to design and install a custom solar energy system that delivers customer savings. This process, which incorporates proprietary software, standardized templates and data derived from on-site surveys, allows us to design each system to comply with complex and varied state and local regulations and optimize system performance on a per panel basis. We continue to pursue technology innovation to integrate accurate system design into the initial in-person sales consultation as a competitive tool to enhance the customer experience and increase sales close rates.
- *Installation* . We are a licensed contractor in the markets we serve and are responsible for each customer installation. Once we complete the system design, we obtain the necessary building permits and begin installation. Upon completion, we schedule the required inspections and arrange for interconnection to the power grid. By directly handling these logistics, we control quality and streamline the system installation process for our customers. Throughout this process, we apprise our customers of the project status with regular updates from our account representatives.
- *Monitoring and service* . We monitor the performance of our solar energy systems, leveraging a combination of internally developed solutions as well as capabilities provided by our suppliers. Our systems use communication gateways and monitoring services to collect performance data and we use this data to ensure that we deliver quality operations and maintenance services for our solar energy systems. If services are required, our strong local presence enables rapid response times.
- *Referrals* . We believe our commitment to delivering customer satisfaction and our concentrated geographic deployment strategy have generated sales through customer referrals, which increase our neighborhood penetration rates and drive our growth. Our financial returns also benefit from the cost savings derived from increasing the density of installations in a neighborhood.

## Our Strategy

Our goal is to become the premier provider of distributed solar energy. Key elements of our strategy include:

- *Building the most sustainable business in the residential solar industry*. We are working to enhance the sustainability of our business by striving to reduce our cost per watt over time, by pricing appropriately in each market and by growing in the right markets. We seek to balance our growth against the operating cash flows and project funding required to offset our operating expenses. We are focused on achieving attractive unit economics on our installations across our targeted markets.
- *Delighting our customers*. We strive to provide a best-in-class customer experience. We offer customized solar energy solutions to each of our customers based on their individual needs, and we are streamlining the time from when a customer signs a contract to when their system is operational. We are also continuously working to improve our processes and customer communication in an effort to provide superior customer service. For example, we employ a detailed quality assessment process to our installations to validate that we maintain a high installation standard. We believe our direct-to-home sales model is a powerful distribution channel given the consultative nature of the solar sales process for most customers, and provides our sales professionals with the opportunity to have meaningful, face-to-face interactions with our customers.
- *Developing a differentiated solution*. We aim to provide unique products in an increasingly commoditized industry, and we believe the market needs smart energy solutions that combine how energy is produced, made available and intelligently consumed. We believe we are uniquely positioned to offer customers a differentiated home solution by developing a partnership with Vivint to provide solar energy systems that will integrate with Vivint's smart home systems to better deliver on the full smart home equation. We also continue to explore other partnerships to develop and provide distinctive solutions to our customers.

- *Accessing capital on favorable terms*. We partner with various investors to form investment funds that monetize the recurring customer payments under our long-term customer contracts, as well as the ITCs, accelerated tax depreciation and other incentives associated with residential solar energy systems. We have also entered into financing facilities to further monetize recurring cash flows and to fund solar energy system development. We plan to pursue additional debt, equity and other financing strategies in order to access capital on favorable terms to enable our continued growth.
- *Growing strategically*. We operate in states whose utility prices, sun exposure, climate conditions and regulatory policies provide the most compelling market for distributed solar energy. We plan to enlarge our addressable market by expanding our presence to new states on a measured basis. In late 2015, we complemented our traditional long-term customer contracts by providing customers the option to purchase solar energy systems outright, which allows us to enter markets where customers prefer to own their solar energy systems or where our traditional long-term customer contracts are not permitted by local regulations or are not economically feasible. Additionally, in 2016, we became more selective in our policies to increase the incremental value of each installation by limiting the installation of smaller system sizes, limiting installations on certain roof types and raising prices in certain markets.

## Customer Contracts

Our current product offering includes the following:

- *Power Purchase Agreements*. Under power purchase agreements, or PPAs, we charge customers a fee per kilowatt hour based on the amount of electricity the solar energy system actually produces, which is billed monthly. PPAs typically have a term of 20 years and are subject to an annual price escalator of 2.9%. Over the term of the PPA, we operate the system and agree to maintain it in good condition. Customers who buy energy from us under PPAs are covered by our workmanship warranty equal to the length of the term of these agreements.
- *Legal-form Leases*. Under legal-form leases, or Solar Leases, we charge customers a fixed monthly payment to lease the solar energy system, which is based on a calculation that takes into account expected solar energy generation. Solar Leases typically have a term of 20 years and contain an annual price escalator of 2.9%. We provide our Solar Lease customers a performance guarantee, under which we agree to refund payments to the customer if the solar energy system does not meet the guaranteed production level in the prior 12-month period. Liabilities for Solar Lease performance guarantees were de minimis as of December 31, 2016 and 2015. Over the term of the Solar Lease, we operate the system and agree to maintain it in good condition. Customers who buy energy from us under Solar Leases are covered by our workmanship warranty equal to the length of the term of these agreements.
- *Solar Energy System Sales*. Under solar energy system sales, or System Sales, we offer our customers the option to purchase solar energy systems for cash or through third-party financing. The price for these contracts is determined as a function of the respective market rate and the size of the solar energy system to be installed. We agree to warranty and maintain the solar energy systems we sell to customers for a period of 10 years. Under certain loan products, customers can additionally contract with us for certain structural upgrades in connection with the installation of a solar energy system. System Sales are becoming an increasingly significant portion of our business and we believe they are advantageous to us as they provide immediate access to cash.

Of our 222.2 megawatts installed in 2016, approximately 84% were installed under PPAs, 10% were installed under Solar Leases and 6% were installed under System Sales. As of December 31, 2016, the average FICO score of our customers was approximately 760.

## Sales and Marketing

We place our integrated residential solar energy systems through a scalable sales organization that primarily uses a direct-to-home sales model. We believe that a high-touch, customer-focused selling process is important before, during and after the sale of our products to maximize our sales success. The members of our sales force typically reside and work within the market they serve. We also generate a significant amount of sales through customer referrals. We have found that customer referrals increase in relation to our penetration in a market. Shortly after entering a new market, referrals become an increasingly effective way to market our solar energy systems.

In addition to direct sales, we sell to customers through our inside sales team. We also continue to explore opportunities to sell solar energy systems to customers through a number of other distribution channels, including relationships with real estate management companies, home builders, home improvement stores, large construction, electrical and roofing companies and other third parties that have access to large numbers of potential customers.

## **Operations**

As of December 31, 2016, we operated in Arizona, California, Connecticut, Florida, Hawaii, Maryland, Massachusetts, New Jersey, New Mexico, New York, Pennsylvania, South Carolina, Texas and Utah. Our corporate headquarters are located in Utah. We manage inventory through our local warehouses and maintain a fleet of approximately 780 trucks and other vehicles to support our installers and operations. In 2016, our field teams completed on average approximately 2,600 residential installations per month. We manage thousands of projects as they move through the stages of engineering, permitting, installation, maintenance and monitoring.

We offer a range of warranties to our investment funds on our solar energy systems under long-term customer contracts. Under our workmanship warranty, we are obligated, at our cost and expense, to correct defects in our installation work, which depending on the particular investment fund, is for periods of five to twenty years. Generally, our maintenance obligations to our investment funds do not include the cost of panels, inverters or racking, should such major components require replacement. The cost of such components is borne instead by the applicable investment fund, although we are obligated to install such equipment as part of our services covered by the agreed maintenance services fee. We provide a pass-through of the inverter and panel manufacturers' warranty coverage to our customers, which generally range from 10 to 25 years. We also provide ongoing service and repair during the entire term of the customer relationship, regardless of whether or not such repairs are covered by our or a manufacturer's warranty. We expect the costs we incur in providing these services will continue to grow as the number of systems in our portfolio increases and as installed solar energy systems age.

## **Suppliers**

We purchase solar panels directly from multiple manufacturers, which has helped to strengthen our diversification and purchasing leverage. Our inverter suppliers are more limited, and we have been working to establish relationships with additional suppliers. Substantially all of our solar panels and inverters are produced outside the United States. We generally source the other products related to our solar energy systems through a variety of suppliers and distributors.

If we fail to develop, maintain and expand our relationships with these or other suppliers, our ability to meet anticipated demand for our solar energy systems may be adversely affected, or we may only be able to offer our systems at higher costs or after delays. To reduce risk, we have added suppliers in the module, inverter and racking product groups. If one or more of the suppliers that we rely upon to meet anticipated demand ceases or reduces production due to its financial condition, acquisition by a competitor or otherwise, it may be difficult to quickly identify alternative suppliers or to qualify alternative products on commercially reasonable terms, and our ability to satisfy this demand may be adversely affected.

We screen all suppliers and components based on expected cost, reliability, warranty coverage, ease of installation and other ancillary costs. We typically enter into master contract arrangements with our major suppliers that define the general terms and conditions of our purchases, including warranties, product specifications, indemnities, licenses, delivery and other customary terms. We typically purchase solar panels, inverters and racking from our suppliers at then prevailing prices pursuant to purchase orders issued under our master contract arrangements.

The declining cost of solar panels and the raw materials necessary to manufacture them has been a key driver in the price we charge for electricity and customer adoption of solar energy. Although solar panel and raw material prices may continue to decline, it is possible they will not decline at the same rate as they have over the past several years or that they may increase. Although the solar panel market has seen an increase in supply, upward pressure on prices may occur due to growth in the solar industry, regulatory policy changes and the resulting increase in demand for solar panels and the raw materials necessary to manufacture them. In the past we have purchased virtually all of the solar panels used in our solar energy systems from manufacturers based in China. However, all of the solar panel manufacturers with which we do business have recently begun manufacturing solar panels outside of China in countries such as Vietnam, Malaysia, Korea and Thailand in order to avoid the current tariffs. We currently anticipate this trend will continue as solar panel manufacturers seek lower tariff countries.

## **Competition**

We believe that our primary competitors are the traditional utilities that supply electricity to our potential customers. We compete with these traditional utilities primarily based on price (cents per kilowatt hour), predictability of future prices (by providing pre-determined annual price escalations) and the ease by which customers can switch to electricity generated by our solar energy systems. We believe that we compete favorably with traditional utilities based on these factors in the states where we operate.

We also compete with companies that are not regulated like traditional utilities but that have access to the traditional utility electricity transmission and distribution infrastructure pursuant to state and local pro-competitive and consumer choice policies as well as with national and local solar companies such as Tesla's SolarCity subsidiary and Sunrun Inc. These companies may offer products that are similar to our PPAs, Solar Leases and System Sales. We believe that we compete favorably with these companies.

In addition, we compete with solar companies in the downstream value chain of solar energy. For example, we face competition from purely finance driven organizations that acquire customers and then subcontract out the installation of solar energy systems, from installation businesses that seek financing from external parties, from large construction companies and utilities and increasingly from sophisticated electrical and roofing companies. These distributed energy competitors typically work in contractual arrangements with third parties, leaving the customer in the position of having to deal with different companies for different aspects of their solar energy systems. We believe that we compete favorably with these companies because we offer an integrated approach to residential solar energy systems, which includes in-house sales, financing, engineering, installation, maintenance and monitoring. Many of our competitors offer only a subset of the services we provide. Aside from simple cost efficiency, we offer distinct practical benefits as an all-in-one provider such as providing a single point of contact and accountability for our offerings during the relationship with our customers. Further, we are not dependent on installation subcontractors, enabling us to better scale our business while maintaining quality control.

## **Technology and Intellectual Property**

As of December 31, 2016, we, directly or through our wholly owned subsidiary Solmetric Corporation, also known as Vivint Solar Labs, had five patents and seven pending applications with the U.S. Patent and Trademark Office. These patents and applications relate primarily to shade and site analysis. Our issued patents start expiring in 2026. We intend to file additional patent applications as we innovate through our research and development efforts. Vivint Solar Labs is our research and development team focused on technologies that we believe will benefit our business, as they have significant experience with photovoltaic hardware, installation instruments and software.

As part of our strategy, we may expand our technological capabilities through targeted acquisitions, licensing technology and intellectual property from third parties, joint development relationships with partners and suppliers and other strategic initiatives as we strive to offer the industry's best operational efficiency, performance prediction, operations and management.

## **Government Regulation, Policies and Incentives**

### ***Government Regulation***

We are not regulated as a public utility in the United States under current applicable national, state or other local regulatory regimes where we conduct business. We obtain interconnection permission from the applicable local primary electric utility to operate solar energy systems. Depending on the size of the solar energy system and local law requirements, interconnection permission is provided by the local utility and us and/or our customer. In most cases, interconnection permissions are issued on the basis of a standard process that has been pre-approved by the local public utility commission or other regulatory body with jurisdiction over net metering procedures. We maintain a utility administration function, with primary responsibility for engaging with utilities and ensuring our compliance with interconnection rules.

Our operations are subject to stringent and complex federal, state and local laws, including regulations governing the occupational health and safety of our employees and wage regulations. For example, we are subject to the requirements of the federal Occupational Safety and Health Act, as amended, or OSHA, the U.S. Department of Transportation, or DOT, and comparable state laws that protect and regulate employee health and safety. We strive to maintain compliance with applicable OSHA, DOT and similar government regulations; however, as discussed in the section captioned "Risk Factors—Compliance with occupational safety and health requirements and best practices can be costly, and noncompliance with such requirements may result in potentially significant monetary penalties, operational delays and adverse publicity," there have been instances in which we experienced workplace accidents and received citations from regulators, resulting in fines. Such instances have not materially impacted our business or relations with our employees.

### ***Government Policies***

Net metering is one of several key policies that have enabled the growth of distributed solar in the United States. Net metering allows a homeowner to pay his or her local electric utility only for their power usage net of production from the solar energy system, transforming the conventional relationship between customers and traditional utilities. Homeowners receive credit for the energy that the solar energy system generates in excess of that consumed onsite to offset energy usage at times when the solar installation is not generating energy. In states that provide for net metering, the customer typically pays for the net energy used and receives a credit against future bills, typically within a 12-month period, at the retail rate if more energy is produced by the solar energy system than consumed onsite. In some states and utility territories, customers are also reimbursed by the electric utility for net excess generation, at the cost avoided rate, on a periodic basis. Forty-one states, Puerto Rico, the District of Columbia, American Samoa and the U.S. Virgin Islands have adopted some form of net metering. Each of the states where we currently serve customers has adopted some form of a net metering policy.

In recent years, net metering programs have been subject to regulatory scrutiny or legislative proposals in some states, such as Arizona, California, Colorado, Hawaii, Nevada, New Hampshire, New York and Utah. Regulators in these states have considered imposing limits on the aggregate capacity of net metering generation, fees on net metering customers, reducing the rate that net metering customers are paid for the power that they deliver back to the grid and allegations that homeowners with net metered solar energy systems shift the costs of maintaining the electric grid onto non-solar ratepayers.

In California, for example, after the earlier of July 1, 2017 or the date the applicable investor owned utility reaches its net metering cap under the previous statute, customers will take service on a new net metering successor tariff. For this new tariff, which will apply to new customers after the applicable investor owned utility reaches its statutory net metering cap, the California Public Utilities Commission largely upheld net metering in its current form with full retail compensation for exports and rejected utility requests to impose extremely high fixed and capacity charges. The California Public Utilities Commission did allow the utilities to impose reasonable interconnection fees and some additional charges on customers, and will require such customers to take service on time-of-use rates. There will be no net metering caps under the new tariff. As reflected in reports for December 31, 2016, San Diego Gas and Electric Company, or SDG&E, and Pacific Gas and Electric Company, or PG&E, which are two large investor-owned utilities, have reached their net metering caps under the previous statute, and are currently allowing net metering systems to interconnect under the new successor tariff. A third large investor-owned utility, Southern California Edison Company, has approximately 24% capacity remaining under its net metering cap of 2,240 megawatts and is not expected to reach its net metering cap until July 1, 2017.

In October 2015, the Hawaii Public Utilities Commission issued an order closing the Hawaiian Electric Company's net metering program to new participants and replaced this program with two new options for customers to interconnect to the utilities' power grids, neither of which provides for compensation for exports at retail electricity rates. In late 2015, the Nevada Public Utilities Commission voted in favor of a plan which limited export compensation to net metering customers and imposed high monthly fees on such customers. Also, in December 2016, Arizona Corporation Commission decided to end traditional net metering and transition to a new distributed solar energy net metering compensation regime in which customers are paid for energy generated from solar energy systems located on their roofs pursuant to a resource comparison proxy methodology or avoided cost methodology. Each of these methodologies will yield a compensation rate that is less advantageous than was previously available to customers under the historical net metering regime, limited to a 10% step down in each utility's rate annually. The Arizona Corporation Commission is also considering a settlement agreement between the Arizona Public Service Company and industry stakeholders under which demand charges based on a customer's maximum average rate of energy consumed during a specified interval would be imposed on residential customers under certain rate schedules. Several other states also plan to revisit their net metering policies in the coming years, including New York, which is currently considering the compensation of customer-sited generation, and is expected to issue an order in early 2017.

As discussed in the section captioned "Risk Factors—We rely on net metering and related policies to offer competitive pricing to our customers in all of our current markets, and changes to net metering policies may significantly reduce demand for electricity from our solar energy systems," the absence of favorable net metering policies or of net metering entirely, or the imposition of new charges that only or disproportionately impact customers that use net metering, would significantly limit customer demand for our solar energy systems and the electricity they generate and could adversely impact our business, results of operations and future growth.

### ***Government Incentives***

Federal, state and local government bodies and utilities provide for tariff structures and incentives to various parties, including owners, end users, distributors, system integrators and manufacturers of solar energy systems to promote solar energy. These incentives come in various forms, including rebates, tax credits and other financial incentives such as system performance payments, renewable energy credits associated with renewable energy generation, exclusion of solar energy systems from property tax assessments and net metering. We rely on these governmental and regulatory programs to finance solar energy system installations, which enables us to lower the price we charge our customers for energy from, and to lease or purchase, our solar energy systems, helping to catalyze customer acceptance of solar energy with those customers as an alternative to utility-provided power.

The Federal government currently offers a 30% ITC under Section 48(a) of the Internal Revenue Code for the installation of certain solar power facilities; legislation was passed in December 2015 which extended this 30% rate until December 31, 2019. By statute, the ITC is scheduled to decrease to 26% for 2020, 22% for 2021 and 10% of the fair market value of a solar energy system on January 1, 2022.

The economics of purchasing a solar energy system are also improved by eligibility for accelerated depreciation, also known as the modified accelerated cost recovery system, or MACRS, which allows for the depreciation of equipment according to an accelerated schedule established by the Internal Revenue Service. The acceleration of depreciation creates a valuable tax benefit that reduces the overall cost of the solar energy system and increases the return on investment.

Many of the states in which we operate offer a personal and/or corporate investment or production tax credit for solar energy that is additive to the ITC. Further, most of the states and local jurisdictions have established property tax incentives for renewable energy systems that include exemptions, exclusions, abatements and credits.

Many state governments, traditional utilities, municipal utilities and co-operative utilities offer a rebate or other cash incentive for the installation and operation of a solar energy system or energy efficiency measures. Capital costs or “up-front” rebates provide funds to solar customers or developers or system owners based on the cost, size or expected production of a customer’s solar energy system. Performance-based incentives provide cash payments to solar customers or a system owner based on the energy generated by the solar energy system during a pre-determined period.

Many states also have adopted procurement requirements for renewable energy production. Twenty-nine states, the District of Columbia and three U.S. territories have adopted a renewable portfolio standard that requires regulated utilities to procure a specified percentage of total electricity delivered to customers in the state from eligible renewable energy sources, such as solar energy systems, by a specified date. To prove compliance with such mandates, utilities usually must surrender solar renewable energy certificates, or SRECs to the applicable authority. Solar energy system owners such as our investment funds often are able to sell SRECs to utilities directly or in SREC markets.

## **Workforce**

As of December 31, 2016, we had a total workforce of 3,001, including 1,140 employees in installation, 879 employees in operations, 255 employees in general and administrative, 86 employees in sales support and marketing and 25 employees in research and development. As of December 31, 2016, we also had 616 active direct sellers. We consider a direct sales person to be active if they completed at least four customer pre-surveys in the prior four weeks. Our operations personnel work primarily in installation, design and account management. Our general and administrative personnel work primarily in information technology, finance, human resources, legal and general management. None of our service providers are represented by a labor union and we consider relations with our workers to be good.

## **Item 1A. Risk Factors**

*You should carefully consider the following risk factors, together with all of the other information included in this report, including the section of this report captioned “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our financial statements and related notes. If any of the following risks occurred, it could materially adversely affect our business, financial condition or operating results. This report also contains forward-looking statements that involve risks and uncertainties. Our actual results could differ materially from those anticipated in the forward-looking statements as a result of factors that are described below and elsewhere in this report.*

### **Risk Related to our Business**

***We need to enter into substantial additional financing arrangements to facilitate new customers’ access to our solar energy systems, and if financing is not available to us on acceptable terms when needed, our ability to continue to grow our business would be materially adversely impacted.***

Our future success depends primarily on our ability to raise capital from third-party investors and commercial sources, such as banks and other lenders, on competitive terms to help finance the deployment of our solar energy systems. We seek to minimize our cost of capital in order to maintain the price competitiveness of the electricity produced by, the lease payments for and the cost of our solar energy systems. We rely on investment funds in order to provide solar energy systems with little to no upfront costs to our customers under our PPAs and Solar Leases. We also rely on access to capital to cover the costs of our solar energy systems that are sold outright until the systems are installed by us and then paid for by our customers, whether by cash or through third-party financing arrangements. If we are unable to establish new financing when needed, or upon desirable terms, to enable our customers’ access to our solar energy systems, we may be unable to finance installation of our customers’ systems, our cost of capital could increase or our liquidity could be constrained, any of which would have a material adverse effect on our business, financial condition, results of operations and prospects. As of February 28, 2017, we had raised 20 investment funds to which investors such as banks and other large financial investors have committed to invest approximately \$1.3 billion, which will enable us to install solar energy systems of total fair market value approximating \$3.3 billion. As of February 28, 2017, we had remaining residential tax equity commitments to fund approximately 80 megawatts of future deployments, which we estimate to be sufficient to fund solar energy systems with a total fair market value of approximately \$310 million.

The contract terms in certain of our investment fund documents impose conditions on our ability to draw on financing commitments from the fund investors, including if an event occurs that could reasonably be expected to have a material adverse effect on the fund or on us. If we do not satisfy such conditions due to events related to our business or a specific investment fund or developments in our industry or otherwise, and as a result we are unable to draw on existing commitments, our inability to draw on such commitments could have a material adverse effect on our business, liquidity, financial condition and prospects. In addition to our inability to draw on the investors' commitments, we may incur financial penalties for non-performance, including delays in the installation process and interconnection to the power grid of solar energy systems and other factors. Based on the terms of the investment fund agreements, we will either reimburse a portion of the fund investor's capital or pay the fund investor a non-performance fee. For example, during the year ended December 31, 2016, we paid contractually agreed upon capital distributions of \$ 2.7 million to reimburse fund investors a portion of their capital contributions primarily due to a delay in solar energy systems being interconnected to the power grid and other factors.

To meet the capital needs of our growing business, we will need to obtain additional financing from new investors and investors with whom we currently have arrangements. If any of the financial institutions that currently provide financing decide not to invest in the future due to general market conditions, concerns about our business or prospects or any other reason, or decide to invest at levels that are inadequate to support our anticipated needs or materially change the terms under which they are willing to provide future financing, we will need to identify new financial institutions and companies to provide financing and negotiate new financing terms. If we are unable to raise additional capital in a timely manner, our ability to meet our capital needs and fund future growth may be limited.

In the past, we have sometimes been unable to timely establish investment funds in accordance with our plans, due in part to the relatively limited number of investors attracted to such types of funds, competition for such capital and the complexity associated with negotiating the agreements with respect to such funds. Delays in raising financing could cause us to delay expanding in existing markets or entering into new markets and hiring additional personnel in support of our planned growth. Any future delays in capital raising could similarly cause us to delay deployment of a substantial number of solar energy systems for which we have signed PPAs or Solar Leases with customers. Our future ability to obtain additional financing depends on banks' and other financing sources' continued confidence in our business model and the renewable energy industry as a whole. It could also be impacted by the liquidity needs of such financing sources themselves. We face intense competition from a variety of other companies, technologies and financing structures for such limited investment capital. If we are unable to continue to offer a competitive investment profile, we may lose access to these funds or they may only be available to us on terms that are less favorable than those received by our competitors. For example, if we experience higher customer default rates than we currently experience in our existing investment funds, this could make it more difficult or costly to attract future financing. In our experience, there are a relatively small number of investors that generate sufficient profits and possess the requisite financial sophistication that can benefit from and have significant demand for the tax benefits that our investment funds can provide. Historically, in the distributed solar energy industry, investors have typically been large financial institutions and a few large, profitable corporations. Our ability to raise investment funds is limited by the relatively small number of such investors. Any inability to secure financing could lead us to cancel planned installations, could impair our ability to accept new customers and could increase our borrowing costs, any of which would have a material adverse effect on our business, financial condition, results of operations and prospects.

***A material reduction in the retail price of traditional utility-generated electricity or electricity from other sources or other reduction in the cost of such electricity would harm our business, financial condition, results of operations and prospects.***

We believe that a significant number of our customers decide to buy solar energy because they want to pay less for electricity than what is offered by the traditional utilities. However, distributed residential solar energy has yet to achieve broad market adoption.

The customer's decision to choose solar energy may also be affected by the cost of other renewable energy sources. Decreases in the retail prices of electricity from the traditional utilities or from other renewable energy sources would harm our ability to offer competitive pricing and could harm our business. The cost of electricity from traditional utilities could decrease as a result of:

- construction of new power generation plants, including plants utilizing natural gas, nuclear, coal, renewable energy or other generation technologies;
- the construction of additional electric transmission and distribution lines;
- relief of transmission constraints that enable local centers to generate energy less expensively;
- reductions in the price of natural gas or other fuel sources;
- utility rate adjustment and customer class cost reallocation;
- energy conservation technologies and public initiatives to reduce electricity consumption;

- widespread deployment of existing or development of new or lower-cost energy storage technologies that have the ability to reduce a customer's average cost of electricity by shifting load to off-peak times;
- reduced regulations by federal or state regulatory bodies that lower the cost of generating and transmitting electricity or otherwise reduce regulatory compliance costs; and
- development of new energy generation technologies that provide less expensive energy.

A reduction in utility electricity costs would make PPAs or Solar Leases less economically attractive. If the cost of energy available from traditional utilities were to decrease due to any of these reasons, or other reasons, we would be at a competitive disadvantage, we may be unable to attract new customers and our growth would be limited. In addition, in the third quarter of 2016, we increased pricing in certain markets which may negatively impact our competitiveness.

***Electric utility industry policies and regulations may present technical, regulatory and economic barriers to the purchase and use of solar energy systems that may significantly reduce demand for electricity from our solar energy systems.***

Federal, state and local government regulations and policies concerning the electric utility industry, utility rate structures, interconnection procedures, and internal policies of electric utilities, heavily influence the market for electricity generation products and services. These regulations and policies often relate to electricity pricing and the interconnection of distributed electricity generation systems to the power grid. Policies and regulations that promote renewable energy and customer-sited energy generation have been challenged by traditional utilities and questioned by those in government and others arguing for less governmental spending and involvement in the energy market. In addition, it is unclear what, if any, actions the new presidential administration in the United States may take regarding existing regulations and policies that place limitations on coal and gas electric generations, mining and exploration. Changes in such policies and regulations could increase the cost or decrease the benefits of solar energy systems, or reduce costs and other limitations on competing forms of generation, and adversely affect our results of operations, cost of capital and growth prospects.

In the United States, governments and the state public service commissions that determine utility rates continuously modify these regulations and policies. These regulations and policies could result in a significant reduction in the potential demand for electricity from our solar energy systems and could deter customers from entering into contracts with us. In addition, depending on the region, electricity generated by solar energy systems competes most effectively with the most expensive retail rates for electricity from the power grid, rather than the less expensive average price of electricity. Modifications to the utilities' peak hour pricing policies or rate design, such as to a flat rate, would make our current products less competitive with the price of electricity from the power grid. For example, the California Public Utilities Commission recently issued a decision that will transition residential rates over the next four years from a four-tiered structure to a two-tiered structure, with only a 25% differential between the two rates and a surcharge for very high energy users. It is possible that this change could have the effect of lowering the incentive for residential customers of California's large investor-owned utilities to reduce their purchases of electricity from their utility by supplying more of their own electricity from solar, and thereby reduce demand for our products. In addition, California is in the process of shifting to a time-of-use rate structure in the coming year. A shift in the timing of peak rates for utility-generated electricity to a time of day when solar energy generation is less efficient or nonexistent could make our solar energy system offerings less competitive and reduce demand for our offerings. The California Public Utilities Commission determined in January of 2016 that net metering customers taking service on the net energy metering (NEM) successor tariff will be required to take service on time-of-use rates. This transition occurred in 2016 for some of our potential customers and will be occurring for all investor-owned utilities by July 1, 2017. Numerous other states also use time-of-use rates. In addition, since we are required to obtain interconnection permission for each solar energy system from the local utility, changes in a local utility's regulations, policies or interconnection process have in the past delayed and in the future could delay or prevent the completion of our solar energy systems. This in turn has delayed and in the future could delay or prevent us from generating revenues from such solar energy systems or cause us to redeploy solar energy systems, adversely impacting our results of operations.

In addition, any changes to government or internal utility regulations and policies that favor electric utilities could reduce our competitiveness and cause a significant reduction in demand for our offerings or increase our costs or the prices we charge our customers. Certain jurisdictions have proposed allowing traditional utilities to assess fees on customers purchasing energy from solar energy systems or have imposed or proposed new charges or rate structures that would disproportionately impact solar energy system customers who utilize net metering, either of which would increase the cost of energy to those customers and could reduce demand for our solar energy systems. For example, the California Public Utilities Commission issued a decision in July 2015 that allowed utilities to impose a minimum \$10 monthly bill for residential customers, approved the concept of fixed charges and will permit the utilities to propose such fixed charges again in 2018. A decision issued in January 2016 will allow new interconnection fees and additional non-by-passable charges to be assessed on customers taking service on California's net metering successor tariff. This will result in monthly charges being imposed on our customers in California. Additionally, certain utilities in Arizona have approved increased rates and charges for net metering customers, and others have proposed doing away with the state's renewable electricity standard carve-outs for distributed generation as well as the state's net metering program. The Arizona Corporation Commission is also considering a settlement agreement between the Arizona Public Service Company and industry stakeholders under which demand charges based on a customer's maximum average rate of energy consumed during a specified interval would be imposed on residential customers under certain rate schedules. These policy changes may negatively impact our customers and affect demand for our solar energy systems, and similar changes to net metering policies may occur in other states. It is also possible that these or other changes could be imposed on our current customers, as well as future customers. Due to the current and expected continued concentration of our solar energy systems in California, any such changes in this market would be particularly harmful to our reputation, customer relations, business, results of operations and future growth in these areas. We may be similarly adversely affected if our business becomes concentrated in other jurisdictions.

***Our business currently depends on the availability of rebates, tax credits and other financial incentives. The expiration, elimination or reduction of these rebates, credits or incentives could adversely impact our business.***

Federal, state and local government and regulatory bodies provide for tariff structures and incentives to various parties including owners, end users, distributors, system integrators and manufacturers of solar energy systems to promote solar energy in various forms, including rebates, tax credits and other financial incentives such as system performance payments, renewable energy credits associated with renewable energy generation, exclusion of solar energy systems from property tax assessments and net metering. We rely on these governmental and regulatory programs to finance solar energy system installations, which enables us to lower the price we charge customers for energy from, and to lease or purchase, our solar energy systems, helping to catalyze customer acceptance of solar energy with those customers as an alternative to utility-provided power. However, these programs may expire on a particular date, end when the allocated funding or capacity allocations are exhausted or be reduced or terminated. These reductions or terminations often occur without warning. For example, the Arizona Department of Revenue has attempted to assess and collect property taxes in the past on rooftop solar energy systems such as ours and counties in Arizona may attempt to assess and collect property taxes in the future. In addition, the financial value of certain incentives decreases over time. For example, the value of solar renewable energy certificates, or SRECs, in a market tends to decrease over time as the supply of SREC-producing solar energy systems installed in that market increases. If we overestimate the future value of these incentives, it could adversely impact our financial results.

The federal government currently offers a 30% ITC under Section 48(a) of the Internal Revenue Code for the installation of certain solar power facilities; the 30% rate continues until December 31, 2019. By statute, the ITC is scheduled to decrease to 26% for 2020, 22% for 2021 and 10% of the fair market value of a solar energy system on January 1, 2022, and the amounts that fund investors are willing to invest could decrease or we may be required to provide a larger allocation of customer payments to the fund investors as a result of this scheduled decrease. To the extent we have a reduced ability to raise investment funds as a result of this reduction, the rate of growth of installations of our residential solar energy systems could be negatively impacted. In addition, future changes to taxation of business entities and the deductibility of interest expense could affect the amount that fund investors are willing to invest, which could reduce our access to capital. The ITC has been a significant driver of the financing supporting the adoption of residential solar energy systems in the United States and its scheduled reduction beginning in 2020, unless modified by an intervening change in law, will significantly impact the attractiveness of solar energy to these investors and could potentially harm our business.

Applicable authorities may adjust or decrease incentives from time to time or include provisions for minimum domestic content requirements or other requirements to qualify for these incentives. Reductions in, eliminations or expirations of or additional application requirements for, governmental incentives could adversely impact our results of operations and ability to compete in our industry by increasing our cost of capital, causing us to increase the prices of our energy and solar energy systems and reducing the size of our addressable market. In addition, this would adversely impact our ability to attract investment partners and to form new investment funds and our ability to offer attractive financing to prospective customers.

*We rely on net metering and related policies to offer competitive pricing to our customers in all of our current markets, and changes to net metering policies may significantly reduce demand for electricity from our solar energy systems.*

Our business benefits significantly from favorable net metering policies in states in which we operate. Net metering allows a homeowner to pay his or her local electric utility only for their power usage net of production from the solar energy system, transforming the conventional relationship between customers and traditional utilities. Homeowners receive credit for the energy that the solar installation generates in excess of that needed by the home to offset energy usage at times when the solar installation is not generating energy. In states that provide for net metering, the customer typically pays for the net energy used or receives a credit against future bills at the retail rate if more energy is produced by the solar installation than consumed. In some states and utility territories, customers are also reimbursed by the electric utility for net excess generation on a periodic basis.

Forty-one states, Puerto Rico, the District of Columbia, American Samoa and the U.S. Virgin Islands have adopted some form of net metering. Each of the states where we currently serve customers has adopted some form of a net metering policy.

In recent years, net metering programs have been subject to regulatory scrutiny and legislative proposals in some states, such as Arizona, California, Colorado, Hawaii, Nevada, New Hampshire, New York and Utah. In California, for example, after the earlier of July 1, 2017 or the date the applicable investor owned utility reaches its statutory net metering cap, customers will take service on a new net metering successor tariff. For this new tariff, which will apply to new customers after the applicable investor owned utility reaches its statutory net metering cap, the California Public Utilities Commission largely upheld net metering in its current form with full retail compensation for exports and rejected utility requests to impose extremely high fixed and capacity charges. The California Public Utilities Commission did allow the utilities to impose reasonable interconnection fees and some additional charges on customers, and will require such customers to take service on time-of-use rates. There are no caps under the new NEM successor tariff. As reflected in reports for December 31, 2016, San Diego Gas and Electric Company, or SDG&E, and Pacific Gas and Electric Company, or PG&E, which are two large investor-owned utilities, have reached their net metering caps, and are currently allowing net metering systems to interconnect under the NEM successor tariff. A third large investor-owned utility, Southern California Edison Company, has approximately 24% capacity remaining under its net metering cap of 2,240 mega watts and is not expected to reach its net metering cap until July 1, 2017. Further, municipal utilities are generally not subject to the same state laws and public commission oversight as compared to investor owned utilities and may make drastic and abrupt changes. As we continue to expand into areas with municipal utilities, we may be subject to greater risk of regulatory uncertainty.

On October 12, 2015, the Hawaii Public Utilities Commission issued an order closing the Hawaiian Electric Company's net metering program to new participants and replaced this program with two new options for customers to interconnect to the utilities' power grids, neither of which provides for compensation for exports at retail electricity rates. In addition, in late 2015, the Nevada Public Utilities Commission voted in favor of a plan that limited export compensation to net metering customers and imposed high monthly fees on such customers.

Additionally, in December 2016, the Arizona Corporation Commission decided to end traditional net metering and transition to a new distributed solar energy net metering compensation regime in which customers are paid for energy generated from solar energy systems located on their roofs pursuant to a resource comparison proxy methodology or avoided cost methodology. Each of these methodologies will yield a compensation rate that is less advantageous than was previously available to customers under the historical net metering regime, limited to a 10% step down in each utility's rate annually. The Arizona Corporation Commission is also considering a settlement agreement between the Arizona Public Service Company and industry stakeholders under which demand charges based on a customer's maximum average rate of energy consumed during a specified interval would be imposed on residential customers under certain rate schedules. These changes reduce the value proposition for residential solar in Arizona as compared to residential solar under the traditional net metering regime.

Several other states plan to revisit their net metering policies in the coming years, including New York, which is currently considering the compensation of customer-sited generation, and is expected to issue an order in early 2017.

If and when net metering caps in certain jurisdictions are reached while they are still in effect, the value of the credit that customers receive for net metering is significantly reduced, utility rate structures are altered, or fees are imposed on net metering customers, future customers may be unable to recognize the same level of cost savings associated with net metering that current customers enjoy. The absence of favorable net metering policies or of net metering entirely, or the imposition of new charges that only or disproportionately impact customers that use net metering would significantly limit customer demand for our solar energy systems and the electricity they generate and could adversely impact our business, results of operations and future growth. For example, shortly after expanding our operations into Nevada, the state's primary electric utility reached its net metering cap. As a result of the net metering cap being reached, we suspended operations in Nevada pending revisions to the net metering available in the state. This change is not expected to have any future impact on our business due to the short duration that we were active in Nevada.

***Failure of anticipated growth in System Sales to materialize as planned could negatively impact our operating results and cash flows.***

Beginning in late 2015, we began offering to customers in select markets the option to purchase solar energy systems as System Sales. We have historically offered our solar energy systems through our PPAs or Solar Leases. System Sales allow us to enter markets, such as those that prohibit third-party ownership of distributed solar energy systems or that lack a favorable net metering policy. While System Sales have represented a relatively small portion of our business, we expect it to continue to grow. Industry analysts have indicated that the number of customer-owned solar energy systems has increased significantly relative to third-party ownership in certain markets and that solar energy system sales are expected to account for a larger percentage of total residential solar installations in the future. Continued increases in the variety and availability of third-party loan financing products and outright solar energy system purchases could further facilitate this growth. It is not certain that we will successfully execute our strategy to increase sales of solar energy systems. If customer preferences or the residential solar energy market continue to shift toward solar energy system sales, and we are not successful in our efforts, we may lose market share which could have an adverse effect on our business, operating results and growth prospects. Additionally, sales of solar energy systems through third-party loans or cash sales require less financing from financial institutions and participants in the tax equity market. To the extent we are unsuccessful in our efforts to sell solar energy systems, or to work with third parties to finance those systems for our customers, our operating cash flows would be negatively affected and our business and growth prospects would be adversely affected.

***Technical and regulatory limitations may significantly reduce our ability to sell electricity from our solar energy systems and retain employees in certain markets.***

Technical and regulatory limits may curb our growth in certain key markets, which may also reduce our ability to retain employees in those markets. For example, the Federal Energy Regulatory Commission, in promulgating the first form small generator interconnection procedures, recommended limiting customer-sited intermittent generation resources, such as our solar energy systems, to a certain percentage of peak load on a given electrical feeder circuit. Similar limits have been adopted by many states as a de facto standard and could constrain our ability to market to customers in certain geographic areas where the concentration of solar installations exceeds this limit. For example, Hawaiian electric utilities have adopted certain policies that limit distributed electricity generation in parts of their service territories. In the first half of 2014, Hawaii was the second largest market in which we operated as measured by total installations. However, despite legislative and regulatory actions to allow further distributed electricity penetration, these limitations constrained growth of distributed residential solar energy in Hawaii in the second half of 2014 and beyond, and Hawaii has become a less important market to us as a result. While a recent Hawaii Public Utilities Commission order seeks to streamline the interconnection process, and while our growth in other markets has more than offset the impact of these limitations in Hawaii, if we experienced similar or other limitations on the deployment of solar energy systems, our business, operating results and growth prospects could be materially adversely affected. Furthermore, in certain areas, we benefit from policies that allow for expedited or simplified procedures related to connecting solar energy systems to the power grid. If such procedures are changed or cease to be available, our ability to sell the electricity generated by solar energy systems we install may be adversely impacted. As adoption of solar distributed generation rises along with the commercial operation of utility scale solar generation in key markets such as California, the amount of solar energy being fed into the power grid will surpass the amount planned for relative to the amount of aggregate demand. Some traditional utilities claim that in less than five years, solar generation resources may reach a level capable of producing an over-generation situation, which may require some solar generation resources to be curtailed to maintain operation of the power grid. While the prospect of such curtailment is somewhat speculative, particularly in the residential sector, the adverse effects of such curtailment without compensation could adversely impact our business, results of operations and future growth.

***We have incurred operating losses and may be unable to achieve or sustain profitability in the future.***

We have incurred operating losses since our inception. We incurred net losses of \$242.5 million and \$253.3 million for the years ended December 31, 2016 and 2015. We expect to continue to incur net losses from operations as we finance our operations, expand our installation, engineering, administrative, sales and marketing staffs, and implement internal systems and infrastructure to support our growth. Failure to grow at a sufficient rate to support these investments in personnel, systems and infrastructure, have adversely impacted and in the future could adversely impact our business and results of operations. Our ability to achieve profitability depends on a number of factors, including:

- growing our customer base;
- finding investors willing to invest in our investment funds;
- maintaining and further lowering our cost of capital;
- reducing the time between system installation and interconnection to the power grid, which allows us to begin generating revenue;

- reducing the cost of components for our solar energy systems; and
- reducing our operating costs by optimizing our sales, design and installation processes and supply chain logistics.

Even if we do achieve profitability, we may be unable to sustain or increase our profitability in the future.

***The vast majority of our business is conducted primarily using one channel, direct-selling.***

Historically, our primary sales channel has been a direct sales model. We also sell to customers through our inside sales team but continue to find greatest success using our direct sales channel. We compete against companies with experience selling solar energy systems to customers through a number of distribution channels, including homebuilders, home improvement stores, large construction, electrical and roofing companies and other third parties and companies that access customers through relationships with third parties in addition to other direct-selling companies. Our less diversified distribution channels may place us at a disadvantage with consumers who prefer to purchase products through these other distribution channels. We are also vulnerable to changes in laws related to direct sales and marketing that could impose additional limitations on unsolicited residential sales calls and may impose additional restrictions. If additional laws affecting direct sales and marketing are passed in the markets in which we operate, it would take time to train our sales force to comply with such laws, and we may be exposed to fines or other penalties for violations of such laws. If we fail to compete effectively through our direct-selling efforts or are not successful in developing other sales channels, our financial condition, results of operations and growth prospects could be adversely affected.

***We are highly dependent on our ability to attract, train and retain an effective sales force.***

The success of our direct-selling channel efforts depends upon the recruitment, retention and motivation of a large number of sales personnel to compensate for a high turnover rate among sales personnel, which is a common characteristic of a direct-selling business. In order to grow our business, we need to recruit, train and retain sales personnel on a continuing basis. Sales personnel are attracted to direct-selling by competitive earnings opportunities and direct-sellers typically compete for sales personnel by providing a more competitive earnings opportunity than that offered by the competition. Competitors devote substantial effort to determining the effectiveness of such incentives so that they can invest in incentives that are the most cost effective or produce the best return on incentive. For example, we have historically compensated our sales personnel on a commission basis, based on the size of the solar energy systems they sell. Some sales personnel may prefer a compensation structure that also includes a salary and equity incentive component. There is significant competition for sales talent in our industry, and from time to time we may need to adjust our compensation model to include such components. These adjustments could adversely impact our operating results and financial performance.

In addition to our sales compensation model, our ability to recruit, train and retain effective sales personnel could be harmed by additional factors, including:

- any adverse publicity regarding us, our solar energy systems, our distribution channel or our industry;
- lack of interest in, or the technical failure of, our solar energy systems;
- lack of a compelling product or income opportunity that generates interest for potential new sales personnel, or perception that other product or income opportunities are more attractive;
- any negative public perception of our sales personnel and direct-selling businesses in general;
- any regulatory actions or charges against us or others in our industry;
- general economic and business conditions; and
- potential saturation or maturity levels in a given market which could negatively impact our ability to attract and retain sales personnel in such market.

We are subject to significant competition for the recruitment of sales personnel from other direct-selling companies and from other companies that sell solar energy systems in particular. Regional and district managers of our sales personnel are instrumental in recruiting, retaining and motivating our sales personnel. When managers have elected to leave us and join other companies, the sales personnel they supervise have often left with them. We may experience increased attrition in our sales personnel in the future which may impact our results of operations and growth. The impact of such attrition could be particularly acute in those jurisdictions, such as California, where contractual non-competition agreements for service providers are not enforceable or subject to significant limitations.

It is therefore continually necessary to innovate and enhance our direct-selling and service model as well as to recruit and retain new sales personnel. If we are unable to do so, our business will be adversely affected.

***We are not currently regulated as an electric utility under applicable law, but we may be subject to regulation as an electric utility in the future.***

We are not regulated as a public utility in any of the markets in which we currently operate. As a result, we are not subject to the various federal, state and local standards, restrictions and regulatory requirements applicable to traditional utilities that operate transmission and distribution systems and that have an obligation to serve electric customers within a specified jurisdiction. Any federal, state, or local regulations that cause us to be treated as an electric utility, or to otherwise be subject to a similar regulatory regime of commission-approved operating tariffs, rate limitations, and related mandatory provisions, could place significant restrictions on our ability to operate our business and execute our business plan by prohibiting, restricting or otherwise regulating our sale of electricity. If we were subject to the same state or federal regulatory authorities as electric utilities in the United States or if new regulatory bodies were established to oversee our business in the United States, then our operating costs would materially increase.

***Our business depends in part on the regulatory treatment of third-party owned solar energy systems.***

Retail sales of electricity by non-utilities such as us face regulatory hurdles in some states and jurisdictions, including states and jurisdictions that we intend to enter where the laws and regulatory policies have not historically embraced competition to the service provided by the incumbent, vertically integrated electric utility. Some of the principal challenges pertain to whether non-customer owned systems qualify for the same levels of rebates or other non-tax incentives available for customer-owned solar energy systems, whether third-party owned systems are eligible at all for these incentives and whether third-party owned systems are eligible for net metering and the associated significant cost savings. Furthermore, in some states and utility territories third parties are limited in the way that they may deliver solar to their customers. In jurisdictions such as Arizona, South Carolina, Utah and Los Angeles, California, laws have been interpreted to either prohibit the sale of electricity pursuant to our standard PPA or regulate entities making such sales, in some cases, such laws have led residential solar energy system providers to use leases in lieu of power purchase agreements. In other states, neither leases nor power purchase agreements are permissible or commercially feasible. Changes in law, reductions in, eliminations of or additional application requirements for, these benefits could reduce demand for our systems, adversely impact our access to capital and could cause us to increase the price we charge our customers for energy.

***If the Internal Revenue Service or the U.S. Treasury Department makes a determination that the fair market value of our solar energy systems is materially lower than what we have reported in our fund tax returns, we may have to pay significant amounts to our investment funds, to our fund investors and/or the U.S. government. Such determinations could have a material adverse effect on our business, financial condition and prospects.***

We report in our fund tax returns and we and our fund investors claim the ITC based on the fair market value of our solar energy systems. Scrutiny by the Internal Revenue Service, or IRS, with respect to fair market value determinations has increased industry-wide in recent years. The IRS recently commenced an audit of one of our investment funds. We are not aware of any other audits or results of audits related to our appraisals or fair market value determinations of any of our investment funds. If as part of an examination the IRS were to review the fair market value that we used to establish our basis for claiming ITCs and determine that the ITCs previously claimed should be reduced, we would owe certain of our investment funds or our fund investors an amount equal to 30% of the investor's share of the difference between the fair market value used to establish our basis for claiming ITCs and the adjusted fair market value determined by the IRS, plus any costs and expenses associated with a challenge to that fair market value, plus a gross up to pay for additional taxes. We could also be subject to tax liabilities, including interest and penalties, based on our share of claimed ITCs. To date, we have not been required to make such payments under any of our investment funds.

***Our ability to provide solar energy systems to customers on an economically viable basis depends on our ability to finance these systems with fund investors who require particular tax and other benefits.***

Substantially all of our solar energy systems installed to date have been eligible for ITCs as well as accelerated depreciation benefits. We have relied on, and will continue to rely on, financing structures that monetize a substantial portion of those benefits and provide financing for our solar energy systems. If, for any reason, we were unable to continue to monetize those benefits through these arrangements, we may be unable to provide solar energy systems for new customers and maintain solar energy systems for new and existing customers on an economically viable basis. The availability of this tax-advantaged financing depends upon many factors, including:

- our ability to compete with other renewable energy companies for the limited number of potential investment fund investors, each of which has limited funds and limited appetite for the tax benefits associated with these financings;
- the state of financial and credit markets;
- changes in the legal or tax risks associated with these financings; and
- non-renewal of these incentives or decreases in the associated benefits.

Solar energy system owners are currently allowed to claim the ITC that is equal to 30% of the system's eligible tax basis, which is generally the fair market value of the system. By statute, the ITC is scheduled to decrease to 26% for 2020, 22% for 2021 and 10% on January 1, 2022. Moreover, potential fund investors must remain satisfied that the structures we offer qualify for the tax benefits associated with solar energy systems available to these investors, which depends both on the investors' assessment of tax law and the absence of any unfavorable interpretations of that law. Changes in existing law and interpretations by the IRS and the courts could reduce the willingness of fund investors to invest in funds associated with these solar energy system investments. It is not certain that this type of financing will continue to be available to us. Alternatively, new investment fund structures or other financing mechanisms may become available, and if we are unable to take advantage of these fund structures and financing mechanisms it may place us at a competitive disadvantage. If, for any reason, we are unable to finance solar energy systems through tax-advantaged structures or if we are unable to realize or monetize depreciation benefits, or if we are otherwise unable to structure investment funds in ways that are both attractive to investors and allow us to provide desirable pricing to customers, we may no longer be able to provide solar energy systems to new customers on an economically viable basis. This would have a material adverse effect on our business, financial condition, results of operations and prospects.

***Rising interest rates could adversely impact our business.***

Rising interest rates could have an adverse impact on our business by increasing our cost of capital. The majority of our cash flows to date have been from customer contracts that have been partially monetized under various investment fund structures. One of the components of this monetization is the present value of the payment streams from the customers who enter into these contracts. If the rate of return required by the fund investor rises as a result of a rise in interest rates, the present value of the customer payment stream and the total value that we are able to derive from monetizing the payment stream will each be reduced. Interest rates are at low levels. It is likely that interest rates will continue to rise in the future, which would cause our costs of capital to increase.

***Our investment funds contain arrangements which provide for priority distributions to fund investors until they receive their targeted rates of return. In addition, under the terms of certain of our investment funds, we may be required to make payments to the fund investors if certain tax benefits that are allocated to such fund investors are not realized as expected. Our financial condition may be adversely impacted if a fund is required to make these priority distributions for a longer period than anticipated to achieve the fund investors' targeted rates of return or if we are required to make any tax-related payments.***

Our investment funds contain terms that contractually require the investment funds to make priority distributions to the fund investor, to the extent cash is available, until it achieves its targeted rate of return. The amounts of potential future distributions under these arrangements depends on the amounts and timing of receipt of cash flows into the investment fund, almost all of which is generated from customer payments related to solar energy systems that have been previously purchased (or leased, as applicable) by such fund. If such cash flows are lower than expected, the priority distributions to the investor may continue for longer than initially anticipated. Additionally, certain of our investment funds require that, under certain circumstances, we forego distributions from the fund that we are otherwise contractually entitled to, or make capital contributions to the fund, so that such distributions owed to us, or additional capital contributions made by us, can be redirected to the fund investor such that it achieves the targeted return. For example, during the year ended December 31, 2016, we paid contractually agreed upon capital distributions of \$2.7 million to reimburse fund investors a portion of their capital contributions primarily due to a delay in solar energy systems being interconnected to the power grid and other factors.

Our fund investors also expect returns partially in the form of tax benefits and, to enable such returns, our investment funds contain terms that contractually require us to make payments to the funds that are then used to make payments to the fund investor in certain circumstances so that the fund investor receives value equivalent to the tax benefits it expected to receive when entering into the transaction. The amounts of potential tax payments under these arrangements depend on the tax benefits that accrue to such investors from the funds' activities.

Due to uncertainties associated with estimating the timing and amounts of these cash distributions and allocations of tax benefits to such investors, we cannot determine the potential maximum future impact on our cash flows or payments that we could have to make under these arrangements. We may agree to similar terms in the future if market conditions require it. Any significant payments that we may be required to make or distributions to us that are reduced or diverted as a result of these arrangements could adversely affect our financial condition.

***We may incur substantially more debt or take other actions that could restrict our ability to pursue our business strategies.***

Since September 2014, we have entered into five debt facilities through which we have incurred \$771.9 million aggregate principal amount of outstanding borrowings and had up to \$238.0 million of unused borrowing capacity remaining as of December 31, 2016. These debt facilities restrict our ability to dispose of assets, incur indebtedness, incur liens, pay dividends or make other distributions to holders of our capital stock, repurchase our capital stock, make specified investments or engage in transactions with our affiliates. In addition, we do not have full access to the cash and cash equivalents held in our investments funds until distributed per the terms of the arrangements. We and our subsidiaries may incur substantial additional debt in the future and any debt instrument we enter into in the future may contain similar, or more onerous, restrictions. These restrictions could inhibit our ability to pursue our business strategies. Additionally, our ability to make scheduled payments depends on our operating performance, which is subject to economic, financial, competitive and other factors that may be beyond our control. Furthermore, if we default on one of our debt instruments, and such event of default is not cured or waived, the lenders could terminate commitments to lend and cause all amounts outstanding with respect to the debt to be due and payable immediately, which in turn could result in cross acceleration under other debt instruments. Our assets and cash flow may not be sufficient to fully repay borrowings under all of our outstanding debt instruments if some or all of these instruments are accelerated upon a default.

Furthermore, there is no assurance that we will be able to enter into new debt instruments on acceptable terms. If we are unable to satisfy financial covenants and other terms under existing or new instruments or obtain waivers or forbearance from our lenders or if we are unable to obtain refinancing or new financings for our working capital, equipment and other needs on acceptable terms if and when needed, our business would be adversely affected.

***Our business is concentrated in certain markets, putting us at risk of region specific disruptions.***

As of December 31, 2016, approximately 39% of our cumulative installations and 28% of our total sales offices were located in California. In addition, we expect future growth to occur in California, which could further concentrate our customer base and operational infrastructure. Accordingly, our business and results of operations are particularly susceptible to adverse economic, regulatory, political, weather and other conditions in California and in other markets that may become similarly concentrated.

***Residential solar energy is an evolving market, which makes it difficult to evaluate our prospects.***

The residential solar energy industry is constantly evolving, which makes it difficult to evaluate our prospects. We cannot be certain if historical growth rates reflect future opportunities or whether growth anticipated by us or industry analysts will be realized. Any future growth of the residential solar energy market and the success of our solar energy systems depend on many factors beyond our control, including recognition and acceptance of the residential solar energy market by consumers, the pricing of alternative sources of energy, a favorable regulatory environment, the continuation of expected tax benefits and other incentives and our ability to provide our solar energy systems cost-effectively. If the markets for residential solar energy do not develop at the rate we expect, our business may be adversely affected.

Additionally, due to our limited operating history, we do not have empirical evidence of the effect of our systems on the resale value of our customers' houses. Due to the length of our customer contracts, the system deployed on a customer's roof may be outdated prior to the expiration of the term of the customer contract reducing the likelihood of renewal of our contracts at the end of the 20-year term, and possibly increasing the occurrence of defaults. This could have an adverse effect on our business, financial condition, results of operations and cash flow. As a result, our limited operating history may impair our ability to accurately forecast our future performance and to invest accordingly.

***We have previously identified a material weakness in our internal control over financial reporting relating to inadequate review procedures in connection with the preparation of our consolidated financial statements that resulted in the restatement of certain of our financial statements, and we may identify material weaknesses in the future .***

We previously reported a material weakness in internal control over financial reporting for the years ended December 31, 2015 and 2014 associated with the HLBV method of attributing net income or loss to non-controlling interests and redeemable non-controlling interests and with our financial statement close process. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis.

As discussed in “Item 9A—Controls and Procedures,” we took a number of measures to remediate the material weakness described above, and based on these measures, management has tested the internal control activities and found them to be effective and has concluded that the material weakness described above has been remediated as of December 31, 2016. However, if in future periods we identify other material weaknesses in internal control over financial reporting, we will be unable to assert that our internal control over financial reporting is effective, which could result in the loss of investor confidence. In addition, to date, the audit of our consolidated financial statements by our independent registered public accounting firm has included a consideration of internal control over financial reporting as a basis of designing their audit procedures, but not for the purpose of expressing an opinion on the effectiveness of our internal controls over financial reporting. When we cease to be an emerging growth company we will be required to have our independent registered accounting firm perform such an evaluation, and additional material weaknesses or other control deficiencies may be identified.

If we are unable to avoid or remediate any future material weakness, our stock price may be adversely affected and we may be unable to maintain compliance with applicable stock exchange listing requirements.

***We face competition from traditional regulated electric utilities, from less-regulated third party energy service providers, other solar companies and from new renewable energy companies.***

The solar energy and renewable energy industries are both highly competitive and continually evolving as participants strive to distinguish themselves within their markets and compete with large traditional utilities. We believe that our primary competitors are the traditional utilities that supply electricity to our potential customers. Traditional utilities generally have substantially greater financial, technical, operational and other resources than we do. As a result, these competitors may be able to devote more resources to the research, development, promotion and sale of their products or respond more quickly to evolving industry standards and changes in market conditions than we can. Traditional utilities could also offer other value-added products or services that could help them to compete with us even if the cost of electricity they offer is higher than ours. In addition, a majority of utilities’ sources of electricity is non-solar, which may allow utilities to sell electricity more cheaply than electricity generated by our solar energy systems.

We also compete with companies that are not regulated like traditional utilities but that have access to the traditional utility electricity transmission and distribution infrastructure pursuant to state and local pro-competitive and consumer choice policies. These energy service companies are able to offer customers electricity supply-only solutions that are competitive with our solar energy system options on both price and usage of renewable energy technology while avoiding the long-term agreements and physical installations that our current fund-financed business model requires. This may limit our ability to attract new customers, particularly those who wish to avoid long-term contracts or have an aesthetic or other objection to putting solar panels on their roofs.

We also compete with solar companies with business models that are similar to ours. Some of these competitors have a higher degree of brand name recognition, differing business and pricing strategies, and greater capital resources than we have, as well as extensive knowledge of our target markets. In addition, as System Sales are becoming a more significant part of our business, we face increasing competition from other national and local solar energy companies who sell solar energy systems. We believe the solar industry is becoming increasingly commoditized, and if we are unable to offer differentiated products, establish or maintain a consumer brand that resonates with homeowners or compete with the pricing offered by our competitors, our sales and market share position may be adversely affected.

In addition, we compete with solar companies in the downstream value chain of solar energy. For example, we face competition from purely finance driven organizations that acquire customers and then subcontract out the installation of solar energy systems, from installation businesses that seek financing from external parties, from large construction companies and utilities, and increasingly from sophisticated electrical and roofing companies. Some of these competitors specialize in the residential solar energy market, and some may provide energy at lower costs than we do. Additionally, some of our competitors may offer their products through sales channels that they have more fully developed, such as retail sales. Further, some of our competitors are integrating vertically in order to ensure supply and to control costs. Many of our competitors also have significant brand name recognition and have extensive knowledge of our target markets. For us to remain competitive, we must distinguish ourselves from our competitors by offering an integrated approach that successfully competes with each level of products and services offered by our competitors at various points in the value chain. If our competitors develop an integrated approach similar to ours including sales, financing, engineering, manufacturing, installation, maintenance and monitoring services, this will reduce our marketplace differentiation.

As the solar industry grows and evolves, we will also face new competitors who are not currently in the market. Our industry is characterized by low technological barriers to entry and well-capitalized companies could choose to enter the market and compete with us. Our failure to adapt to changing market conditions and to compete successfully with existing or new competitors will limit our growth and will have a material adverse effect on our business and prospects.

***Developments in alternative technologies or improvements in distributed solar energy generation may materially adversely affect demand for our offerings.***

Significant developments in alternative technologies, such as advances in other forms of distributed solar power generation, storage solutions such as batteries, the widespread use or adoption of fuel cells for residential or commercial properties or improvements in other forms of centralized power production may materially and adversely affect our business and prospects in ways we do not currently anticipate. Any failure by us to adopt new or enhanced technologies or processes, or to react to changes in existing technologies, could materially delay deployment of our solar energy systems, which could result in product obsolescence, the loss of competitiveness of our systems, decreased revenue and a loss of market share to competitors.

***A failure to hire and retain a sufficient number of employees in key functions would constrain our growth and our ability to timely complete our customers' projects.***

To support our growth, we need to hire, train, deploy, manage and retain a substantial number of skilled installers and electricians in the relevant markets where there is heightened or increasing demand for solar energy products. Competition for qualified personnel in our industry has increased substantially and we expect it to continue to do so, particularly for skilled electricians and other personnel involved in the installation of solar energy systems. We also compete with the homebuilding and construction industries for skilled labor. As these industries seek to hire additional workers, our cost of labor may increase. Companies with whom we compete to hire installers may offer compensation or incentive plans that certain installers may view as more favorable. We periodically assess the compensation plans and policies for our service providers, including our installers and electricians, and, if deemed necessary, may decide to revise those plans and policies. Our installers and electricians may not react well to any such revisions, which in turn could adversely affect retention, motivation and productivity. Additionally, we continually monitor our workforce requirements in the markets in which we operate. Any workforce reductions in markets where sales volume does not support the number of installation and other personnel could in turn adversely affect retention, motivation and productivity.

Furthermore, trained installers are typically able to more efficiently install solar energy systems. Shortages of skilled labor could significantly delay installations or otherwise increase our costs. While we do not currently have any unionized employees, we have expanded, and may continue to expand, into areas such as the Northeast, where labor unions are more prevalent. The unionization of our labor force could also increase our labor costs. In addition, a significant portion of our business has been concentrated in states such as California, where market conditions are particularly favorable to distributed solar energy generation. We have experienced and may in the future experience greater than expected turnover in our installers in those jurisdictions which would adversely impact the geographic mix of new solar energy system installations.

Because we are a licensed electrical contractor in every jurisdiction in which we operate, we are required to employ licensed electricians. As we expand into new markets, we are required to hire and/or contract with seasoned licensed electricians in order for us to qualify for the requisite state and local licenses. Because of the high demand for these seasoned licensed electricians, these individuals currently or in the future may demand greater compensation. In addition, our inability to attract and retain these qualifying electricians may adversely impact our ability to continue operations in current markets or expand into new areas.

If we cannot meet our hiring, retention and efficiency goals, we may be unable to complete our customers' projects on time, in an acceptable manner or at all. Any significant failures in this regard would materially impair our growth, reputation, business and financial results. If we are required to pay higher compensation than we anticipate, these greater expenses may also adversely impact our financial results and the growth of our business.

***We act as the licensed general contractor for our customers and are subject to risks associated with construction, cost overruns, delays, regulatory compliance and other contingencies, any of which could have a material adverse effect on our business and results of operations.***

We are a licensed contractor in every market we service and we are responsible for every customer installation. We are the general contractor, electrician, construction manager and installer for all our solar energy systems. We may be liable to customers for any damage we cause to their home, belongings or property during the installation of our systems. For example, we penetrate our customers' roofs during the installation process and may incur liability for the failure to adequately weatherproof such penetrations following the completion of installation of solar energy systems. In addition, because the solar energy systems we deploy are high-voltage energy systems, we may incur liability for the failure to comply with electrical standards and manufacturer recommendations. Furthermore, prior to obtaining permission to operate our solar energy systems, the systems must pass various inspections. Any delay in passing, or inability to pass, such inspections, would adversely affect our results of operations. Because our profit on a particular installation is based in part on assumptions as to the cost of such project, cost overruns, delays or other execution issues may cause us to not achieve our expected results or cover our costs for that project.

In addition, the installation of solar energy systems is subject to oversight and regulation in accordance with national, state and local laws and ordinances relating to building, fire and electrical codes, safety, environmental protection, utility interconnection and metering, and related matters. We also rely on certain of our employees to maintain professional licenses in many of the jurisdictions in which we operate, and our failure to employ properly licensed personnel could adversely affect our licensing status in those jurisdictions. It is difficult and costly to track the requirements of every authority having jurisdiction over our operations and our solar energy systems. Any new government regulations or utility policies pertaining to our systems, or changes to existing government regulations or utility policies pertaining to our systems, may result in significant additional expenses to us and our customers and, as a result, could cause a significant reduction in demand for our systems.

***We depend on a limited number of suppliers of solar energy system components and technologies to adequately meet anticipated demand for our solar energy systems. Due to the limited number of suppliers in our industry, the acquisition of any of these suppliers by a competitor or any shortage, delay, price change, imposition of tariffs or duties or other limitation in our ability to obtain components or technologies we use could result in sales and installation delays, cancellations and loss of market share.***

We purchase solar panels, inverters and other system components from a limited number of suppliers, making us susceptible to quality issues, shortages and price changes. In 2016 and 2015, Trina Solar Limited, Yingli Green Energy Americas, Inc. and JinkoSolar Holding Co., Ltd. accounted for a substantial majority of our solar photovoltaic module purchases and Enphase Energy, Inc. and SolarEdge Technologies Inc. accounted for substantially all of our inverter purchases. If we fail to develop, maintain and expand our relationships with these or other suppliers, our ability to adequately meet anticipated demand for our solar energy systems may be adversely affected, or we may only be able to offer our systems at higher costs or after delays. If one or more of the suppliers that we rely upon to meet anticipated demand ceases or reduces production due to its financial condition, acquisition by a competitor or otherwise, is unable to increase production as industry demand increases or is otherwise unable to allocate sufficient production to us, it may be difficult to quickly identify alternative suppliers or to qualify alternative products on commercially reasonable terms, and our ability to satisfy this demand may be adversely affected. There are a limited number of suppliers of solar energy system components and technologies. While we believe there are other sources of supply for these products available, transitioning to a new supplier may result in additional costs and delays in acquiring our solar products and deploying our systems, and may require us to obtain the approval of our financing partners in order to utilize new products. These issues could harm our business or financial performance.

There have also been periods of industry-wide shortages of key components, including solar panels, in times of rapid industry growth. The manufacturing infrastructure for some of these components has a long lead-time, requires significant capital investment and relies on the continued availability of key commodity materials, potentially resulting in an inability to meet demand for these components. The solar industry is growing and, as a result, shortages of key components, including solar panels, may be more likely to occur, which in turn may result in price increases for such components. Even if industry-wide shortages do not occur, suppliers may decide to allocate key components with high demand or insufficient production capacity to more profitable customers, customers with long-term supply agreements or customers other than us and our supply of such components may be reduced as a result.

We have entered into multi-year agreements with certain of our major suppliers. These agreements are denominated in U.S. dollars. Since our revenue is also generated in U.S. dollars we are mostly insulated from currency fluctuations. However, since our suppliers often incur a significant amount of their costs by purchasing raw materials and generating operating expenses in foreign currencies, if the value of the U.S. dollar depreciates significantly or for a prolonged period of time against these other currencies this may cause our suppliers to raise the prices they charge us, which could harm our financial results. Since we purchase almost all of the solar photovoltaic modules we use from China, we are particularly exposed to exchange rate risk from increases in the value of the Chinese Renminbi. In addition, the U.S. government has imposed tariffs on solar cells produced and assembled in China and Taiwan, and it is unclear what actions the new U.S. presidential administration may take with respect to existing and proposed trade agreements, or restrictions on trade generally. The existing tariffs, and any new tariffs, duties or other restraints, or shortages, delays, price changes or other limitation in our ability to obtain components or technologies we use could limit our growth, cause cancellations or adversely affect our profitability, and result in loss of market share and damage to our brand.

***Our operating results may fluctuate from quarter to quarter and year to year, which could make our future performance difficult to predict and could cause our operating results for a particular period to fall below expectations, resulting in a severe decline in the price of our common stock.***

Our quarterly and annual operating results are difficult to predict and may fluctuate significantly in the future. We have experienced seasonal and quarterly fluctuations in the past. However, given that we are in a growing industry, the true extent of these fluctuations may have been masked by our historical growth rates and thus may not be readily apparent from our historical operating results and may be difficult to predict. For example, the amount of revenue we recognize in a given period from our customer contracts is dependent in part on the amount of energy generated by solar energy systems under such contracts. As a result, revenue derived from PPAs is impacted by seasonally shorter daylight hours in winter months. In addition, our ability to install solar energy systems is impacted by weather, such as during the winter months in the Northeastern United States. Such delays can impact the timing of when we can install and begin to generate revenue from solar energy systems. As such, our past quarterly operating results may not be good indicators of future performance.

In addition to the other risks described in this “Risk Factors” section, the following factors could cause our operating results to fluctuate:

- the expiration or initiation of any rebates or incentives;
- significant fluctuations in customer demand for our offerings;
- our ability to complete installations and interconnect to the power grid in a timely manner;
- the availability and costs of suitable financing;
- the amount and timing of sales of SRECs;
- our ability to continue to expand our operations, and the amount and timing of expenditures related to this expansion;
- actual or anticipated changes in our growth rate relative to our competitors;
- announcements by us or our competitors of significant acquisitions, strategic partnerships, joint ventures or capital-raising activities or commitments;
- changes in our pricing policies or terms or those of our competitors, including traditional utilities; and
- actual or anticipated developments in our competitors’ businesses or the competitive landscape.

For these or other reasons, the results of any prior quarterly or annual periods should not be relied upon as indications of our future performance. In addition, our actual revenue, key operating metrics and other operating results in future periods may fall short of the expectations of investors and financial analysts, which could have an adverse effect on the trading price of our common stock.

***Our business has benefited from the declining cost of solar panels, and our financial results may be harmed if the cost of solar panels increases in the future.***

The declining cost of solar panels and the raw materials necessary to manufacture them has been a key driver in the price we charge for electricity and customer adoption of solar energy. Although industry experts indicate that solar panel and raw material prices will continue to decline, it is possible they will not decline at the same rate as they have over the past several years. In addition, while the solar panel market has recently seen an increase in supply, growth in the solar industry and the resulting increase in demand for solar panels and the raw materials necessary to manufacture them may put upward pressure on prices. These resulting prices could slow our growth and cause our financial results to suffer. In addition, in the past we have purchased virtually all of the solar panels used in our solar energy systems from manufacturers based in China which have benefited from favorable governmental policies by the Chinese government. If this governmental support were to decrease or be eliminated, our ability to purchase these products on competitive terms or to access specialized technologies from China could be restricted.

Even if this support from the Chinese government were to continue, the U.S. government could impose additional tariffs on solar cells manufactured in China or other restraints on trade with China. In 2014, the U.S. government broadened its investigation of Chinese pricing practices in this area to include solar panels and modules produced in China containing solar cells manufactured in other countries. In July 2015, the U.S. government announced antidumping duties ranging from 9.67% to 238.95% on imports of the majority of solar panels made in China, and, in December 2014, rates ranging from 11.5% to 27.6% on imported solar cells made in Taiwan. Countervailing duties ranging from 15.43% to 49.8% for Chinese modules have also been announced, and in July 2015 were set at 20.94% for most Chinese modules. In January 2015, the antidumping duties were confirmed by a determination of the U.S. International Trade Commission that material harm to the U.S. solar industry had occurred. These combined tariffs would make such solar cells less competitively priced in the United States, and the Chinese and Taiwanese manufacturers may choose to limit the amount of solar equipment they sell into the United States. As a result, it may be easier for solar cell manufacturers located outside of China or Taiwan to increase the prices of the solar cells they sell into the United States. If we are required to pay higher prices, accept less favorable terms or purchase solar panels or other system components from alternative, higher-priced sources, our financial results will be adversely affected.

***The profitability and residual value of our solar energy systems during and at the end of the associated term of the PPA or Solar Lease may be lower than projected today and adversely affect our financial performance and valuation.***

We maintain ownership of the solar energy systems that we install under our PPAs or Solar Leases. We amortize the costs of our solar energy systems over a 30-year estimated useful life, which exceeds the period of the component warranties and the corresponding payment streams from our contracts with our customers. If we incur repair and maintenance costs on these systems after the warranties have expired, and if they then fail or malfunction, we will be liable for the expense of repairing these systems without a chance of recovery from our suppliers. We are also contractually obligated to remove, store and reinstall the solar energy systems, typically for a nominal fee, if customers need to replace or repair their roofs. However, customer fees may not cover our costs to remove, store and reinstall the solar energy systems. In addition, we typically bear the cost of removing the solar energy systems at the end of the term of the customer contract if the customer does not renew his or her contract at the end of its term. Furthermore, it is difficult to predict how future environmental regulations may affect the costs associated with the removal, disposal or recycling of our solar energy systems. We also face other factors that could increase the costs or diminish the production of a solar energy system, such as unanticipated damage or malfunctions, animal interference and weather-related matters. If the residual value of the systems is less than we expect at the end of the customer contract, after giving effect to any associated removal and redeployment costs, we may be required to accelerate all or some of the remaining unamortized costs. If the profitability or the residual value of the systems is lower than expected, this could materially impair our future operating results and estimated retained value.

***Compliance with occupational safety and health requirements and best practices can be costly, and noncompliance with such requirements may result in potentially significant monetary penalties, operational delays and adverse publicity.***

The installation of solar energy systems requires our employees to work at heights with complicated and potentially dangerous electrical systems and at potentially high temperatures. The evaluation and modification of buildings as part of the installation process requires our employees to work in locations that may contain potentially dangerous levels of asbestos, lead, mold or other materials known or believed to be hazardous to human health. We also maintain a fleet of approximately 780 trucks and other vehicles to support our installers and operations. There is substantial risk of serious injury or death if proper safety procedures are not followed. Our operations are subject to regulation under the U.S. Occupational Safety and Health Act, or OSHA, the U.S. Department of Transportation, or DOT, and equivalent state laws. Changes to OSHA, DOT or state requirements, or stricter interpretation or enforcement of existing laws or regulations, could result in increased costs. If we fail to comply with applicable OSHA regulations, even if no work-related serious injury or death occurs, we may be subject to civil or criminal enforcement and be required to pay substantial penalties, incur significant capital expenditures or suspend or limit operations. While we have not experienced a high level of injuries to date, we could be exposed to increased liability in the future. In the past, we have had workplace accidents and received citations from OSHA regulators for alleged safety violations, resulting in fines. Any such accidents, citations, violations, injuries or failure to comply with industry best practices may subject us to adverse publicity, damage our reputation and competitive position and adversely affect our business.

***Problems with product quality or performance may cause us to incur expenses, may lower the residual value of our solar energy systems and may damage our market reputation and adversely affect our financial results.***

We agree to maintain the solar energy systems installed on our customers' homes in connection with a PPA or Solar Lease during the length of the term of our customer contracts, which is typically 20 years. We also agree to warranty and maintain the solar energy systems we sell to customers for a period of 10 years. We are exposed to any liabilities arising from the systems' failure to operate properly and are generally under an obligation to ensure that each system remains in good condition during the term of the agreement. As part of our operations and maintenance work, we provide a pass-through of the inverter and panel manufacturers' warranty coverage to our customers, which generally range from 10 to 25 years. One or more of these third-party manufacturers could cease operations and no longer honor these warranties, leaving us to fulfill these potential obligations to our customers or to our fund investors without underlying warranty coverage. We, either ourselves or through our investment funds, bear the cost of such major equipment. Even if the investment fund bears the direct expense of such replacement equipment, we could suffer financial losses associated with a loss of production from the solar energy systems.

Beginning in 2014, we began structuring some customer contracts as solar energy system leases. To be competitive in the market and to comply with the requirements of jurisdictions where we offer leases, our solar energy system leases contain a performance guarantee in favor of the lessee. Leases with performance guarantees require us to refund money to the lessee if the solar energy system fails to generate a stated minimum amount of electricity in a 12-month period. We may also suffer financial losses associated with such refunds if significant performance guarantee payments are triggered.

Our failure to accurately predict future liabilities related to material quality or performance expenses could result in unexpected volatility in our financial condition. Because of the limited operating history of our solar energy systems, compared to their long estimated useful life, we have been required to make assumptions and apply judgments regarding a number of factors, including our anticipated rate of warranty claims, and the durability, performance and reliability of our solar energy systems. We have made these assumptions based on the historic performance of similar systems or on accelerated life cycle testing. Our assumptions could prove to be materially different from the actual performance of our systems, causing us to incur substantial expense to repair or replace defective solar energy systems in the future or to compensate customers for systems that do not meet their performance guarantees. Equipment defects, serial defects or operational deficiencies also would reduce our revenue from customer contracts because the customer payments under such agreements are dependent on system production or would require us to make refunds under performance guarantees. Any widespread product failures or operating deficiencies may damage our market reputation and adversely impact our financial results.

***We are responsible for providing maintenance, repair and billing on solar energy systems that are owned or leased by our investment funds on a fixed fee basis, and our financial performance could be adversely affected if our cost of providing such services is higher than we project.***

We typically provide a workmanship warranty for periods of five to 20 years to our investment funds for every system we sell to them. We are also generally contractually obligated to cover the cost of maintenance, repair and billing on any solar energy systems that we sell or lease to our investment funds. We are subject to a maintenance services agreement under which we are required to operate and maintain the system, and perform customer billing services for a fixed fee that is calculated to cover our future expected maintenance and servicing costs of the solar energy systems in each investment fund over the term of the PPA or Solar Lease with the covered customers. If our solar energy systems require an above-average amount of repairs or if the cost of repairing systems were higher than our estimate, we would need to perform such repairs without additional compensation. If our solar energy systems, a majority of which are located in California, are damaged in the event of a natural disaster beyond our control, such as an earthquake, tsunami or hurricane, losses could be outside the scope of insurance policies or exceed insurance policy limits, and we could incur unforeseen costs that could harm our business and financial condition. We may also incur significant costs for taking other actions in preparation for, or in reaction to, such events. When required to do so under the terms of a particular investment fund, we purchase property and business interruption insurance with industry standard coverage and limits approved by the investor's third-party insurance advisors to hedge against such risk, but such coverage may not cover our losses, and we have not acquired such coverage for all of our funds.

***Product liability claims against us or accidents could result in adverse publicity and potentially significant monetary damages.***

If one of our solar energy systems injured someone, we could be exposed to product liability claims. In addition, it is possible that our products could injure our customer or third parties, or that our products could cause property damage as a result of product malfunctions, defects, improper installation, fire or other causes. We rely on our general liability insurance to cover product liability claims. Any product liability claim we face could be expensive to defend and divert management's attention. The successful assertion of product liability claims against us could result in potentially significant monetary damages, penalties or fines, increase our insurance rates, subject us to adverse publicity, damage our reputation and competitive position and adversely affect sales of our systems and other products. In addition, product liability claims, injuries, defects or other problems experienced by other companies in the residential solar industry could lead to unfavorable market conditions to the industry as a whole, and may have an adverse effect on our ability to attract new customers, thus affecting our growth and financial performance.

***Failure by our component suppliers to use ethical business practices and comply with applicable laws and regulations may adversely affect our business.***

We do not control our suppliers or their business practices. Accordingly, we cannot guarantee that they follow ethical business practices such as fair wage practices and compliance with environmental, safety and other local laws. A lack of demonstrated compliance could lead us to seek alternative suppliers, which could increase our costs and result in delayed delivery of our products, product shortages or other disruptions of our operations. Violation of labor or other laws by our suppliers or the divergence of a supplier's labor or other practices from those generally accepted as ethical in the United States or other markets in which we do business could also attract negative publicity for us and harm our business.

***Damage to our brand and reputation, or change or loss of use of our brand, could harm our business and results of operations.***

We depend significantly on our reputation for high-quality products, best-in-class customer service and the brand name "Vivint Solar" to attract new customers and grow our business. If we fail to continue to deliver our solar energy systems within the planned timelines, if our offerings do not perform as anticipated or if we damage any of our customers' properties or delay or cancel projects, our brand and reputation could be significantly impaired. Future technical improvements may allow us to offer lower prices or offer new technology to new customers; however, technical limitations in our current solar energy systems may prevent us from offering such lower prices or new technology to our existing customers. The inability of our current customers to benefit from technological improvements could cause our existing customers to lower the value they perceive our existing products offer and impair our brand and reputation.

We have focused particular attention on growing our direct sales force, leading us in some instances to take on candidates who we later determined did not meet our standards. In addition, given our direct sales business model and the sheer number of interactions our sales and other personnel have with customers and potential customers, it is inevitable that some customers' and potential customers' interactions with our company will be perceived as less than satisfactory. This has led to instances of customer complaints, some of which have affected our digital footprint on rating websites such as Yelp and SolarReviews. If we cannot manage our hiring and training processes to avoid or minimize these issues to the extent possible, our reputation may be harmed and our ability to attract new customers would suffer.

Given our relationship with our sister company Vivint and the similarity in our names, customers may associate us with any problems experienced with Vivint, such as complaints with the Better Business Bureau. Because we have no control over Vivint, we may not be able to take remedial action to cure any issues Vivint has with its customers, and our brand and reputation may be harmed if we are mistaken for the same company.

In addition, if we were to no longer use, lose the right to continue to use, or if others use, the "Vivint Solar" brand, we could lose recognition in the marketplace among customers, suppliers and partners, which could affect our growth and financial performance, and would require financial and other investment, and management attention in new branding, which may not be as successful.

***Marketplace confidence in our liquidity and long-term business prospects is important for building and maintaining our business.***

Our financial condition, operating results and business prospects may suffer materially if we are unable to establish and maintain confidence about our liquidity and business prospects among consumers and within our industry. Our solar energy systems require ongoing maintenance and support. If we were to reduce operations, even years from now, buyers of our systems from years earlier might have difficulty in having us repair or service our systems, which remain our responsibility under the terms of our customer contracts. As a result, consumers may be less likely to purchase our solar energy systems now if they are uncertain that our business will succeed or that our operations will continue for many years. Similarly, suppliers and other third parties will be less likely to invest time and resources in developing business relationships with us if they are not convinced that our business will succeed. Accordingly, in order to build and maintain our business, we must maintain confidence among customers, suppliers and other parties in our liquidity and long-term business prospects. We may not succeed in our efforts to build this confidence.

***If we fail to manage our recent and future growth effectively, we may be unable to execute our business plan, maintain high levels of customer service or adequately address competitive challenges.***

We have experienced growth in recent periods with the cumulative capacity of our solar energy systems growing from 458.9 megawatts as of December 31, 2015 to 681.1 megawatts as of December 31, 2016, and we intend to continue to expand our business within existing markets and in a number of new locations in the future. This growth has placed, and any future growth may place, a significant strain on our management, operational and financial infrastructure. For example, we recently entered or expanded our offerings in California, Connecticut, Florida, Maryland, Massachusetts, New Hampshire, South Carolina and Texas. Our management will also be required to maintain and expand our relationships with customers, suppliers and other third parties and attract new customers, suppliers and financing, as well as manage multiple geographic locations.

In addition, our current and planned operations, personnel, IT and other systems and procedures might be inadequate to support our future growth and may require us to make additional unanticipated investments in our infrastructure. Our success and ability to further scale our business will depend, in part, on our ability to manage these changes in a cost-effective and efficient manner.

If we cannot manage our growth, we may be unable to meet our or industry analysts' expectations regarding growth, opportunity and financial targets, take advantage of market opportunities, execute our business strategies, meet our investment fund commitments or respond to competitive pressures. This could also result in declines in quality or customer satisfaction, increased costs, difficulties in introducing new offerings or other operational difficulties. Any failure to effectively manage growth could adversely impact our business and reputation.

***Expansion into new markets could be costly and time-consuming. Historically, we have only provided our offerings to residential customers, which could put us at a disadvantage relative to companies who also compete in other markets.***

We have historically only provided our offerings to residential customers. We compete with companies who sell solar energy systems in the commercial, industrial and government markets, in addition to the residential market. While we believe that in the future we could have opportunities to expand our operations into other markets, there are no assurances that our design and installation systems will work for non-residential customers or that we will be able to compete successfully with companies with historical presences in such markets or we may not realize the anticipated benefits of entering such markets, and entering new markets has numerous risks, including the following:

- incurring significant costs if we are required to adapt our current or develop new design and installation processes for use in non-residential applications;
- diversion of our management and employees from our core residential business;
- difficulty adapting our current or developing new marketing strategies and sales channels to non-residential customers;
- inability to obtain key customers, brand recognition and market share and compete successfully with companies with historical presences in such markets; and
- inability to achieve the financial and strategic goals for such market.

If we choose to pursue opportunities in additional markets and are unable to successfully compete in such markets, our operating results and growth prospects could be materially adversely affected. Additionally, there is intense competition in the residential solar energy market in the markets in which we operate. As new entrants continue to enter into these markets, we may be unable to gain or maintain market share and we may be unable to compete with companies that earn revenue in both the residential market and non-residential markets.

***SunEdison's failure to complete the acquisition, and its subsequent bankruptcy filing, has affected and may in the future, materially and adversely affect our results of operations and stock price.***

On July 20, 2015, we entered into an Agreement and Plan of Merger, or Merger Agreement, as amended by the Amendment to the Agreement and Plan of Merger, dated as of December 9, 2015, with SunEdison, Inc., or SunEdison, a Delaware corporation, and SEV Merger Sub Inc., a Delaware corporation and a wholly owned subsidiary of SunEdison, pursuant to which we were to have been acquired by SunEdison.

We delivered notice to SunEdison on February 26, 2016, and again on March 1, 2016, that, pursuant to the terms of the Merger Agreement, SunEdison was required to cause the closing of the acquisition to occur on February 26, 2016, and remained obligated to cause the closing to occur.

SunEdison's failure to cause the closing to occur was a breach of its covenants under the Merger Agreement. SunEdison's representatives subsequently informed us that SunEdison was unable to cause the closing to occur in the foreseeable future.

As a result of the foregoing and in accordance with and pursuant to our rights under the Merger Agreement, we terminated the Merger Agreement on March 7, 2016. On March 8, 2016, we filed suit in the Court of Chancery State of Delaware against SunEdison and SEV Merger Sub Inc. alleging that SunEdison willfully breached its obligations under the Merger Agreement. Due to SunEdison's bankruptcy filing on April 21, 2016, and the bankruptcy court's subsequent denial of our motion for relief from the automatic stay, our claim for damages for breach of the Merger Agreement is likely to be resolved by the bankruptcy court. While we believe that SunEdison willfully breached its obligations under the Merger Agreement and that our claims have merit and are likely to succeed, the outcomes of lawsuits are inherently unpredictable, and we may be unsuccessful in our claims. Moreover, due to the nature of bankruptcy proceedings, it is likely that the SunEdison bankruptcy estate will have insufficient assets to fully satisfy our claim, even if the claim is determined to be meritorious.

SunEdison's failure to close the acquisition presents other significant risks to us. In response to the announcement of the acquisition, and due to uncertainty regarding the closing of the acquisition, our existing or prospective customers or suppliers have or may have:

- delayed, deferred and may cease purchasing products or services from or providing products or services to us;
- delayed or deferred other decisions concerning us; or
- otherwise sought to change the terms on which they do business with us.

Additionally, due to these uncertainties and to SunEdison's required approvals, we ceased certain employee actions during the pendency of the merger, such as hiring, terminating and reallocating personnel. During this time, our employees and our management teams reallocated significant time to integration efforts. We deferred transitions to key IT systems as a standalone company. We were also caused to defer and delay financing options, including acquiring additional investment funds and debt facilities, which has decreased our operational efficiency and effectiveness. Further, SunEdison withheld approval of PPA enhancements as a leverage tool, which further decreased our effectiveness in attracting and obtaining prospective customers. These delays and uncertainties disrupted our business and may have adversely impacted our results of operations as we continue to operate as a standalone company.

***We may not realize the anticipated benefits of past or future acquisitions, and integration of these acquisitions may disrupt our business and management.***

We acquired Solmetric Corporation in January 2014 and in the future we may acquire additional companies, project pipelines, products or technologies or enter into joint ventures or other strategic initiatives. We may not realize the anticipated benefits of this acquisition or any other future acquisition, and any acquisition has numerous risks. These risks include the following:

- difficulty in assimilating the operations and personnel of the acquired company;
- difficulty in effectively integrating the acquired technologies or products with our current technologies;
- difficulty in maintaining controls, procedures and policies during the transition and integration;
- disruption of our ongoing business and distraction of our management and employees from other opportunities and challenges due to integration issues;
- difficulty integrating the acquired company's accounting, management information and other administrative systems;
- inability to retain key technical and managerial personnel of the acquired business;
- inability to retain key customers, vendors and other business partners of the acquired business;
- inability to achieve the financial and strategic goals for the acquired and combined businesses;
- incurring acquisition-related costs or amortization costs for acquired intangible assets that could impact our operating results;
- potential failure of the due diligence processes to identify significant issues with product quality, intellectual property infringement and other legal and financial liabilities, among other things;
- potential inability to assert that internal controls over financial reporting are effective; and
- potential inability to obtain, or obtain in a timely manner, approvals from governmental authorities, which could delay or prevent such acquisitions.

Mergers and acquisitions of companies are inherently risky, and if we do not complete the integration of acquired businesses successfully and in a timely manner, we may not realize the anticipated benefits of the acquisitions to the extent anticipated, which could adversely affect our business, financial condition or results of operations.

***The loss of one or more members of our senior management or key employees may adversely affect our ability to implement our strategy.***

We are highly dependent on the efforts and abilities of the principal members of our senior management team, and the loss of one or more key executives could have a negative impact on our business. In May 2016, our board of directors accepted the resignation of Greg Butterfield as our chief executive officer and president and appointed David Bywater as interim chief executive officer. Mr. Bywater was subsequently named our permanent chief executive officer in December 2016. No assurances can be made about the impact that this management change or other recent management changes will have on our company.

We also depend on our ability to retain and motivate key employees and attract qualified new employees. No assurances can be made about the effect our recent management change will have on employee morale, or our ability to retain key employees. None of our key executives are bound by employment agreements for any specific term and we do not maintain key person life insurance policies on any of our executive officers. In the year ended December 31, 2015, one-third of the outstanding options to purchase shares of our common stock granted to our key executives and other employees under our 2013 Omnibus Incentive Plan vested. In addition, one-third of the options remained outstanding and will vest annually over three years, or immediately if 313 Acquisition LLC receives a return on its invested capital at a pre-established threshold. As a result, the retention incentives associated with these options could lapse for all employees holding these options under our 2013 Omnibus Incentive Plan at the same time. This decrease in retention incentive could cause significant turnover after these options vest. We may be unable to replace key members of our management team and key employees if we lose their services. Integrating new employees into our team could prove disruptive to our operations, require substantial resources and management attention and ultimately prove unsuccessful. An inability to attract and retain sufficient managerial personnel who have critical industry experience and relationships could limit or delay our strategic efforts, which could have a material adverse effect on our business, financial condition, results of operations and prospects.

***The requirements of being a public company may strain our resources, divert management's attention and affect our ability to attract and retain qualified board members and officers.***

As a public company, we are subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, or the Exchange Act, the listing requirements of the New York Stock Exchange, or NYSE, and other applicable securities rules and regulations. Compliance with these rules and regulations has increased our legal and financial compliance costs, made some activities more difficult, time-consuming or costly and increased demand on our systems and resources. The Exchange Act requires, among other things, that we file annual, quarterly and current reports with respect to our business and operating results and maintain effective disclosure controls and procedures and internal control over financial reporting. To maintain and improve our disclosure controls and procedures and internal control over financial reporting to meet this standard, significant resources and management oversight are required. As a result, management's attention may be diverted from other business concerns which could harm our business and operating results. If in the future, we or our independent registered public accounting firm identify deficiencies in our internal control over financial reporting that are deemed to be material weaknesses, the market price of our stock could decline and we could be subject to sanctions or investigations by the Securities and Exchange Commission, or the SEC, or other regulatory authorities, which would require additional financial and management resources.

Being a public company has also made it more expensive for us to obtain director and officer liability insurance, and in the future, we may be required to accept reduced coverage or incur substantially higher costs to continue coverage. These factors could also make it more difficult for us to attract and retain qualified executive officers and members of our board of directors, particularly to serve on our audit committee and compensation committee.

***We may be subject to intellectual property rights claims by third parties, which are extremely costly to defend, could require us to pay significant damages and could limit our ability to use certain technologies.***

Third parties, including our competitors, may own patents or other intellectual property rights that cover aspects of our technology or business methods. Such parties may claim we have misappropriated, misused, violated or infringed third party intellectual property rights, and, if we gain greater recognition in the market, we face a higher risk of being the subject of claims that we have violated others' intellectual property rights. Any claim that we violate a third party's intellectual property rights, whether with or without merit, could be time-consuming, expensive to settle or litigate and could divert our management's attention and other resources. If we do not successfully settle or defend an intellectual property claim, we could be liable for significant monetary damages and could be prohibited from continuing to use certain technology, business methods, content or brands. To avoid a prohibition, we could seek a license from third parties, which could require us to pay significant royalties, increasing our operating expenses. If a license is not available at all or not available on reasonable terms, we may be required to develop or license a non-violating alternative, either of which could require significant effort and expense. If we cannot license or develop a non-violating alternative, we would be forced to limit or stop sales of our offerings and may be unable to effectively compete. Any of these results would adversely affect our business, results of operations, financial condition and cash flows. To deter other companies from making intellectual property claims against us or to gain leverage in settlement negotiations, we may be forced to significantly increase the size of our intellectual property portfolio through internal efforts and acquisitions from third parties, both of which could require significant expenditures. However, a robust intellectual property portfolio may provide little or no deterrence, particularly for patent holding companies or other patent owners that have no relevant product revenues.

***We use “open source” software in our solutions, which may restrict how we distribute our offerings, require that we release the source code of certain software subject to open source licenses or subject us to possible litigation or other actions that could adversely affect our business.***

We currently use in our solutions, and expect to continue to use in the future, software that is licensed under so-called “open source,” “free” or other similar licenses. Open source software is made available to the general public on an “as-is” basis under the terms of a non-negotiable license. We currently combine our proprietary software with open source software but not in a manner that we believe requires the release of the source code of our proprietary software to the public. We do not plan to integrate our proprietary software with open source software in ways that would require the release of the source code of our proprietary software to the public, however, our use and distribution of open source software may entail greater risks than use of third-party commercial software. Open source licensors generally do not provide warranties or other contractual protections regarding infringement claims or the quality of the code. In addition, if we combine our proprietary software with open source software in a certain manner, we could, under certain open source licenses, be required to release or remove the source code of our proprietary software to the public. We may also face claims alleging noncompliance with open source license terms or infringement or misappropriation of proprietary software. These claims could result in litigation, require us to purchase a costly license or remove the software. In addition, if the license terms for open source software that we use change, we may be forced to re-engineer our solutions, incur additional costs or discontinue the sale of our offerings if re-engineering could not be accomplished on a timely basis. Although we monitor our use of open source software to avoid subjecting our offerings to unintended conditions, few courts have interpreted open source licenses, and there is a risk that these licenses could be construed in a way that could impose unanticipated conditions or restrictions on our ability to commercialize our offerings. We cannot guarantee that we have incorporated open source software in our software in a manner that will not subject us to liability, or in a manner that is consistent with our current policies and procedures.

***The installation and operation of solar energy systems depends heavily on suitable solar and meteorological conditions. If meteorological conditions are unexpectedly unfavorable, the electricity production from our solar energy systems may be substantially below our expectations and our ability to timely deploy new systems may be adversely impacted.***

The energy produced and revenue and cash receipts generated by a solar energy system depend on suitable solar, atmospheric and weather conditions, all of which are beyond our control. Furthermore, components of our systems, such as panels and inverters, could be damaged by severe weather, such as hailstorms or lightning. Although we maintain insurance to cover for many such casualty events, our investment funds would be obligated to bear the expense of repairing the damaged solar energy systems, sometimes subject to limitations based on our ability to successfully make warranty claims. Our economic model and projected returns on our systems require us to achieve certain production results from our systems and, in some cases, we guarantee these results for both our consumers and our investors. If the systems underperform for any reason, our financial results could suffer. Sustained unfavorable weather also could delay our installation of solar energy systems, leading to increased expenses and decreased revenue and cash receipts in the relevant periods. We have experienced seasonal fluctuations in our operations. For example, the amount of revenue we recognize in a given period from PPAs is dependent in part on the amount of energy generated by solar energy systems under such contracts. As a result, operating leases and incentives revenue is impacted by seasonally shorter daylight hours in winter months. In addition, our ability to install solar energy systems is impacted by weather. For example, we have limited ability to install solar energy systems during the winter months in the Northeastern United States. Such delays can impact the timing of when we can install and begin to generate revenue from solar energy systems. However, given that we are in a growing industry, the true extent of these fluctuations may have been masked by our historical growth rates and thus may not be readily apparent from our historical operating results and may be difficult to predict. As such, our historical operating results may not be indicative of future performance. Furthermore, weather patterns could change, making it harder to predict the average annual amount of sunlight striking each location where we install a solar energy system. This could make our solar energy systems less economical overall or make individual systems less economical. Any of these events or conditions could harm our business, financial condition, results of operations and prospects.

***Disruptions to our solar monitoring systems could negatively impact the operation of our business and our revenues and increase our expenses.***

Our ability to accurately charge our customers for the energy produced by our solar energy systems depends on our ability to monitor our customers' solar energy systems. Our customer agreements require our customers to maintain a broadband internet connection so that we may receive data regarding solar energy system production from their home networks. We could incur significant expenses or disruptions of our operations in connection with failures of our solar monitoring systems, including failures of our customers' home networks that would prevent us from accurately monitoring solar energy production. In addition, sophisticated hardware and operating system software and applications that we procure from third parties may contain defects in design or manufacture, including "bugs" and other problems that could unexpectedly interfere with the operation of our systems. The costs to us to eliminate or alleviate viruses and bugs, or any problems associated with failures of our customers' home networks could be significant, and the efforts to address these problems could result in interruptions, delays or cessation of service that may impede our sales, distribution or other critical functions. When a customer's solar monitoring system is not properly communicating with us, we estimate the production of their solar energy systems. Such estimates may prove inaccurate and could cause us to underestimate the power being generated by our solar energy systems and undercharge our customers, thereby harming our results of operations.

***We are exposed to the credit risk of our customers.***

Our solar energy customers primarily purchase energy or lease solar energy systems from us pursuant to one of two types of long-term contracts: a PPA or a Solar Lease. The terms of PPAs and Solar Leases are typically for 20 years, and require the customer to make monthly payments to us. Accordingly, we are subject to the credit risk of our customers. As of December 31, 2016, the average FICO score of our customers was approximately 760. However, as we grow our business, the risk of customer defaults could increase. Our reserve for this exposure is estimated to be \$1.8 million as of December 31, 2016, and our future exposure may exceed the amount of such reserves.

***A failure to comply with laws and regulations relating to our interactions with current or prospective residential customers could result in negative publicity, claims, investigations and litigation, and adversely affect our financial performance.***

Our business substantially focuses on contracts and transactions with residential customers. We must comply with numerous federal, state and local laws and regulations that govern matters relating to our interactions with residential consumers, including those pertaining to privacy and data security, consumer financial and credit transactions, home improvement contracts, warranties, door-to-door solicitation as well as specific regulations pertaining to solar installations. These laws and regulations are dynamic and subject to potentially differing interpretations, and various federal, state and local legislative and regulatory bodies may initiate investigations, expand current laws or regulations, or enact new laws and regulations, regarding these matters. Changes in these laws or regulations or their interpretation could dramatically affect how we do business, acquire customers, and manage and use information we collect from and about current and prospective customers and the costs associated therewith.

For example, Arizona enacted statutes in 2015 and 2016 that require increased disclosures and acknowledgements in any agreement governing the financing, sale or lease of distributed energy systems, such as our solar energy systems. This legislation required us to amend the standard lease and system purchase agreement we provide customers in Arizona to, among other things, include an acknowledgement by the customer of any restrictions on the ability to transfer ownership of the solar energy system or underlying property and provide contact information for any party that has the right to review or approve such a transfer and add additional customer acknowledgments of disclosures that already appear in our customer agreements (e.g., the customer's right to cancel within three business days, the description of major solar energy system components, and certain payment details). Legislation proposed in California and New Mexico would require similar additional disclosures and potential new regulation of our industry.

We strive to comply with all applicable laws and regulations relating to our interactions with residential customers. It is possible, however, that these requirements may be interpreted and applied in a manner that is inconsistent from one jurisdiction to another and may conflict with other rules or our practices. For example, members of the U.S. House of Representatives have sent letters to the Consumer Financial Protection Bureau, or CFPB, and the Federal Trade Commission, or FTC, requesting that these agencies investigate the sales practices of companies providing solar energy system leases to residential consumers. In 2016, the FTC held a public workshop on competition and consumer protection issues relating to the residential solar industry, and we expect additional regulatory scrutiny of the industry at the state and federal levels. Additionally, in March 2017, we received notice that the New Mexico Attorney General's office intends to file an action against us and our officers alleging violation of state consumer protection statutes. While we believe our standard sales practices and policies comply with all applicable laws and regulations, if federal, state or other local regulators or agencies were to initiate an investigation against us or enact regulations relating to the marketing of our products to residential consumers, responding to such investigation or complying with such regulations could divert management's attention to our business, require us to modify our operations and incur significant additional expenses, which could have an adverse effect on our business, financial condition and results of operations or could reduce the number of our potential customers.

As another example, the Fannie Mae Selling Guide imposes certain requirements the terms of solar power purchase agreements and leases as a condition of eligibility of home mortgages for sale to or securitization by Fannie Mae. These requirements include responsibility for damage to the real property, insurance requirements, and lender rights in the event of foreclosure. Such requirements, and possible future conditions impacting the ability of our customers to sell or refinance their homes impact the terms of our business, the terms on which we are able to obtain financing and could have an adverse effect on our business, financial condition and results of operations.

Additionally, we cannot ensure that our sales force will comply with our standard practices and policies, and any such non-compliance potentially could expose us to claims, proceedings, litigation, investigations, and/or enforcement actions by private parties and regulatory authorities, as well as substantial fines and negative publicity, each of which may materially and adversely affect our business. We have incurred, and will continue to incur, significant expenses to comply with the laws, regulations and industry standards that apply to us.

***Any unauthorized access to, or disclosure or theft of personal information or other proprietary information we gather, store or use could harm our reputation and subject us to claims or litigation.***

We receive, store and use personal information of our customers, including names, addresses, e-mail addresses, credit information and other housing and energy use information. We also store and use personal information of our employees. In addition, we currently utilize certain shared information and technology systems with Vivint. We take certain steps in an effort to protect the security, integrity and confidentiality of the personal information and other proprietary and confidential information we collect, store or transmit, but there is no guarantee that inadvertent or unauthorized use or disclosure will not occur or that third parties will not gain unauthorized access to this information despite our efforts. Because techniques used to obtain unauthorized access or sabotage systems change frequently and generally are not identified until they are launched against a target, we and our suppliers or vendors, including Vivint, may be unable to anticipate these techniques or to implement adequate preventative or mitigation measures. In addition, due to a potential time lapse between when a sales representative leaves us and when we are made aware of the separation, sales representatives may have continued access to our customers' information for a period when they should not.

We are also subject to laws and regulations relating to the collection, use, retention, security and transfer of personal information of our customers. In many cases, these laws apply not only to third-party transactions, but also to transfers of information between one company and its subsidiaries. Several jurisdictions have passed new laws in this area, and other jurisdictions are considering imposing additional restrictions. These laws continue to develop and may be inconsistent from jurisdiction to jurisdiction. In addition to government regulation, privacy advocates and industry groups may propose new and different self-regulatory standards that either legally or contractually apply to us. One example of such self-regulatory standards to which we may be contractually bound is the Payment Card Industry Data Security Standard, or PCI DSS. Further, to the extent we accept and handle credit card numbers, we may be subject to various aspects of the PCI DSS. In the event we fail to be compliant with the PCI DSS, fines and other penalties could result. Complying with emerging and changing requirements may cause us to incur costs or require us to change our business practices. Any actual or alleged failure by us, our affiliates or other parties with whom we do business to comply with privacy-related or data protection laws, regulations and industry standards could result in proceedings against us by governmental entities or others, which could have a detrimental effect on our business, results of operations and financial condition.

Any actual or perceived unauthorized use or disclosure of, or access to, any personal information or other proprietary or confidential information maintained by us or on our behalf, whether through breach of our systems, breach of the systems of our suppliers or vendors, including Vivint, by an unauthorized party, or through employee or contractor error, theft or misuse, or otherwise, could harm our business. If any such unauthorized use or disclosure of, or access to, such personal information were to occur or to be believed to have occurred, our operations could be seriously disrupted and we could be subject to demands, claims and litigation by private parties, and investigations, related actions, and penalties by regulatory authorities. In addition, we could incur significant costs in notifying affected persons and entities and otherwise complying with the multitude of federal, state and local laws and regulations relating to unauthorized access to, or use or disclosure of, personal information. Finally, any perceived or actual unauthorized access to, or use or disclosure of, such information could harm our reputation, substantially impair our ability to attract and retain customers and have an adverse impact on our business, financial condition and results of operations.

***We are involved, and may become involved in the future, in legal proceedings that, if adversely adjudicated or settled, could adversely affect our financial results.***

We are, and may in the future become, party to litigation. For examples, see Note 18—Commitments and Contingencies. While we intend to defend against these actions vigorously, the ultimate outcomes of these cases are presently not determinable as they are in a preliminary phase. In general, litigation claims can be expensive and time consuming to bring or defend against, may result in the diversion of management attention and resources from our business and business goals and could result in settlements or damages that could significantly affect financial results and the conduct of our business. It is not possible to predict the final resolution of the litigation to which we currently are or may in the future become party, and the impact of certain of these matters on our business, prospects, financial condition, liquidity, results of operations and cash flows.

#### **Risks Related to our Relationship with Vivint**

***Vivint provides us with certain information technology support for our business. If Vivint fails to perform its obligations to us or if we do not find appropriate replacement services, we may be unable to perform these services or implement substitute arrangements on a timely and cost-effective basis on terms favorable to us.***

We have historically relied on the technical support of Vivint to run our business. We are currently using certain of Vivint's information technology and infrastructure, though our usage continues to decline. The implementation of new software support systems requires significant management time, support and cost, and there are inherent risks associated with implementing, developing, improving and expanding our core systems. We cannot be sure that these systems will be fully or effectively implemented on a timely basis, if at all. If we do not successfully implement these systems, our operations may be disrupted and our operating results could be harmed. In addition, the new systems may not operate as we expect them to, and we may be required to expend significant resources to correct problems or find alternative sources for performing these functions.

In order to successfully transition to our own systems and operate as a standalone business, we have entered into various agreements with Vivint. These include a master framework agreement providing the overall terms of the relationship and a transition services agreement detailing various information technology services that Vivint will provide. Vivint will provide each service until we agree that support from Vivint is no longer required for that service. The information technology services provided under the transition services agreement may not be sufficient to meet our needs and we may not be able to replace these services at favorable costs and on favorable terms, if at all. Any failure or significant downtime in our own systems or in Vivint's systems during the transition period and any difficulty in separating our information technology services from Vivint's information technology services and integrating newly developed or acquired information technology services into our business could result in unexpected costs, impact our results or prevent us from performing other technical, administrative and information technology services on a timely basis and could materially harm our business, financial condition, results of operations and cash flows.

***Our inability to resolve any disputes that arise between us and Vivint with respect to our past and ongoing relationships may adversely affect our financial results, and such disputes may also result in claims for indemnification.***

Disputes may arise between Vivint and us in a number of areas relating to our past and ongoing relationships, including the following:

- intellectual property, labor, tax, employee benefits, indemnification and other matters arising from our separation from Vivint;
- employee retention and recruiting;
- our ability to use, modify and enhance the intellectual property that we have licensed from Vivint;
- business combinations or divestitures;
- pricing for shared and transitional services;
- exclusivity arrangements;
- the nature, quality and pricing of products and services Vivint agrees to provide to us; and
- business opportunities that may be attractive to both Vivint and us.

We have entered into certain agreements with Vivint. Pursuant to the terms of the Non-Competition Agreement we have entered into with Vivint, we and Vivint each define our areas of business and our competitors, and agree not to directly or indirectly engage in the other's business through September 30, 2017. This agreement may limit our ability to pursue attractive opportunities that we may have otherwise pursued.

Additionally, this agreement prohibits either Vivint or us from soliciting for employment any member of the other's executive or senior management team, or any of the other's employees who primarily manage sales, installation or services of the other's products and services until September 30, 2019. The commitment not to solicit each other's employees lasts for 180 days after such employee finishes employment with us or Vivint. Historically, we have recruited a majority of our sales personnel from Vivint. This agreement may require us to obtain personnel from other sources, and may limit our ability to continue scaling our business if we are unable to do so. Notwithstanding the above, a number of sales representatives work for both Vivint and us. To the extent there is any confusion concerning the relationship between us and Vivint with respect to the products and services we offer and the products and services of Vivint, such sales representatives could expose us to increased claims, proceedings, litigation and investigations by consumers and regulatory authorities. In addition, having sales representatives who work for both Vivint and us could distract such sales representatives, impact the effectiveness of our sales force, and potentially increase the turnover of our existing sales representatives who may feel displaced by the addition of Vivint sales representatives to our sales force.

Pursuant to the terms of the Marketing and Customer Relations Agreement we have entered into with Vivint, we and Vivint are required to compensate one another for sales leads that result in sales. Vivint may direct sales leads to other solar energy companies in markets in which we have not entered. However, once we enter a market, Vivint must exclusively direct to us all leads for customers and potential customers with an interest in solar energy. Vivint's ability to sell leads to other solar energy providers in markets where we are not currently operating may adversely affect our ability to scale rapidly if we subsequently enter into such market as many of Vivint's customers with solar energy inclinations may have already been referred to another company by the time we enter into such market. Additionally, even in markets in which we currently operate, there can be no assurances regarding how many leads Vivint will be able to generate, or that such leads will successfully result in a signed PPA, Solar Lease or System Sale. In addition, as we work to expand our customer opportunities and product offerings through our relationship with Vivint, our business and results of operations may be adversely affected by factors that may have a material impact on Vivint's business or our relationship with them.

We may not be able to resolve any potential conflicts relating to these agreements or otherwise, and even if we do, the resolution may be less favorable than if we were dealing with an unaffiliated party. In addition, we have indemnification obligations under the intercompany services agreements we entered into with Vivint, and disputes between us and Vivint may result in claims for indemnification. However, we do not currently expect that these indemnification obligations will materially affect our potential liability compared to what it would be if we did not enter into these agreements with Vivint.

### **Risks Related to Our Common Stock**

*The price of our common stock may be volatile, and the value of your investment could decline.*

The trading price of our common stock may be highly volatile. For example, from our initial public offering to December 31, 2016, the closing price of our common stock has ranged from a high of \$16.01 to a low of \$2.22. Our stock price could continue to be subject to wide fluctuations in response to various factors, some of which are beyond our control. These factors include:

- our financial condition and the availability and terms of future financing;
- changes in laws or regulations applicable to our industry or offerings, including any new tariffs or trade regulations that affect our ability to import goods at attractive prices or at all;
- additions or departures of key personnel, such as the recent resignation of our former chief executive officer and the appointment of his replacement;
- actual or anticipated changes in expectations regarding our performance by investors or securities analysts;
- securities litigation involving us;
- price and volume fluctuations in the overall stock market;
- volatility in the market price and trading volume of companies in our industry or companies that investors consider comparable;
- share price and volume fluctuations attributable to inconsistent trading volume levels of our shares;
- the failure of securities analysts to cover our common stock;
- our ability to protect our intellectual property and other proprietary rights;
- sales of our common stock by us or our stockholders;
- litigation or disputes involving us, our industry or both;
- major catastrophic events;

- general economic and market conditions; and
- potential acquisitions.

Further, the stock markets have experienced extreme price and volume fluctuations that have affected and continue to affect the market prices of equity securities of many companies. These fluctuations often have been unrelated or disproportionate to the operating performance of those companies. In addition, the stock prices of many renewable energy companies have experienced wide fluctuations that have often been unrelated to the operating performance of those companies. These broad market and industry fluctuations, as well as general economic, political and market conditions such as recessions, interest rate changes or international currency fluctuations, may cause the market price of our common stock to decline. If the market price of our common stock decreases, investors may not realize any return on investment and may lose some or all of their investments.

In the past, companies that have experienced volatility in the market price of their stock have been subject to securities class action litigation. We are currently subject to two putative class action lawsuits, subsequently consolidated into an amended complaint, filed in the U.S. District Court for the Southern District of New York, alleging certain misrepresentations by us in connection with our initial public offering. We may become the target of additional securities litigation in the future, which could result in substantial costs and divert our management's attention from other business concerns, which could seriously harm our business.

***As an emerging growth company within the meaning of the Securities Act, we will utilize certain modified disclosure requirements, and we cannot be certain if these reduced requirements will make our common stock less attractive to investors.***

We are an emerging growth company, and, for as long as we continue to be an emerging growth company, we may choose to take advantage of exemptions from various reporting requirements applicable to other public companies but not to "emerging growth companies" including, but not limited to, not being required to have our independent registered public accounting firm audit our internal control over financial reporting under Section 404 of the Sarbanes-Oxley Act, reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements, and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. We have utilized, and we plan in future filings with the SEC to continue to utilize, the modified disclosure requirements available to emerging growth companies. As a result, our stockholders may not have access to certain information they may deem important.

In addition, Section 107 of the JOBS Act also provides that an emerging growth company can utilize the extended transition period provided in Section 7(a)(2)(B) of the Securities Act for complying with new or revised accounting standards. Thus, an emerging growth company can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have irrevocably elected not to avail ourselves of this exemption from new or revised accounting standards and, therefore, we will be subject to the same new or revised accounting standards as other public companies that are not "emerging growth companies."

We could remain an "emerging growth company" for up to five years, or until the earliest of (1) the last day of the first fiscal year in which our annual gross revenue exceeds \$1 billion, (2) the date that we become a "large accelerated filer" as defined in Rule 12b-2 under the Exchange Act, which would occur if we become a seasoned issuer and the market value of our common stock that is held by non-affiliates exceeds \$700 million as of the last business day of our most recently completed second fiscal quarter or (3) the date on which we have issued more than \$1 billion in non-convertible debt securities during the preceding three-year period.

***Our stock price could decline due to the large number of outstanding shares of our common stock eligible for future sale.***

Sales of substantial amounts of our common stock in the public market, or the perception that these sales could occur, could cause the market price of our common stock to decline. These sales could also make it more difficult for us to sell equity or equity-related securities in the future at a time and price that we deem appropriate.

As of December 31, 2016, we had 110.2 million outstanding shares of common stock. These shares may be sold in the public market in the United States, subject to prior registration in the United States, if required, or reliance upon an exemption from U.S. registration, including, in the case of shares held by affiliates or control persons, compliance with the volume restrictions of Rule 144.

In addition, 1.1 million shares of our common stock reserved for future issuance under our Long-Term Incentive Plan were issued, vested and became immediately tradable without restriction. Approximately 2.7 million additional shares of our common stock reserved for future issuance under our Long-Term Incentive Plan will issue, vest and be immediately tradable without restriction on the date that our Sponsor and its affiliates achieve specified returns on their invested capital. For more information regarding the shares reserved under our Long-Term Incentive Plan see the footnote to our consolidated financial statements captioned “ Note 15— Equity Compensation Plans . ”

Further, options to purchase 4.2 million shares of common stock remained outstanding as of December 31, 2016, with 1.8 million of those shares being vested and exercisable as of December 31, 2016. The remaining 2.4 million shares that are not yet vested are subject to ratable time-based vesting over three to five years. All shares subject to time-based vesting will become immediately tradable once vested. As of December 31, 2016, 8.0 million restricted stock units remained outstanding, of which 6.3 million are subject to ratable time-based vesting over one to four years and 1.7 million vest over one to four years subject to individual participants’ achievement of quarterly or annual performance goals.

Stockholders owning an aggregate of 84.7 million shares of our common stock are entitled, under contracts providing for registration rights, to require us to register shares of our common stock owned by them for public sale in the United States, subject to the restrictions of Rule 144. On October 1, 2014, we filed a registration statement on Form S-8 to register 22.9 million shares previously issued or reserved for future issuance under our equity compensation plans and agreements. Under this registration statement, subject to the satisfaction of applicable vesting periods, the shares of common stock issued upon exercise of outstanding options and vested RSUs will be available for immediate resale in the United States in the open market. Sales of our common stock as restrictions end or pursuant to registration rights may make it more difficult for us to sell equity securities in the future at a time and at a price that we deem appropriate. These sales also could cause our stock price to fall and make it more difficult for investors to sell shares of our common stock.

***Our Sponsor and its affiliates control us and their interests may conflict with ours or investors’ in the future.***

As of December 31, 2016, 313 Acquisition LLC, which is controlled by our Sponsor and its affiliates, beneficially owned approximately 75% of our common stock. Moreover, under our organizational documents and the stockholders agreement with 313 Acquisition LLC, for so long as our existing owners and their affiliates retain significant ownership of us, we will agree to nominate to our board individuals designated by our Sponsor, whom we refer to as the Sponsor directors. In addition, for so long as 313 Acquisition LLC continues to own shares representing a majority of the total voting power, we will agree to nominate to our board individuals appointed by Summit Partners and Todd Pedersen. Even when our Sponsor and its affiliates and certain of its co-investors cease to own shares of our stock representing a majority of the total voting power, for so long as our Sponsor and its affiliates continue to own a significant percentage of our stock our Sponsor will still be able to significantly influence the composition of our board of directors and the approval of actions requiring stockholder approval. In addition, under the stockholders agreement, affiliates of our Sponsor will have consent rights with respect to certain actions involving our company, provided a certain aggregate ownership threshold is maintained collectively by our Sponsor and its affiliates, together with Summit Partners, Todd Pedersen and Alex Dunn and their respective affiliates. Accordingly, for such period of time, our Sponsor and certain of its co-investors will have significant influence with respect to our management, business plans and policies, including the appointment and removal of our officers. In particular, for so long as our Sponsor and its affiliates continue to own a significant percentage of our stock, our Sponsor will be able to cause or prevent a change of control of our company or a change in the composition of our board of directors and could preclude any unsolicited acquisition of our company. The concentration of ownership could deprive investors of an opportunity to receive a premium for shares of common stock as part of a sale of our company and ultimately might affect the market price of our common stock.

Our Sponsor and its affiliates engage in a broad spectrum of activities, including investments in the energy sector. In the ordinary course of their business activities, our Sponsor and its affiliates may from time to time acquire and hold interests in businesses that compete directly or indirectly with us. For example, affiliates of our Sponsor regularly invest in utility companies that compete with solar energy and renewable energy companies such as ours. In addition, affiliates of our Sponsor own interests in one of the largest solar power developers in India and may in the future make other investments in solar power, including in the United States. Our certificate of incorporation provides that none of our Sponsor, any of its affiliates or any director who is not employed by us (including any non-employee director who serves as one of our officers in both his or her director and officer capacities) or his or her affiliates will have any duty to refrain from engaging, directly or indirectly, in the same business activities or similar business activities or lines of business in which we operate. Our Sponsor also may pursue acquisition opportunities that may be complementary to our business, and, as a result, those acquisition opportunities may not be available to us. In addition, our Sponsor may have an interest in pursuing acquisitions, divestitures and other transactions that, in its judgment, could enhance its investment, even though such transactions might involve risks to investors.

***We have elected to take advantage of the “controlled company” exemption to the corporate governance rules for NYSE-listed companies, which could make our common stock less attractive to some investors or otherwise harm our stock price.***

Because we qualify as a “controlled company” under the corporate governance rules for NYSE-listed companies, we are not required to have a majority of our board of directors be independent, nor are we required to have a compensation committee or an independent nominating function. In light of our status as a controlled company, in the future we could elect not to have a majority of our board of directors be independent or not to have a compensation committee or nominating and governance committee. Accordingly, should the interests of 313 Acquisition LLC or our Sponsor differ from those of other stockholders, the other stockholders may not have the same protections afforded to stockholders of companies that are subject to all of the corporate governance rules for NYSE-listed companies. Our status as a controlled company could make our common stock less attractive to some investors or otherwise harm our stock price.

***Provisions in our certificate of incorporation, bylaws, stockholders agreement and under Delaware law might discourage, delay or prevent a change of control of our company or changes in our management and, therefore, depress the trading price of our common stock.***

Our certificate of incorporation, bylaws and stockholders agreement contain provisions that could depress the trading price of our common stock by discouraging, delaying or preventing a change of control of our company or changes in our management that the stockholders of our company may believe advantageous. These provisions include:

- establishing a classified board of directors so that not all members of our board of directors are elected at one time;
- authorizing “blank check” preferred stock that our board of directors could issue to increase the number of outstanding shares to discourage a takeover attempt;
- limiting the ability of stockholders to call a special stockholder meeting;
- limiting the ability of stockholders to act by written consent;
- providing that the board of directors is expressly authorized to make, alter or repeal our bylaws;
- establishing advance notice requirements for nominations for elections to our board of directors or for proposing matters that can be acted upon by stockholders at stockholder meetings;
- requiring our Sponsor to consent to certain actions, as described under the section of our 2016 Proxy Statement captioned “Related Party Transactions—Agreements with Our Sponsor,” for so long as our Sponsor, Summit Partners, Todd Pedersen and Alex Dunn or their respective affiliates collectively own, in the aggregate, at least 30% of our outstanding shares of common stock;
- the removal of directors only for cause and only upon the affirmative vote of the holders of at least 66-2/3% in voting power of all the then-outstanding shares of stock of our company entitled to vote thereon, voting together as a single class, if Blackstone and its affiliates beneficially own, in the aggregate, less than 30% in voting power of the stock of our company entitled to vote generally in the election of directors; and
- that certain provisions may be amended only by the affirmative vote of the holders of at least 66-2/3% in voting power of all the then-outstanding shares of stock of our company entitled to vote thereon, voting together as a single class, if Blackstone and its affiliates beneficially own, in the aggregate, less than 30% in voting power of the stock of our company entitled to vote generally in the election of directors.

***If securities or industry analysts do not publish or cease publishing research or reports about us, our business or our market, or if they change their recommendations regarding our stock adversely, our stock price and trading volume could decline.***

The trading market for our common stock will be influenced by the research and reports that industry or securities analysts may publish about us, our business, our market or our competitors. If any of the analysts who do now, or may in the future, cover us change their recommendation regarding our stock adversely, or provide more favorable relative recommendations about our competitors, our stock price would likely decline. If any analyst who may cover us were to cease coverage of our company or fail to regularly publish reports on us, we could lose visibility in the financial markets, which in turn could cause our stock price or trading volume to decline.

#### **Item 1B. Unresolved Staff Comments.**

None.

**Item 2. Properties.**

Our corporate headquarters and executive offices are located in Lehi, Utah, where we lease approximately 150,000 square feet of office space that expires in 2028. We lease approximately 91,000 square feet of office space with TCO-Canyon Park, LLC in Orem, Utah, and we are actively pursuing avenues to sublease or exit this location prior to the lease termination in September 2017. We also have a lease for the construction of a second office building on the corporate headquarters campus that will increase the leased premises by approximately 150,000 square feet. The lease on the second office building is currently anticipated to commence in 2020. We believe that our currently leased space is sufficient to meet our current needs and our anticipated growth.

Our other locations include leased warehouses and sales offices that range from approximately 1,000 to 36,000 square feet for terms ranging from one to six years in Arizona, California, Connecticut, Florida, Hawaii, Maryland, Massachusetts, New Jersey, New Mexico, New York, Pennsylvania, South Carolina, Texas, and Utah.

**Item 3. Legal Proceedings.**

For a list of our current legal proceedings, see Note 18—Commitments and Contingencies.

**Item 4. Mine Safety Disclosures.**

Not applicable.

PART II

**Item 5. Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.**

Our common stock has been traded on the New York Stock Exchange since October 1, 2014 under the symbol “VSLR.” Prior to October 1, 2014, there was no established public trading market for our common stock. The following table sets forth the high and low sales price for our common stock as reported by the New York Stock Exchange for the periods indicated.

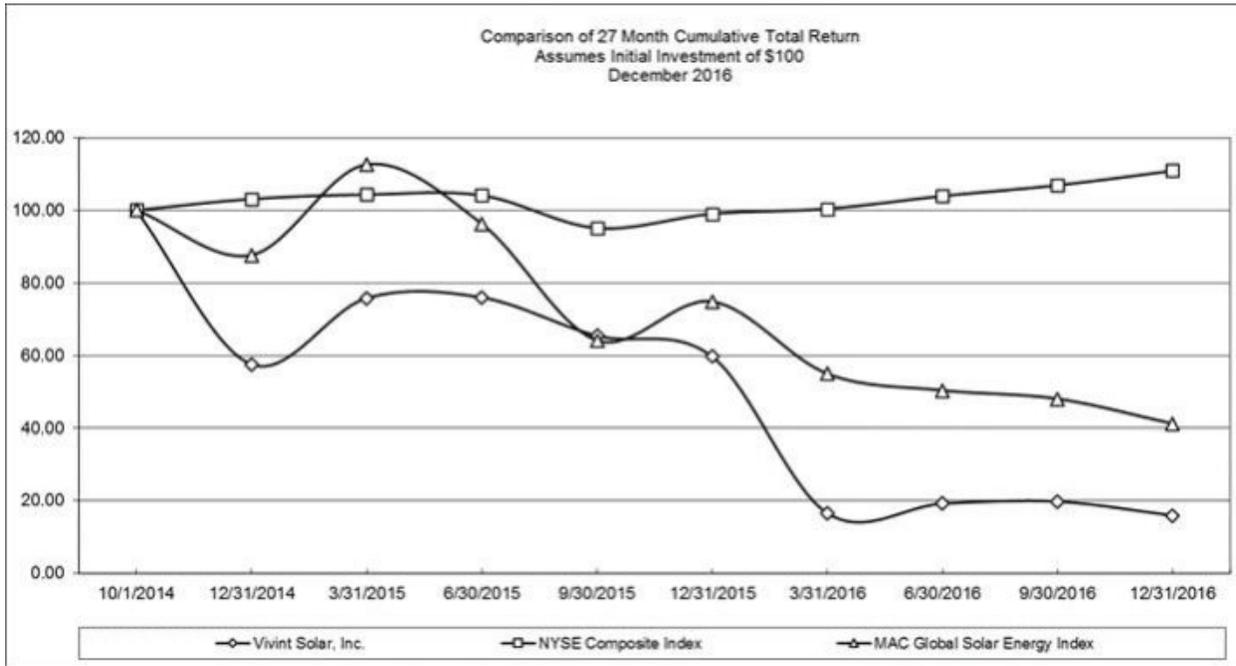
	High	Low
Fourth quarter 2016	3.35	2.50
Third quarter 2016	3.70	2.74
Second quarter 2016	4.06	2.16
First quarter 2016	10.16	2.41
Fourth quarter 2015	13.05	6.59
Third quarter 2015	16.00	9.91
Second quarter 2015	15.28	11.52
First quarter 2015	13.56	7.70

As of March 1, 2017, we had five stockholders of record of our common stock. We also have approximately 16,500 beneficial holders whose stock is in nominee or “street name” accounts through brokers.

**Stock Performance Graph**

The following graph is not “soliciting material,” is not deemed “filed” with the SEC and is not to be incorporated by reference into any filing of Vivint Solar, Inc. under the Securities Act of 1933, as amended (the “Securities Act”), or the Exchange Act, whether made before or after the date hereof and irrespective of any general incorporation language in any such filing.

The following graph compares for the period from October 1, 2014 through December 31, 2016, the total cumulative stockholder return on our common stock with the total cumulative return of the New York Stock Exchange Composite Index and the MAC Global Solar Energy Index. The graph assumes a \$100 investment at the beginning of the period in our common stock, the stocks represented in the New York Stock Exchange Composite Index and the MAC Global Solar Energy Index, and assumes reinvestment of any dividends. Historical stock price performance should not be relied upon as an indication of future stock price performance:



## Recent Sales of Unregistered Securities

None.

## Issuer Purchase of Equity Securities

None.

## Dividend Policy

We have never declared or paid any cash dividends on our common stock. We currently intend to retain any future earnings to fund our growth, and we do not anticipate declaring or paying any cash dividends in the foreseeable future. Additionally, the terms of one or more of our current debt instruments restrict our ability to pay cash dividends on our common stock. Any future determination to declare cash dividends will be made at the discretion of our board of directors, subject to applicable laws and provisions of our debt instruments and organizational documents, after taking into account our financial condition, results of operations, capital requirements, general business conditions and other factors that our board of directors may deem relevant.

## Item 6. Selected Financial Data.

The following table sets forth selected historical consolidated financial and other data for the periods ended and at the dates indicated below. On November 16, 2012, we were acquired by The Blackstone Group, L.P., our Sponsor. We refer to the years ended December 31, 2016, 2015, 2014 and 2013 and the period from November 17, 2012 through December 31, 2012 as the Successor Periods or Successor, and the period from January 1, 2012 through November 16, 2012 as the Predecessor Period or Predecessor. Our selected historical consolidated statement of operations data for the years ended December 31, 2016, 2015, and 2014 presented in this table and the balance sheet data as of December 31, 2016 and 2015 have been derived from our historical audited consolidated financial statements included elsewhere in this report. Our historical results are not necessarily indicative of the results that may be expected in the future. The following selected financial data should be read in conjunction with the sections of this document captioned "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and related notes included elsewhere in this report.

	Successor					Predecessor
	Year Ended December 31,				Period from	Period from
	2016	2015	2014	2013	November 17, through December 31, 2012	January 1, through November 16, 2012
	(In thousands, except per share data)					
<b>Statements of Operations Data:</b>						
Operating leases and incentives revenue	\$ 105,353	\$ 61,150	\$ 21,688	\$ 5,864	\$ 109	\$ 183
Solar energy system and product sales revenue	29,814	3,032	3,570	306	—	157
Total revenue	135,167	64,182	25,258	6,170	109	340
Total operating expenses	337,700	295,296	187,552	57,508	4,346	12,657
Net loss attributable to non-controlling interests and redeemable non-controlling interests	(260,523)	(266,345)	(137,036)	(62,108)	(699)	(1,771)
Net income available (loss attributable) to common stockholders	17,986	13,080	(28,883)	5,638	(2,604)	(31,674)
Net income available (loss attributable) per share to common stockholders (1):						
Basic	\$ 0.17	\$ 0.12	\$ (0.35)	\$ 0.08	\$ (0.03)	\$ (0.42)
Diluted	\$ 0.16	\$ 0.12	\$ (0.35)	\$ 0.07	\$ (0.03)	\$ (0.42)

(1) See Note 19—Basic and Diluted Net Income (Loss) Per Share to our consolidated financial statements for an explanation of the method used to calculate basic and diluted net income available (loss attributable) per share to common stockholders and the weighted-average number of shares used in the computation of the per share amounts.

	As of December 31,				
	2016	2015	2014	2013	2012
	(In thousands)				
<b>Balance Sheet Data:</b>					
Cash and cash equivalents	\$ 96,586	\$ 92,213	\$ 261,649	\$ 6,038	\$ 11,650
Solar energy systems, net	1,458,355	1,102,157	588,167	188,058	47,089
Total assets	2,126,356	1,609,070	1,064,324	297,707	132,087
Revolving lines of credit, related party	—	—	—	41,412	15,000
Long-term obligations <sup>(1)</sup>	767,619	431,394	114,678	3,761	—
Redeemable non-controlling interests	129,676	169,541	128,427	73,265	17,741
Total equity	666,834	609,252	613,136	80,621	71,323

(1) Includes the current and long-term portions of debt outstanding in the years presented, and the amounts payable under capital lease obligations in 2013 through 2016

## Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

### Overview

You should read the following discussion together with Item 6 "Selected Financial Data" and our consolidated financial statements and the related notes included in Item 8 of this report. This discussion contains forward-looking statements about our business and operations. Our actual results may differ materially from those we currently anticipate as a result of the many factors, including those we describe under Item 1A "Risk Factors" and elsewhere in this report. See "Forward-Looking Statements."

### Business Overview

We primarily offer distributed solar energy — electricity generated by a solar energy system installed at or near customers' locations — to residential customers through a customer-focused and neighborhood-driven direct-to-home sales model. We believe we are disrupting the traditional electricity market by satisfying customers' demand for increased energy independence and less expensive, more socially responsible electricity generation. As a result, we primarily compete with traditional utilities in the markets we serve, and our strategy is to price the energy we sell below prevailing retail electricity rates. The price our customers pay to buy energy from us varies depending on the state where the customer is located, the impact of the local traditional utility, customer price sensitivity, the need to offer a compelling financial benefit and the price other solar energy companies charge in the region. We also compete with distributed solar energy system providers for solar energy system sales on the basis of price, service and availability of financing options.

Our primary product offering includes the following:

- *Power Purchase Agreements.* Under power purchase agreements, or PPAs, we charge customers a fee per kilowatt hour based on the electricity production of the solar energy system, which is billed monthly. PPAs typically have a term of 20 years and are subject to an annual price escalator of 2.9%. Over the term of the PPA, we operate the system and agree to maintain it in good condition. Customers who buy energy from us under PPAs are covered by our workmanship warranty equal to the length of the term of these agreements.
- *Legal-form Leases.* Under legal-form leases, or Solar Leases, we charge customers a fixed monthly payment to lease the solar energy system, which is based on a calculation that accounts for expected solar energy generation. Solar Leases typically have a term of 20 years and are subject to an annual price escalator of 2.9%. We provide our Solar Lease customers a performance guarantee, under which we agree to refund payments to the customer if the solar energy system does not meet the guaranteed production level in the prior 12-month period. Over the term of the Solar Lease, we operate the system and agree to maintain it in good condition. Customers who buy energy from us under Solar Leases are covered by our workmanship warranty equal to the length of the term of these agreements.
- *Solar energy System Sales.* Under solar energy system sales, or System Sales, we offer our customers the option to purchase solar energy systems for cash or through third-party financing. The price for these contracts is determined as a function of the respective market rate and the size of the solar energy system to be installed. Under certain loan products, customers can additionally contract with us for certain structural upgrades in connection with the installation of a solar energy system. System Sales are becoming an increasingly significant portion of our business and we believe they are more advantageous to us as they provide more immediate access to cash.

Of our 222.2 megawatts installed in 2016, approximately 84% were installed under PPAs, 10% were installed under Solar Leases and 6% were installed under System Sales. As of December 31, 2016, the average FICO score of our customers was approximately 760.

In 2016, we began adjusting our installation policies and pricing. We have become more selective in our installation policies to increase incremental value by limiting the installation of smaller system sizes and limiting installations on certain roof types. We have also changed our pricing in certain markets to maximize returns on investment. We continue to evaluate and make adjustments to our installation policies as our processes become more efficient and power rates increase. We also continue to evaluate pricing to optimize our use of capital based on market conditions and utility rates.

Our ability to offer long-term customer contracts depends in part on our ability to finance the installation of the solar energy systems by co-investing or entering into lease arrangements with fund investors who value the resulting customer receivables and investment tax credits, accelerated tax depreciation and other incentives related to the solar energy systems through structured investments known as “tax equity.” Tax equity investments are generally structured as non-recourse project financings. In the context of the distributed solar energy market, tax equity investors make an upfront advance payment to a sponsor through an investment fund in exchange for a share of the tax attributes and cash flows emanating from an underlying portfolio of solar energy systems. In these tax equity investments, the U.S. federal tax attributes offset taxes that otherwise would have been payable on the investors’ other operations. The terms and conditions of each investment fund vary significantly by investor and by fund. We continue to negotiate with financial investors to create additional investment funds.

With one exception, our investment funds have adopted the partnership or inverted lease structures. Under partnership structures, we and our fund investors contribute cash into a partnership company. The partnership uses this cash to acquire solar energy systems developed by us and sells energy from such systems to customers or directly leases the solar energy systems to customers. Under our existing inverted lease structures, we and the fund investor set up a multi-tiered investment vehicle, comprised of two partnership entities, that facilitates the pass through of the tax benefits to the fund investors. In this structure, we contribute solar energy systems to a lessor partnership entity in exchange for interests in the lessor partnership and the fund investors contribute cash to a lessee partnership in exchange for interests in the lessee partnership which in turn makes an investment in the lessor partnership entity in exchange for interests in the lessor partnership. The lessor partnership distributes the cash contributions received from the lessee partnership to our wholly owned subsidiary that contributed the projects to the lessor partnership. The lessor partnership leases the contributed solar energy systems to the lessee partnership under a master lease, and the lessee partnership pays the lessor partnership rent for those systems.

We have determined that we are the primary beneficiary in these partnership and inverted lease structures for accounting purposes. Accordingly, we consolidate the assets and liabilities and operating results of these partnerships in our consolidated financial statements. We recognize the fund investors’ share of the net assets of the investment funds as non-controlling interests and redeemable non-controlling interests in our consolidated balance sheets. These income or loss allocations, reflected on our consolidated statement of operations, may create significant volatility in our reported results of operations, including potentially changing net income available (loss attributable) to common stockholders from income to loss, or vice versa, from quarter to quarter.

## **Recent Developments**

### ***2017 Term Loan***

On January 5, 2017, we entered into a long-term fixed rate credit agreement, or the 2017 Term Loan, pursuant to which we borrowed \$203.8 million with certain financial institutions for which Wells Fargo Bank, National Association is acting as administrative agent. The borrower under the 2017 Term Loan is Vivint Solar Financing III, LLC, our wholly owned indirect subsidiary. Proceeds of the 2017 Term Loan were used to (1) repay existing indebtedness of \$140.3 million under our aggregation credit facility, or the Aggregation Facility, with respect to the portfolio of projects being used as collateral for the 2017 Term Loan, or the 2017 Term Loan Portfolio, (2) fund a debt service reserve account and other agreed reserves of \$20.1 million, (3) pay transaction costs and fees in connection with the 2017 Term Loan of \$5.5 million, (4) pay the investment tax credit, or ITC, insurance premium of \$2.0 million on behalf of one of our investment funds, and (5) distribute \$35.9 million to us as reimbursement for capital costs associated with deployment of the 2017 Term Loan Portfolio. For additional details regarding the 2017 Term Loan, see Note 20—Subsequent Events.

### ***Aggregation Facility Amendment***

On March 9, 2017, we amended and restated the Aggregation Facility. Pursuant to the Aggregation Facility, as amended, the parties agreed to (1) extend the date through which we may incur borrowings under the Aggregation Facility to March 31, 2020, or the Availability Period, with an option to extend such period by an additional 12 months to the extent the lenders agree to such extension; (2) extend the maturity date for the initial loans under the Aggregation Facility from March 12, 2018 to September 30, 2020; and (3) increase the “Applicable Margin” used to determine the applicable interest rate on outstanding borrowings after the Availability Period from 3.50% to 3.75%. The “Applicable Margin” used to determine the applicable interest rate on outstanding borrowings during the Availability Period remains unchanged at 3.25%.

In addition, the amendments to the Aggregation Facility, (1) allow us to satisfy concentration covenants by maintaining insurance policies with respect to certain tax equity funds for the benefit of the lenders to cover any indemnification payments we may be required to make to certain of our tax equity investors in connection with the loss of ITCs and (2) modify the customer FICO score requirement thresholds to enable us to borrow more against certain solar energy systems. The amendments to the Aggregation Facility also provide the ability for us to enter into forward-starting interest rate hedges and require no less than 75% of outstanding loan balances to be hedged at all times.

### **Key Operating Metrics**

We regularly review a number of metrics, including the following key operating metrics, to evaluate our business, measure our performance, identify trends affecting our business, formulate financial projections and make strategic decisions. Some of our key operating metrics are estimates. These estimates are based on our management’s beliefs and assumptions and on information currently available to management. Although we believe that we have a reasonable basis for each of these estimates, these estimates are based on a combination of assumptions that may not prove to be accurate over time, particularly given that a number of them involve estimates of cash flows up to 30 years in the future. Underperformance of the solar energy systems, payment defaults by our customers, cancellation of signed contracts, competition from other distributed solar energy companies, development in the distributed solar energy market and the energy market more broadly, technical innovation or other factors described under the section of this report captioned “Risk Factors” could cause our actual results to differ materially from our calculations. Furthermore, while we believe we have calculated these key metrics in a manner consistent with those used by others in our industry, other companies may in fact calculate these metrics differently than we do now or in the future, which would reduce their usefulness as a comparative measure.

- *Solar energy system installations* . Solar energy system installations represents the number of solar energy systems installed on customers’ premises. Cumulative solar energy system installations represents the aggregate number of solar energy systems that have been installed on customers’ premises. We track the number of solar energy system installations as of the end of a given period as an indicator of our historical growth and as an indicator of our rate of growth from period to period.
- *Megawatts installed* . Megawatts installed represents the aggregate megawatt nameplate capacity of solar energy systems that have been installed during the applicable period. Cumulative megawatts installed represents the aggregate megawatt nameplate capacity of solar energy systems that have been installed. We track the nameplate capacity of our solar energy systems as measured in megawatts DC STC, or direct current standard test conditions. Because the size of solar energy systems varies greatly, we believe that tracking the aggregate megawatt nameplate capacity of the systems is an indicator of our growth rate. We track megawatts installed in a given period as an indicator of asset growth in the period and cumulative megawatts installed as of the end of a given period as an indicator of our historical growth.
- *Estimated nominal contracted payments remaining* . Estimated nominal contracted payments remaining equals the sum of the remaining cash payments that our customers are expected to pay over the term of their PPAs or Solar Leases with us for systems installed as of the measurement date. For a PPA, we multiply the contract price per kilowatt-hour by the estimated annual energy output of the associated solar energy system to determine the estimated nominal contracted payments. For a Solar Lease, we include the monthly fees and upfront fee, if any, as set forth in the lease. We use the nominal contracted payments, together with the value attributable to investment tax credits, accelerated depreciation, solar renewable energy certificates, or SRECs, state tax benefits and rebates, to cover the fixed and variable costs associated with installing solar energy systems. Estimated nominal contracted payments remaining is a reporting metric forecasted as of specified dates. It is a forward-looking number, and we use judgment in developing the assumptions used to calculate it. The primary assumption in the calculation is the annual energy output of the associated solar energy systems, which is estimated based on typical annual sun hours given the system’s location, nameplate production capacity of the system, and estimated declines in the solar equipment productivity over the life of the system. Those assumptions may not prove to be accurate over time.

- *Estimated retained value* . Estimated retained value represents the net cash flows discounted at 6% that we expect to receive from customers pursuant to long-term customer contracts net of estimated cash distributions to fund investors and estimated operating expenses for systems installed as of the measurement date. Estimated retained value, and the other metrics that are based on estimated retained value, are key operating metrics because these amounts reflect the net cash flows we expect to receive from customers pursuant to long-term customer contracts and represent valuable future revenue streams created by our operations, but which are not yet recognized on our financial statements. Estimated retained value and estimated retained value per watt amounts do not consider the impact of other events that could adversely affect the cash flows generated by the solar energy system during the contract term and anticipated renewal period. These events could include, but are not limited to, non-payment of obligated amounts by the customer, declines in utility rates for residential electricity or early contract termination by the customer as a result of the customer purchasing the solar energy system in connection with the sale of the home on which the solar energy system is installed.
- *Estimated retained value under energy contracts* . Estimated retained value under energy contracts represents the estimated retained value from the solar energy systems during the typical 20-year term of our long-term contracts.
- *Estimated retained value of renewal* . Estimated retained value of renewal represents the estimated retained value associated with an assumed 10-year renewal term following the expiration of the initial contract term. To calculate estimated retained value of renewal, we assume all contracts are renewed at 90% of the contractual price in effect at the expiration of the initial term.
- *Estimated retained value per watt* . Estimated retained value per watt is calculated by dividing the estimated retained value as of the measurement date by the aggregate nameplate capacity of solar energy systems under long-term customer contracts that have been installed as of such date, and is subject to the same assumptions and uncertainties as estimated retained value. We have chosen to initially introduce our solar energy systems in states where utility rates, solar resource and regulatory policies provide for the most compelling market for distributed solar energy. Although we believe there are many other markets that have attractive economics for us, estimated retained value per watt will decrease over time because these markets are not as attractive as the ones in which we currently operate. We may experience disproportionate growth in markets that offer attractive incentives such as SRECs, the value of which is not reflected in estimated retained value. Furthermore, other companies may calculate estimated retained value per watt (or a similar metric) differently than we do, which reduces its usefulness as a comparative measure.

	Year Ended December 31,		
	2016	2015	2014
Solar energy system installations	31,071	32,807	22,424
Megawatts installed	222.2	230.8	155.4

	As of December 31,		
	2016	2015	2014
Cumulative solar energy system installations	99,598	68,527	35,720
Cumulative megawatts installed	681.1	458.9	228.2
Estimated nominal contracted payments remaining (in millions)	\$ 2,568.6	\$ 1,871.9	\$ 1,030.5
Estimated retained value under energy contracts (in millions)	\$ 1,015.1	\$ 705.6	\$ 383.1
Estimated retained value of renewal (in millions)	\$ 299.4	\$ 200.5	\$ 97.9
Estimated retained value (in millions)	\$ 1,314.5	\$ 906.1	\$ 480.9
Estimated retained value per watt	\$ 1.98	\$ 1.98	\$ 2.11

## Factors Affecting Our Performance

### *Financing Availability*

Our future success depends in part on our ability to raise capital from third-party investors on competitive terms to help finance the deployment of our residential solar energy systems under long-term customer contracts. There are a limited number of potential investment fund investors and the competition for this investment capital is intense. The principal tax credit on which fund investors in our industry rely is the ITC. The amount for the ITC is equal to 30% of the value of eligible solar property. By statute, the ITC percentage is scheduled to decrease to 26% on January 1, 2020, 22% on January 1, 2021 and 10% on January 1, 2022. We intend to create additional investment funds with financial investors and corporate investors. We also use debt, equity or other financing strategies to fund our operations, including our obligations to make contributions to investment funds. Such other financing strategies may increase our cost of capital. Our future success also depends in part on our ability to partner with third-parties who administer solar loan products.

### *Incentives; Net Metering*

Our cost of capital, the price we can charge for electricity, the cost of our systems and the demand for residential distributed solar energy is impacted by a number of federal, state and local government incentives and regulations, including: tax credits, particularly the ITC; tax abatements; rebate programs; net metering; and SRECs. These programs have on occasion been challenged by incumbent utilities and questioned by those in government and others arguing for less governmental spending and involvement in the energy market. In recent years, net metering programs have been subject to regulatory scrutiny or legislative proposals in some states, such as Arizona, California, Colorado, Hawaii, Nevada, New Hampshire, New York and Utah. Regulators in these states have considered imposing limits on the aggregate capacity of net metering generation, fees on net metering customers, reducing the rate that net metering customers are paid for the power that they deliver back to the grid and allegations that homeowners with net metered solar energy systems shift the costs of maintaining the electric grid onto non-solar ratepayers. In California, for example, after the earlier of July 1, 2017 or the date the applicable investor owned utility reaches its statutory net metering cap, customers will take service on a new net metering successor tariff. For the net energy metering successor tariff, the California Public Utilities Commission largely upheld net metering in its current form with full retail compensation for exports and rejected utility requests to impose extremely high fixed and capacity charges. The California Public Utilities Commission did allow the utilities to impose reasonable interconnection fees and some additional charges on customers, and will require such customers to take service on time-of-use rates.

In October 2015, the Hawaii Public Utilities Commission issued an order closing the Hawaiian Electric Company's net metering program to new participants and replaced this program with two new options for customers to interconnect to the utilities' power grids, neither of which provides for compensation for exports at retail electricity rates. In late 2015, the Nevada Public Utilities Commission voted in favor of a plan which limits export compensation to net metering customers and imposes high monthly fees on such customers. This order greatly reduced the economic benefit to Nevada customers of residential solar. As a result, we do not operate in Nevada. In December 2016, Arizona Corporation Commission decided to adjust the net metering credit that customers receive for energy generated from solar energy systems located on their roofs from retail credit to a resource comparison proxy calculation credit. The Arizona Corporation Commission is also considering a settlement agreement between the Arizona Public Service Company and industry stakeholders under which demand charges based on a customer's maximum average rate of energy consumed during a specified interval would be imposed on residential customers under certain rate schedules. Several other states also plan to revisit their net metering policies in the coming years.

We also apply for and receive SRECs and other state-level incentives in certain jurisdictions for power generated by our solar energy systems, which comprise a significant portion of the value to us of the associated solar energy systems. The market for SRECs is extremely volatile and sellers are often able to obtain better unit pricing by selling a large quantity of SRECs. As a result, we may sell SRECs infrequently, at opportune times and in large quantities and the timing and volume of our SREC sales may lead to fluctuations in our quarterly results.

### *Cost of Solar Energy Systems*

The declining cost of solar panels and the raw materials necessary to manufacture them has been a key driver in the price we charge for electricity and customer adoption of solar energy. Although solar panel and raw material prices may continue to decline, it is possible they will not decline at the same rate as they have over the past several years or that they may increase. Although the solar panel market has seen an increase in supply, upward pressure on prices may occur due to growth in the solar industry, regulatory policy changes and the resulting increase in demand for solar panels and the raw materials necessary to manufacture them. In recent years, the U.S. government has imposed anti-dumping duties and countervailing duties on solar panels and other system components produced in China and Taiwan. See "Risk Factors — Risk Related to our Business — Our business has benefited from the declining cost of solar panels, and our financial results may be harmed if the cost of solar panels increases in the future." In the past we have purchased virtually all of the solar panels used in our solar energy systems from manufacturers based in China. However, all of the solar panel manufacturers with which we do business have recently begun manufacturing solar panels outside of China in countries such as Vietnam, Malaysia, Korea and Thailand in order to avoid the current tariffs. We currently anticipate this trend will continue as solar panel manufacturers seek lower tariff countries. The cost of other components, such as inverters, racking systems and other electrical equipment, may also vary from period to period. A key part of our strategy is to reduce costs, and if solar energy system costs begin to increase, we may be forced to pass these costs on to our customers and the value proposition for customers would decrease. Alternatively, our financial results or growth would decrease if we did not pass these costs on to our customers.

## ***Sustainable Growth***

We operate in states whose utility prices, sun exposure, climate conditions and regulatory policies provide for the most compelling market for distributed solar energy. Utility rates, availability of state incentives, other state, regional and local regulations, sun exposure and weather conditions, which can impact sales, installation and system productivity, vary by market. For example, markets in California typically have higher utility rates than markets in the Eastern United States. As a result, systems in California typically have a higher retained value than systems in the Eastern United States. However, we are entitled to receive SRECs and other state incentives in many Eastern states that are not available in the Western United States. Although the impact of such incentives is not reflected in the retained value of the associated systems, they do generate value for us. As a result, our financial and operating results will be affected by the geographic mix of the systems we install. Competition also varies by market and we may compete with national and local solar companies that offer products similar to ours. We plan to enlarge our addressable market by expanding our presence to new states on a measured basis. Offering System Sales to customers allows us to enter markets where customers prefer to own their solar energy systems or locations where our PPAs and Solar Leases are not permitted by local regulations or are not economically feasible.

## ***Sales Channels***

We place our integrated residential solar energy systems through a sales organization that primarily uses a direct-to-home sales model. We believe that a high-touch, customer-focused selling process is important before, during and after the sale of our products to maximize our sales success. The members of our sales force typically reside and work within the market they serve. We also generate a significant amount of sales through customer referrals. We have found that customer referrals increase in relation to our penetration in a particular market. Shortly after entering a new market, referrals become an increasingly effective way to market our solar energy systems. In addition to direct sales, we sell to customers through our inside sales team. We also continue to explore opportunities to sell solar energy systems to customers through a number of other distribution channels, including relationships with real estate management companies, home builders, home improvement stores, large construction, electrical and roofing companies and other third parties that have access to large numbers of potential customers.

## ***Relationship with Vivint***

We have historically relied on the technical support of APX Group, Inc., or Vivint, to run our business. Although our usage has decreased over time, we continue to use certain of Vivint's information technology and infrastructure. Our historical financial information does not necessarily reflect what our financial position, results of operations, cash flows or costs and expenses would have been had we operated separately from Vivint during the historical periods presented in this report. The historical costs and expenses reflected in our consolidated financial statements include charges to certain corporate functions historically provided to us by Vivint. We and Vivint believe these charges are reasonable reflections of the historical utilization levels of these services in support of our business.

In order to successfully transition to our own systems and operate as a standalone business, we have entered into various agreements with Vivint. These include a master framework agreement providing the overall terms of the relationship and a transition services agreement detailing various information technology services that Vivint will provide. Vivint will provide each service until we agree that support from Vivint is no longer required for that service. The information technology services provided under the transition services agreement may not be sufficient to meet our needs and we may not be able to replace these services at favorable costs and on favorable terms, if at all. Any failure or significant downtime in our own systems or in Vivint's systems during the transition period and any difficulty in separating our information technology services from Vivint's information technology services and integrating newly developed or acquired information technology services into our business could result in unexpected costs, impact our results or prevent us from performing other technical, administrative and information technology services on a timely basis and could materially harm our business, financial condition, results of operations and cash flows.

## **Components of Results of Operations**

### ***Revenue***

We classify and account for our PPAs as operating leases, and recognize revenue from these contracts based on the actual amount of power generated at rates specified under the contracts. We also offer Solar Leases, which include performance guarantees. Depending on the level of the guarantee, we either recognize revenue based on the amount of power generated at rates specified under the contracts and establish a reserve for those lease contracts for which we may have to make a payment at the end of each year to the customer if the solar energy systems do not meet a guaranteed production level in the prior 12-month period; or we treat as an operating lease and recognize revenue on a straight-line basis over the lease term. In 2015, we began offering System Sales. Revenue for System Sales is recognized when systems are interconnected to local power grids and granted permission to operate, assuming all other revenue recognition criteria are met.

One of our investment funds is structured as a lease pass-through fund arrangement. Under the agreement, we contribute solar energy systems and the investor makes large upfront payments to one of our wholly owned subsidiaries and is obligated to make subsequent periodic payments. We allocated a portion of the aggregate payments received from the fund investor to the estimated fair value of assigned ITCs, and the balance to the future customer lease payments that are also assigned to the investor. The fair value of the ITCs was estimated by multiplying the ITC rate of 30% by the fair value of the systems that were sold to the lease pass-through fund. The fair value of the systems was determined by independent appraisals. Our subsidiary has an obligation to ensure the solar energy systems are in service and operational for a term of five years to avoid any recapture of the ITCs. Accordingly, we recognize revenue as the recapture provisions lapse assuming all other revenue recognition criteria have been met. The amounts allocated to the ITCs are initially recorded as deferred revenue in the consolidated balance sheet, and subsequently, one-fifth of the amounts allocated to the ITCs is recognized as revenue from operating leases and solar energy systems incentives in the consolidated statements of operations based on the anniversary of each solar energy system's placed in service date.

We consider the proceeds from solar energy system rebate incentives offered by certain state and local governments to form part of the payments under our operating leases and recognize such payments as revenue over the contract term. We record revenue from our operating leases over the term of our long-term customer contracts, which is typically 20 years. Less than 1% of our revenue was attributable to state and local rebates and incentives in all periods presented. We also apply for and receive SRECs in certain jurisdictions for power generated by our solar energy systems under long-term customer contracts. We generally recognize revenue related to the sale of SRECs upon delivery. The market for SRECs is extremely volatile and sellers are often able to obtain better unit pricing by selling a large quantity of SRECs. As a result, we may sell SRECs infrequently, at opportune times and in large quantities and the timing and volume of our SREC sales may lead to fluctuations in our quarterly results. We also recognize revenue related to the sale of photovoltaic installation devices and software products and follow respective revenue recognition guidance for these sales.

The following table sets forth our revenue by major product (in thousands):

	Year Ended December 31,		
	2016	2015	2014
<b>Revenue:</b>			
Operating leases and other incentives	\$ 81,610	\$ 47,224	\$ 19,051
SREC sales	19,304	13,926	2,637
ITC revenue	4,439	—	—
Total operating leases and incentives	<u>105,353</u>	<u>61,150</u>	<u>21,688</u>
System sales	27,645	762	357
Photovoltaic installation devices and software products	2,169	2,270	3,213
Total solar energy system and product sales	<u>29,814</u>	<u>3,032</u>	<u>3,570</u>
Total revenue	<u>\$ 135,167</u>	<u>\$ 64,182</u>	<u>\$ 25,258</u>

### **Operating Expenses**

**Cost of Revenue.** Cost of operating leases and incentives includes the depreciation of the cost of solar energy systems under long-term customer contracts, which are depreciated for accounting purposes over 30 years; and the amortization of the related capitalized initial direct costs, which are amortized over the term of the long-term customer contract. It also includes allocated indirect material and labor costs related to the processing; account creation; design; installation; interconnection and servicing of solar energy systems that are not capitalized, such as personnel costs not directly associated to a solar energy system installation; warehouse rent and utilities; and fleet vehicle executory costs. The cost of revenue for the sales of SRECs is limited to broker fees which are paid in connection with certain SREC transactions. In 2017, we expect our cost of operating leases and incentives revenue will increase in absolute dollars compared to 2016 primarily due to depreciation associated with additional solar energy systems being placed in service.

Cost of solar energy system and product sales consists of direct and allocated indirect material and labor costs and overhead costs for System Sales, photovoltaic installation devices and software products and structural upgrades. Indirect material and labor costs are ratably allocated to System Sales and include costs related to the processing; account creation; design; installation; interconnection and servicing of solar energy systems that are not capitalized, such as personnel costs not directly associated to a solar energy system installation; warehouse rent and utilities; and fleet vehicle executory costs. Costs of solar energy system sales are recognized in conjunction with the related revenue upon the solar energy system passing an inspection by the responsible governmental department after completion of system installation and interconnection to the power grid, assuming all other revenue recognition criteria are met. In 2017, we expect our cost of solar energy system and product sales will increase in absolute dollars compared to 2016 as we continue to increase System Sales.

*Sales and Marketing Expenses.* Sales and marketing expenses include personnel costs, such as salaries, benefits, bonuses and stock-based compensation for our corporate sales and marketing employees and exclude costs related to our direct sales personnel that are accounted for as cost of revenue. Sales and marketing expenses also include advertising, promotional and other marketing-related expenses; certain allocated corporate overhead costs related to facilities and information technology; travel; professional services and costs related to customer cancellations. In 2017, we expect sales and marketing costs will remain consistent in absolute dollars compared to 2016.

*Research and Development.* Research and development expense is comprised primarily of salaries and benefits and other costs related to the development of photovoltaic installation devices, other solar technologies and software products. Research and development costs are charged to expense when incurred. In 2017, we expect research and development costs will remain consistent in absolute dollars compared to 2016.

*General and Administrative Expenses.* General and administrative expenses include personnel costs, such as salaries, bonuses and stock-based compensation related to our general and administrative personnel; professional fees related to legal, human resources, accounting and structured finance services; travel; and allocated facilities and information technology costs. Our financial results have included charges for the use of services provided by Vivint, including shared facilities in 2014. These costs were based on the actual cost incurred by Vivint without mark-up. The charges to us may not be representative of what the costs would have been had we operated separately from Vivint during the periods presented; however, we believe the amounts charged are representative of the incremental cost to Vivint to provide these services to us. We continue to use certain information and technology resources and systems administered by Vivint as of December 31, 2016, though our usage continues to decline. In 2017, we expect that general and administrative expense will increase in absolute dollars compared to 2016.

*Amortization of Intangible Assets.* We have recorded intangible assets at their fair value related to acquisitions in which we have been involved and at cost for internally developed software projects. Such intangible assets are amortized over their estimated useful lives.

*Impairment of Goodwill and Intangible Assets.* In conjunction with the acquisition by SunEdison failing to occur, our market capitalization decreased significantly during the first quarter of 2016, from \$1.0 billion as of December 31, 2015 to \$283.0 million as of March 31, 2016. We considered this significant decrease in market capitalization to be an indicator of goodwill impairment, and we performed a test for potential impairment as of March 31, 2016. The completion of the impairment test resulted in the determination that our goodwill balance of \$36.6 million was fully impaired. See Note 8—Intangible Assets and Goodwill.

#### ***Non-Operating Expenses***

*Interest Expense.* Interest expense primarily consists of the interest charges associated with our indebtedness including the amortization of debt issuance costs and the interest component of capital lease obligations. In 2017, we expect our interest expense to increase in absolute dollars compared to 2016 as we have incurred additional indebtedness. Additionally, our debt facilities accrue interest at floating rates and increases in the floating rates would result in higher interest expense.

*Other (Income) Expense.* Other (income) expense includes changes in fair value for the ineffective portions of our cash flow hedges and has included interest and penalties associated with tax payments that were not paid in a timely manner.

*Income Tax Expense (Benefit).* All of our business is conducted in the United States, and therefore income tax expense (benefit) consists of current and deferred income taxes incurred in U.S federal, state and local jurisdictions.

#### ***Net Income Available (Loss Attributable) to Stockholders***

We determine the net income available (loss attributable) to stockholders by deducting from net loss the net loss attributable to non-controlling interests and redeemable non-controlling interests. The net loss attributable to non-controlling interests and redeemable non-controlling interests represents the investment fund investors' allocable share in the results of operations of the investment funds that we consolidate.

We have determined that the legal provisions in the contractual arrangements of the investment funds in which there is a non-controlling interest represent substantive profit-sharing arrangements, where the allocation to the partners differs from the stated ownership percentages. We have further determined that the appropriate methodology for attributing income and loss to the non-controlling interests and redeemable non-controlling interests each period is a balance sheet approach using the hypothetical liquidation at book value, or HLBV, method. Under the HLBV method, the amounts of income and loss attributed to the non-controlling interests and redeemable non-controlling interests in the consolidated statements of operations reflect changes in the amounts the fund investors would hypothetically receive at each balance sheet date under the liquidation provisions of the contractual agreements of these funds, assuming the net assets of the respective investment funds were liquidated at recorded amounts determined in accordance with GAAP. The fund investors' interest in the results of operations of these investment funds is determined as the difference in the fund investors' claim under the HLBV method at the start and end of each reporting period, after taking into account any capital transactions between the fund and the fund investors. For all of our investment funds in which we have an equity interest, the application of HLBV is performed consistently. However, the results of that application and its impact on the income or loss allocated between us and the non-controlling interests and redeemable non-controlling interests depend on the respective funds' specific contractual liquidation provisions. HLBV results are generally affected by, among other factors, the tax attributes allocated to the fund investors including tax bonus depreciation and investment tax credits, the amount of preferred returns that have been paid to the fund investors by the investment funds, and the allocation of taxable income or losses in a liquidation scenario. As of December 31, 2016, we had one operational investment fund that did not utilize the HLBV method to allocate gains and losses, as we own 100% of the equity of that fund and there is no non-controlling interest attributable to a fund investor.

The contractual liquidation provisions of our existing funds in which there is a non-controlling interest provide that the allocation percentages between us and the investor change, or "flip," under certain circumstances. Prior to the point at which the allocation percentage flips, the investor is entitled to receive a contractually agreed upon allocation of the value generated by the solar energy systems. The allocation of cash payments received from customers may differ from the allocation of other tax benefits. Afterwards, we are entitled to receive the majority of the value generated by the solar energy systems. The difference between our current inverted lease structures and our current partnership structures that drives a significant impact on our results from the application of the HLBV method is how the flip point is determined.

The HLBV calculation is also impacted by the difference between the cash received by us from the investment funds and the carrying value of the solar energy systems contributed to the investment funds. The purchase price paid for solar energy systems by an investment fund is based on the fair market value, as determined by an independent appraiser. As we consolidate both the subsidiary that develops the solar energy systems and the investment fund, the sales of the solar energy systems are considered transactions under common control and are therefore reflected at their historical cost, or their carryover basis. Cash received in excess of the installed purchased solar energy systems' carryover basis is treated as deemed distributions from the investment fund to us. In most cases, any excess of the purchase price over the carryover basis of the solar energy systems would result in allocations of income to us.

A portion of the solar energy systems purchased by, or contributed to, an investment fund are not installed at the time of purchase or contribution and therefore do not have any carryover basis allocated to them. Our wholly owned subsidiary has an obligation to purchase, install and provide the solar energy system equipment to an investment fund for any in-progress projects that were previously purchased by such fund. If our wholly owned subsidiary does not ultimately provide the investment fund with the solar energy systems that it purchased, it is required to refund the purchase price to the investment fund. In these specific cases, we determined that the portion of the cash purchase price paid by an investment fund that relates to in-progress projects should be recorded as a receivable by the investment fund, representing the investment fund's right to receive solar panels and related equipment for solar energy systems that are installed after the project is purchased by the investment fund. Given that our subsidiary controls the investment fund, we have accounted for the receivable balance as a reduction in the investment fund's members' equity in accordance with GAAP. Initially this may result in allocations of losses amongst the partners, as the GAAP equity balance is less than the tax capital account. The allocations of such losses amongst the partners follow the contractual liquidation provisions of the partnership agreements. When such solar energy systems are subsequently installed, the systems are recorded at their carryover basis as a common control transaction and the receivable balance is eliminated. With the elimination of the receivable, the investment fund's member's equity is increased to the extent of the carrying amount of the assets contributed, which results in the reversal of a portion of the prior allocation of losses. In most cases, the reversal of such losses occurs within a short period of time, approximately three to six months. As discussed above, the difference between the receivable balance eliminated and the carryover basis of the installed solar energy systems is treated as deemed distributions from the investment fund to us, and as a result, that portion of the prior allocation of losses is not reversed over time.

We classify certain non-controlling interests with redemption features that are not solely within our control outside of permanent equity. The fair values of these redemption features are calculated by discounting the cash flows subsequent to the expected flip date of the respective investment funds. When the redemption value of our redeemable non-controlling interests exceeds their carrying value after attribution of income or loss under the HLBV method in any period, we make an additional attribution of income to our redeemable non-controlling interests such that their carrying value at least equals the redemption value.

## Results of Operations

The results of operations presented below should be reviewed in conjunction with the consolidated financial statements and related notes included elsewhere in this report.

The following table sets forth selected consolidated statements of operations data for each of the periods indicated.

	Year Ended December 31,		
	2016	2015	2014
	(In thousands)		
<b>Revenue:</b>			
Operating leases and incentives	\$ 105,353	\$ 61,150	\$ 21,688
Solar energy system and product sales	29,814	3,032	3,570
Total revenue	<u>135,167</u>	<u>64,182</u>	<u>25,258</u>
<b>Operating expenses:</b>			
Cost of revenue—operating leases and incentives	150,796	131,213	67,984
Cost of revenue—solar energy system and product sales	23,185	1,762	1,997
Sales and marketing	41,436	48,078	21,869
Research and development	2,979	3,901	1,892
General and administrative	81,802	92,664	78,899
Amortization of intangible assets	901	13,172	14,911
Impairment of goodwill and intangible assets	36,601	4,506	—
Total operating expenses	<u>337,700</u>	<u>295,296</u>	<u>187,552</u>
Loss from operations	(202,533)	(231,114)	(162,294)
Interest expense	34,008	12,568	9,323
Other (income) expense	(1,437)	(154)	1,372
Loss before income taxes	(235,104)	(243,528)	(172,989)
Income tax expense (benefit)	7,433	9,737	(7,070)
Net loss	(242,537)	(253,265)	(165,919)
Net loss attributable to non-controlling interests and redeemable non-controlling interests	(260,523)	(266,345)	(137,036)
Net income available (loss attributable) to common stockholders	<u>\$ 17,986</u>	<u>\$ 13,080</u>	<u>\$ (28,883)</u>

### Comparison of Years Ended December 31, 2016 and 2015

#### Revenue

	Year Ended December 31,		\$ Change 2016 from 2015
	2016	2015	
	(In thousands)		
<b>Revenue:</b>			
Operating leases and incentives	\$ 105,353	\$ 61,150	\$ 44,203
Solar energy system and product sales	29,814	3,032	26,782
Total revenue	<u>\$ 135,167</u>	<u>\$ 64,182</u>	<u>\$ 70,985</u>

*Operating Leases and Incentives.* The \$44.2 million increase was primarily the result of a \$34.4 million increase in operating lease revenue as the total megawatts of solar energy systems placed in service under these long-term customer contracts increased 67%. In addition, SREC sales increased \$5.4 million primarily driven by the increased solar energy systems in service and revenue related to our lease pass-through fund arrangement increased \$4.4 million as deferred ITC revenue was recognized.

*Solar Energy System and Product Sales.* The \$26.8 million increase was primarily the result of our emphasis on System Sales through cash and loan products.

## Operating Expenses

	Year Ended December 31,		\$ Change 2016 from 2015
	2016	2015	
(In thousands)			
Operating expenses:			
Cost of revenue—operating leases and incentives	\$ 150,796	\$ 131,213	\$ 19,583
Cost of revenue—solar energy system and product sales	23,185	1,762	21,423
Sales and marketing	41,436	48,078	(6,642)
Research and development	2,979	3,901	(922)
General and administrative	81,802	92,664	(10,862)
Amortization of intangible assets	901	13,172	(12,271)
Impairment of goodwill and intangible assets	36,601	4,506	32,095
Total operating expenses	<u>\$ 337,700</u>	<u>\$ 295,296</u>	<u>\$ 42,404</u>

*Cost of Revenue—Operating Leases and Incentives* . The \$19.6 million increase was primarily due to a \$19.1 million increase in depreciation and amortization of solar energy systems and an \$8.5 million increase in solar energy system portfolio maintenance costs primarily due to the increase in the number of solar energy systems placed in service. Additionally, warehouse, office and other building costs increased \$4.6 million due to new warehouses opened in 2016 and the effect of a full year of expense for warehouses that were opened in the second half of 2015. These increases were partially offset by a \$10.3 million decrease in compensation and benefits due to a 35% decrease in installation headcount and increased efficiencies in our installation processes, and a \$2.9 million decrease in vehicle fleet costs.

*Cost of Revenue—Solar Energy System and Product Sales* . The \$21.4 million increase was primarily due to a \$21.6 million increase in the cost of system sales due to the higher volume of solar energy systems sold in 2016.

*Sales and Marketing Expense* . The \$6.6 million decrease was primarily due to a \$7.8 million decrease in stock-based compensation. Stock-based compensation expense in 2015 was higher primarily due to the grant and vesting of shares issued to sales personnel under the Long-Term Incentive Plan, or LTIP, and the vesting of options due to a performance condition being met. Total stock-based compensation expense is adjusted for the majority of sales and marketing participants based on our stock price, which declined significantly from December 31, 2015 to December 31, 2016. Additionally, sales and marketing management costs decreased \$0.8 million due to decreases in unrecovered employee advances. These decreases were partially offset by a \$2.3 million increase in costs associated with customer cancellations.

*Research and Development Expense* . The \$0.9 million decrease was primarily due to a \$1.0 million decrease in stock-based compensation primarily driven by the forfeiture of unvested stock options for employees who left our company during 2016.

*General and Administrative Expense* . The \$10.9 million decrease was primarily due to a \$6.3 million decrease in stock-based compensation primarily due to performance options that vested in 2015 and the forfeiture of unvested stock options for executives who left the company in 2016. Additionally, professional fees related to initiating and servicing tax equity investment funds decreased \$5.1 million as we were no longer subject to the advisory agreement with an affiliate of our Sponsor in 2016. Legal and other fees related to the failed acquisition by SunEdison decreased \$4.5 million and other professional fees decreased \$2.7 million primarily due to decreased legal fees. Other administrative costs, including facility and information technology costs, new office equipment and business property tax expense decreased \$0.9 million. These decreases were partially offset by a \$5.4 million increase in compensation and benefits primarily related to corporate bonuses that were not accrued in 2015. Additionally, in 2016, \$2.2 million in costs were incurred related to severance for senior management who left the company and other organizational changes and a \$1.0 million fee was incurred to terminate and settle a commercial and industrial investment fund.

*Amortization of Intangible Assets* . The \$12.3 million decrease was primarily due to a \$12.8 million decrease in amortization related to our customer contracts intangible asset as it became fully amortized in 2015, which was partially offset by the amortization of other intangible assets.

*Impairment of Goodwill and Intangible Assets*. An impairment charge of \$36.6 million was recorded in 2016 to write off the entire value of goodwill as it was deemed to be fully impaired during the year ended December 31, 2016. An impairment charge of \$4.5 million was recorded in 2015 to write down the value of intangibles associated with two Solmetric products for which we ceased external sales.

### Non-Operating Expenses

	Year Ended December 31,		\$ Change 2016 from 2015
	2016	2015	
	(In thousands)		
Interest expense	\$ 34,008	\$ 12,568	\$ 21,440
Other income	(1,437)	(154)	(1,283)

*Interest Expense* . Interest expense increased \$21.4 million primarily due to the cost of financing additional borrowings year over year.

*Other Income* . The \$1.3 million increase in other income was primarily due to \$1.6 million in gains related to the ineffective portions of our cash flow hedges that were recognized during the period.

### Income Taxes

	Year Ended December 31,		\$ Change 2016 from 2015
	2016	2015	
	(In thousands)		
Income tax expense	\$ 7,433	\$ 9,737	\$ (2,304)

The \$2.3 million decrease in income tax expense was primarily attributable to a net \$26.7 million of higher tax credits due to a significantly higher number of solar energy systems that were not financed through tax equity funds and \$2.0 million of lower non-controlling interests and redeemable non-controlling interests. These decreases in income tax expense were partially offset by \$12.8 million associated with the goodwill impairment charge, \$5.1 million of higher amortization related to the prepaid tax asset, \$4.5 million due to lower losses before income taxes, and \$4.2 million in a lower domestic production activities deduction.

### Net Loss Attributable to Non-controlling Interests and Redeemable Non-controlling Interests

	Year Ended December 31,		\$ Change 2016 from 2015
	2016	2015	
	(In thousands)		
Net loss attributable to non-controlling interests and redeemable non-controlling interests	\$ (260,523)	\$ (266,345)	\$ 5,822

Net loss attributable to non-controlling interests and redeemable non-controlling interests was allocated using the HLBV method. Generally, gains and losses that are allocated to the fund investors relate to hypothetical liquidation gains and losses resulting from differences between the net assets of the investment fund and the partners' respective tax capital accounts in the investment fund. Losses allocated to the fund investors were also driven by a reduction in certain fund investors' claims on net assets due to the agreement of the partnership to take accelerated tax depreciation, as well as the receipt of ITCs that were primarily allocated to fund investors.

### Comparison of Years Ended December 31, 2015 and 2014

#### Revenue

	Year Ended December 31,		\$ Change 2015 from 2014
	2015	2014	
	(In thousands)		
Total revenue	\$ 64,182	\$ 25,258	\$ 38,924

The increase in total revenue of \$38.9 million was primarily the result of a \$27.9 million increase in operating lease revenue as the total megawatts of solar energy systems placed in service increased 134%. In addition, revenue from the sale of SRECs increased \$11.3 million primarily related to the increased solar energy systems in service and solar energy system sales increased \$0.4 million. These increases were partially offset by a \$0.9 million decrease in photovoltaic device and software revenue as a result of ceasing the external sales of certain Solmetric products.

Operating Expenses

	Year Ended December 31,		\$ Change
	2015	2014	2015 from 2014
	(In thousands)		
Operating expenses:			
Cost of revenue—operating leases and incentives	\$ 131,213	\$ 67,984	\$ 63,229
Cost of revenue—solar energy system and product sales	1,762	1,997	(235)
Sales and marketing	48,078	21,869	26,209
Research and development	3,901	1,892	2,009
General and administrative	92,664	78,899	13,765
Amortization of intangible assets	13,172	14,911	(1,739)
Impairment of goodwill and intangible assets	4,506	—	4,506
Total operating expenses	<u>\$ 295,296</u>	<u>\$ 187,552</u>	<u>\$ 107,744</u>

*Cost of Revenue—operating leases and incentives* . The \$63.2 million increase was in part due to a \$33.8 million increase in compensation and benefits primarily due to employee headcount growth and the increase in installed solar energy systems related to solar energy system installation activities. Installation and operations employee headcount increased 53%. Depreciation and amortization of solar energy systems also increased \$14.2 million primarily due to the increase in installed solar energy systems. Fleet vehicle maintenance, information technology, warehouse and other installation costs increased \$10.1 million due to increased installations and an approximately 70% increase in warehouses in operation. Stock-based compensation increased \$2.0 million primarily due to a performance condition being met in 2015. Administrative costs increased \$1.8 million primarily due to employee headcount growth and an increase in miscellaneous office expenses, such as office and personnel supplies and telecommunications. Additionally, accrued losses on solar energy system removals were \$1.0 million in 2015.

*Sales and Marketing Expense* . The \$26.2 million increase was primarily due to our efforts to grow the business by entering into new markets, opening new sales offices and hiring sales and marketing personnel. Compensation and benefits increased \$10.8 million due to headcount growth of 82%. Stock-based compensation increased \$9.9 million primarily due to the grant and vesting of shares issued to sales personnel under the LTIP and a performance condition being met in 2015. Additionally, sales and marketing management costs increased \$3.7 million primarily due to increases in contracted services and customer cancellations; and marketing and brand awareness activity costs increased \$1.6 million.

*Research and Development Expense* . The \$2.0 million increase was primarily due to a 129% growth in research and development employee headcount due to additional development activities to optimize and accelerate business growth.

*General and Administrative Expense* . The \$13.8 million increase included a \$10.5 million increase in costs related to the proposed acquisition by SunEdison, an \$8.3 million increase in compensation and benefits due to general and administrative employee headcount growth of 68%, and a \$1.3 million increase in accrued legal settlements. Additionally, other administrative costs, including banking service charges, new office equipment and franchise tax expense increased \$3.2 million; depreciation increased \$2.2 million due to growth in equipment and leasehold improvements; and insurance costs increased \$1.8 million. These increases were partially offset by a \$10.6 million decrease in stock-based compensation primarily due to a charge related to the sale of stock to two directors in 2014 and a \$0.6 million decrease in professional services fees related to the initiation and servicing of tax equity investment funds. In addition, professional fees decreased \$2.4 million resulting from higher costs that were incurred in 2014 as we prepared to operate as a public company that were partially offset by software configuration costs in 2015 as we transition to standalone technology systems.

*Amortization of Intangible Assets* . The \$1.7 million decrease was primarily due to a \$1.8 million decrease in amortization related to our customer contracts intangible asset as it became fully amortized in 2015.

*Impairment of Intangible Assets*. An impairment charge of \$4.5 million was recorded in 2015 to write down the value of intangible assets associated with two Solmetric products for which we ceased external sales in 2015. See Note 8—Intangible Assets and Goodwill for additional information.

## Non-Operating Expenses

	<u>Year Ended December 31,</u>		<u>\$ Change</u> <u>2015 from 2014</u>
	<u>2015</u>	<u>2014</u>	
	(In thousands)		
Interest expense	\$ 12,568	\$ 9,323	\$ 3,245
Other (income) expense	(154)	1,372	(1,526)

*Interest Expense* . Interest expense increased \$3.2 million primarily as the cost of financing additional borrowings year over year.

*Other (Income) Expense* . The \$1.5 million change from other expense to income was due to a decrease in incurred tax-related interest and penalties and to an abatement of a portion of prior period tax penalties.

## Income Taxes

	<u>Year Ended December 31,</u>		<u>\$ Change</u> <u>2015 from 2014</u>
	<u>2015</u>	<u>2014</u>	
	(In thousands)		
Income tax expense (benefit)	\$ 9,737	\$ (7,070)	\$ 16,807

The \$16.8 million change from income tax benefit to expense was primarily attributable to the effect of non-controlling interests and redeemable non-controlling interests and increased amortization of the prepaid tax asset which were partially offset by an increase in the domestic production activities deduction.

## Net Loss Attributable to Non-controlling Interests and Redeemable Non-controlling Interests

	<u>Year Ended December 31,</u>		<u>\$ Change</u> <u>2015 from 2014</u>
	<u>2015</u>	<u>2014</u>	
	(In thousands)		
Net loss attributable to non-controlling interests and redeemable non-controlling interests	\$ (266,345)	\$ (137,036)	\$ (129,309)

Net loss attributable to non-controlling interests and redeemable non-controlling interests was allocated using the HLBV method. Generally, gains and losses that are allocated to the fund investors relate to hypothetical liquidation gains and losses resulting from differences between the net assets of the investment fund and the partners' respective tax capital accounts in the investment fund. Losses allocated to the fund investors were also driven by a reduction in certain fund investors' claims on net assets due to the agreement of the partnership to take bonus depreciation allowances under Internal Revenue Code Section 168(k), as well as the receipt of ITCs that were primarily allocated to fund investors.

## Critical Accounting Policies and Estimates

Our discussion and analysis of our financial condition and results of operations are based upon our consolidated financial statements, which have been prepared in accordance with GAAP. GAAP requires us to make estimates and judgments that affect the reported amounts of assets, liabilities, revenue and expenses, cash flows and related footnote disclosures. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances. Actual results may differ from these estimates. Our future consolidated financial statements will be affected to the extent that our actual results materially differ from these estimates.

We believe that the assumptions and estimates associated with our principles of consolidation; ITCs; revenue recognition; solar energy systems, net; the impairment analysis of long-lived assets; the goodwill impairment analysis; stock-based compensation; the provision for income taxes; the valuation of derivative financial instruments; the recognition and measurement of loss contingencies; and non-controlling interests and redeemable non-controlling interests have the greatest potential impact on our consolidated financial statements. Therefore, we consider these to be our critical accounting policies and estimates.

### ***Principles of Consolidation***

We consider each of our investment funds to be a separate variable interest entity, or VIE. We use a qualitative approach in assessing the consolidation requirement for these VIEs. This approach focuses on determining whether we have the power to direct the activities of the VIE that most significantly affect the VIE's economic performance and whether we have the obligation to absorb losses or the right to receive benefits that could potentially be significant to the VIE. All of these determinations involve significant management judgments and estimates. We have determined that we are the primary beneficiary in the operational VIEs in which we have an equity interest, which we consolidate. We evaluate our relationships with the VIEs on an ongoing basis to ensure that we continue to be the primary beneficiary. All intercompany transactions and balances have been eliminated in consolidation.

### ***Investment Tax Credits***

We apply for and receive ITCs under Section 48(a) of the Internal Revenue Code. The amount for the ITC is equal to 30% of the value of eligible solar property. We receive all ITCs for solar energy systems that are not sold to customers or placed in our investment funds. We receive minimal allocations of ITCs for solar energy systems placed in our investment funds as the majority of such credits are allocated to the fund investors. Some of our investment funds obligate us to make certain fund investors whole for losses that the investors may suffer in certain limited circumstances resulting from the disallowance or recapture of ITCs as a result of the Internal Revenue Service's, or the IRS, assessment of the fair value of such systems. We have concluded that the likelihood of a recapture event is remote and consequently have not recorded any liability in the consolidated financial statements for any potential recapture exposure.

### ***Revenue Recognition***

We recognize revenue when all of the following criteria are met: (1) persuasive evidence of an arrangement exists, (2) delivery or performance has occurred, (3) the sales price is fixed or determinable and (4) collectability is reasonably assured. Our revenue is comprised of operating leases and incentives, and solar energy system and product sales. Operating leases and incentives revenue includes revenue associated with PPAs and Solar Leases, SREC sales and rebate incentives. Solar energy system and product sales revenue includes System Sales, which may include structural upgrades included in sales contracts and SREC sales related to sold systems, and the sale of photovoltaic installation devices and software products. Revenue is recorded net of any sales tax collected.

### ***Operating Leases and Incentives Revenue***

Our primary revenue-generating activity consists of entering into PPAs with residential customers, under which the customer agrees to purchase all of the power generated by the solar energy system for the term of the contract, which is 20 years. The agreement includes a fixed price per kilowatt hour with a fixed annual price escalation percentage. Customers have not historically been charged for installation or activation of the solar energy system. For all PPAs, we assess the probability of collectability on a customer-by-customer basis through a credit review process that evaluates their financial condition and ability to pay.

We have determined that PPAs should be accounted for as operating leases after evaluating and concluding that none of the following capitalized lease classification criteria are met: no transfer of ownership or bargain purchase option exists at the end of the lease, the lease term is not greater than 75% of the useful life or the present value of minimum lease payments does not exceed 90% of the fair value at lease inception. As PPA customer payments are dependent on power generation, they are considered contingent rentals and are excluded from future minimum annual lease payments. PPA revenue is recognized based on the actual amount of power generated at rates specified under the contracts, assuming the other revenue recognition criteria discussed above are met.

We also offer solar energy systems to customers pursuant to Solar Leases in certain markets. The customer agreements are structured as legal-form leases due to local regulations that can be read to prohibit the sale of electricity pursuant to our standard PPA. Pursuant to Solar Leases, the customers' monthly payments are a pre-determined amount calculated based on the expected solar energy generation by the system and include an annual fixed percentage price escalation over the period of the contracts, which is 20 years. We provide our Solar Lease customers a performance guarantee, under which we agree to make a payment at the end of each year to the customer if the solar energy systems do not meet a guaranteed production level in the prior 12-month period.

At times, we make nominal cash payments to customers in order to facilitate the finalization of long-term customer contracts and the installation of related solar energy systems. These cash payments are considered lease incentives that are deferred and recognized over the term of the contract as a reduction of revenue.

The guaranteed production levels have varying terms. Dependent on the level of the production guarantee, we either (1) recognize the monthly lease payments as revenue and record a solar energy performance guarantee liability due to the contingent nature of the lease payments, or (2) straight-line the contracted payments over the initial term of the lease. Liabilities for Solar Lease performance guarantees were de minimis as of December 31, 2016 and 2015.

We apply for and receive SRECs in certain jurisdictions for power generated by our solar energy systems under long-term customer contracts. When SRECs are granted, we typically sell them to other companies directly, or to brokers, to assist them in meeting their own mandatory emission reduction or conservation requirements. We recognize revenue related to the sale of these certificates upon delivery, assuming the other revenue recognition criteria discussed above are met.

We consider upfront rebate incentives earned from our solar energy systems under long-term customer contracts to be minimum lease payments and recognize revenue for those payments on a straight-line basis over the life of the long-term customer contracts, assuming the other revenue recognition criteria discussed above are met.

#### *Lease Pass-Through Arrangement*

In 2015, a lease pass-through fund arrangement became operational under which we contributed solar energy systems and the investor contributed cash. Contemporaneously, one of our wholly owned subsidiaries entered into a master lease arrangement to lease the solar energy systems and the associated PPAs or Solar Leases to the fund investor. Our subsidiary made a tax election to pass the ITCs related to the solar energy systems through to the fund investor, who as the legal lessee of the property is allowed to claim the ITCs under Section 50(d)(5) of the Internal Revenue Code and the related regulations.

Under this arrangement, the fund investor made a large upfront lease payment to our subsidiary and is obligated to make subsequent periodic payments. We allocated a portion of the aggregate payments received from the fund investor to the estimated fair value of the assigned ITCs. The fair value of the ITCs was estimated by multiplying the ITC rate of 30% by the fair value of the systems that were sold to the lease pass-through fund. The fair value of the systems was determined by independent appraisals. Our subsidiary has an obligation to ensure the solar energy system is in service and operational for a term of five years to avoid any recapture of the ITCs. Accordingly, we recognize ITC revenue as the recapture provisions lapse assuming all other revenue recognition criteria have been met. The amounts allocated to the ITCs were initially recorded as deferred revenue in the consolidated balance sheet, and subsequently, one-fifth of the amounts allocated to the ITCs is recognized as operating leases and incentives revenue in the consolidated statements of operations based on the anniversary of each solar energy system's placed in service date.

#### *Solar Energy System Sales*

System Sale revenue is recognized when the solar energy system is interconnected to the local power grid and granted permission to operate, assuming all other revenue recognition criteria are met. With respect to System Sales where customers obtain third-party financing, we incur a lender fee, which is recognized as a direct reduction of the recognized revenue related to the sale. Additionally, customers who finance System Sales may require structural upgrades to facilitate the installation of the system which we provide for an additional fee. This revenue is recognized at the point the structural upgrade work is completed, assuming all other revenue recognition criteria are met.

In connection with System Sales, we are obligated to assist with processing and submitting customer claims on the manufacturer warranties, provide routine system monitoring services on sold systems and notify the customer of any problems. While the value and nature of these services is not significant, we consider these services to have standalone value to the customer. Therefore, we allocate a portion of the contract consideration to these administrative and maintenance services based on the relative selling price method and we recognize the deferred revenue over the contractual service term.

#### *Photovoltaic Installation and Software Products*

We also recognize revenue from the sale of photovoltaic installation devices and software products. These sales are either: (1) standalone and are recognized at the time of product shipment to the customer, assuming the remaining revenue recognition criteria have been met; or (2) multiple-element arrangements typically involving sales of photovoltaic installation hardware devices containing software essential to the hardware product's functionality and standalone software. We recognize revenue related to these transactions according to GAAP.

### ***Solar Energy Systems, Net***

Solar energy systems are stated at cost, less accumulated depreciation and amortization. Solar energy systems, net is comprised of system equipment costs and initial direct costs related to solar energy systems subject to PPAs or Solar Leases. System equipment costs include components such as solar panels, inverters, racking systems and other electrical equipment, as well as costs for design and installation activities once a long-term customer contract has been executed. Initial direct costs related to solar energy systems consist of sales commissions and other direct customer acquisition expenses. System equipment costs and initial direct costs are capitalized and recorded within solar energy systems, net. Cash received under U.S. Treasury grants are recorded as a reduction in the basis of the related solar energy systems. This accounting treatment results in decreased depreciation of such solar energy systems over their useful lives.

Depreciation and amortization expense is calculated using the straight-line method over the estimated useful lives of the respective assets as follows:

	<u>Useful Lives</u>
System equipment costs	30 years
Initial direct costs related to solar energy systems	Lease term (20 years)

We commence depreciation of our solar energy systems once the respective systems have been installed, interconnected to the power grid and received permission to operate. The determination of the useful lives of assets included within solar energy systems involves significant management judgment.

### ***Impairment of Long-Lived Assets***

The carrying amounts of our long-lived assets, including solar energy systems, property and equipment and finite-lived intangible assets are periodically reviewed for impairment whenever events or changes in circumstances indicate that the carrying value of these assets may not be recoverable or that the useful life is shorter than originally estimated. Factors that we consider in deciding when to perform an impairment review include significant negative industry or economic trends, and significant changes or planned changes in our use of the assets. Recoverability of these assets is measured by comparison of the carrying amount of each asset to the future undiscounted cash flows the asset is expected to generate over its remaining life. If the asset is considered to be impaired, the amount of any impairment is measured as the difference between the carrying value and the fair value of the impaired asset. If the useful life is shorter than originally estimated, we amortize the remaining carrying value over the new shorter useful life.

### ***Goodwill Impairment Analysis***

Goodwill represents the excess of the purchase price of an acquired business over the fair value of the net tangible and intangible assets acquired. During the first quarter of 2016, our market capitalization decreased significantly from \$1.0 billion as of December 31, 2015 to \$283 million as of March 31, 2016. We considered this significant decrease in market capitalization to be an indicator of impairment and we performed a goodwill impairment test as of March 31, 2016. The impairment test determined that there was no implied value of goodwill, which resulted in an impairment charge of \$36.6 million, which was recorded in impairment of goodwill and intangible assets.

Prior to goodwill being impaired in 2016, we performed our annual impairment test of goodwill as of October 1st of each fiscal year or whenever events or circumstances changed that would indicate that goodwill might be impaired. In conducting the impairment test, we first assessed qualitative factors to determine whether it was more likely than not that the fair value of a reporting unit was less than its carrying amount as a basis for determining whether it was necessary to perform the two-step goodwill impairment test. If the qualitative step was not passed, we performed a two-step impairment test whereby in the first step, we would compare the fair value of the reporting unit with its carrying amount. If the carrying amount exceeded its fair value, we performed the second step of the goodwill impairment test to determine the amount of impairment. The second step, measuring the impairment loss, compared the implied fair value of the goodwill with the carrying value of the goodwill. Any excess of the goodwill carrying value over the implied fair value would be recognized as an impairment loss.

### ***Stock-Based Compensation***

Stock-based compensation issued to employees is measured based on the grant-date fair value of the awards. The fair value of each restricted stock unit award and performance share unit award is determined as the closing price of our stock on the date of grant. The fair value of each time-based employee stock option is estimated on the date of grant using the Black-Scholes-Merton stock option pricing valuation model. The fair value of each performance-based employee stock option is estimated on the date of grant using the Monte Carlo simulation model. We recognize compensation costs using the accelerated attribution method for all employee stock-based compensation awards that are expected to vest over the requisite service period of the awards, which is generally the awards' vesting period. Forfeitures are required to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates.

Stock-based compensation expense for equity instruments issued to non-employees is recognized based on the estimated fair value of the equity instrument. The fair value of the non-employee awards is subject to remeasurement at each reporting period until services required under the arrangement are completed, which is the vesting date.

Use of the Black-Scholes-Merton option-pricing model requires the input of highly subjective assumptions, including (1) the fair value of the underlying common stock, (2) the expected term of the option, (3) the expected volatility of the price of our common stock, (4) risk-free interest rates and (5) the expected dividend yield of our common stock. The assumptions used in the option-pricing model represent our best estimates. These estimates involve inherent uncertainties and the application of our judgment. If factors change and different assumptions are used, our stock-based compensation expense could be materially different in the future.

We estimate potential forfeitures of stock grants and adjust stock-based compensation expense accordingly. The estimate of forfeitures is adjusted over the requisite service period to the extent that actual forfeitures differ, or are expected to differ, from such estimates. Changes in estimated forfeitures are recognized in the period of change.

### ***Provision for Income Taxes***

We account for income taxes under an asset and liability approach. Deferred income taxes are classified as long-term and reflect the impact of temporary differences between assets and liabilities recognized for financial reporting purposes and the amounts recognized for income tax reporting purposes, net operating loss carryforwards and other tax credits measured by applying currently enacted tax laws. A valuation allowance is provided when necessary to reduce deferred tax assets to an amount that is more likely than not to be realized.

We recognize sales of solar energy systems to substantially all of the investment funds for income tax purposes. As the investment funds are consolidated by us, the gain on the sale of the solar energy systems is not recognized in the consolidated financial statements. However, this gain is recognized for tax reporting purposes. Since these transactions are intercompany sales for GAAP purposes, any tax expense incurred related to these intercompany sales is deferred and recorded as a prepaid tax asset and amortized over the estimated useful life of the underlying solar energy systems, which has been estimated to be 30 years.

We determine whether a tax position is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. We use a two-step approach to recognizing and measuring uncertain tax positions. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates that it is more likely than not that the position will be sustained upon tax authority examination, including resolution of related appeals or litigation processes, if any. The second step is to measure the tax benefit as the largest amount that is more than 50% likely of being realized upon ultimate settlement.

Our policy is to include interest and penalties related to unrecognized tax benefits, if any, within income tax expense (benefit).

### ***Derivative Financial Instruments***

We entered into interest rate swaps in August 2016 in order to reduce interest rate risk as required by the terms of one of our debt agreements. The interest rate swaps are designated as cash flow hedges. Changes in fair value for the effective portions of these cash flow hedges are recorded in other comprehensive income (loss) and will subsequently be reclassified to interest expense over the life of the related debt facilities as interest payments are made. Changes in fair value for the ineffective portions of the cash flow hedges are recognized in other (income) expense. As interest payments for the associated debt agreements and derivatives are recognized, we include the effect of these payments in cash flows from operating activities within the consolidated statements of cash flows. Derivative instruments may be offset under their master netting arrangements.

### ***Loss Contingencies***

We are subject to the possibility of various loss contingencies arising in the ordinary course of business. We consider the likelihood of loss or impairment of an asset, or the incurrence of a liability, as well as our ability to reasonably estimate the amount of loss, in determining loss contingencies. We accrue an estimated loss contingency when it is probable that an asset has been impaired or a liability has been incurred and the amount of loss can be reasonably estimated. We regularly evaluate current information available to determine whether an accrual is required, an accrual should be adjusted or a range of possible loss should be disclosed.

### ***Non-Controlling Interests and Redeemable Non-Controlling Interests***

Non-controlling interests and redeemable non-controlling interests represent fund investors' interests in the net assets of certain consolidated investment funds that we have entered into in order to finance the costs of solar energy systems under long-term customer contracts. We have determined that the provisions in the contractual arrangements of the investment funds represent substantive profit-sharing arrangements, which gives rise to the non-controlling interests and redeemable non-controlling interests. We have further determined that the appropriate methodology for attributing income and loss to the non-controlling interests and redeemable non-controlling interests each period is a balance sheet approach using the HLBV method. Under the HLBV method, the amounts of income and loss attributed to the non-controlling interests and redeemable non-controlling interests in the consolidated statements of operations reflect changes in the amounts the fund investors would hypothetically receive at each balance sheet date under the liquidation provisions of the contractual agreements of these structures, assuming the net assets of these funding structures were liquidated at recorded amounts. The fund investors' non-controlling interest in the results of operations of these funding structures is determined as the difference in the non-controlling interests' and redeemable non-controlling interests' claims under the HLBV method at the start and end of each reporting period, after taking into account any capital transactions between the fund and the fund investors.

Attributing income and loss to the non-controlling interests and redeemable non-controlling interests under the HLBV method requires the use of significant assumptions and estimates to calculate the amounts that fund investors would receive upon a hypothetical liquidation. Changes in these assumptions and estimates can have a significant impact on the amount that fund investors would receive upon a hypothetical liquidation. The use of the HLBV methodology to allocate income to the non-controlling and redeemable non-controlling interest holders may create volatility in our consolidated statements of operations as the application of HLBV can drive changes in net income available and loss attributable to non-controlling interests and redeemable non-controlling interests from quarter to quarter.

We classify certain non-controlling interests with redemption features that are not solely within our control outside of permanent equity on our consolidated balance sheets. Estimated redemption value is calculated as the discounted cash flows subsequent to the expected flip date of the respective investment funds. Redeemable non-controlling interests are reported using the greater of their carrying value at each reporting date as determined by the HLBV method or their estimated redemption value in each reporting period. Estimating the redemption value of the redeemable non-controlling interests requires the use of significant assumptions and estimates. Changes in these assumptions and estimates can have a significant impact on the calculation of the redemption value.

## Quarterly Results of Operations

The following table presents our unaudited consolidated statement of operations for each of the eight quarters in the 24-month period ended December 31, 2016. Our consolidated statement of operations for each of these quarters have been prepared on a basis consistent with our audited annual consolidated financial statements included elsewhere in this report and, in the opinion of management, include all adjustments necessary for the fair presentation of our consolidated results of operations for these quarters. You should read this information together with our consolidated financial statements and the related notes included elsewhere in this report. The results of operations for any quarter are not necessarily indicative of the results of operations for any future period.

	Three Months Ended							
	December 31, 2016	September 30, 2016	June 30, 2016	March 31, 2016	December 31, 2015	September 30, 2015	June 30, 2015	March 31, 2015
	(In thousands except per share data)							
<b>Revenue:</b>								
Operating leases and incentives	\$ 25,320	\$ 33,394	\$ 30,061	\$ 16,578	\$ 15,488	\$ 21,781	\$ 15,301	\$ 8,580
Solar energy system and product sales	16,451	7,868	4,843	652	540	693	834	965
Total revenue	41,771	41,262	34,904	17,230	16,028	22,474	16,135	9,545
<b>Operating expenses:</b>								
Cost of revenue—operating leases and incentives	35,230	39,268	38,538	37,760	36,414	37,624	33,295	23,880
Cost of revenue—solar energy system and product sales	12,579	6,468	3,716	422	378	470	476	438
Sales and marketing	9,358	8,617	10,813	12,648	10,897	12,051	18,697	6,433
Research and development	761	842	144	1,232	1,352	1,047	920	582
General and administrative	21,796	19,022	18,064	22,920	20,716	21,954	31,364	18,630
Amortization of intangible assets	139	342	155	265	1,977	3,711	3,721	3,763
Impairment of goodwill and intangible assets	—	—	—	36,601	—	—	—	4,506
Total operating expenses	79,863	74,559	71,430	111,848	71,734	76,857	88,473	58,232
Loss from operations	(38,092)	(33,297)	(36,526)	(94,618)	(55,706)	(54,383)	(72,338)	(48,687)
Interest expense	11,469	9,361	7,413	5,765	4,360	3,351	2,730	2,127
Other (income) expense	(1,342)	(434)	309	30	(553)	26	60	313
Loss before income taxes	(48,219)	(42,224)	(44,248)	(100,413)	(59,513)	(57,760)	(75,128)	(51,127)
Income tax (benefit) expense	(2,812)	(2,959)	8,055	5,149	(6,240)	(7,448)	14,577	8,848
Net loss	(45,407)	(39,265)	(52,303)	(105,562)	(53,273)	(50,312)	(89,705)	(59,975)
Net loss attributable to non-controlling interests and redeemable non-controlling interests	(65,545)	(55,961)	(64,674)	(74,343)	(40,083)	(50,780)	(103,358)	(72,124)
Net income available (loss attributable) to common stockholders	<u>\$ 20,138</u>	<u>\$ 16,696</u>	<u>\$ 12,371</u>	<u>\$ (31,219)</u>	<u>\$ (13,190)</u>	<u>\$ 468</u>	<u>\$ 13,653</u>	<u>\$ 12,149</u>
Net income available (loss attributable) per share to common stockholders:								
Basic	<u>\$ 0.18</u>	<u>\$ 0.15</u>	<u>\$ 0.12</u>	<u>\$ (0.29)</u>	<u>\$ (0.12)</u>	<u>\$ 0.00</u>	<u>\$ 0.13</u>	<u>\$ 0.12</u>
Diluted	<u>\$ 0.18</u>	<u>\$ 0.15</u>	<u>\$ 0.11</u>	<u>\$ (0.29)</u>	<u>\$ (0.12)</u>	<u>\$ 0.00</u>	<u>\$ 0.12</u>	<u>\$ 0.11</u>
Weighted-average shares used in computing net income available (loss attributable) per share to common stockholders:								
Basic	<u>110,198</u>	<u>108,692</u>	<u>107,226</u>	<u>106,619</u>	<u>106,551</u>	<u>106,492</u>	<u>105,988</u>	<u>105,303</u>
Diluted	<u>114,898</u>	<u>113,344</u>	<u>111,380</u>	<u>106,619</u>	<u>106,551</u>	<u>110,223</u>	<u>109,794</u>	<u>109,051</u>

### Quarterly Trends

#### Revenue

Revenue from solar energy system and product sales increased significantly through 2016 due to our emphasis on System Sales through cash and third-party loan products as there were minimal sales prior to 2016.

#### Operating Expenses

Cost of revenue—solar energy system and products sales increased significantly through 2016 in line with our increased revenue from System Sales in the period.

General and administrative expenses fluctuate from quarter to quarter in part due to variations in stock-based compensation caused by performance options vesting and award forfeitures, professional fees that fluctuate depending on the number of investment funds opened during a period and one-time costs such as the costs associated with the failed acquisition by SunEdison.

In impairment of goodwill and intangible assets, we incurred a \$36.6 million impairment charge in the second quarter of 2016 as we determined that our goodwill balance was impaired and we incurred a \$4.5 million impairment charge in the first quarter of 2015 as we determined that certain of our intangible assets were impaired.

#### *Non-Operating Expenses*

Interest expense has increased each quarter primarily due to additional borrowings incurred to support our growth and increases in floating interest rates.

Other (income) expense increased in the second half of 2016 due to gains on the ineffective portions of our cash flow hedges.

#### *Seasonality*

We experience seasonal fluctuations in our operations. For example, the amount of revenue we recognize in a given period from PPAs is dependent in part on the amount of energy generated by solar energy systems under such contracts. As a result, operating leases and incentives revenue is impacted by seasonally shorter daylight hours in winter months. In addition, our ability to install solar energy systems is impacted by weather. For example, we have limited ability to install solar energy systems during the winter months in the Northeastern United States and other areas where winter weather is impactful. Such delays can impact the timing of when we can install and begin to generate revenue from solar energy systems. This includes our ability to recognize revenue for System Sales. However, the true extent of these fluctuations may have been masked by our historical growth rates and thus may not be readily apparent from our historical operating results and may be difficult to predict. As such, our historical operating results may not be indicative of future performance.

#### **Liquidity and Capital Resources**

As of December 31, 2016, we had cash and cash equivalents of \$96.6 million, which consisted principally of cash and time deposits with high-credit-quality financial institutions. As discussed in Note 11—Debt Obligations and Note 13—Investment Funds, we do not have full access to a portion of our cash and cash equivalents. We finance our operations primarily from investment fund arrangements that we have formed with fund investors, from borrowings, from cash inflows from operations and historically from sales of equity securities. Our principal uses of cash are funding our operations, including the costs of acquisition and installation of solar energy systems, working capital requirements and the satisfaction of our obligations under our debt instruments. Our business model requires substantial outside financing arrangements to grow the business and facilitate the deployment of additional solar energy systems. While there can be no assurances, we anticipate raising additional required capital from new and existing fund investors, additional borrowings, cash from System Sales and other potential financing vehicles.

We may seek to raise financing through the sale of equity, equity-linked securities, additional borrowings or other financing vehicles. Additional equity or equity-linked financing may be dilutive to our stockholders. If we raise funding through additional borrowings, such borrowings would have rights that are senior to holders of our equity securities and could contain covenants that restrict our operations. We believe our cash and cash equivalents, including our investment fund commitments, projected investment fund contributions and our current debt facilities as further described below, in addition to financing that we may obtain from other sources, including our financial Sponsors, will be sufficient to meet our anticipated cash needs for at least the next 12 months. However, if we are unable to secure additional financing when needed, or upon desirable terms, we may be unable to finance installation of our customers' systems in a manner consistent with our past performance, our cost of capital could increase, or we may be required to significantly reduce the scope of our operations, any of which would have a material adverse effect on our business, financial condition, results of operations and prospects. While we believe additional financing is available and will continue to be available to support our current level of operations, we believe we have the ability and intent to reduce operations to the level of available financial resources for at least the next 12 months.

#### *Sources of Funds*

##### *Investment Fund Commitments*

As of February 28, 2017, we have raised 20 investment funds to which investors such as banks and other large financial investors have committed to invest approximately \$1.3 billion, which will enable us to install solar energy systems of total fair market value approximating \$3.3 billion. The undrawn committed capital for these funds as of February 28, 2017 is approximately \$150 million, which includes approximately \$60 million in payments that will be received from fund investors upon interconnection to the respective power grid of solar energy systems that have already been allocated to investment funds. As of February 28, 2017, we had tax equity commitments to fund approximately 80 megawatts of future deployments, which we estimate to be sufficient to fund solar energy systems with a total fair market value of approximately \$310 million.

### Debt Instruments

Debt obligations consisted of the following as of December 31, 2016 (in thousands, except interest rates):

	<b>Principal Borrowings Outstanding</b>	<b>Unused Borrowing Capacity</b>	<b>Interest Rate</b>	<b>Maturity Date</b>
Revolving lines of credit				
Aggregation credit facility	\$ 187,000	\$ 188,000	4.2%	March 2018
Working capital credit facility (1)	136,500	—	3.9	March 2020
2016 Term loan facility	297,506	—	3.6 (2)	August 2021
Subordinated HoldCo credit facility	149,500	50,000	8.6	March 2020
Credit agreement	1,346	—	6.5	(3)
<b>Total debt</b>	<b>\$ 771,852</b>	<b>\$ 238,000</b>		

- (1) Facility is recourse debt, which refers to debt that is collateralized by our general assets. All of our other debt obligations are non-recourse, which refers to debt that is only collateralized by specified assets or subsidiaries.
- (2) The interest rate of this facility is partially hedged to an effective interest rate of 4.0% for \$270.0 million of the principal borrowings outstanding. See Note 12—Derivative Financial Instruments.
- (3) Quarterly payments of principal and interest are payable over a seven-year term. The seven-year term begins after the final completion date of the underlying solar energy systems, which we anticipate will begin in the first quarter of 2017.

See Note 11—Debt Obligations for additional details regarding the debt facilities outstanding at December 31, 2016. See Note 20—Subsequent Events for a description of the 2017 Term Loan which we entered into in January 2017. Our obligations under the 2017 Term Loan are not reflected in the table above.

### Revenue from Operations

In the year ended December 31, 2016, we generated \$105.4 million in revenue from operating leases and incentives, which approximates cash inflow with the exception of \$4.4 million of operating lease revenue related to ITCs in our lease pass-through fund. Cash related to our System Sales is generally received prior to revenue recognition and during 2016 we received \$32.1 million related to system sales. The cash from our revenue partially offsets the cash used in operations for the period.

### Sale of Equity Securities

In October 2014, we closed our initial public offering, resulting in net proceeds of \$300.6 million. In August and September 2014, we issued and sold shares of common stock to 313 Acquisition LLC and two of our directors for aggregate gross proceeds of \$103.5 million. The transactions were negotiated on an arms' length basis and represented what we believed to be the most agreeable alternative at the time. For additional discussion regarding these transactions, refer to Note 14—Redeemable Non-Controlling Interests and Equity and Preferred Stock.

### Uses of Funds

Our principal uses of cash are funding our operations, including the costs of acquisition and installation of solar energy systems, satisfaction of our obligations under our debt instruments and other working capital requirements. From time to time, we also reimburse portions of fund investors' capital as a result of delays in the installation process and interconnection to the power grid of solar energy systems and other factors. Our operating expenses have increased from year to year due to the growth of our business. We expect our capital expenditures to continue to increase as we continue to grow our business. We will need to raise financing to support our operations, and such financing may not be available to us on acceptable terms, or at all.

### Historical Cash Flows

The following table summarizes our cash flows for the periods indicated:

	Year Ended December 31,		
	2016	2015	2014
(In thousands)			
<b>Consolidated cash flow data:</b>			
Net cash used in operating activities	\$ (165,690)	\$ (189,244)	\$ (135,918)
Net cash used in investing activities	(414,447)	(556,446)	(400,763)
Net cash provided by financing activities	584,510	576,254	792,292
Net increase (decrease) in cash and cash equivalents	\$ 4,373	\$ (169,436)	\$ 255,611

### Operating Activities

In 2016, we had a net cash outflow from operations of \$165.7 million. This outflow was primarily due to a \$242.5 million net loss, a \$142.0 million increase in prepaid tax assets and a \$32.5 million decrease in prepaid expenses and other current assets. The outflow was partially offset by noncash adjustments of \$174.1 million for deferred income taxes, \$46.8 million for depreciation and amortization and \$36.6 million for impairment of goodwill.

### Investing Activities

In 2016, we used \$414.4 million in investing activities primarily due to \$405.6 million in costs associated with the design, acquisition and installation of solar energy systems and \$11.8 million to increase the balance in restricted cash and cash equivalents. These uses were partially offset by \$5.2 million in proceeds received from tax credits.

### Financing Activities

In 2016, we generated \$584.5 million from financing activities, of which \$589.2 million was received in proceeds from long-term debt and \$277.8 million was received in proceeds from investments by non-controlling interests and redeemable non-controlling interests into our investment funds. These proceeds were partially offset by repayments of long-term debt of \$233.2 million, distributions to non-controlling interests and redeemable non-controlling interests of \$32.1 million, and payments for debt issuance costs of \$16.8 million.

### Contractual Obligations

Our contractual commitments and obligations were as follows as of December 31, 2016:

	Payments Due by Period (1)				
	Less than 1 Year	1-3 Years	3-5 Years	More than 5 Years	Total
(In thousands)					
Long-term debt	\$ 6,469	\$ 200,263	\$ 563,856	\$ 1,264	\$ 771,852
Interest payments related to long-term debt (2)	37,777	60,826	23,122	175	121,900
Distributions payable to non-controlling interests and redeemable non-controlling interests (3)	16,176	—	—	—	16,176
Capital lease obligations and interest	5,751	5,358	477	—	11,586
Operating lease obligations	12,171	14,098	16,079	82,193	124,541
Total	\$ 78,344	\$ 280,545	\$ 603,534	\$ 83,632	\$ 1,046,055

(1) Does not include amounts related to redeemable put options held by fund investors. The redemption price for the fund investors' interest in the respective fund is equal to the sum of: (a) any unpaid, accrued priority return, and (i) the greater of: (x) a fixed price and (b) the fair market value of such interest at the date the option is exercised. Due to uncertainties associated with estimating the timing and amount of the redemption price, we cannot determine the potential future payments that we could have to make under these redemption options. For additional information regarding the redeemable put options, see Note 14—Redeemable Non-Controlling Interests and Equity and Preferred Stock to our consolidated financial statements. As of December 31, 2016, all fund investors have contributed an aggregate of \$1,050.9 million into the funds. For additional information regarding our investment funds, see Note 13—Investment Funds to our consolidated financial statements.

(2) Interest payments related to long-term debt are calculated and estimated for the periods presented based on the amount of debt outstanding and the interest rates as of December 31, 2016, given our debt is primarily at floating interest rates.

- (3) Includes \$8.3 million in accrued distributions to reimburse fund investors in order to true up the investors' expected rate of return primarily due to a delay in solar energy systems being interconnected to the power grid. However, does not include any other potential contractual obligations that may arise as a result of the contractual guarantees we have made with certain investors in our investment funds. The amounts of any potential payments we may be required to make depend on the amount and timing of future distributions to the relevant fund investors and the investment tax credits that accrue to such investors from the funds' activities. Due to uncertainties associated with estimating the timing and amounts of distributions and likelihood of an event that may trigger repayment of any forfeiture or recapture of investment tax credits to such investors, we cannot determine the potential maximum future payments that we could have to make under these guarantees. As a result of these guarantees, as of December 31, 2016, we were required to hold a minimum balance of \$10.0 million in the aggregate, which is classified as restricted cash and cash equivalents on our consolidated balance sheet. For additional information, see Note 13—Investment Funds to our consolidated financial statements.

### **Off-Balance Sheet Arrangements**

We include in our consolidated financial statements all assets and liabilities and results of operations of investment fund arrangements that we have entered into. We do not have any off-balance sheet arrangements.

### **Recent Accounting Pronouncements**

For a description of recent accounting pronouncements that we are evaluating, see Note 2—Summary of Significant Accounting Policies.

#### *Emerging Growth Company Status*

Section 107 of the JOBS Act provides that an “emerging growth company” can take advantage of the extended transition period provided in Section 7(a)(2)(B) of the Securities Act for complying with new or revised accounting standards. In other words, an “emerging growth company” can delay the adoption of certain accounting standards until those standards would otherwise apply to private companies. We have irrevocably elected not to avail ourselves of this exemption from new or revised accounting standards and, therefore, we will be subject to the same new or revised accounting standards as other public companies that are not “emerging growth companies.”

### **Item 7A. Quantitative and Qualitative Disclosures About Market Risk.**

Our exposure to market risk for changes in interest rates relates primarily to our cash and cash equivalents and our indebtedness.

As of December 31, 2016, we had cash and cash equivalents of \$96.6 million. Our cash equivalents are money market accounts and time deposits with maturities of three months or less at the time of purchase. Our primary exposure to market risk on these funds is interest income sensitivity, which is affected by changes in the general level of the interest rates in the United States. However, because of the short-term nature of the instruments in our portfolio, a sudden change in market interest rates would not be expected to have a material impact on our consolidated financial statements.

As of December 31, 2016, we had incurred an aggregate of \$771.9 million in borrowings under our debt facilities, which currently accrue interest at a weighted-average rate of approximately 4.8%. If our debt facilities had been fully drawn at December 31, 2015 and remained outstanding for all of 2016, the effect of a hypothetical 10% change in our floating interest rate on these borrowings would increase or decrease interest expense by approximately \$5.0 million.

All of our operations are in the United States and all purchases of our solar energy system components are denominated in U.S. dollars. However, our suppliers often incur a significant amount of their costs by purchasing raw materials and generating operating expenses in foreign currencies. If the value of the U.S. dollar depreciates significantly or for a prolonged period of time against these currencies (particularly the Chinese Renminbi), our suppliers may raise the prices they charge us, which could have a negative impact on our financial results.

**Item 8. Financial Statements and Supplementary Data.**

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**R eport of Independent Registered Public Accounting Firm**

The Board of Directors and Stockholders  
Vivint Solar, Inc.

We have audited the accompanying consolidated balance sheets of Vivint Solar, Inc. as of December 31, 2016 and 2015, and the related consolidated statements of operations, comprehensive income (loss), redeemable non-controlling interests and equity, and cash flows for each of the three years in the period ended December 31, 2016. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. We were not engaged to perform an audit of the Company's internal control over financial reporting. Our audits included consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of Vivint Solar, Inc. at December 31, 2016 and 2015, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2016, in conformity with U.S. generally accepted accounting principles.

/s/ Ernst & Young LLP

Salt Lake City, Utah  
March 16, 2017

**Vivint Solar, Inc.**  
**Consolidated Balance Sheets**  
(In thousands, except per share data and footnote 1)

	December 31, 2016	December 31, 2015
<b>ASSETS</b>		
Current assets:		
Cash and cash equivalents	\$ 96,586	\$ 92,213
Accounts receivable, net	12,658	3,636
Inventories	11,285	631
Prepaid expenses and other current assets	46,683	17,078
Total current assets	167,212	113,558
Restricted cash and cash equivalents	26,853	15,035
Solar energy systems, net	1,458,355	1,102,157
Property and equipment, net	23,199	48,168
Intangible assets, net	1,420	2,031
Goodwill	—	36,601
Prepaid tax asset, net	419,474	277,496
Other non-current assets, net	29,843	14,024
<b>TOTAL ASSETS</b> <sup>(1)</sup>	<b>\$ 2,126,356</b>	<b>\$ 1,609,070</b>
<b>LIABILITIES, REDEEMABLE NON-CONTROLLING INTERESTS AND EQUITY</b>		
Current liabilities:		
Accounts payable	\$ 46,630	\$ 49,986
Accounts payable—related party	191	1,905
Distributions payable to non-controlling interests and redeemable non-controlling interests	16,176	11,347
Accrued compensation	20,003	13,758
Current portion of long-term debt	6,252	—
Current portion of deferred revenue	19,911	4,968
Current portion of capital lease obligation	5,163	5,489
Accrued and other current liabilities	19,364	29,017
Total current liabilities	133,690	116,470
Long-term debt, net of current portion	750,728	415,850
Deferred revenue, net of current portion	34,379	43,304
Capital lease obligation, net of current portion	5,476	10,055
Deferred tax liability, net	395,218	216,033
Other non-current liabilities	10,355	28,565
Total liabilities <sup>(1)</sup>	1,329,846	830,277
Commitments and contingencies (Note 18)		
Redeemable non-controlling interests	129,676	169,541
Stockholders' equity:		
Common stock, \$0.01 par value—1,000,000 authorized, 110,245 shares issued and outstanding as of December 31, 2016; 1,000,000 authorized, 106,576 shares issued and outstanding as of December 31, 2015	1,102	1,066
Additional paid-in capital	542,348	530,646
Accumulated other comprehensive income	7,631	—
Retained earnings (accumulated deficit)	5,217	(12,769)
Total stockholders' equity	556,298	518,943
Non-controlling interests	110,536	90,309
Total equity	666,834	609,252
<b>TOTAL LIABILITIES, REDEEMABLE NON-CONTROLLING INTERESTS AND EQUITY</b>	<b>\$ 2,126,356</b>	<b>\$ 1,609,070</b>

(1) The Company's consolidated assets as of December 31, 2016 and 2015 include \$1,303.5 million and \$1,005.8 million consisting of assets of variable interest entities, or VIEs, that can only be used to settle obligations of the VIEs. These assets include solar energy systems, net, of \$1,273.8 million and \$990.6 million as of December 31, 2016 and 2015; cash and cash equivalents of \$23.2 million and \$12.0 million as of December 31, 2016 and 2015; accounts receivable, net, of \$4.0 million and \$3.1 million as of December 31, 2016 and 2015; and prepaid expenses and other current assets of \$0.8 million and \$0.1 million as of December 31, 2016 and 2015. The Company's consolidated liabilities as of December 31, 2016 and 2015 included \$64.2 million and \$66.4 million of liabilities of VIEs whose creditors have no recourse to the Company. These liabilities include distributions payable to non-controlling interests and redeemable non-controlling interests of \$16.2 million and \$11.3 million as of December 31, 2016 and 2015; deferred revenue of \$41.7 million and \$47.9 million as of December 31, 2016 and 2015; accrued and other current liabilities of \$4.5 million and \$3.9 million as of December 31, 2016 and 2015; and other non-current liabilities of \$1.9 million and \$3.3 million as of December 31, 2016 and 2015. For further information see Note 13—Investment Funds.

See accompanying notes to consolidated financial statements.

**Vivint Solar, Inc.**  
**Consolidated Statements of Operations**  
(In thousands, except per share data)

	Year Ended December 31,		
	2016	2015	2014
<b>Revenue:</b>			
Operating leases and incentives	\$ 105,353	\$ 61,150	\$ 21,688
Solar energy system and product sales	29,814	3,032	3,570
Total revenue	135,167	64,182	25,258
<b>Operating expenses:</b>			
Cost of revenue—operating leases and incentives	150,796	131,213	67,984
Cost of revenue—solar energy system and product sales	23,185	1,762	1,997
Sales and marketing	41,436	48,078	21,869
Research and development	2,979	3,901	1,892
General and administrative	81,802	92,664	78,899
Amortization of intangible assets	901	13,172	14,911
Impairment of goodwill and intangible assets	36,601	4,506	—
Total operating expenses	337,700	295,296	187,552
Loss from operations	(202,533)	(231,114)	(162,294)
Interest expense	34,008	12,568	9,323
Other (income) expense	(1,437)	(154)	1,372
Loss before income taxes	(235,104)	(243,528)	(172,989)
Income tax expense (benefit)	7,433	9,737	(7,070)
Net loss	(242,537)	(253,265)	(165,919)
Net loss attributable to non-controlling interests and redeemable non-controlling interests	(260,523)	(266,345)	(137,036)
Net income available (loss attributable) to common stockholders	\$ 17,986	\$ 13,080	\$ (28,883)
Net income available (loss attributable) per share to common stockholders:			
Basic	\$ 0.17	\$ 0.12	\$ (0.35)
Diluted	\$ 0.16	\$ 0.12	\$ (0.35)
Weighted-average shares used in computing net income available (loss attributable) per share to common stockholders:			
Basic	108,190	106,088	83,446
Diluted	112,538	109,858	83,446

See accompanying notes to consolidated financial statements.

Vivint Solar, Inc.

Consolidated Statements of Comprehensive Income (Loss)  
(In thousands)

	Year Ended December 31,		
	2016	2015	2014
Net income available (loss attributable) to common stockholders	\$ 17,986	\$ 13,080	\$ (28,883)
Other comprehensive income:			
Unrealized gains on cash flow hedging instruments (net of tax effect of \$5,258 in 2016)	7,875	—	—
Less: Interest expense on derivatives recognized into earnings (net of tax effect of \$(163) in 2016)	(244)	—	—
Total other comprehensive income	7,631	—	—
Comprehensive income (loss)	\$ 25,617	\$ 13,080	\$ (28,883)

See accompanying notes to consolidated financial statements.

Vivint Solar, Inc.

Consolidated Statements of Redeemable Non-Controlling Interests and Equity  
(In thousands)

	Redeemable Non- Controlling Interests	Common Stock		Additional Paid-in Capital	Accumulated Other Comprehensive Income	Retained Earnings (Accumulated Deficit)	Total Stockholders' Equity	Non- Controlling Interests	Total Equity
		Shares	Amount						
<b>Balance — January 1, 2014</b>	\$ 73,265	75,000	\$ 750	\$ 75,049	\$ —	\$ 3,034	\$ 78,833	\$ 1,788	\$ 80,621
Stock-based compensation expense	—	—	—	23,687	—	—	23,687	—	23,687
Non-cash contributions for services	—	—	—	200	—	—	200	—	200
Issuance of common stock	—	30,303	303	412,609	—	—	412,912	—	412,912
Costs related to issuance of common stock	—	—	—	(8,760)	—	—	(8,760)	—	(8,760)
Contributions from non-controlling interests and redeemable non-controlling interests	63,735	—	—	—	—	—	—	275,777	275,777
Deemed dividend	—	—	—	43,430	—	—	43,430	—	43,430
Return of capital adjustment	—	—	—	(43,430)	—	—	(43,430)	—	(43,430)
Distributions to non-controlling interests and redeemable non-controlling interests	(5,154)	—	—	—	—	—	—	(8,801)	(8,801)
Net loss	(3,419)	—	—	—	—	(28,883)	(28,883)	(133,617)	(162,500)
<b>Balance — December 31, 2014</b>	<b>128,427</b>	<b>105,303</b>	<b>1,053</b>	<b>502,785</b>	<b>—</b>	<b>(25,849)</b>	<b>477,989</b>	<b>135,147</b>	<b>613,136</b>
Stock-based compensation expense	—	—	—	25,604	—	—	25,604	—	25,604
Excess tax benefit from stock-based compensation	—	—	—	1,713	—	—	1,713	—	1,713
Issuance of common stock, net	—	1,273	13	544	—	—	557	—	557
Contributions from non-controlling interests and redeemable non-controlling interests	113,896	—	—	—	—	—	—	178,833	178,833
Distributions to non-controlling interests and redeemable non-controlling interests	(6,566)	—	—	—	—	—	—	(23,542)	(23,542)
Net (loss) income	(66,216)	—	—	—	—	13,080	13,080	(200,129)	(187,049)
<b>Balance — December 31, 2015</b>	<b>169,541</b>	<b>106,576</b>	<b>1,066</b>	<b>530,646</b>	<b>—</b>	<b>(12,769)</b>	<b>518,943</b>	<b>90,309</b>	<b>609,252</b>
Stock-based compensation expense	—	—	—	10,614	—	—	10,614	—	10,614
Excess tax detriment from stock-based compensation	—	—	—	(1,713)	—	—	(1,713)	—	(1,713)
Issuance of common stock, net	—	3,669	36	2,801	—	—	2,837	—	2,837
Contributions from non-controlling interests and redeemable non-controlling interests	42,803	—	—	—	—	—	—	235,045	235,045
Distributions to non-controlling interests and redeemable non-controlling interests	(7,650)	—	—	—	—	—	—	(29,313)	(29,313)
Total other comprehensive income	—	—	—	—	7,631	—	7,631	—	7,631
Net (loss) income	(75,018)	—	—	—	—	17,986	17,986	(185,505)	(167,519)
<b>Balance — December 31, 2016</b>	<b>\$ 129,676</b>	<b>110,245</b>	<b>\$ 1,102</b>	<b>\$ 542,348</b>	<b>\$ 7,631</b>	<b>\$ 5,217</b>	<b>\$ 556,298</b>	<b>\$ 110,536</b>	<b>\$ 666,834</b>

See accompanying notes to consolidated financial statements.

**Vivint Solar, Inc.**  
**Consolidated Statements of Cash Flows**  
(In thousands)

	Year Ended December 31,		
	2016	2015	2014
<b>CASH FLOWS FROM OPERATING ACTIVITIES:</b>			
Net loss	\$ (242,537)	\$ (253,265)	\$ (165,919)
Adjustments to reconcile net loss to net cash used in operating activities:			
Depreciation and amortization	46,821	24,924	8,523
Amortization of intangible assets	901	13,172	15,042
Impairment of goodwill and intangible assets	36,601	4,506	—
Deferred income taxes	174,090	107,466	74,848
Stock-based compensation	10,614	25,604	23,687
Loss on solar energy systems and property and equipment	6,432	1,024	—
Non-cash interest and other expense	7,161	3,724	6,712
Reduction in lease pass-through financing obligation	(4,239)	(231)	—
Gains on ineffective portions of cash flow hedges	(1,591)	—	—
Excess tax detriment from stock-based compensation	(1,713)	—	—
Changes in operating assets and liabilities, net of acquisitions:			
Accounts receivable, net	(9,022)	(1,799)	(1,018)
Inventories	(10,654)	143	(195)
Prepaid expenses and other current assets	(32,526)	(576)	(10,486)
Prepaid tax asset, net	(141,978)	(165,586)	(81,172)
Other non-current assets, net	(6,078)	(5,268)	(8,451)
Accounts payable	2,698	1,636	1,905
Accounts payable—related party	(1,714)	(227)	(935)
Accrued compensation	5,567	(892)	(1,073)
Deferred revenue	6,018	43,492	3,387
Accrued and other liabilities	(10,541)	12,909	(773)
Net cash used in operating activities	(165,690)	(189,244)	(135,918)
<b>CASH FLOWS FROM INVESTING ACTIVITIES:</b>			
Payments for the cost of solar energy systems	(405,635)	(540,399)	(383,522)
Payments for property and equipment	(2,785)	(6,307)	(3,505)
Proceeds from disposals of property and equipment	913	—	—
Change in restricted cash and cash equivalents	(11,818)	(8,519)	(1,516)
Proceeds from tax credits and U.S. Treasury grants	5,169	—	190
Purchase of intangible assets	(291)	(1,221)	(370)
Payment in connection with business acquisition, net of cash acquired	—	—	(12,040)
Net cash used in investing activities	(414,447)	(556,446)	(400,763)
<b>CASH FLOWS FROM FINANCING ACTIVITIES:</b>			
Proceeds from investment by non-controlling interests and redeemable non-controlling interests	277,848	292,729	339,512
Distributions paid to non-controlling interests and redeemable non-controlling interests	(32,134)	(25,541)	(8,751)
Proceeds from long-term debt	589,246	310,850	105,000
Payments on long-term debt	(233,244)	—	—
Payments for debt issuance costs	(16,774)	(5,422)	—
Proceeds from lease pass-through financing obligation	2,388	7,228	—
Principal payments on capital lease obligations	(5,657)	(5,363)	(2,623)
Proceeds from issuance of common stock	2,837	649	412,912
Proceeds from revolving lines of credit—related party	—	—	154,500
Payments on revolving lines of credit—related party	—	—	(200,192)
Proceeds from short-term debt	—	—	75,500
Payments on short-term debt	—	—	(75,500)
Excess tax benefits from stock-based compensation	—	1,713	—
Payments for deferred offering costs	—	(589)	(8,066)
Net cash provided by financing activities	584,510	576,254	792,292
<b>NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS</b>	<b>4,373</b>	<b>(169,436)</b>	<b>255,611</b>
CASH AND CASH EQUIVALENTS—Beginning of period	92,213	261,649	6,038
CASH AND CASH EQUIVALENTS—End of period	<u>\$ 96,586</u>	<u>\$ 92,213</u>	<u>\$ 261,649</u>
<b>SUPPLEMENTAL DISCLOSURES OF CASH FLOW INFORMATION:</b>			
Cash paid for interest	\$ 23,733	\$ 8,469	\$ 4,473
Cash paid for income taxes	\$ 15,905	\$ 67,135	\$ 4,350
<b>NONCASH INVESTING AND FINANCING ACTIVITIES:</b>			
Changes in fair value of interest rate swaps	\$ 14,317	\$ —	\$ —
Costs of lessor-financed tenant improvements	\$ 7,850	\$ —	\$ —
Accrued distributions to non-controlling interests and redeemable non-controlling interests	\$ 4,829	\$ 4,567	\$ 5,204
Property acquired under build-to-suit agreements	\$ 2,896	\$ 25,560	\$ —
Sale-leaseback of property under build-to-suit agreements	\$ (28,456)	\$ —	\$ —
Vehicles acquired under capital leases	\$ 1,947	\$ 11,363	\$ 8,541
Receivable for tax credit recorded as a reduction to solar energy system costs	\$ 1,552	\$ 1,678	\$ 4,132
Costs of solar energy systems included in changes in accounts payable, accrued compensation and other accrued liabilities	\$ (4,508)	\$ (6,589)	\$ 25,990

See accompanying notes to consolidated financial statements.

**Vivint Solar, Inc.**  
**Notes to Consolidated Financial Statements**

**1. Organization**

Vivint Solar, Inc. was incorporated as a Delaware corporation on August 12, 2011. Vivint Solar, Inc. and its subsidiaries are collectively referred to as the “Company.” The Company commenced operations in May 2011. In November 2012 (the “Acquisition Date”), investment funds affiliated with The Blackstone Group L.P. (the “Sponsor”) and certain co-investors (collectively, the “Investors”), through 313 Acquisition LLC (“313” or “Parent”), acquired 100% of the equity interests of APX Group, Inc. (“Vivint”) and the Company (the “Acquisition”). The Acquisition was accomplished through certain mergers and related reorganization transactions pursuant to which the Company became a direct wholly owned subsidiary of 313, an entity owned by the Investors. In October 2014, the Company closed its initial public offering with 313 remaining the majority shareholder.

***Business***

The Company primarily offers solar energy to residential customers through long-term customer contracts, such as power purchase agreements (“PPAs”) and legal-form leases (“Solar Leases”). The Company also offers its customers the option to purchase solar energy systems (“System Sales”) through a third-party loan offering or cash purchase. The Company enters into these customer agreements primarily through a sales organization that uses a direct-to-home sales model. The long-term customer contracts are typically for 20 years and require the customer to make monthly payments to the Company.

The Company has formed various investment funds and entered into long-term debt facilities to monetize the recurring customer payments under its long-term customer contracts and the investment tax credits, accelerated tax depreciation and other incentives associated with residential solar energy systems. The Company uses the cash received from the investment funds, long-term debt facilities and revenue generated from operations to finance a portion of the Company’s variable and fixed costs associated with installing solar energy systems. The obligations of the Company are in no event obligations of the investment funds.

Since inception, the Company has relied on Vivint and certain of its affiliates for some of its administrative, managerial, account management and operational services. The Company’s use of Vivint services has steadily decreased since 2013 and in 2016 the remaining services consisted primarily of certain IT support. The Company was consolidated by Vivint as a variable interest entity prior to the Acquisition, and continues to be an affiliated entity and related party subsequent to the Acquisition. The Company has entered into various agreements and transactions with Vivint and its affiliates related to these services. See Note 17—Related Party Transactions.

**2. Summary of Significant Accounting Policies**

***Basis of Presentation and Principles of Consolidation***

The accompanying consolidated financial statements have been prepared in accordance with U.S. generally accepted accounting principles (“GAAP”) and applicable rules and regulations of the Securities and Exchange Commission (the “SEC”) and reflect the accounts and operations of the Company, its subsidiaries in which the Company has a controlling financial interest and the investment funds formed to fund the purchase of solar energy systems under long-term customer contracts, which are consolidated as variable interest entities (“VIEs”). The Company uses a qualitative approach in assessing the consolidation requirement for VIEs. This approach focuses on determining whether the Company has the power to direct the activities of the VIE that most significantly affect the VIE’s economic performance and whether the Company has the obligation to absorb losses or the right to receive benefits that could potentially be significant to the VIE. All of these determinations involve significant management judgments and estimates. The Company has determined that it is the primary beneficiary in the operational VIEs in which it has an equity interest. The Company evaluates its relationships with the VIEs on an ongoing basis to ensure that it continues to be the primary beneficiary. All intercompany transactions and balances have been eliminated in consolidation. For additional information regarding these VIEs, see Note 13—Investment Funds.

Certain prior period amounts have been reclassified to conform to current year presentation. These reclassifications did not have a significant impact on the consolidated financial statements.

### ***Use of Estimates***

The preparation of the consolidated financial statements requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. The Company regularly makes significant estimates and assumptions including, but not limited to, estimates that affect the Company's principles of consolidation; investment tax credits ("ITCs"); revenue recognition; solar energy systems, net; the impairment analysis of long-lived assets; the goodwill impairment analysis; stock-based compensation; the provision for income taxes; the valuation of derivative financial instruments; the recognition and measurement of loss contingencies; and non-controlling interests and redeemable non-controlling interests. The Company bases its estimates on historical experience and on various other assumptions believed to be reasonable, the results of which form the basis for making judgments about the carrying values of assets and liabilities. Actual results could differ materially from those estimates.

### ***Cash and Cash Equivalents***

The Company considers all highly liquid investments with maturities of three months or less at the time of purchase to be cash and cash equivalents. Cash equivalents consist principally of time deposits and money market accounts with high quality financial institutions.

### ***Restricted Cash***

The Company's guaranty agreements with certain of its fund investors require the maintenance of minimum cash balances of \$10.0 million. For additional information, see Note 13—Investment Funds. The Company was also required to deposit a total of \$16.9 million into separate interest reserve accounts in accordance with the terms of its various debt obligations. For additional information, see Note 11—Debt Obligations. These minimum cash balances are classified as restricted cash.

### ***Liquidity***

In order to grow, the Company requires cash to finance the deployment of solar energy systems. As of the date of this filing, the Company will require additional sources of cash beyond current cash balances, and currently available financing facilities to fund long-term planned growth. If the Company is unable to secure additional financing when needed, or upon desirable terms, the Company may be unable to finance installation of customers' systems in a manner consistent with past performance, cost of capital could increase, or the Company may be required to significantly reduce the scope of operations, any of which would have a material adverse effect on the business, financial condition, results of operations and prospects. While the Company believes additional financing is available and will continue to be available to support current levels of operations, the Company believes it has the ability and intent to reduce operations to the level of available financial resources for at least the next 12 months from the date of this report.

### ***Accounts Receivable, Net***

Accounts receivable are recorded at the invoiced amount, net of allowance for doubtful accounts. Accounts receivable also include unbilled accounts receivable, which is comprised of the monthly PPA power generation not yet invoiced and the monthly bill rate of Solar Leases as of the end of the reporting period. The Company estimates its allowance for doubtful accounts based upon the collectability of the receivables in light of historical trends and adverse situations that may affect customers' ability to pay. Revisions to the allowance are recorded as an adjustment to bad debt expense or as a reduction to revenue when collectability is not reasonably assured. After appropriate collection efforts are exhausted, specific accounts receivable deemed to be uncollectible would be charged against the allowance in the period they are deemed uncollectible. Recoveries of accounts receivable previously written-off are recorded as credits to bad debt expense. The Company had an allowance for doubtful accounts of \$1.8 million and \$0.9 million as of December 31, 2016 and 2015.

### ***Inventories***

Inventories include solar energy systems under construction that have yet to be interconnected to the power grid and that will be sold to customers. Inventory is stated at the lower of cost, on a first-in-first-out basis ("FIFO"), or market. Upon interconnection to the power grid, solar energy system inventory is removed using the specific identification method. Inventories also include components related to photovoltaic installation devices and software products and are stated at the lower of cost, on an average cost basis, or market. The Company evaluates its inventory reserves on a quarterly basis and writes down the value of inventories for estimated excess and obsolete inventories based on assumptions about future demand and market conditions. See Note 5—Inventories.

### ***Concentrations of Risk***

Financial instruments that potentially subject the Company to concentrations of credit risk consist primarily of cash and cash equivalents and accounts receivable. The associated concentration risk for cash and cash equivalents is mitigated by banking with creditworthy institutions. At certain times, amounts on deposit exceed Federal Deposit Insurance Corporation insurance limits. Approximately 64% of accounts receivable as of December 31, 2016 was due from a third-party loan provider that offers financing to System Sales customers. The Company does not require collateral or other security to support accounts receivable. The Company is not dependent on any single customer outside of the third-party loan provider.

The Company purchases solar panels, inverters and other system components from a limited number of suppliers. Three suppliers accounted for nearly 84% of the solar photovoltaic module purchases for the year ended December 31, 2016. Two suppliers accounted for approximately 95% of the Company's inverter purchases for the year ended December 31, 2016. If these suppliers fail to satisfy the Company's requirements on a timely basis or if the Company fails to develop, maintain and expand its relationship with these suppliers, the Company could suffer delays in being able to deliver or install its solar energy systems, experience a possible loss of revenue, or incur higher costs, any of which could adversely affect its operating results.

As of December 31, 2016, the Company's customers are located in 14 states. Solar energy system installations in California accounted for approximately 31%, 36% and 48% of total installations for the years ended December 31, 2016, 2015 and 2014. Solar energy system installations in the Northeastern United States accounted for approximately 35%, 40% and 38% of total installations for the years ended December 31, 2016, 2015 and 2014. Future operations could be affected by changes in the economic conditions in these and other geographic areas, by changes in the demand for renewable energy generated by solar panel systems or by changes or eliminations of solar energy related government incentives.

### ***Fair Value of Financial Instruments***

Assets and liabilities recorded at fair value on a recurring basis in the consolidated balance sheets are categorized based upon the level of judgment associated with the inputs used to measure their fair values. Fair value is defined as the exchange price that would be received for an asset or an exit price that would be paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs. The authoritative guidance on fair value measurements establishes a three-tier fair value hierarchy for disclosure of fair value measurements as follows:

- Level I—Inputs are unadjusted, quoted prices in active markets for identical assets or liabilities at the measurement date;
- Level II—Inputs are observable, unadjusted quoted prices in active markets for similar assets or liabilities, unadjusted quoted prices for identical or similar assets or liabilities in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the related assets or liabilities; and
- Level III—Unobservable inputs that are significant to the measurement of the fair value of the assets or liabilities that are supported by little or no market data.

The Company's financial instruments consist of Level II assets. See Note 3—Fair Value Measurements.

### ***Investment Tax Credits (ITCs)***

The Company applies for and receives ITCs under Section 48(a) of the Internal Revenue Code. The amount for the investment tax credit is equal to 30% of the value of eligible solar property. The Company receives all ITCs for solar energy systems that are not sold to customers or placed in its investment funds. The Company receives minimal allocations of ITCs for solar energy systems placed in its investment funds as the majority of such credits are allocated to the fund investor. Some of the Company's investment funds obligate it to make certain fund investors whole for losses that the investors may suffer in certain limited circumstances resulting from the disallowance or recapture of ITCs as a result of the Internal Revenue Service's (the "IRS") assessment of the fair value of such systems. The Company has concluded that the likelihood of a recapture event related to these assessments is remote and consequently has not recorded any liability in the consolidated financial statements for any potential recapture exposure.

### ***Solar Energy Systems, Net***

The Company sells energy to customers through PPAs or leases solar energy systems to customers through Solar Leases. The Company has determined that these contracts should be accounted for as operating leases and, accordingly, the related solar energy systems are stated at cost, less accumulated depreciation and amortization. The Company also sells solar energy systems to customers through System Sales. Systems that are sold to customers are not part of solar energy systems, net.

Solar energy systems, net is comprised of system equipment costs and initial direct costs related to solar energy systems subject to PPAs or Solar Leases. System equipment costs include components such as solar panels, inverters, racking systems and other electrical equipment, as well as costs for design and installation activities once a long-term customer contract has been executed. Initial direct costs related to solar energy systems consist of sales commissions and other direct customer acquisition expenses. System equipment costs and initial direct costs are capitalized and recorded within solar energy systems, net. Cash received under U.S. Treasury grants are recorded as a reduction in the basis of the related solar energy systems. This accounting treatment results in decreased depreciation of such solar energy systems over their useful lives.

Depreciation and amortization is calculated using the straight-line method over the estimated useful lives of the respective assets as follows:

	<u>Useful Lives</u>
System equipment costs	30 years
Initial direct costs related to solar energy systems	Lease term (20 years)

System equipment costs are depreciated and initial direct costs are amortized once the respective systems have been installed and interconnected to the power grid. The determination of the useful lives of assets included within solar energy systems involves significant management judgment. As of December 31, 2016 and 2015, the Company had recorded costs of \$1,532.1 million and \$1,134.7 million in solar energy systems, of which \$1,417.4 million and \$882.7 million related to systems that had been interconnected to the power grid, with accumulated depreciation and amortization of \$73.8 million and \$32.5 million.

### ***Property and Equipment, Net***

The Company's property and equipment is stated at cost less accumulated depreciation and amortization. Depreciation and amortization are calculated using the straight-line method over the estimated useful lives of the assets. Vehicles leased under capital leases are depreciated over the life of the lease term, which is typically three to four years. The estimated useful lives of computer equipment, furniture, fixtures and purchased software are three years. Leasehold improvements are amortized over the shorter of the lease term or the estimated useful lives of the assets. The estimated useful lives of leasehold improvements currently range from one to 12 years. Repairs and maintenance costs are expensed as incurred. Major renewals and improvements that extend the useful lives of existing assets would be capitalized and depreciated over their estimated useful lives.

### ***Intangible Assets***

The Company capitalizes costs incurred in the development of internal-use software during the application development stage. Costs related to preliminary project activities and post-implementation activities are expensed as incurred. Internal-use software is amortized on a straight-line basis over its estimated useful life. The Company tests these assets for impairment whenever events or changes in circumstances occur that could impact the recoverability of these assets. The Company recorded amortization for internal-use software of \$0.8 million and \$0.2 million for the years ended December 31, 2016 and 2015. No amortization for internal-use software was recorded for the year ended December 31, 2014 as the internal-use software applications were still under development. During the year ended December 31, 2016, the Company adopted Accounting Standards Update ("ASU") 2015-05, which requires that if a cloud computing arrangement includes a software license, the payment of fees is accounted for in the same manner as the acquisition of other software licenses. If there is no software license, the fees are accounted for as a service contract. The Company adopted this update prospectively, which did not have a significant impact on the Company's consolidated financial statements in the current period.

Other finite-lived intangible assets, which consist of developed technology acquired in business combinations, trademarks/trade names and customer relationships are initially recorded at fair value and presented net of accumulated amortization. These intangible assets are amortized on a straight-line basis over their estimated useful lives. The Company amortizes customer relationships over five years, trademarks/trade names over 10 years and developed technology over five to eight years. See Note 8—Intangible Assets and Goodwill.

### ***Impairment of Long-Lived Assets***

The carrying amounts of the Company's long-lived assets, including solar energy systems, property and equipment and finite-lived intangible assets are periodically reviewed for impairment whenever events or changes in circumstances indicate that the carrying value of these assets may not be recoverable or that the useful life is shorter than originally estimated. Factors that the Company considers in deciding when to perform an impairment review include significant negative industry or economic trends, and significant changes or planned changes in the Company's use of the assets. Recoverability of these assets is measured by comparison of the carrying amount of each asset to the future undiscounted cash flows the asset is expected to generate over its remaining life. If the asset is considered to be impaired, the amount of any impairment is measured as the difference between the carrying value and the fair value of the impaired asset. If the useful life is shorter than originally estimated, the Company amortizes the remaining carrying value over the new shorter useful life.

In February 2015, the Company ceased the external sales of two Solmetric Corporation ("Solmetric") products: the SunEye and PV Designer. This change was considered an indicator of impairment, and a review regarding the recoverability of the carrying value of the related intangible assets was performed. As a result of this review, the Company recorded a total impairment charge of \$4.5 million for the year ended December 31, 2015. See Note 8—Intangible Assets and Goodwill.

### ***Goodwill Impairment Analysis***

Goodwill represents the excess of the purchase price of an acquired business over the fair value of the net tangible and intangible assets acquired. During the first quarter of 2016, the Company's market capitalization decreased significantly from \$1.0 billion as of December 31, 2015 to \$283 million as of March 31, 2016. The Company considered this significant decrease in market capitalization to be an indicator of impairment and the Company performed a goodwill impairment test as of March 31, 2016. The impairment test determined that there was no implied value of goodwill, which resulted in an impairment charge of \$36.6 million, which was recorded in impairment of goodwill and intangible assets.

Prior to goodwill being impaired in 2016, the Company performed its annual impairment test of goodwill as of October 1st of each fiscal year or whenever events or circumstances changed that would indicate that goodwill might be impaired. In conducting the impairment test, the Company first assessed qualitative factors to determine whether it was more likely than not that the fair value of a reporting unit was less than its carrying amount as a basis for determining whether it was necessary to perform the two-step goodwill impairment test. If the qualitative step was not passed, the Company performed a two-step impairment test whereby in the first step, the Company would compare the fair value of the reporting unit with its carrying amount. If the carrying amount exceeded its fair value, the Company performed the second step of the goodwill impairment test to determine the amount of impairment. The second step, measuring the impairment loss, compared the implied fair value of the goodwill with the carrying value of the goodwill. Any excess of the goodwill carrying value over the implied fair value would be recognized as an impairment loss.

### ***Prepaid Tax Asset, Net***

The Company recognizes sales of solar energy systems to the investment funds for income tax purposes. As the investment funds are consolidated by the Company, the gain on the sale of the solar energy systems has been eliminated in the consolidated financial statements. However, this gain is recognized for tax reporting purposes. Since these transactions are intercompany sales for GAAP purposes, any tax expense incurred related to these intercompany sales is deferred and recorded as a prepaid tax asset and amortized over the estimated useful life of the underlying solar energy systems, which has been estimated to be 30 years.

### ***Other Non-Current Assets***

Other non-current assets primarily consist of interest rate swaps, the long-term portion of lease incentive assets, tax credits receivable, advances receivable due from sales representatives, debt issuance costs and long-term refundable rent deposits. For additional information regarding the interest rate swaps, see "—Derivative Financial Instruments" and Note 12—Derivative Financial Instruments. Lease incentives represent cash payments made by the Company to customers in order to finalize long-term customer contracts. Tax credits receivable represent refundable tax credits for which the Company has elected to receive in cash in lieu of offsetting future tax liabilities. The Company provides advance payments of compensation to direct-sales personnel under certain circumstances. The advance is repaid as a reduction of the direct-sales personnel's future compensation. The Company has established an allowance related to advances to direct-sales personnel who have terminated their employment agreement with the Company. These are non-interest bearing advances. Debt issuance costs represent costs incurred in connection with obtaining revolving debt financings and are deferred and amortized utilizing the straight-line method, which approximates the effective-interest method, over the term of the related financing.

### ***Distributions Payable to Non-Controlling Interests and Redeemable Non-Controlling Interests***

As discussed in Note 13—Investment Funds, the Company and fund investors have formed various investment funds that the Company consolidates as the Company has determined that it is the primary beneficiary in the operational VIEs in which it has an equity interest. These VIEs are required to pay cumulative cash distributions to their respective fund investors. The Company accrues amounts payable to fund investors in distributions payable to non-controlling interests and redeemable non-controlling interests.

### ***Deferred Revenue***

Deferred revenue primarily includes deferred ITC revenue, rebate incentives and cash received related to System Sales. Deferred ITC revenue is related to a lease pass-through arrangement in which a portion of the rent prepayment is allocated to ITC revenue. Rebate incentives are received from utility companies and various government agencies and are recognized as revenue over the related lease term of 20 years. A portion of the cash received for System Sales is attributable to administrative services and is deferred over the period that the administrative services are provided. The majority of the cash received for System Sales is deferred until the solar energy systems are interconnected to the local power grids and receive permission to operate. See “— Revenue Recognition” for additional information regarding revenue.

### ***Home Installation Accruals and Warranties***

The Company typically warrants solar energy systems sold to customers for periods of one through twenty years against defects in design and workmanship, and for periods of one to twenty years that installations will remain watertight. The manufacturers’ warranties on the solar energy system components, which is typically passed through to the customers, has a typical product warranty period of 10 years and a limited performance warranty period of 25 years. The Company warrants its photovoltaic installation devices and software products for six months to one year against defects in materials or installation workmanship.

The Company generally assesses a loss contingency accrual for damages related to home installations and roof penetrations, and provides for the estimated cost of warranties at the time the related revenue is recognized. The Company assesses the accrued home installation reserve and warranty regularly and adjusts the amounts as necessary based on actual experience and changes in future estimates. The current portion of this accrual is recorded as a component of accrued and other current liabilities and was \$0.8 million and \$0.3 million as of December 31, 2016 and 2015. The non-current portion of this accrual is recorded as a component of other non-current liabilities and was \$0.8 million as of December 31, 2016.

### ***Derivative Financial Instruments***

The Company entered into interest rate swaps in August 2016 in order to reduce interest rate risk as required by the terms of one of the Company’s debt agreements. See Note 11—Debt Obligations. The interest rate swaps are designated as cash flow hedges. Changes in fair value for the effective portions of these cash flow hedges are recorded in other comprehensive income and will subsequently be reclassified to interest expense over the life of the related debt facilities as interest payments are made. Changes in fair value for the ineffective portions of the cash flow hedges are recognized in other (income) expense. As interest payments for the associated debt agreements and derivatives are recognized, the Company includes the effect of these payments in cash flows from operating activities within the consolidated statements of cash flows. Derivative instruments may be offset under their master netting arrangements. See Note 12—Derivative Financial Instruments.

### ***Comprehensive Income (Loss)***

Due to the Company entering into interest rate swaps, other comprehensive income (loss) (“OCI”) includes unrealized gains on the cash flow hedges for the year ended December 31, 2016. Prior to 2016, the Company had no comprehensive income or loss.

### ***Debt Issuance Costs***

During the year ended December 31, 2016, the Company adopted ASU 2015-03, which requires that debt issuance costs be presented in the balance sheet as a direct deduction from the carrying amount of the associated debt obligation. ASU 2015-15 further clarified that this treatment is not required to be applied to revolving line-of-credit arrangements. The Company applied the updates on a retrospective basis; however, the Company’s long-term debt in all prior periods presented was comprised of revolving line-of-credit arrangements. As such, there is no change to the Company’s prior period consolidated balance sheets. In 2016, the Company entered into term loan facilities that are presented net of debt issuance costs. Debt issuance costs are presented consistent with the balance sheet classification of the related debt arrangements.

### **Revenue Recognition**

The Company recognizes revenue when all of the following criteria are met: (1) persuasive evidence of an arrangement exists, (2) delivery or performance has occurred, (3) the sales price is fixed or determinable and (4) collectability is reasonably assured. The Company's revenue is comprised of operating leases and incentives, and solar energy system and product sales as captioned in the consolidated statements of operations. Operating leases and incentives revenue includes PPA and Solar Lease revenue, solar renewable energy certificates ("SRECs") sales and rebate incentives. Solar energy system and product sales revenue includes System Sales, which may include structural upgrades in sales contracts and SREC sales related to sold systems, and the sale of photovoltaic installation devices and software products. Revenue is recorded net of any sales tax collected.

### **Operating Leases and Incentives Revenue**

The Company's primary revenue-generating activity consists of entering into PPAs with residential customers, under which the customer agrees to purchase all of the power generated by the solar energy system for the term of the contract, which is 20 years. The agreement includes a fixed price per kilowatt hour with a fixed annual price escalation percentage. Customers have not historically been charged for installation or activation of the solar energy system. For all PPAs, the Company assesses the probability of collectability on a customer-by-customer basis through a credit review process that evaluates their financial condition and ability to pay.

The Company has determined that PPAs should be accounted for as operating leases after evaluating and concluding that none of the following capitalized lease classification criteria are met: no transfer of ownership or bargain purchase option exists at the end of the lease, the lease term is not greater than 75% of the useful life or the present value of minimum lease payments does not exceed 90% of the fair value at lease inception. As PPA customer payments are dependent on power generation, they are considered contingent rentals and are excluded from future minimum annual lease payments. PPA revenue is recognized based on the actual amount of power generated at rates specified under the contracts, assuming the other revenue recognition criteria discussed above are met.

The Company also offers solar energy systems to customers pursuant to Solar Leases in certain markets. The customer agreements are structured as Solar Leases due to local regulations that can be read to prohibit the sale of electricity pursuant to the Company's standard PPA. Pursuant to Solar Leases, the customers' monthly payments are a pre-determined amount calculated based on the expected solar energy generation by the system and includes an annual fixed percentage price escalation over the period of the contracts, which is 20 years. The Company provides its Solar Lease customers a performance guarantee, under which the Company agrees to make a payment at the end of each year to the customer if the solar energy system does not meet a guaranteed production level in the prior 12-month period.

At times the Company makes nominal cash payments to customers in order to facilitate the finalization of long-term customer contracts and the installation of related solar energy systems. These cash payments are considered lease incentives that are deferred and recognized over the term of the contract as a reduction of revenue.

The guaranteed production levels have varying terms. Dependent on the level of the production guarantee, the Company either (1) recognizes the monthly lease payments as revenue and records a solar energy performance guarantee liability due to the contingent nature of the lease payments, or (2) straight-lines the contracted payments over the initial term of the lease. Solar energy performance guarantee liabilities were de minimis as of December 31, 2016 and 2015.

Future minimum annual lease receipts from customers under Solar Leases are as follows (in thousands):

### **Years Ending December 31,**

2017	\$	4,962
2018		5,106
2019		5,254
2020		5,406
2021		5,565

The Company applies for and receives SRECs in certain jurisdictions for power generated by its solar energy systems under long-term customer contracts. When SRECs are granted, the Company typically sells them to other companies directly, or to brokers, to assist them in meeting their own mandatory emission reduction or conservation requirements. The Company recognizes revenue related to the sale of these certificates upon delivery, assuming the other revenue recognition criteria discussed above are met. The portion of SRECs included in operating leases and incentives was \$19.3 million, \$13.9 million and \$2.6 million for the years ended December 31, 2016, 2015 and 2014.

The Company considers upfront rebate incentives earned from its solar energy systems under long-term customer contracts to be minimum lease payments and are recognized on a straight-line basis over the life of the long-term customer contracts, assuming the other revenue recognition criteria discussed above are met. The portion of rebates recognized within operating leases and incentives was \$0.5 million, \$0.4 million and \$0.2 million for the years ended December 31, 2016, 2015 and 2014.

#### *Lease Pass-Through Arrangement*

In 2015, a lease pass-through fund arrangement became operational under which the Company contributed solar energy systems and the investor contributed cash. Contemporaneously, a wholly owned subsidiary of the Company entered into a master lease arrangement to lease the solar energy systems and the associated PPAs or Solar Leases to the fund investor. The Company's subsidiary made a tax election to pass the ITCs related to the solar energy systems through to the fund investor, who as the legal lessee of the property is allowed to claim the ITCs under Section 50(d)(5) of the Internal Revenue Code and the related regulations.

Under this arrangement, the fund investor made a large upfront lease payment to one of the Company's wholly owned subsidiaries and is obligated to make subsequent periodic payments. The Company allocated a portion of the aggregate payments received from the fund investor to the estimated fair value of the assigned ITCs. The fair value of the ITCs was estimated by multiplying the ITC rate of 30% by the fair value of the systems that were sold to the lease pass-through fund. The fair value of the systems was determined by independent appraisals. The Company's subsidiary has an obligation to ensure the solar energy system is in service and operational for a term of five years to avoid any recapture of the ITCs. Accordingly, the Company recognizes ITC revenue as the recapture provisions lapse assuming all other revenue recognition criteria have been met. The amounts allocated to the ITCs were initially recorded as deferred revenue in the consolidated balance sheet, and subsequently, one-fifth of the amounts allocated to the ITCs is recognized as operating leases and incentives revenue in the consolidated statements of operations based on the anniversary of each solar energy system's placed in service date.

#### *Solar Energy System Sales*

System Sale revenue is recognized when the solar energy system is interconnected to the local power grid and granted permission to operate, assuming all other revenue recognition criteria are met. With respect to System Sales where customers obtain third-party financing, the Company incurs a lender fee, which is recognized as a direct reduction of the recognized revenue related to the sale. Additionally, customers who finance System Sales may require structural upgrades to facilitate the installation of the system, which the Company provides for an additional fee. This revenue is recognized at the point the structural upgrade work is completed, assuming all other revenue recognition criteria are met.

In connection with a System Sale, the Company is obligated to assist with processing and submitting customer claims on the manufacturer warranties, provide routine system monitoring services on sold systems and notify the customer of any problems. While the value and nature of these services is not significant, the Company considers these services to have standalone value to the customer. Therefore, the Company allocates a portion of the contract consideration to these administrative and maintenance services based on the relative selling price method and the Company recognizes the deferred revenue over the contractual service term. As of December 31, 2016, the Company's obligations to customers subsequent to the sale of solar energy systems were approximately \$0.4 million. No obligations were recorded as of December 31, 2015 as sales of solar energy systems were de minimis.

#### *Photovoltaic Installation and Software Products*

The Company also recognizes revenue from the sale of photovoltaic installation devices and software products. These sales are either: (1) standalone and are recognized at the time of product shipment to the customer, assuming the remaining revenue recognition criteria have been met; or (2) multiple-element arrangements typically involving sales of photovoltaic installation hardware devices containing software essential to the hardware product's functionality and standalone software. The Company recognizes revenue related to these transactions according to GAAP.

## **Cost of Revenue**

### ***Cost of Revenue—Operating Leases and Incentives***

Cost of revenue—operating leases and incentives includes the depreciation of the cost of solar energy systems under long-term customer contracts and the amortization of the related capitalized initial direct costs. It also includes allocated indirect material and labor costs related to the processing, account creation, design, installation, interconnection and servicing of solar energy systems that are not capitalized, such as personnel costs not directly associated to a solar energy system installation, warehouse rent and utilities, and fleet vehicle executory costs. The cost of revenue for the sales of SRECs is limited to broker fees which are paid in connection with certain SREC transactions.

### ***Cost of Revenue—Solar Energy System and Product Sales***

Cost of revenue—solar energy system and product sales consists of direct and allocated indirect material and labor costs for System Sales, photovoltaic installation devices and software products and structural upgrades. Indirect material and labor costs include costs related to the processing, account creation, design, installation, interconnection and servicing of solar energy systems that are not capitalized, such as personnel costs not directly associated to a solar energy system installation, warehouse rent and utilities, and fleet vehicle executory costs. Costs of solar energy system sales are recognized in conjunction with the related revenue when the solar energy system is interconnected to the local power grid and granted permission to operate, assuming all other revenue recognition criteria are met.

## **Research and Development**

Research and development expense is primarily comprised of salaries and benefits associated with research and development personnel and other costs related to photovoltaic installation devices and software products and the development of other solar technologies. Research and development costs are charged to expense when incurred. The Company's research and development expense was \$3.0 million, \$3.9 million and \$1.9 million for the years ended December 31, 2016, 2015 and 2014.

## **Advertising Costs**

Advertising costs are expensed when incurred and are included in sales and marketing expenses in the consolidated statements of operations. The Company's advertising expense was \$2.3 million, \$4.5 million and \$3.5 million for the years ended December 31, 2016, 2015 and 2014.

## **Vivint Related Party Expenses**

The consolidated financial statements reflect all costs of doing business, including the allocation of expenses incurred by Vivint on behalf of the Company. For additional information, see Note 17—Related Party Transactions. These expenses were allocated to the Company on a basis that was considered to reasonably reflect the utilization of the services provided to, or the benefit obtained by, the Company. The allocations may not, however, reflect the expense the Company would have incurred as an independent company for the periods presented, and as the Company continues to absorb these services, the allocations may not be indicative of the Company's ongoing results of operations and financial position.

## **Other (Income) Expense**

For the year ended December 31, 2016, other (income) expense primarily includes changes in fair value for the ineffective portions of the cash flow hedges. Other (income) expense also includes interest and penalties and related abatements associated with tax payments that were not paid in a timely manner.

## **Provision for Income Taxes**

The Company accounts for income taxes under an asset and liability approach. Deferred income taxes are classified as long-term and reflect the impact of temporary differences between assets and liabilities recognized for financial reporting purposes and the amounts recognized for income tax reporting purposes, net operating loss carryforwards, and other tax credits measured by applying currently enacted tax laws. A valuation allowance is provided when necessary to reduce deferred tax assets to an amount that is more likely than not to be realized.

The Company recognizes sales of solar energy systems to substantially all of the investment funds for income tax purposes. As the investment funds are consolidated by us, the gain on the sale of the solar energy systems is not recognized in the consolidated financial statements. However, this gain is recognized for tax reporting purposes. Since these transactions are intercompany sales for GAAP purposes, any tax expense incurred related to these intercompany sales is deferred and recorded as a prepaid tax asset and amortized over the estimated useful life of the underlying solar energy systems, which has been estimated to be 30 years.

The Company determines whether a tax position is more likely than not to be sustained upon examination, including resolution of any related appeals or litigation processes, based on the technical merits of the position. The Company uses a two-step approach to recognizing and measuring uncertain tax positions. The first step is to evaluate the tax position for recognition by determining if the weight of available evidence indicates that it is more likely than not that the position will be sustained upon tax authority examination, including resolution of related appeals or litigation processes, if any. The second step is to measure the tax benefit as the largest amount that is more than 50% likely of being realized upon ultimate settlement.

The Company's policy is to include interest and penalties related to unrecognized tax benefits, if any, within income tax expense (benefit).

#### ***Stock-Based Compensation Expense***

Stock-based compensation expense for equity instruments issued to employees is measured based on the grant-date fair value of the awards. The fair value of each restricted stock unit award and performance share unit award is determined as the closing price of the Company's stock on the date of grant. The fair value of each time-based employee stock option is estimated on the date of grant using the Black-Scholes-Merton stock option pricing valuation model. The fair value of each performance-based employee stock option is estimated on the date of grant using the Monte Carlo simulation model. The Company recognizes compensation costs using the accelerated attribution method for all employee stock-based compensation awards that are expected to vest over the requisite service period of the awards, which is generally the awards' vesting period. Forfeitures are required to be estimated at the time of grant and revised, if necessary, in subsequent periods if actual forfeitures differ from those estimates.

Stock-based compensation expense for equity instruments issued to non-employees is recognized based on the estimated fair value of the equity instrument. The fair value of the non-employee awards is subject to remeasurement at each reporting period until services required under the arrangement are completed, which is the vesting date.

#### ***Post-Employment Benefits***

In 2016, the Company began to sponsor its own 401(k) Plan that covered all of the Company's eligible employees. In 2015 and 2014, the Company participated in a 401(k) Plan sponsored by Vivint that covered all of the Company's eligible employees. The Company did not provide a discretionary company match to employee contributions during any of the periods presented.

#### ***Non-Controlling Interests and Redeemable Non-Controlling Interests***

Non-controlling interests and redeemable non-controlling interests represent fund investors' interests in the net assets of certain consolidated investment funds, which have been entered into by the Company in order to finance the costs of solar energy systems under long-term customer contracts. The Company has determined that the provisions in the contractual arrangements represent substantive profit-sharing arrangements, which gives rise to the non-controlling interests and redeemable non-controlling interests. The Company has further determined that the appropriate methodology for attributing income and loss to the non-controlling interests and redeemable non-controlling interests each period is a balance sheet approach referred to as the hypothetical liquidation at book value ("HLBV") method. Under the HLBV method, the amounts of income and loss attributed to the non-controlling interests and redeemable non-controlling interests in the consolidated statements of operations reflect changes in the amounts the fund investors would hypothetically receive at each balance sheet date under the liquidation provisions of the contractual agreements of these structures, assuming the net assets of these funding structures were liquidated at recorded amounts. The fund investors' non-controlling interest in the results of operations of these funding structures is determined as the difference in the non-controlling interests' and redeemable non-controlling interests' claims under the HLBV method at the start and end of each reporting period, after considering any capital transactions, such as contributions or distributions, between the fund and the fund investors. The use of the HLBV methodology to allocate income to the non-controlling and redeemable non-controlling interest holders may create volatility in the Company's consolidated statements of operations as the application of HLBV can drive changes in net income available and loss attributable to non-controlling interests and redeemable non-controlling interests from quarter to quarter.

The Company classifies certain non-controlling interests with redemption features that are not solely within the control of the Company outside of permanent equity on its consolidated balance sheets. Estimated redemption value is calculated as the discounted cash flows subsequent to the expected flip date of the respective investment funds. Redeemable non-controlling interests are reported using the greater of their carrying value at each reporting date as determined by the HLBV method or their estimated redemption value in each reporting period.

### ***Loss Contingencies***

The Company is subject to the possibility of various loss contingencies arising in the ordinary course of business. The Company considers the likelihood of loss or impairment of an asset, or the incurrence of a liability, as well as the Company's ability to reasonably estimate the amount of loss, in determining loss contingencies. An estimated loss contingency is accrued when it is probable that an asset has been impaired or a liability has been incurred and the amount of loss can be reasonably estimated. The Company regularly evaluates current information available to determine whether an accrual is required, an accrual should be adjusted or a range of possible loss should be disclosed.

### ***Segment Information***

The Company's chief operating decision maker is its chief executive officer. The chief executive officer reviews financial information for purposes of allocating resources and evaluating financial performance. From the second quarter of 2015 through the second quarter of 2016, the Company had aligned its operations as two reporting segments, (1) Residential and (2) Commercial and Industrial ("C&I"), as the result of entering into a C&I investment fund with plans to service customers in the C&I market. During that time, no projects were initiated within the fund and no revenue was recorded in the C&I segment. In June 2016, the Company ended its C&I investment fund and settled with a \$1.0 million termination fee. As a result of this termination, the Company realigned and consolidated its reporting segments as the Residential segment, which is again the Company's only reporting segment. No restatement of prior periods is necessary, as the restated prior periods are the previously disclosed consolidated statements of operations.

Operating expenses in the C&I segment included sales and marketing and general and administrative. For the year ended December 31, 2016 and 2015, sales and marketing expense was \$0.3 million and \$0.7 million. For the year ended December 31, 2016 and 2015, general and administrative expense was \$1.5 million and \$2.2 million. The Company did not have any assets or liabilities associated with the C&I fund. For additional information regarding the termination of the C&I investment fund, see Note 13—Investment Funds.

### ***Recent Accounting Pronouncements***

#### ***New Revenue Guidance***

From March 2016 through December 2016, the Financial Accounting Standards Board (the "FASB") issued ASU 2016-20, ASU 2016-12, ASU 2016-11, ASU 2016-10 and ASU 2016-08. These updates all clarify aspects of the guidance in ASU 2014-09, *Revenue from Contracts with Customers* (Topic 606), which represents comprehensive reform to revenue recognition principles related to customer contracts. Additionally, per ASU 2015-14, the effective date of these updates for the Company was deferred to January 1, 2018, with early adoption available on January 1, 2017. The Company currently plans to adopt the new standard in 2018. Adoption of this ASU is either full retrospective to each prior period presented or retrospective with a cumulative adjustment to retained earnings or accumulated deficit as of the adoption date. The Company is currently considering adopting the standard using the full retrospective method and is still evaluating the impact of the new standard on its accounting policies, processes and system requirements.

Under the current accounting guidance, the Company accounts for PPAs and Solar Leases as operating leases. The Company is evaluating whether these agreements will continue to meet the definition of a lease under ASC 842, *Leases*, or whether these agreements will be accounted for in accordance with Topic 606. The Company is still evaluating the impact of this new standard on the consolidated financial statements. The Company currently accounts for certain Solar Leases, rebates and incentives as minimum lease payments under ASC 840, *Leases*, and the Company is currently evaluating the accounting for these revenues under Topic 606. The Company is also evaluating the accounting for incremental costs of obtaining a contract, which under current accounting policies are capitalized as initial direct costs and amortized over the lease term.

The Company is in the final stages of analyzing the impact of Topic 606 on System Sales and has preliminarily concluded that it will not have a material impact on the consolidated financial statements.

The Company is assessing the impact of Topic 606 as it relates to other revenue streams such as sales of ITCs through its lease pass-through fund arrangement and sales of photovoltaic installation and software products.

While the Company continues to assess all potential impacts under the new standard, including the areas described above, the Company does not know or cannot reasonably estimate quantitative information related to the impact of the new standard on the consolidated financial statements at this time.

#### *New Lease Guidance*

In February 2016, the FASB issued ASU 2016-02, *Leases (Topic 842)*. The objective of this update is to increase transparency and comparability among organizations by recognizing lease assets and lease liabilities on the balance sheet and disclosing key information about leasing arrangements. This update primarily changes the recognition by lessees of lease assets and liabilities for leases currently classified as operating leases. Lessor accounting remains largely unchanged. This update is effective in fiscal years beginning after December 15, 2018 for public business entities and early adoption is permitted. The amendments should be applied using a modified retrospective approach. The Company currently accounts for PPAs and Solar Leases pursuant to ASC 840, *Leases*. The Company is evaluating whether these agreements will meet the definition of a lease pursuant to ASC 842, *Leases*, or whether these agreements will be accounted for in accordance with ASC 606, *Revenue from Contracts with Customers*. The Company is currently considering early adopting ASC 842 to coincide with the adoption of ASC 606, however a decision to early adopt is not final. The Company has operating leases that will be affected by this update and is still evaluating the impact on its consolidated financial statements and related disclosures.

#### *Other Recent Accounting Pronouncements*

In November 2016, the FASB issued ASU 2016-18, *Statement of Cash Flows (Topic 230): Restricted Cash (a consensus of the FASB Emerging Issued Task Force)*. This update clarifies that transfers between cash and restricted cash are not part of the entity's operating, investing and financing activities, and details of those transfers are not reported as cash flow activities in the statement of cash flows. This update is effective for annual periods beginning after December 15, 2017 for public business entities. The amendments in this update should be applied using a retrospective transition method to each period presented. The Company is evaluating this update but currently anticipates it will have a material impact on its consolidated financial statements and related disclosures as changes in restricted cash will no longer be presented as cash flows from investing activities.

In October 2016, the FASB issued ASU 2016-17, *Consolidation (Topic 810): Interests held through related parties that are under common control*. This update does not change the characteristics of a primary beneficiary in current accounting guidance, but requires an entity to consider additional factors when determining if it is the primary beneficiary of a VIE that is under common control with related parties. This update is effective for annual periods beginning after December 15, 2016 for public business entities. The amendments in this update should be applied using a modified retrospective approach. The Company is evaluating this update but currently anticipates it will not have a material impact on its consolidated financial statements and related disclosures.

In October 2016, the FASB issued ASU 2016-16, *Income Taxes (Topic 740): Intra-Entity Transfers of Assets Other Than Inventory*. Current accounting guidance prohibits the recognition of current and deferred income taxes for an intra-entity asset transfer until the asset has been sold to an outside party. This update will require an entity to recognize the income tax consequences of an intra-entity transfer of an asset other than inventory when the transfer occurs. This update is effective for annual periods beginning after December 15, 2017 for public business entities and early adoption is permitted. The amendments in this update should be applied using a modified retrospective approach. The Company is evaluating this update but currently anticipates it will have a material impact on its consolidated financial statements and related disclosures as the Company will no longer record prepaid tax assets on the consolidated balance sheets and will record the income tax consequences of intra-entity transfers through income tax expense (benefit) on the consolidated statements of operations.

In August 2016, the FASB issued ASU 2016-15, *Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments*. This update clarifies how certain cash flows should be classified with the objective of reducing the existing diversity in practice. This update is effective for annual periods beginning after December 15, 2017 for public business entities and early adoption is permitted. The amendments in this update should be applied using a retrospective transition method and must all be applied in the same period. The Company is evaluating the impact of this update on its consolidated financial statements and related disclosures.

In March 2016, the FASB issued ASU 2016-09, *Compensation—Stock Compensation (Topic 718): Improvements to Employee Share-Based Payment Accounting*. The objective of this update is to simplify several aspects of the accounting for share-based payment transactions, including the income tax consequences, classification of awards as either equity or liabilities, forfeiture rates and classification on the statement of cash flows. This update is effective for annual periods beginning after December 15, 2016 for public business entities and early adoption is permitted. The Company expects to apply the update upon its effectiveness in the first quarter of 2017, which will impact its equity balance in the consolidated balance sheet and all expense line items where stock compensation is recorded on the consolidated statement of operations.

In July 2015, the FASB issued ASU 2015-11, *Simplifying the Measurement of Inventory*. This ASU changes the measurement principle for inventories valued under the first-in, first-out ("FIFO") or weighted-average methods from the lower of cost or market to the lower of cost or net realizable value. Net realizable value is defined by the FASB as estimated selling prices in the ordinary course of business, less reasonably predictable costs of completion, disposal and transportation. This ASU does not change the measurement principles for inventories valued under the last-in, first-out method. The update is effective in fiscal years beginning after December 15, 2016 and early adoption is permitted. The Company does not anticipate this update to have a significant impact on its consolidated financial statements and related disclosures.

### 3. Fair Value Measurements

The Company measures and reports its cash equivalents at fair value. The following tables set forth the fair value of the Company's financial assets measured on a recurring basis by level within the fair value hierarchy (in thousands):

	December 31, 2016			
	Level I	Level II	Level III	Total
<b>Financial Assets</b>				
Interest rate swaps	\$ —	\$ 14,317	\$ —	\$ 14,317
Time deposits	—	100	—	100
Total financial assets	\$ —	\$ 14,417	\$ —	\$ 14,417

	December 31, 2015			
	Level I	Level II	Level III	Total
<b>Financial Assets</b>				
Time deposits	\$ —	\$ 1,900	\$ —	\$ 1,900
Total financial assets	\$ —	\$ 1,900	\$ —	\$ 1,900

The interest rate swaps (Level II) are valued using a discounted cash flow model which incorporates an assessment of the risk of non-performance by the interest rate swap counterparties and the Company. The valuation model uses various observable inputs including contractual terms, interest rate curves, credit spreads and measures of volatility.

Time deposits (Level II) approximate fair value due to their short-term nature (30 days) and, upon renewal, the interest rate is adjusted based on current market rates. The Company's total debt obligations are carried at cost and were \$771.9 million and \$415.9 million as of December 31, 2016 and 2015. The Company estimated the fair value of its total debt obligations to approximate carrying value as interest accrues at a floating rate based on market rates. The Company did not have realized gains or losses related to financial assets for any of the periods presented.

### 4. Solmetric Acquisition

In January 2014, the Company completed the acquisition of Solmetric (the "Solmetric Acquisition"), a developer and manufacturer of photovoltaic installation devices and software products. The purchase price agreed to in the purchase agreement with Solmetric was \$12.0 million plus a net working capital adjustment resulting in total cash purchase consideration of \$12.2 million. The total consideration of \$12.2 million was used for the purchase of all outstanding stock and options of Solmetric, settlement of Solmetric's short-term promissory note and settlement of other liabilities including employee-related liabilities of Solmetric incurred in connection with the acquisition. The Company incurred \$0.3 million of costs related to retention bonuses to key Solmetric employees and \$0.1 million of transaction fees, all of which were included in the consolidated statements of operations for the year ended December 31, 2014.

Pursuant to the terms of the purchase agreement, \$1.0 million of the purchase consideration was placed in escrow and was held for general representations and warranties, rather than specific contingencies or specific assets or liabilities of the Company. The Company had no right to these funds, nor did it have a direct obligation associated with them. Accordingly, the Company did not include the escrow funds in its consolidated balance sheets. The escrow was released on the one year anniversary of the Solmetric Acquisition.

The estimated fair values of the assets acquired and liabilities assumed were based on information obtained from various sources including third party valuations, management's internal valuation and historical experience. The fair values of the intangible assets related to customer relationships, trade names and trademarks, developed technology and in-process research and development were determined using the income approach and significant estimates relate to assumptions as to the future economic benefits to be received, cash flow projections and discount rates.

The purchase price was allocated based on the estimated fair value of net assets acquired and liabilities assumed at the date of the acquisition. The purchase price allocation was finalized as of December 31, 2014. The following table summarizes the estimated fair values of the assets acquired and liabilities assumed (in thousands):

Cash acquired	\$	139
Inventories		580
Other current assets acquired		221
Property		77
Customer relationships		738
Trademarks/trade names		1,664
Developed technology		1,295
In-process research and development		2,097
Goodwill		7,056
Deferred tax liability, net		(1,478)
Current liabilities assumed		(210)
Total	\$	<u>12,179</u>

Goodwill represents the purchase price in excess of the fair value of net assets acquired. In the first quarter of 2016, the Company determined that its total goodwill balance was impaired, resulting in a total impairment charge of \$36.6 million, including \$7.1 million attributable to the Solmetric acquisition. See Note 8—Intangible Assets and Goodwill.

For tax purposes, the acquired intangible assets are not amortized. Accordingly, a deferred tax liability of \$2.5 million was recorded for the difference between the book and tax basis related to the intangible assets. Additionally, a deferred tax asset of \$1.0 million was recorded mainly as a result of Solmetric's net operating losses.

Financial results for Solmetric since the acquisition date are included in the results of operations for the year ended December 31, 2014. Solmetric contributed \$3.2 million of revenues and \$0.4 million of net income for the year ended December 31, 2014. During 2015, the Company ceased the external sale of two Solmetric products. This change was considered an indicator of impairment, and the Company performed a review regarding the recoverability of the carrying value of the related intangible assets. As a result of this review, the Company recorded an impairment charge of \$4.5 million in the first quarter of 2015. In the second quarter of 2016, the Company resumed external sales of the SunEye product.

#### ***Unaudited Solmetric Pro Forma Information***

The following pro forma financial information is based on the historical financial statements of the Company and presents the Company's results as if the Solmetric Acquisition had occurred as of January 1, 2014 (in thousands):

	Year Ended December 31, <u>2014</u>
Pro forma revenue	\$ 25,380
Pro forma net loss	(165,734)
Pro forma net loss attributable to common stockholders	(28,698)

The unaudited pro forma results include the accounting effects resulting from the Solmetric Acquisition, such as the amortization charges from acquired intangible assets, reversal of costs related to special retention bonuses and other payments to employees and transaction costs directly related to the Solmetric Acquisition, elimination of intercompany sales and reversal of the related tax effects. The pro forma information presented does not purport to present what the actual results would have been had the Solmetric Acquisition actually occurred on January 1, 2014, nor is the information intended to project results for any future period.

## 5. Inventories

Inventories consisted of the following (in thousands):

	December 31, 2016	December 31, 2015
Solar energy systems held for sale	\$ 10,540	\$ 121
Photovoltaic installation devices and software products	745	510
Total inventories	<u>\$ 11,285</u>	<u>\$ 631</u>

Solar energy systems held for sale are solar energy systems under construction that have yet to be interconnected to the power grid and that will be sold to customers. Solar energy systems held for sale are stated at the lower of cost, on a FIFO basis, or market. Photovoltaic installation devices and software products are stated at the lower of cost, on an average cost basis, or market.

## 6. Solar Energy Systems

Solar energy systems, net consisted of the following (in thousands):

	December 31, 2016	December 31, 2015
System equipment costs	\$ 1,238,968	\$ 893,088
Initial direct costs related to solar energy systems	261,318	171,081
	<u>1,500,286</u>	<u>1,064,169</u>
Less: Accumulated depreciation and amortization	(73,793)	(32,505)
	<u>1,426,493</u>	<u>1,031,664</u>
Solar energy system inventory	31,862	70,493
Solar energy systems, net	<u>\$ 1,458,355</u>	<u>\$ 1,102,157</u>

Solar energy system inventory represents the solar components and materials used in the installation of solar energy systems prior to being installed on customers' roofs. As such, no depreciation is recorded related to this line item. The Company recorded depreciation and amortization expense related to solar energy systems of \$41.3 million, \$22.3 million and \$8.1 million for the years ended December 31, 2016, 2015 and 2014.

## 7. Property and Equipment

Property and equipment, net consisted of the following (in thousands):

	Estimated Useful Lives	December 31, 2016	December 31, 2015
Vehicles acquired under capital leases	3-4 years	\$ 20,384	\$ 24,149
Leasehold improvements	1-12 years	14,694	4,116
Furniture and computer and other equipment	3 years	6,270	6,524
		<u>41,348</u>	<u>34,789</u>
Less: Accumulated depreciation and amortization		(18,149)	(12,181)
		<u>23,199</u>	<u>22,608</u>
Build-to-suit lease asset under construction		—	25,560
Property and equipment, net		<u>\$ 23,199</u>	<u>\$ 48,168</u>

The Company recorded depreciation and amortization related to property and equipment of \$11.1 million, \$8.2 million and \$3.4 million for the years ended December 31, 2016, 2015 and 2014.

The Company leases fleet vehicles that are accounted for as capital leases and are included in property and equipment, net. Depreciation on vehicles under capital leases totaling \$5.5 million, \$5.5 million and \$3.0 million was capitalized in solar energy systems, net for the years ended December 31, 2016, 2015 and 2014.

Because of its involvement in certain aspects of the construction of its headquarters building in Lehi, UT, the Company was deemed the owner of the building for accounting purposes during the construction period. Accordingly, the Company recorded a build-to-suit lease asset and corresponding liabilities during the construction period. In May 2016, construction on the headquarters building was completed. The building qualified for sale-leaseback treatment as the Company determined the lease to be a normal leaseback, payment terms indicated the landlord has continuing investment in the property and the payment terms transferred the risks and rewards of ownership to the landlord. As such, the Company removed the build-to-suit lease asset and liabilities from its consolidated balance sheet as of December 31, 2016. For additional information regarding the related build-to-suit liabilities and the resulting ongoing lease, see Note 18—Commitments and Contingencies.

Future minimum lease payments for vehicles under capital leases as of December 31, 2016 were as follows (in thousands):

<b>Years Ending December 31,</b>	
2017	\$ 5,751
2018	4,119
2019	1,239
2020	477
2021	—
Thereafter	—
<b>Total minimum lease payments</b>	<b>11,586</b>
Less: interest	947
<b>Present value of capital lease obligations</b>	<b>10,639</b>
Less: current portion	5,163
<b>Long-term portion</b>	<b>\$ 5,476</b>

## 8. Intangible Assets and Goodwill

Intangible assets consisted of the following (in thousands):

	<b>December 31, 2016</b>	<b>December 31, 2015</b>
<b>Cost:</b>		
Internal-use software	\$ 1,314	\$ 1,591
Developed technology	522	522
Trademarks/trade names	201	201
Customer relationships	164	164
Total carrying value	<u>2,201</u>	<u>2,478</u>
<b>Accumulated amortization:</b>		
Internal-use software	(434)	(219)
Developed technology	(191)	(126)
Trademarks/trade names	(59)	(39)
Customer relationships	(97)	(63)
Total accumulated amortization	<u>(781)</u>	<u>(447)</u>
<b>Total intangible assets, net</b>	<b>\$ 1,420</b>	<b>\$ 2,031</b>

The Company recorded amortization expense of \$0.9 million and \$13.2 million for the years ended December 31, 2016 and 2015, and \$14.9 million for the year ended December 31, 2014, of which \$0.1 million was recorded in cost of revenue solar energy system and product sales.

In February 2015, the Company ceased the external sales of the SunEye and PV Designer products, the rights to which the Company acquired when it acquired Solmetric. This change was considered an indicator of impairment, and a review regarding the recoverability of the carrying value of the related intangible assets was performed. In-process research and development, which was intended to generate Solmetric product sales in the residential market, was terminated and deemed fully impaired resulting in a charge of \$2.1 million. The Solmetric, Sun Eye and PV Designer trade names were determined to no longer be utilized and were deemed fully impaired resulting in a charge of \$1.3 million. The SunEye and PV Designer developed technology assets were deemed fully impaired resulting in a charge of \$0.7 million. Customer relationships were deemed partially impaired by \$0.4 million due to the loss of external customers who purchased the SunEye and PV Designer. As a result of this review, the Company recorded a total impairment charge of \$4.5 million for the year ended December 31, 2015. No impairment was recorded in the years ended December 31, 2016 and 2014. In the second quarter of 2016, the Company resumed external sales of the SunEye product.

As of December 31, 2016, expected amortization expense for the unamortized intangible assets was as follows (in thousands):

**Years Ending December 31,**

2017	\$	558
2018		515
2019		134
2020		86
2021		86
Thereafter		41
<b>Total</b>	<b>\$</b>	<b>1,420</b>

*Goodwill Impairment Test as of March 31, 2016*

In conjunction with the acquisition by SunEdison failing to occur, the Company's market capitalization decreased significantly during the first quarter of 2016 from \$1.0 billion as of December 31, 2015 to \$283 million as of March 31, 2016. The Company considered this significant decrease in market capitalization to be an indicator of impairment and the Company performed a step one test for potential impairment as of March 31, 2016.

At the time this impairment test was performed, the Company consisted of two reporting segments, and all goodwill remained with the Residential reporting unit. The step one analysis resulted in the Company concluding that the carrying book value of its Residential reporting unit was higher than the business unit's fair value. Because the Residential reporting unit failed the step one test, the Company was required to perform the step two test, which utilizes a notional purchase price allocation using the estimated fair value from step one as the purchase price to determine the implied value of the reporting unit's goodwill. The completion of the step two test resulted in the determination that the \$36.6 million of the Residential reporting unit's goodwill was fully impaired. The \$36.6 million impairment charge was recorded in impairment of goodwill and intangible assets.

In performing step one of the goodwill impairment test, it was necessary to determine the fair value of the Residential reporting segment. The fair value of the reporting unit was estimated using a discounted cash flow methodology ("DCF"). The market analysis included looking at the valuations of comparable public companies, as well as recent acquisitions of comparable companies. The Residential reporting unit is comprised of many differing consolidated entities and components that have been aggregated for operational and financial reporting purposes. The discount rate is applicable to the Residential reporting unit as a whole and is not intended for use for any individual asset, entity or component of the Company.

Two key inputs to the DCF analysis were the future cash flow projection and the discount rate. The Company used a 30-year future cash flow projection, based on the Company's long-range forecast of current customer contracts and an estimate of customer renewals of 90% subsequent to the 20-year customer contract period, discounted to present value.

The discount rate was determined by estimating the reporting unit's weighted average cost of capital, reflecting the nature of the reporting unit as a whole and the perceived risk of the underlying cash flows. In its DCF methodology, the Company used a 7.25% discount rate for the cash flows related to current customer contracts and a 9.25% discount rate for the estimated cash flows from customer renewals subsequent to the 20-year customer contract period. A higher discount rate was used for the estimated customer renewals due to the increased subjectivity of this cash flow stream. If the Company had varied the discount rates by 1.0%, it would not have impacted the ultimate results of the step one test. The excess of the carrying value over the fair value of the Residential reporting unit was approximately 15%.

Because the Residential reporting unit failed the step one test, the Company was required to perform the step two test, which utilizes a purchase price allocation using the estimated fair value from step one as the purchase price to determine the implied value of the reporting unit's goodwill. The step two test involves allocating the fair value of the Residential reporting unit to all of its assets and liabilities on a fair value basis, with the excess amount representing the implied value of goodwill. As part of this process the fair value of the reporting unit's identifiable assets was determined. The fair values of these assets were determined primarily through the use of the DCF method if the fair value was estimated to differ materially from book value. After determining the fair value of the reporting unit's assets and liabilities and allocating the fair value of the Residential reporting unit to those assets and liabilities, it was determined that there was no implied value of goodwill. The carrying value of the reporting unit's goodwill was \$36.6 million, which resulted in the impairment charge of \$36.6 million, which was recorded in impairment of goodwill and intangible assets.

## 9. Accrued Compensation

Accrued compensation consisted of the following (in thousands):

	December 31, 2016	December 31, 2015
Accrued payroll	\$ 12,558	\$ 6,918
Accrued commissions	7,445	6,840
Total accrued compensation	<u>\$ 20,003</u>	<u>\$ 13,758</u>

## 10. Accrued and Other Current Liabilities

Accrued and other current liabilities consisted of the following (in thousands):

	December 31, 2016	December 31, 2015
Current portion of lease pass-through financing obligation	\$ 4,833	\$ 3,835
Accrued unused commitment fees and interest	3,827	1,014
Accrued professional fees	3,222	7,918
Sales, use and property taxes payable	1,785	3,683
Current portion of deferred rent	1,155	1,064
Income tax payable	—	6,169
Accrued litigation settlements	—	1,790
Other accrued expenses	4,542	3,544
Total accrued and other current liabilities	<u>\$ 19,364</u>	<u>\$ 29,017</u>

## 11 . Debt Obligations

Debt obligations consisted of the following as of December 31, 2016 (in thousands, except interest rates):

	Principal Borrowings Outstanding	Unamortized Debt Issuance Costs		Net Carrying Value		Unused Borrowing Capacity	Interest Rate	Maturity Date	
		Current	Long-term	Current	Long-term				
Revolving lines of credit									
Aggregation credit facility	\$ 187,000	\$ —	(1)\$ —	(1)\$ —	\$ 187,000	\$ 188,000	4.2%	March 2018	
Working capital credit facility (2)	136,500	—	(1)	—	136,500	—	3.9	March 2020	
2016 Term loan facility	297,506	(169)	(9,643)	—	4,788	282,906	—	3.6(3)	August 2021
Subordinated HoldCo credit facility	149,500	(47)	(4,851)	—	1,453	143,149	50,000	8.6	March 2020
Credit agreement	1,346	(1)	(161)	—	11	1,173	—	6.5	(4)
Total debt	<u>\$ 771,852</u>	<u>\$ (217)</u>	<u>\$ (14,655)</u>	<u>\$ 6,252</u>	<u>\$ 750,728</u>	<u>\$ 238,000</u>			

Debt obligations consisted of the following as of December 31, 2015 (in thousands, except interest rates):

	Principal Borrowings Outstanding	Unamortized Debt Issuance Costs		Net Carrying Value		Unused Borrowing Capacity	Interest Rate	Maturity Date
		Current	Long-term	Current	Long-term			
Aggregation credit facility	\$ 269,100	\$ —	(1)\$ —	(1)\$ —	\$ 269,100	\$ 105,900	3.8%	March 2018
Working capital credit facility	146,750	—	(1)	—	146,750	—	3.5	March 2020
Total debt	<u>\$ 415,850</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 415,850</u>	<u>\$ 105,900</u>		

- (1) Revolving lines of credit are not presented net of unamortized debt issuance costs. See Note 2—Summary of Significant Accounting Policies.
- (2) Facility is recourse debt, which refers to debt that is collateralized by the Company's general assets. All of the Company's other debt obligations are non-recourse, which refers to debt that is only collateralized by specified assets or subsidiaries of the Company.
- (3) The interest rate of this facility is partially hedged to an effective interest rate of 4.0% for \$270.0 million of the principal borrowings outstanding. See Note 12—Derivative Financial Instruments.
- (4) Quarterly payments of principal and interest are payable over a seven-year term. The seven-year term begins after the final completion date of the underlying solar energy systems, which is anticipated to begin in the first quarter of 2017.

### 2016 Term Loan Facility

In August 2016, the Company entered into a credit agreement (the "2016 Term Loan Facility") pursuant to which it may borrow up to \$313.0 million aggregate principal amount of term borrowings and letters of credit from certain financial institutions for which Investec Bank PLC is acting as administrative agent. The borrower under the 2016 Term Loan Facility is Vivint Solar Financing II, LLC, a wholly owned indirect subsidiary of the Company. Proceeds of \$300.0 million in term loan borrowings under the 2016 Term Loan Facility were used to: (1) repay \$220.5 million of existing indebtedness under the Aggregation Facility to remove the portfolio of projects being used as collateral for the 2016 Term Loan Facility (the "2016 Term Loan Portfolio"); (2) distribute \$63.6 million to the Company; (3) pay \$10.6 million in transaction costs and fees in connection with the 2016 Term Loan Facility; and (4) fund \$5.3 million in agreed reserve accounts. Additionally, letters of credit for up to \$13.0 million were issued for a debt service reserve.

For the initial four years of the term of the 2016 Term Loan Facility, interest on borrowings accrues at an annual rate equal to the London Interbank Offered Rate ("LIBOR") plus 3.00%. Thereafter interest accrues at an annual rate equal to LIBOR plus 3.25%. In the third quarter of 2016, the Company entered into interest rate swap hedging arrangements such that 90% of the aggregate principal amount of the outstanding term loan is subject to a fixed interest rate. See Note 12—Derivative Financial Instruments. Certain principal payments are due on a quarterly basis subject to the occurrence of certain events, including proceeds received by the borrower or subsidiary guarantors in respect of casualties, proceeds received for purchased systems and failure to meet certain distribution conditions. Estimated principal payments due in the next 12 months are classified as the current portion of long-term debt, net of the related unamortized debt issuance costs. Optional prepayments, in whole or in part, are permitted under the 2016 Term Loan Facility, without premium or penalty apart from any customary LIBOR breakage provisions.

The 2016 Term Loan Facility includes customary events of default, conditions to borrowing and covenants, including negative covenants that restrict, subject to certain exceptions, the borrower's and guarantors' ability to incur indebtedness, incur liens, make fundamental changes to their respective businesses, make certain types of restricted payments and investments or enter into certain transactions with affiliates. A debt service reserve account was funded with the outstanding letters of credit under the 2016 Term Loan Facility, and as a result, it is not classified as restricted cash and cash equivalents. The borrower is required to maintain an average debt service coverage ratio of 1.55 to 1. As of December 31, 2016, the Company was in compliance with such covenants.

Prior to the maturity of the 2016 Term Loan Facility, a fund investor could exercise a put option in two of the Company's investment funds and require the Company to purchase the fund investor's interest in those investment funds. As such, the Company was required to establish a \$2.9 million reserve at the inception of the 2016 Term Loan Facility in order to pay the fund investor if either of the put options is exercised prior to the maturity of the 2016 Term Loan Facility. In addition, a \$2.4 million escrow account was established with respect to those systems in the 2016 Term Loan Portfolio that had not been placed in service as of the closing date, with a single disbursement of this amount to occur once such systems have been placed in service, subject to compliance with the 2016 Term Loan Portfolio concentration restrictions and limitations related to the 2016 Term Loan Portfolio. These reserves are classified as restricted cash and cash equivalents.

The obligations of the borrower are secured by a pledge of the membership interests in the borrower, all of the borrower's assets, and the assets of the borrower's directly owned subsidiaries acting as managing members of the underlying investment funds. In addition, the Company guarantees certain obligations of the borrower under the 2016 Term Loan Facility.

Interest expense for the 2016 Term Loan Facility was approximately \$5.8 million for the year ended December 31, 2016. No interest expense was incurred for the years ended December 31, 2015 and 2014.

#### ***Subordinated HoldCo Facility***

In March 2016, the Company entered into a financing agreement (the "Subordinated HoldCo Facility," formerly known as the "Term Loan Facility") pursuant to which it may borrow up to an aggregate principal amount of \$200.0 million of term loan borrowings from investment funds and accounts advised by HPS Investment Partners, formerly known as Highbridge Principal Strategies, LLC. The borrower under the Subordinated HoldCo Facility is Vivint Solar Financing Holdings, LLC, one of the Company's wholly owned subsidiaries. The initial \$75.0 million in borrowings are referred to as "Tranche A" borrowings. The remaining \$125.0 million aggregate principal amount in borrowings may be incurred in three installments of at least \$25.0 million aggregate principal amount prior to March 2017. Such subsequent borrowings are referred to as "Tranche B" borrowings. The Company incurred Tranche B borrowings in July 2016. As a result, the maturity date for all borrowings was extended to March 2020. The Company may not prepay any borrowings outside of required prepayments until March 2018, and any subsequent prepayments of principal are subject to a 3.0% fee. Subsequent to the date of the financial statements, the Company incurred the remaining borrowing capacity available under this arrangement. Borrowings under the Subordinated HoldCo Facility will be used for the construction and acquisition of solar energy systems.

Prior to the Tranche B borrowings being incurred, interest on principal borrowings under the Subordinated HoldCo Facility accrued at a floating rate of LIBOR plus 5.5%. Subsequent to the Tranche B borrowings being incurred, interest accrues at a floating rate of LIBOR plus 8.0%. Certain principal payments are due on a quarterly basis. Estimated principal payments due in the next 12 months are classified as the current portion of long-term debt, net of the related unamortized debt issuance costs.

The Subordinated HoldCo Facility includes customary events of default, conditions to borrowing and covenants, including covenants that restrict, subject to certain exceptions, the borrower's, and the guarantors' ability to incur indebtedness, incur liens, make investments, make fundamental changes to their business, dispose of assets, make certain types of restricted payments or enter into certain related party transactions. These restrictions do not impact the Company's ability to enter into investment funds, including those that are similar to those entered into previously. Additionally, the parties to the Subordinated HoldCo Facility must maintain certain consolidated and project subsidiary loan-to-value ratios and a consolidated debt service coverage ratio, with such covenants to be tested as of the last day of each fiscal quarter and upon each incurrence of borrowings. As of December 31, 2016, the Company was in compliance with such covenants. Each of the parties to the Subordinated HoldCo Facility has pledged assets not otherwise pledged under another existing debt facility as collateral to secure their obligations under the Subordinated HoldCo Facility. Vivint Solar Financing Holdings Parent, LLC, another of the Company's wholly owned subsidiaries and the parent company of the borrower and certain other of the Company's subsidiaries guarantee the borrower's obligations under the financing agreement.

Interest expense for the Subordinated HoldCo Facility was approximately \$7.3 million for the year ended December 31, 2016. No interest expense was recorded for the years ended December 31, 2015 and 2014. A \$7.6 million interest reserve amount was deposited in an interest reserve account with the administrative agent and is included in restricted cash and cash equivalents. The interest reserve increases as borrowings increase under the Subordinated HoldCo Facility.

### ***Bank of America, N.A. Aggregation Credit Facility***

In September 2014, the Company entered into an aggregation credit facility (as amended, the “Aggregation Facility”), pursuant to which the Company may borrow up to an aggregate of \$375.0 million and, upon the satisfaction of certain conditions and the approval of the lenders, up to an additional aggregate of \$175.0 million in borrowings with certain financial institutions for which Bank of America, N.A. is acting as administrative agent. The Company’s ability to draw on any available borrowing capacity under the Aggregation Facility is dependent on when it has solar energy system revenue to collateralize the borrowings.

Prepayments are permitted under the Aggregation Facility, and the principal and accrued interest on any outstanding loans mature in March 2018. Under the Aggregation Facility, interest on borrowings accrues at a floating rate equal to either (1) (a) LIBOR or (b) the greatest of (i) the Federal Funds Rate plus 0.5%, (ii) the administrative agent’s prime rate and (iii) LIBOR plus 1% and (2) a margin that varies between 3.25% during the period during which the Company may incur borrowings and 3.50% after such period. Interest is payable at the end of each interest period that the Company may elect as a term of either one, two or three months.

The borrower under the Aggregation Facility is Vivint Solar Financing I, LLC, one of the Company’s indirect wholly owned subsidiaries, which in turn holds the Company’s interests in the managing members in the Company’s existing investment funds. These managing members guarantee the borrower’s obligations under the Aggregation Facility. In addition, Vivint Solar Financing I Parent, LLC, has pledged its interests in the borrower, and the borrower has pledged its interests in the guarantors as security for the borrower’s obligations under the Aggregation Facility. The related solar energy systems are not subject to any security interest of the lenders, and there is no recourse to the Company in the case of a default.

The Aggregation Facility includes customary covenants, including covenants that restrict, subject to certain exceptions, the borrower’s, and the guarantors’ ability to incur indebtedness, incur liens, make investments, make fundamental changes to their business, dispose of assets, make certain types of restricted payments or enter into certain related party transactions. Among other restrictions, the Aggregation Facility provides that the borrower may not incur any indebtedness other than that related to the Aggregation Facility or in respect of permitted swap agreements, and that the guarantors may not incur any indebtedness other than that related to the Aggregation Facility or as permitted under existing investment fund transaction documents. These restrictions do not impact the Company’s ability to enter into investment funds, including those that are similar to those entered into previously. As of December 31, 2016, the Company was in compliance with such covenants.

The Aggregation Facility also contains certain customary events of default. If an event of default occurs, lenders under the Aggregation Facility will be entitled to take various actions, including the acceleration of amounts due under the Aggregation Facility and foreclosure on the interests of the borrower and the guarantors that have been pledged to the lenders.

Interest expense was approximately \$14.1 million, \$9.9 million and \$1.4 million for the years ended December 31, 2016, 2015 and 2014. As of December 31, 2016, the current portion of unamortized debt issuance costs of \$4.0 million was recorded in prepaid expenses and other current assets, and the long-term portion of unamortized debt issuance costs of \$0.9 million was recorded in other non-current assets, net. In addition, a \$3.9 million interest reserve amount was deposited in an interest reserve account with the administrative agent and is included in restricted cash and cash equivalents. The interest reserve increases as borrowings increase under the Aggregation Facility.

### ***Working Capital Credit Facility***

In March 2015, the Company entered into a revolving credit agreement (the “Working Capital Facility”) pursuant to which the Company may borrow up to an aggregate principal amount of \$150.0 million from certain financial institutions for which Goldman Sachs Lending Partners LLC is acting as administrative agent and collateral agent. Loans under the Working Capital Facility will be used to pay for the costs incurred in connection with the design and construction of solar energy systems, and letters of credit may be issued for working capital and general corporate purposes. In addition to the outstanding borrowings as of December 31, 2016, the Company had established letters of credit under the Working Capital Facility for up to \$13.5 million related to insurance contracts.

The Company has pledged the interests in the assets of the Company and its subsidiaries, excluding the Company’s existing investment funds, their managing members, the 2016 Term Loan Facility, the Subordinated HoldCo Facility, the Aggregation Facility and Solmetric, as security for its obligations under the Working Capital Facility. Prepayments are permitted under the Working Capital Facility, and the principal and accrued interest on any outstanding loans mature in March 2020. Interest accrues on borrowings at a floating rate equal to, dependent on the type of borrowing, (1) a rate equal to the Eurodollar Rate for the interest period divided by one minus the Eurodollar Reserve Percentage, plus a margin of 3.25%; or (2) the highest of (a) the Federal Funds Rate plus 0.50%, (b) the Citibank prime rate and (c) the one-month interest period Eurodollar rate plus 1.00%, plus a margin of 2.25%. Interest is payable dependent on the type of borrowing at the end of (1) the interest period that the Company may elect as a term and not to exceed three months, (2) quarterly or (3) at maturity of the Working Capital Facility.

The Working Capital Facility includes customary covenants, including covenants that restrict, subject to certain exceptions, the Company's ability to incur indebtedness, incur liens, make investments, make fundamental changes to its business, dispose of assets, make certain types of restricted payments or enter into certain related party transactions. Among other restrictions, the Working Capital Facility provides that the Company may not incur any indebtedness other than that related to the Working Capital Facility or permitted swap agreements. These restrictions do not impact the Company's ability to enter into investment funds, including those that are similar to those entered into previously. The Company is also required to maintain \$25.0 million in cash and cash equivalents and certain investments as of the last day of each quarter. As of December 31, 2016, the Company was in compliance with such covenants.

The Working Capital Facility also contains certain customary events of default. If an event of default occurs, lenders under the Working Capital Facility will be entitled to take various actions, including the acceleration of amounts then outstanding.

Interest expense for this facility was approximately \$6.1 million and \$2.3 million for the years ended December 31, 2016 and 2015. No interest expense was recorded for the year ended December 31, 2014. As of December 31, 2016, the current portion of unamortized debt issuance costs of \$0.5 million was recorded in prepaid expenses and other current assets, and the long-term portion of unamortized debt issuance costs of \$1.2 million was recorded in other non-current assets, net.

#### ***Credit Agreement***

In February 2016, a wholly owned subsidiary of the Company entered into a credit agreement (the "Credit Agreement") pursuant to which Goldman Sachs, through GSUIG Real Estate Member LLC, committed to lend an aggregate principal amount of up to \$3.0 million upon the satisfaction of certain conditions and the approval of the lenders. Proceeds from the Credit Agreement were used for the deployment of certain solar energy systems. Quarterly payments of principal and interest are due over a seven-year term. The seven-year term begins after the final completion date of the underlying solar energy systems. The Company did not draw upon the full borrowing capacity of the Credit Agreement, and no borrowing capacity remained as of December 31, 2016. As of December 31, 2016, the repayment term had not yet begun. Interest accrues on borrowings at a rate of 6.50%. Interest expense under the Credit Agreement was \$0.1 million for the year ended December 31, 2016. No interest expense was recorded for the years ended December 31, 2015 and 2014.

#### ***Bank of America, N.A. Term Loan Credit Facility***

In May 2014, the Company entered into a term loan credit facility for an aggregate principal amount of \$75.5 million with certain financial institutions for which Bank of America, N.A. acted as administrative agent. In September 2014 in connection with the entry into the Aggregation Facility, the Company repaid the then outstanding \$75.5 million in aggregate borrowings and terminated the agreement. Under this credit facility, the Company incurred interest on the term borrowings that accrued at a floating rate based on (1) LIBOR plus a margin equal to 4%, or (2) a rate equal to 3% plus the greatest of (a) the Federal Funds Rate plus 0.5%, (b) the administrative agent's prime rate and (c) LIBOR plus 1%. Interest expense from inception of this credit facility in May 2014 through payoff in September 2014 was approximately \$1.3 million.

The credit facility included customary covenants, including covenants that restricted, subject to certain exceptions, the Company's ability to incur indebtedness, incur liens, make investments, make fundamental changes to the Company's business, dispose of assets, make certain types of restricted payments or enter into certain related party transactions. As of the day on which borrowings under the credit facility were repaid, the Company was in compliance with all such covenants. In addition, the \$1.6 million interest reserve amount that was deposited in an interest reserve account with the administrative agent was released upon termination of the credit facility.

#### ***Revolving Lines of Credit — Related Party***

On October 9, 2014, the Company repaid \$58.8 million in aggregate borrowings and interest owed to Vivint under the 2013 Loan Agreement and the 2012 Loan Agreement defined below. These loan agreements were terminated upon repayment.

In May 2013, the Company entered into a Subordinated Note and Loan Agreement with APX Parent Holdco, Inc., pursuant to which the Company was able to incur up to \$20.0 million in revolver borrowings ("2013 Loan Agreement"). In January 2014, the Company amended and restated the 2013 Loan Agreement, pursuant to which the Company was able to incur an additional \$30.0 million in revolver borrowings, resulting in a total borrowing capacity of \$50.0 million, with interest on the borrowings accruing at a rate of 12% per year. Accrued interest was paid-in-kind through additions to the principal amount on a semi-annual basis. The Company incurred and repaid revolver borrowings in 2014. Interest expense was \$3.1 million for the year ended December 31, 2014.

In December 2012 and amended in July 2013, the Company entered into a Subordinated Note and Loan Agreement with Vivint pursuant to which the Company could incur revolver borrowings of up to \$20.0 million (“2012 Loan Agreement”). Prior to 2014, the Company incurred \$20.0 million in revolver borrowings. Interest accrued on these borrowings at 7.5% per year, and accrued interest was paid-in-kind through additions to the principal amount on a semi-annual basis. Interest expense was \$ 1.3 million for the year ended December 31, 2014.

**Interest Expense and Amortization of Debt Issuance Costs**

For the years ended December 31, 2016, 2015 and 2014, total interest expense incurred under debt obligations was \$33.4 million, \$12.2 million and \$9.3 million, of which \$6.5 million, \$3.5 million and \$2.2 million was amortization of debt issuance costs.

**Scheduled Maturities of Debt**

The scheduled maturities of debt as of December 31, 2016 are as follows (in thousands):

2017	\$	6,469
2018		193,652
2019		6,611
2020		286,795
2021		277,061
Thereafter		1,264
<b>Total</b>	<b>\$</b>	<b>771,852</b>

**12. Derivative Financial Instruments**

Derivative financial instruments at fair value consisted of the following (in thousands):

	<b>December 31, 2016</b>	<b>Balance Sheet Location</b>
<b>Asset derivatives designated as hedging instruments:</b>		
Interest rate swaps	\$ 14,317	Other non-current assets
<b>Total derivatives</b>	<b>\$ 14,317</b>	

The Company is exposed to interest rate risk relating to its outstanding debt facilities that have variable interest rates. In connection with closing the Term Loan Facility in August 2016, the Company entered into interest rate swaps with an aggregate notional amount of \$270.0 million to offset changes in the variable interest rate for a portion of the Company’s LIBOR-indexed floating-rate loans. The notional amount of the interest rate swaps decreases through June 30, 2028 to match the Company’s estimated monthly and quarterly principal payments on its loans through that date. The Company had no other derivative financial instruments prior to entering into these interest rate swaps. The Company records derivatives at fair value.

The interest rate swaps are designated as cash flow hedges. The amount of accumulated other comprehensive income (“AOCI”) expected to be reclassified to interest expense within the next 12 months is approximately \$0.1 million. The Company will discontinue the hedge accounting designation of these derivatives if interest payments on LIBOR-indexed floating rate loans compared to the payments under the derivatives are no longer highly effective.

The effect of derivative financial instruments on the consolidated statements of comprehensive income (loss) and the consolidated statements of operations, before tax effect, consisted of the following (in thousands):

	Year Ended December 31,		Location of Gain (Loss)
	2016	2015	
<b>Gains recognized in OCI - effective portion:</b>			
Interest rate swaps	\$ 13,133	\$ —	
Total	<u>\$ 13,133</u>	<u>\$ —</u>	
<b>Losses reclassified from AOCI into income - effective portion:</b>			
Interest rate swaps	\$ (407)	\$ —	Interest expense
Total	<u>\$ (407)</u>	<u>\$ —</u>	
<b>Gains recognized in income - ineffective portion:</b>			
Interest rate swaps	\$ 1,591	\$ —	Other (income) expense
Total	<u>\$ 1,591</u>	<u>\$ —</u>	

### 13. Investment Funds

As of December 31, 2016, the Company had formed 20 residential investment funds for the purpose of funding the purchase of solar energy systems under long-term customer contracts. The Company has aggregated the financial information of the investment funds in the table below. The aggregate carrying value of these funds' assets and liabilities (after elimination of intercompany transactions and balances) in the Company's consolidated balance sheets were as follows (in thousands):

	December 31, 2016	December 31, 2015
<b>Assets</b>		
Current assets:		
Cash and cash equivalents	\$ 23,190	\$ 12,014
Accounts receivable, net	3,958	3,063
Prepaid expenses and other current assets	761	121
Total current assets	27,909	15,198
Solar energy systems, net	1,273,813	990,609
Other non-current assets, net	1,781	18
Total assets	<u>\$ 1,303,503</u>	<u>\$ 1,005,825</u>
<b>Liabilities</b>		
Current liabilities:		
Distributions payable to non-controlling interests and redeemable non-controlling interests	\$ 16,176	\$ 11,347
Current portion of deferred revenue	8,148	4,824
Accrued and other current liabilities	4,458	3,869
Total current liabilities	28,782	20,040
Deferred revenue, net of current portion	33,536	43,094
Other non-current liabilities	1,875	3,283
Total liabilities	<u>\$ 64,193</u>	<u>\$ 66,417</u>

The Company consolidates the investment funds in which it has an equity interest, and all intercompany balances and transactions between the Company and the investment funds are eliminated in the consolidated financial statements. The Company determined that each of these investment funds meets the definition of a VIE. The Company uses a qualitative approach in assessing the consolidation requirement for VIEs that focuses on determining whether the Company has the power to direct the activities of the VIE that most significantly affect the VIE's economic performance and whether the Company has the obligation to absorb losses or the right to receive benefits that could potentially be significant to the VIE.

The Company has considered the provisions within the contractual arrangements that grant it power to manage and make decisions that affect the operation of these VIEs, including determining the solar energy systems and associated long-term customer contracts to be sold or contributed to the VIE, and installation, operation and maintenance of the solar energy systems. The Company considers that the rights granted to the other investors under the contractual arrangements are more protective in nature rather than participating rights. As such, the Company has determined it is the primary beneficiary of the VIEs for all periods presented. The Company evaluates its relationships with the VIEs on an ongoing basis to ensure that it continues to be the primary beneficiary.

Under the related agreements, cash distributions of income and other receipts by the fund, net of agreed-upon expenses and estimated expenses, tax benefits and detriments of income and loss, and tax benefits of tax credits, are assigned to the fund investor and Company's subsidiary as specified in contractual arrangements. As such, the cash held in investment funds is not readily available to the Company due to the timing of distributions. Certain of these fund arrangements have call and put options to acquire the investor's equity interest as specified in the contractual agreements.

Fund investors for three of the funds are managed indirectly by the Sponsor and are considered related parties. As of December 31, 2016 and 2015, the cumulative total of contributions into the VIEs by all investors was \$1,050.9 million and \$773.0 million. Of these contributions, a cumulative total of \$110.0 million was contributed by related parties in prior periods. All funds except one were operational as of December 31, 2016.

#### ***C&I Investment Fund***

In June 2016, the Company terminated the C&I investment fund that had been initiated in 2015. No projects were purchased by the fund prior to termination. As such, the Company did not have any assets or liabilities associated with the fund. In 2016, the Company paid a fee of \$1.0 million to the C&I fund investor to terminate the fund and release any and all claims.

#### ***Lease Pass-Through Financing Obligation***

During 2015, the Company entered into a lease pass-through fund arrangement under which the Company contributed solar energy systems and the investor contributed cash. A wholly owned subsidiary of the Company entered into a master lease arrangement to lease the solar energy systems and the associated PPAs or Solar Leases to the fund investor. The Company's subsidiary made a tax election to pass-through the ITCs that accrue to the solar energy systems to the fund investor, who as the legal lessee of the property is allowed to claim the ITCs under Section 50(d)(5) of the Internal Revenue Code and the related regulations. The related solar energy systems had a net carrying value of \$60.5 million and \$64.7 million as of December 31, 2016 and 2015.

Under the arrangement, the fund investor made large upfront payments to one of the Company's wholly owned subsidiaries and is obligated to make subsequent periodic payments. The Company allocated a portion of the aggregate payments received from the fund investor to the estimated fair value of the assigned ITCs, and the balance to the future customer lease payments that were also assigned to the investor. The fair value of the ITCs was estimated by multiplying the ITC rate of 30% by the fair value of the systems that were sold to the lease pass-through fund. The fair value of the systems was determined by independent appraisals. The Company's subsidiary has an obligation to ensure the solar energy systems are in service and operational for a term of five years to avoid any recapture of the ITCs. Accordingly, the Company recognizes revenue as the recapture provisions lapse assuming all other revenue recognition criteria have been met. The amounts allocated to the ITCs were initially recorded as deferred revenue, and subsequently, one-fifth of the amounts allocated to the ITCs is recognized as revenue from operating leases and solar energy systems incentives based on the anniversary of each solar energy system's placed in service date.

The Company accounts for the residual of the large upfront payments, net of amounts allocated to the ITCs, and subsequent periodic payments received from the fund investor as a borrowing by recording the proceeds received as a lease pass-through financing obligation, which will be repaid through customer payments that will be received by the investor. Under this approach, the Company continues to account for the arrangement with the customers in its consolidated financial statements, whether the cash generated from the customer arrangements is received by the Company's wholly subsidiary or paid directly to the fund investor. A portion of the amounts received by the fund investor from customer payments is applied to reduce the lease pass-through financing obligation, and the balance is allocated to interest expense. The customer payments are recognized into revenue based on cash receipts during the period as required by GAAP. Interest is calculated on the lease pass-through financing obligation using the effective interest rate method. The effective interest rate is the interest rate that equates the present value of the cash amounts to be received by a fund investor over the master lease term with the present value of the cash amounts paid by the investor to the Company, adjusted for any payments made by the Company. Any additional master lease prepayments by the investor would be recorded as an additional lease pass-through financing obligation, while any refunds of master lease prepayments would reduce the lease pass-through financing obligation.

The lease pass-through financing obligation is nonrecourse . In 2016, a one-time future lease payment reset mechanism occurred that resulted in a return of a portion of the upfront payment to the investor of \$1.8 million. As of December 31, 2016 and 2015 the Company had recorded financing liabilities of \$ 40.4 million and \$47.3 million related to this fund arrangement , of which \$34.2 million and \$40.1 million was deferred revenue and \$6.2 million and \$7.2 million was the lease pass-through financing obligation recorded in other liabilities .

As of December 31, 2016, the future minimum lease payments to be received from the fund investor for each of the next five years and thereafter were as follows (in thousands):

**Years Ending December 31,**

2017	\$	2,953
2018		2,999
2019		3,045
2020		3,091
2021		3,138
Thereafter		7,184
Total minimum lease payments to be received	\$	<u>22,410</u>

The fund investor is responsible for services such as warranty support, accounting, lease servicing and performance reporting, which have been outsourced to the Company under administrative and maintenance service agreements.

***Guarantees***

With respect to the investment funds, the Company and the fund investors have entered into guaranty agreements under which the Company guarantees the performance of certain financial obligations of its subsidiaries to the investment funds. These guarantees do not result in the Company being required to make payments to the fund investors unless such payments are mandated by the investment fund governing documents and the investment fund fails to make such payment.

The Company is contractually obligated to make certain VIE investors whole for losses that the investors may suffer in certain limited circumstances resulting from the disallowance or recapture of investment tax credits. The Company has concluded that the likelihood of a significant recapture event is remote and consequently has not recorded any liability in the consolidated financial statements for any potential recapture exposure. The maximum potential future payments that the Company could have to make under this obligation would depend on the IRS successfully asserting upon audit that the fair market values of the solar energy systems sold or transferred to the funds as determined by the Company exceeded the allowable basis for the systems for purposes of claiming ITCs. The fair market values of the solar energy systems and related ITCs are determined and the ITCs are allocated to the fund investors in accordance with the funds governing agreements. Due to uncertainties associated with estimating the timing and amounts of distributions, the likelihood of an event that may trigger repayment, forfeiture or recapture of ITCs to such investors, and the fact that the Company cannot determine how the IRS will evaluate system values used in claiming ITCs, the Company cannot determine the potential maximum future payments that are required under these guarantees.

From time to time, the Company incurs penalties for non-performance, which non-performance may include delays in the installation process and interconnection to the power grid of solar energy systems and other factors. Based on the terms of the investment fund agreements, the Company will either reimburse a portion of the fund investor's capital or pay the fund investor a non-performance fee. Distributions paid to reimburse fund investors totaled \$2.7 million, \$5.0 million and zero for the years ended December 31, 2016, 2015 and 2014. As of December 31, 2016, the Company accrued an estimated \$8.3 million in distributions to reimburse fund investors a portion of their capital contributions primarily due to a delay in solar energy systems being interconnected to the power grid.

As a result of the guaranty arrangements in certain funds, the Company was required to hold a minimum cash balance of \$10.0 million as of December 31, 2016 and 2015, which is classified as restricted cash and cash equivalents.

## 14 . Redeemable Non-Controlling Interests and Equity and Preferred Stock

### *Common Stock*

The Company has 1.0 billion authorized shares of common stock. As of December 31, 2016 and 2015, the Company had 110.2 million and 106.6 million shares of common stock issued and outstanding.

The Company had shares of common stock reserved for issuance as follows (in thousands):

	<u>December 31,</u> <u>2016</u>	<u>December 31,</u> <u>2015</u>
Shares available for grant under equity incentive plans	11,596	12,267
Restricted stock units issued and outstanding	7,964	930
Stock options issued and outstanding	4,184	9,277
Long-term incentive plan	2,706	3,382
Total	<u>26,450</u>	<u>25,856</u>

On October 6, 2014, the Company closed its initial public offering in which 20.6 million shares of its common stock were sold at a public offering price of \$16.00 per share, which generated net proceeds, after deducting underwriting discounts and commissions and \$8.8 million in offering expenses, of \$300.6 million.

In August 2014, the Company issued and sold an aggregate of 2.7 million shares of common stock to 313 for \$10.667 per share for aggregate proceeds of \$28.5 million. In September 2014, the Company issued and sold an aggregate of 7.0 million additional shares to 313 and two of its directors for \$10.667 per share for aggregate gross proceeds of \$75.0 million. With respect to the shares sold to the two directors, the Company recorded \$14.8 million of stock-based compensation expense. Regarding the shares of common stock sold to 313, the Company recorded \$43.4 million as a deemed distribution within additional paid-in capital.

### *Non-Controlling Interests and Redeemable Non-Controlling Interests*

Six of the investment funds include a right for the non-controlling interest holder to require the Company's wholly owned subsidiary to purchase all of its membership interests in the fund (each, a "Put Option"). The purchase price for the fund investor's interest in the six investment funds under the Put Options is the greater of fair market value at the time the option is exercised and a specified amount, ranging from \$0.7 million to \$4.1 million. The Put Options for these six investment funds are exercisable beginning on the date that specified conditions are met for each respective fund. None of the Put Options are expected to become exercisable prior to 2019.

Because the Put Options represent redemption features that are not solely within the control of the Company, the non-controlling interests in these investment funds are presented outside of permanent equity. Redeemable non-controlling interests are recorded using the greater of their carrying value at each reporting date (which is impacted by attribution under the HLBV method) or their estimated redemption value in each reporting period.

In all investment funds except one, the Company's wholly owned subsidiary has the right to require the non-controlling interest holder to sell all of its membership units to the Company's wholly owned subsidiary (each, a "Call Option"). The purchase price for the fund investors' interests under the Call Options varies by fund, but is generally the greater of a specified amount, which ranges from approximately \$0.7 million to \$7.0 million, the fair market value of such interest at the time the option is exercised, or an amount that causes the fund investor to achieve a specified return on investment. The Call Options are exercisable beginning on the date that specified conditions are met for each respective fund. None of the Call Options are expected to become exercisable prior to 2019.

### *Preferred Stock*

In October 2014, the Company authorized 10.0 million shares of preferred stock that is issuable in series. As of December 31, 2016 and 2015, there were no series of preferred stock issued or designated.

## 15. Equity Compensation Plans

### *Equity Incentive Plans*

#### *2014 Equity Incentive Plan*

In September 2014, the Company adopted the 2014 Equity Incentive Plan (the “2014 Plan”). Under the 2014 Plan, the Company may grant stock options, restricted stock, restricted stock units, stock appreciation rights, performance units, performance shares and performance awards to its employees, directors and consultants, and its parent and subsidiary corporations’ employees and consultants.

As of December 31, 2016, a total of 11.6 million shares of common stock were available for grant under the 2014 plan, subject to adjustment in the case of certain events. In addition, any shares that otherwise would be returned to the Omnibus Plan (as defined below) as the result of the expiration or termination of stock options may be added to the 2014 Plan. The number of shares available for issuance under the 2014 Plan is subject to an annual increase on the first day of each year, equal to the least of 8.8 million shares, 4% of the outstanding shares of common stock as of the last day of the immediately preceding fiscal year and an amount of shares as determined by the Company. In accordance with the annual increase, an additional 4.3 million shares were reserved for issuance at the beginning of 2016 under the 2014 Plan.

As of December 31, 2016, there were 0.7 million time-based stock options, 6.3 million restricted stock units (“RSUs”), and 1.7 million performance share units (“PSUs”) granted and outstanding under the 2014 Plan. The time-based options are subject to ratable time-based vesting over three to four years. The RSUs are subject to ratable time-based vesting over one to four years. The PSUs vest quarterly or annually over one to four years subject to individual participants’ achievement of quarterly or annual performance goals.

#### *2013 Omnibus Incentive Plan; Non-plan Option Grant*

The Company’s 2013 Omnibus Incentive Plan (the “Omnibus Plan”) was terminated in connection with the adoption of the 2014 Plan in September 2014, and accordingly no additional shares are available for issuance under the Omnibus Plan. The Omnibus Plan will continue to govern outstanding awards granted under the plan.

During 2014 and 2013, the Company granted stock options of which one-third are subject to ratable time-based vesting over a five-year period and two-thirds are subject to vesting upon certain performance conditions and the achievement of certain investment return thresholds by 313. Certain performance stock options were modified as described in the section captioned “—Equity Award Modifications.” The stock options have a ten-year contractual period.

#### *Long-term Incentive Plan*

In July 2013, the Company’s board of directors approved 4.1 million shares of common stock for six Long-term Incentive Plan Pools (“LTIP Pools”) that comprise the 2013 Long-term Incentive Plan (the “LTIP”). The purpose of the LTIP was to attract and retain key service providers and strengthen their commitment to the Company by providing incentive compensation measured by reference to the value of the shares of the Company’s common stock. Eligible participants include nonemployee direct sales personnel who sell the solar energy system contracts, employees that install and maintain the solar energy systems and employees that recruit new employees to the Company.

Based on the terms of the agreement, participants are allocated a portion of the LTIP Pools relative to the performance of other participants. LTIP awards to employees are considered to be granted when the allocation of the LTIP Pools to each participant is fixed, which occurs once performance and service conditions are met. Nonemployee awards are granted and will be measured on the date on which the performance is complete, which is the date the service or other performance conditions are achieved. The Company recognizes stock-based compensation expense based on the lowest aggregate fair value of the non-employee awards at the reporting date.

As of December 31, 2016, 1.1 million shares of common stock had been awarded to participants under the LTIP and 0.3 million shares had been returned to the 2014 Plan. As of December 31, 2016, 2.7 million shares remained outstanding.

## Equity Award Modifications

### Current CEO Equity Awards

In May 2016, the Company appointed an interim CEO. In December 2016, the interim CEO was appointed as the permanent CEO. In connection with his interim appointment, the CEO was awarded 1.0 million stock options pursuant to the 2014 Plan, which were then cancelled and replaced with 0.5 million RSUs. Either award vested on the first anniversary of his start date, or if earlier, on the date on which a successor CEO was appointed. The cancellation of stock options and grant of RSUs was accounted for as a modification; however, there was no incremental value arising from the modification. As a result of the CEO's permanent appointment, the RSUs became fully vested and all remaining expense was accelerated and recognized during the year ended December 31, 2016.

### Former CEO Resignation

In May 2016, the Company accepted the resignation of its former CEO. Pursuant to a separation agreement, the Company accelerated the vesting of 0.2 million of the former CEO's stock options. Further, all of the CEO's vested stock options were modified such that they will remain exercisable until the third anniversary of his termination date. As a result of these modifications, the Company recorded incremental stock-based compensation expense of \$0.7 million during the year ended December 31, 2016.

### Omnibus Plan Performance Options

In May 2016, the Company modified the unvested Omnibus Plan performance options (the "Tier II Options"). The modified Tier II Options vest annually over three years with the first vesting date occurring in May 2017. The original performance condition for the Tier II Options remains in effect and will trigger immediate vesting of the Tier II Options if it is met prior to the three-year time-based vesting period. Due to the modification, the Company now considers the Tier II Options to be time-based options. Additionally, the Company will record incremental stock-based compensation expense of approximately \$1.5 million over the three-year time-based vesting period, subject to immediate acceleration if the performance condition is met prior to the three-year time-based vesting period.

## Stock Options

### Stock Option Activity

Stock options are granted under the 2014 Plan and Omnibus Plan as described above. Stock option activity for the year ended December 31, 2016 was as follows (in thousands, except term and per share amounts):

	Shares Underlying Options	Weighted- Average Exercise Price	Weighted- Average Remaining Contractual Term	Aggregate Intrinsic Value
Outstanding—December 31, 2015	9,277	\$ 1.36		\$ 76,488
Granted	1,640	3.09		
Exercised	(2,679)	1.08		
Cancelled	(4,054)	1.95		
Outstanding—December 31, 2016	4,184	\$ 1.64	7.3	\$ 4,876
Options vested and exercisable—December 31, 2016	1,846	\$ 1.37	6.8	\$ 2,562
Options vested and expected to vest—December 31, 2016	3,868	\$ 1.62	7.2	\$ 4,616

The following table summarizes stock option activity by range of exercise price as of December 31, 2016 (number of awards in thousands):

Range of Exercise Price	Awards Outstanding			Awards Exercisable	
	Number of Awards Outstanding	Weighted-Average Remaining Contractual Life	Weighted-Average Exercise Price	Number of Awards Exercisable	Weighted-Average Exercise Price
\$0.00 - \$1.00	2,002	6.6	\$ 1.00	1,080	\$ 1.00
\$1.01 - \$2.00	1,418	7.1	1.30	710	1.30
\$2.01 - \$10.00	685	9.8	2.98	21	4.14
\$10.01 - \$16.00	79	8.3	12.63	35	12.64
Total	4,184	7.3	\$ 1.64	1,846	\$ 1.37

The weighted-average grant date fair value of time-based options granted during the years ended December 31, 2016, 2015 and 2014 was \$2.15, \$9.39 and \$4.69 per share. No performance-based stock options were granted during the years ended December 31, 2016 and 2015. The weighted-average grant date fair value of performance-based options granted during the year ended December 31, 2014 was \$2.80 per share. The total intrinsic value of options exercised for the years ended December 31, 2016 and 2015 was \$5.6 million and \$7.4 million. There were no options exercised for the year ended December 31, 2014. Intrinsic value is calculated as the difference between the exercise price of the underlying options and the fair value of the common stock for the options that had exercise prices that were lower than the fair value per share of the common stock.

The total fair value of options vested for the years ended December 31, 2016, 2015 and 2014 was \$1.6 million, \$14.8 million and \$1.0 million.

#### *Determination of Fair Value of Stock Options*

The Company estimates the fair value of the time-based stock options granted on each grant date using the Black-Scholes-Merton option pricing model and applies the accelerated attribution method for expense recognition. The Company estimated the fair value and the vesting period of the performance-based options granted in 2014 under the Omnibus Plan on each grant date using the Monte Carlo simulation method. No performance-based options were granted in 2016 or 2015.

The fair values using the Black-Scholes-Merton method were estimated on each grant date using the following weighted-average assumptions:

	Year Ended December 31,		
	2016	2015	2014
Expected term (in years)	5.8	6.2	6.2
Volatility	83.1%	89.0%	87.1%
Risk-free interest rate	1.7%	1.8%	1.9%
Dividend yield	0.0%	0.0%	0.0%

Use of the Black-Scholes-Merton option-pricing model requires the input of highly subjective assumptions, including (1) the fair value of the underlying common stock, (2) the expected term of the option, (3) the expected volatility of the price of the Company's common stock, (4) risk-free interest rates and (5) the expected dividend yield of the Company's common stock. The assumptions used in the option-pricing model represent management's best estimates. These estimates involve inherent uncertainties and the application of management's judgment. If factors change and different assumptions are used, the Company's stock-based compensation expense could be materially different in the future.

These assumptions and estimates are as follows:

- Fair Value of Common Stock.*** As the Company's common stock is publicly traded, the fair value of the Company's common stock is the close price on the grant date. Prior to the initial public offering, the fair value of common stock was estimated. The fair values of the common stock underlying the Company's stock-based awards were determined by the Company's board of directors, which considered numerous objective and subjective factors to determine the fair value of common stock at each grant date. These factors included, but were not limited to, the lack of marketability of the Company's common stock and developments in the business. A significant factor considered for awards granted approaching the initial public offering was the expected offering price.

- *Expected Term.* The expected term represents the period that the Company's option awards are expected to be outstanding. The Company utilized the simplified method in estimating the expected term of its options granted. The simplified method deems the term to be the average of the time to vesting and the contractual life of the options.
- *Expected Volatility.* The volatility is derived from the average historical stock volatilities of the Company and a peer group of public companies within the Company's industry that it considers to be comparable to its business over a period equivalent to the expected term of the stock-based grants. The Company did not rely on implied volatilities of traded options in the industry peers' common stock because of the low volume of activity.
- *Risk-Free Interest Rate.* The risk-free interest rate is based on the U.S. Treasury yield curve in effect at the time of grant for zero-coupon U.S. Treasury notes with maturities approximately equal to the option's expected term.
- *Dividend Yield.* The Company has never declared or paid any cash dividends and does not presently plan to pay cash dividends in the foreseeable future. Consequently, the Company used an expected dividend yield of zero.

The Company estimates potential forfeitures of stock grants and adjusts stock-based compensation expense accordingly. The estimate of forfeitures will be adjusted over the requisite service period to the extent that actual forfeitures differ, or are expected to differ, from such estimates. Changes in estimated forfeitures were recognized in the period of change.

The fair values using the Monte Carlo Simulation method were estimated on each grant date using the following weighted-average assumptions:

	<u>Year Ended December 31, 2014</u>
Volatility	80.0%
Risk-free interest rate	2.7%

The assumptions used in the Monte Carlo Simulation were determined in a manner consistent with the assumptions for the Black-Scholes-Merton model. No performance-based options were granted in the years ended December 31, 2016 and 2015. As such, no Monte Carlo Simulation inputs were required for 2016 and 2015.

#### ***Restricted Stock Units***

RSUs are granted under the 2014 Plan and the LTIP as described above. RSU activity for the year ended December 31, 2016 was as follows (awards in thousands):

	<u>Number of Awards</u>	<u>Weighted- Average Grant Date Fair Value</u>
Outstanding at December 31, 2015	930	\$ 12.84
Granted	9,180	2.68
Vested	(990)	6.97
Forfeited	(1,156)	4.00
Outstanding at December 31, 2016	<u>7,964</u>	<u>\$ 3.14</u>

The total fair value of RSUs vested was \$4.8 million and \$9.0 million for the years ended December 31, 2016 and 2015. No RSUs vested in the year ended December 31, 2014. The Company determined the fair value of RSUs granted on each grant date based on the fair value of the Company's common stock on the grant date.

### Stock-Based Compensation Expense

Stock-based compensation was included in operating expenses as follows (in thousands):

	Year Ended December 31,		
	2016	2015	2014
Cost of revenue	\$ 2,428	\$ 3,068	\$ 1,105
Sales and marketing	2,980	10,737	860
General and administrative	5,716	11,310	21,722
Research and development	(510)	489	—
Total stock-based compensation	\$ 10,614	\$ 25,604	\$ 23,687

During the year ended December 31, 2016, several of the Company's senior management, including the Company's former CEO, left the Company. The Company reversed all stock-based compensation expense for awards that were forfeited by the terminated employees, which reduced stock-based compensation expense for the year ended December 31, 2016 below historical levels. As a result of these and other terminations, the Company increased its forfeiture rate during the year ended December 31, 2016, which is reflected in stock-based compensation expense for the year ended December 31, 2016.

The income tax benefit related to share-based compensation expense was \$5.5 million and \$4.8 million for the years ended December 31, 2016 and 2015. There was no income tax benefit related to share-based compensation recognized in the year ended December 31, 2014 as there were no option exercises or RSU releases.

In September 2014, the Company recorded \$14.8 million of stock-based compensation expense in general and administrative expense related to the sale of shares of common stock to two of its directors as discussed in Note 14 —Redeemable Non-Controlling Interests and Equity and Preferred Stock .

Unrecognized stock-based compensation expense, net of estimated forfeitures, for time-based stock options, performance-based stock options, RSUs and PSUs as of December 31, 2016 was as follows (in thousands, except years):

	Unrecognized Stock-Based Compensation Expense	Weighted- Average Period of Recognition
Time-based stock options	\$ 2,693	2.8 years
RSUs and PSUs	12,536	1.8 years
Total unrecognized stock-based compensation expense as of December 31, 2016	\$ 15,229	

### 16. Income Taxes

Income tax expense (benefit) is composed of the following (in thousands):

	Year Ended December 31,		
	2016	2015	2014
Current:			
Federal	\$ (30,301)	\$ 52,578	\$ 1,358
State	5,623	15,275	4,035
Total current (benefit) expense	(24,678)	67,853	5,393
Deferred:			
Federal	31,122	(46,364)	(9,636)
State	989	(11,752)	(2,827)
Total deferred expense (benefit)	32,111	(58,116)	(12,463)
Income tax expense (benefit)	\$ 7,433	\$ 9,737	\$ (7,070)

The Company operates in only one federal jurisdiction, the United States. The following table presents a reconciliation of the income tax benefit computed at the statutory federal rate and the Company's income tax expense (benefit) (in thousands):

	Year Ended December 31,		
	2016	2015	2014
Income tax benefit—computed as 35% of pretax loss	\$ (82,286)	\$ (85,235)	\$ (60,546)
Effect of non-controlling interests and redeemable non-controlling interests	91,183	93,221	47,962
Goodwill impairment	12,810	—	—
Amortization of prepaid tax asset	11,750	6,661	2,199
Effect of nondeductible expenses	6,942	1,232	6,617
State and local income tax expenses (net of federal benefit)	4,298	2,289	616
Effect of domestic production activities deduction	(473)	(4,699)	—
Effect of tax credits	(36,328)	(4,106)	(3,939)
Other	(463)	374	21
Income tax expense (benefit)	<u>\$ 7,433</u>	<u>\$ 9,737</u>	<u>\$ (7,070)</u>

Deferred income taxes reflect the impact of temporary differences between assets and liabilities for financial reporting purposes and the amounts recognized for income tax reporting purposes, net operating loss carryforwards and other tax credits measured by applying currently enacted tax laws. The significant components of the Company's deferred tax assets and liabilities were as follows (in thousands):

	December 31,	
	2016	2015
Deferred tax assets:		
Accruals and reserves	\$ 8,523	\$ 4,582
Stock-based compensation	7,791	9,068
Tax credits	1,744	—
Transaction costs	—	4,216
Other	351	395
Gross deferred tax assets	<u>18,409</u>	<u>18,261</u>
Valuation allowance	(204)	(212)
Net deferred tax assets	<u>18,205</u>	<u>18,049</u>
Deferred tax liabilities:		
Investment in solar funds	(368,536)	(220,803)
Depreciation and amortization	(38,116)	(13,004)
Interest rate swaps	(5,732)	—
Accruals and reserves	(1,039)	(275)
Gross deferred tax liabilities	<u>(413,423)</u>	<u>(234,082)</u>
Net deferred tax liabilities	<u>\$ (395,218)</u>	<u>\$ (216,033)</u>

The Company sells solar energy systems under long-term customer contracts to substantially all of the investment funds for income tax purposes. As the investment funds are consolidated by the Company, the gain on the sale of the solar energy systems is not recognized in the consolidated financial statements. However, this gain is recognized for tax reporting purposes. Since these transactions are intercompany sales for GAAP purposes, any tax expense incurred related to these intercompany sales is deferred and amortized over the estimated useful life of the underlying solar energy systems, which has been estimated to be 30 years. Accordingly, the Company has recorded a prepaid tax asset, net of \$419.5 million and \$277.5 million as of December 31, 2016 and 2015.

The future reversal of deferred tax liabilities is expected to produce a sufficient source of future taxable income of the necessary character and in the necessary periods and jurisdictions to support the realization of the deferred tax assets. As such, no valuation allowance is required except for as noted below.

The Company had net operating loss carryforwards of approximately \$1.1 million and \$1.3 million related to state (the "NOLs"), available to offset future taxable income as of December 31, 2016 and 2015. The NOLs expire in varying amounts from 2029 through 2034 for state tax purposes if unused. As of December 31, 2016 and 2015, the Company recognized a valuation allowance of \$0.2 million for the existing state NOLs and other existing state tax attributes due to state-imposed limitations on their utilization.

The Company reported federal business tax credits, primarily composed of federal investment tax credits, of \$36.3 million and \$4.1 million for the years ended December 31, 2016 and 2015. The Company accounts for its federal business tax credits as a reduction of income tax expense in the year in which the credits arise. As of December 31, 2016, the Company had \$33.2 million of federal income tax refunds receivable which were recorded in prepaid expenses and other current assets. The Company did not have any federal income tax refunds receivable as of December 31, 2015.

### Uncertain Tax Positions

As of December 31, 2016 and 2015, the Company had no unrecognized tax benefits. There were no interest and penalties accrued for any uncertain tax positions as of December 31, 2016 and 2015. The Company does not have any tax positions for which it is reasonably possible the total amount of gross unrecognized benefits will increase or decrease within 12 months of the year ended December 31, 2016. The Company is subject to taxation and files income tax returns in the United States and various state and local jurisdictions. Substantially all of the Company's federal, state and local income tax returns since inception are still subject to audit.

### 17. Related Party Transactions

The Company's operations included the following expenses from related party transactions (in thousands):

	Year Ended December 31,		
	2016	2015	2014
Cost of revenue—operating leases and incentives	\$ 3,311	\$ 6,054	\$ 7,834
Sales and marketing	2,610	2,133	2,312
General and administrative	749	5,241	5,909
Interest expense (1)	—	—	4,481

(1) Includes revolving lines of credit—related party. See Note 11—Debt Obligations.

### Vivint Services

In 2014, and as subsequently amended as noted below, the Company negotiated and entered into a number of agreements with Vivint related to services and other support that Vivint provides to the Company.

These agreements with Vivint included the following:

- *Master Intercompany Framework Agreement*. This agreement establishes a framework for the relationship between the Company and Vivint, including master terms regarding the protection of each other's confidential information, and master procedural terms, such as notice procedures, restrictions on assignment, interpretive provisions, governing law and dispute resolution.
- *Non-Competition Agreement*. This agreement defines each company's current areas of business and competitors, and the Company and Vivint agree not to directly or indirectly engage in the other's business through September 30, 2017.
- *Transition Services Agreement*. Pursuant to this agreement Vivint provides the Company various enterprise services. Under this agreement, Vivint agreed to provide the services at the same degree of care and diligence that it takes in performing services for its own operations. These services include information technology and infrastructure, employee benefits and certain other services. In exchange, the Company pays Vivint for the services, which represents Vivint's good faith estimate of their full cost of providing the services to the Company, without markup or surcharge.
- *Marketing and Customer Relations Agreement*. This agreement governs various cross-marketing initiatives between the companies. In November 2016, Vivint and the Company amended this agreement to update the terms governing sales lead generation and provides for a formal cross-selling pilot program between the companies. The terms of the schedules defined in the amendment range from three months to three years.
- *Bill of Sale*. Under this agreement, Vivint transferred certain assets such as office equipment from Vivint to the Company.
- *Trademark License Agreement*. Pursuant to this agreement, the licensor, a subsidiary majority-owned by Vivint and minority-owned by the Company, granted to the Company a royalty-free exclusive license to the trademark "VIVINT SOLAR" in the field of selling renewable energy or energy storage products and services. The agreement is perpetual but may be terminated voluntarily by the Company or by the licensor upon certain specified termination events. Vivint retains ownership of the Vivint trademark and the Company has no right to use "Vivint" except as part of "VIVINT SOLAR".

The Company incurred fees under these agreements and its ongoing relationship with Vivint of \$4.3 million and \$8.0 million for the years ended December 31, 2016 and 2015 and \$2.2 million in 2014 following the Company's initial public offering. These amounts reflect the level of services provided by Vivint on behalf of the Company.

In June 2013, the Company entered into a full-service sublease agreement (the "Sublease Agreement") whereby Vivint provided various administrative services, such as management, human resources, information technology, facilities and use of corporate office space to the Company. The Company paid Vivint a monthly services fee and rent based on headcount and square footage used. In connection with the Company's initial public offering, the Sublease Agreement was amended to focus exclusively on real estate issues. The Company incurred fees under the Sublease agreement of \$7.2 million for the year ended December 31, 2014, which reflects the amount of services provided by Vivint on behalf of the Company. No fees were incurred under these agreements in the years ended December 31, 2016 and 2015.

Payables to Vivint recorded in accounts payable—related party were \$0.2 million and \$1.9 million as of December 31, 2016 and 2015. These payables include amounts due to Vivint related to the services agreements and other miscellaneous intercompany payables.

Additionally, during the year ended December 31, 2016, the Company agreed to install a solar energy system for a corporate entity in exchange for \$1.5 million of value-in-kind consideration. The Amendment agrees that Vivint will utilize approximately \$0.6 million of that consideration over three years, which will be applied as a reduction of amounts owed to Vivint by the Company over that period.

### ***313 Incentive Units Plan***

Incentive units from 313 were granted to certain board members of the Company. Such board members are also employees of Vivint. As a result, the related compensation expense has been allocated between the two companies based on the net equity of the respective companies at the Acquisition. The Company recorded expense of \$0.2 million and corresponding noncash capital contributions from 313 during the year ended December 31, 2014. No expense related to these board members was incurred in the years ended December 31, 2016 and 2015.

### ***Advisory Agreements***

In May 2014, the Company entered into an advisory agreement with Blackstone Advisory Partners L.P. ("BAP"), an affiliate of the Sponsor, under which BAP would provide financial advisory and placement services related to the Company's financing of residential solar energy systems. In August 2015, this agreement was terminated. Under the agreement, the Company was required under certain circumstances to pay a placement fee to BAP ranging from 0.75% to 1.5% of the transaction capital, depending on the identity of the investor and whether the financing related to residential or commercial projects. This agreement replaced the 2013 advisory agreement, under which BAP was paid a placement fee ranging from 0% to 2% of the transaction capital, depending on the identity of the investor and how contact with the investor was established.

The Company incurred fees under these agreements of \$4.4 million and \$4.5 million for the years ended December 31, 2015 and 2014. The amounts were recorded in general and administrative expense. No fees were incurred under these agreements during the year ended December 31, 2016.

### ***Advances Receivable — Related Party***

Net amounts due from direct-sales personnel were \$3.7 million and \$2.9 million as of December 31, 2016 and 2015. The Company provided a reserve of \$1.3 million and \$0.7 million as of December 31, 2016 and 2015 related to advances to direct-sales personnel who have terminated their employment agreement with the Company.

### ***Investment Funds***

Fund investors for three of the funds are indirectly managed by the Sponsor and accordingly are considered related parties. The Company accrued equity distributions to these entities of \$1.6 million and \$1.7 million as of December 31, 2016 and 2015, included in distributions payable to non-controlling and redeemable non-controlling interests. See Note 13—Investment Funds. The Company also had a Backup Maintenance Servicing Agreement with Vivint in which Vivint would provide maintenance servicing of a fund in the event that the Company was removed as the service provider for the fund, which was terminated at the end of 2016. No services were performed by Vivint under that agreement. An unrelated provider has agreed to perform backup maintenance services for all funds.

## 18 . Commitments and Contingencies

### *Non-Cancellable Operating Leases*

In September 2014, the Company entered into a non-cancellable lease, which was subsequently amended in July 2015 and October 2016, whereby the Company terminated the lease for its prior corporate headquarters in Lehi, Utah and moved to another building in the same general location. The new headquarters lease is classified and accounted for as a non-cancellable operating lease. The lease term is 12 years, with the option to extend for two additional periods of five years. The base rent for this building commenced at approximately \$0.3 million per month and will increase over the term of the lease, as amended, at a rate of 2.5% annually. In October 2016, the Company amended the new headquarters lease to terminate the construction of the studio building. Construction on the studio building had not commenced prior to the amendment date.

In July 2015, the Company entered into a non-cancellable lease for a second office building on the corporate headquarters campus. Subsequently in October 2016, the lease was amended resulting in a new anticipated lease commencement date of January 1, 2020. The second office building will provide approximately 150,000 square feet of office space. The lease term is 12 years, with the option to extend for two additional periods of five years. The monthly rent payments will commence at approximately \$0.4 million and increase at a rate of 2.5% annually. As a result, the Company expects to make total lease payments of \$57.7 million over the initial term of the lease.

The Company has entered into lease agreements for warehouses and related equipment located in states in which the Company conducts operations. The warehouse lease agreements range from a term of one to six years, with the majority having a term of three years. The equipment lease agreements range from one to three years, and include basic renewal options for an additional set period, continued renting by the month, or return of the unit.

For all non-cancellable lease arrangements, there are no bargain renewal options, penalties for failure to renew, or any guarantee by the Company of the lessor's debt or a loan from the Company to the lessor related to the leased property. Aggregate lease expense for these non-cancellable operating lease arrangements was \$17.4 million, \$11.0 million and \$4.3 million for the years ended December 31, 2016, 2015 and 2014. For operating leases having remaining lease terms in excess of one year, the total minimum rental payments to be received under noncancelable subleases was \$1.3 million as of December 31, 2016. Rental payments received under noncancelable subleases are recorded as a reduction to operating lease expense.

Future minimum lease payments under non-cancellable operating leases as of December 31, 2016 were as follows (in thousands):

#### **Years Ending December 31,**

2017	\$	12,171
2018		8,683
2019		5,415
2020		7,106
2021		8,973
Thereafter		82,193
Total minimum lease payments	\$	<u>124,541</u>

### *Build-to-Suit Lease Arrangements*

As discussed in “—Non-Cancellable Operating Leases,” in September 2014, the Company entered into a non-cancellable lease for its new headquarters. In 2015, construction began on the new headquarters. Because of the Company's involvement in certain aspects of construction per the terms of the lease, the Company was deemed the owner of the building for accounting purposes. Accordingly, the Company recorded a build-to-suit lease asset and corresponding build-to-suit lease liabilities during the construction period.

In May 2016, construction on the new headquarters was completed and the Company commenced occupancy. The building qualified for sale-leaseback treatment as the Company determined the lease to be a normal leaseback, payment terms indicated the landlord has continuing investment in the property and the payment terms transferred the risks and rewards of ownership to the landlord. As such, the Company removed the build-to-suit lease asset and liabilities in the second quarter of 2016. The new headquarters' lease is classified and accounted for as a non-cancellable operating lease.

### ***Letters of Credit***

As of December 31, 2016, the Company had established letters of credit under the Working Capital Facility for up to \$13.5 million related to insurance contracts and under the Term Loan Facility for up to \$13.0 million related to the debt service reserve for the Term Loan Facility. See Note 11—Debt Obligations.

During the year ended December 31, 2016, the Company fulfilled its obligations under a forward contract to sell SRECs entered into in November 2013. As a result, the related \$1.8 million stand-by letter of credit that was outstanding at December 31, 2015 was cancelled, and the corresponding time deposit was released during the year ended December 31, 2016.

### ***Indemnification Obligations***

From time to time, the Company enters into contracts that contingently require it to indemnify parties against claims. These contracts primarily relate to provisions in the Company's services agreements with related parties that may require the Company to indemnify the related parties against services rendered; and certain agreements with the Company's officers and directors under which the Company may be required to indemnify such persons for liabilities. In addition, under the terms of the agreements related to the Company's investment funds and other material contracts, the Company may also be required to indemnify fund investors and other third parties for liabilities. Distributions paid to reimburse fund investors totaled \$2.7 million, \$5.0 million and zero for the years ended December 31, 2016, 2015, and 2014. As of December 31, 2016, the Company accrued an estimated \$8.3 million in distributions to reimburse fund investors a portion of their capital contributions primarily due to a delay in solar energy systems being interconnected to the power grid and other factors.

### ***Legal Proceedings***

In September 2014, two former installation technicians of the Company, on behalf of themselves and a purported class, filed a complaint for damages, injunctive relief and restitution in the Superior Court of the State of California in and for the County of San Diego against the Company and unnamed John Doe defendants. The complaint alleges certain violations of the California Labor Code and the California Business and Professions Code based on, among other things, alleged improper classification of installer technicians, installer helpers, electrician technicians and electrician helpers, failure to pay minimum and overtime wages, failure to provide accurate itemized wage statements, and failure to provide wages on termination. In December 2014, the original plaintiffs and three additional plaintiffs filed an amended complaint with essentially the same allegations. On November 5, 2015, the parties agreed to preliminary terms of a settlement of all claims related to allegations in the complaint in return for the Company's payment of \$1.7 million to be paid out to the purported class members, which was accrued at that time. The Court gave final approval to the settlement on September 30, 2016. On October 7, 2016, the Company made payment of the \$1.7 million gross settlement fund to the settlement claim administrator.

In November and December 2014, two putative class action lawsuits were filed in the U.S. District Court for the Southern District of New York against the Company, its directors, certain of its officers and the underwriters of the Company's initial public offering of common stock alleging violation of securities laws and seeking unspecified damages. In January 2015, the Court ordered these cases to be consolidated into the earlier filed case, *Hyatt v. Vivint Solar, Inc. et al.*, 14-cv-9283 (KBF). The plaintiffs filed a consolidated amended complaint in February 2015. On May 6, 2015, the Company filed a motion to dismiss the complaint and on December 10, 2015, the Court issued an Opinion and Order dismissing the complaint with prejudice. On January 5, 2016, the plaintiffs filed a Notice of Appeal to the Second Circuit Court of Appeals. On August 25, 2016, the Court of Appeals heard oral arguments on the appeal. The Company is unable to estimate a range of loss, if any, that could result were there to be an adverse final decision. If an unfavorable outcome were to occur in this case, it is possible that the impact could be material to the Company's results of operations in the period(s) in which any such outcome becomes probable and estimable.

On September 9, 2015, two of the Company's customers, on behalf of themselves and a purported class, named the Company in a putative class action, Case No. BCV-15-100925(Cal. Super. Ct., Kern County), alleging violation of California Business and Professions Code Section 17200 and requesting relief pursuant to Section 1689 of the California Civil Code. The complaint seeks: (1) rescission of their PPAs along with restitution to the plaintiffs individually and (2) declaratory and injunctive relief. On October 16, 2015, the Company moved to compel arbitration of the plaintiffs' claims pursuant to the provisions set forth in the PPAs, which the Court granted and dismissed the class claims without prejudice. Plaintiffs have appealed the Court's order. It is not possible to estimate the amount or range of potential loss, if any, at this time.

On March 8, 2016, the Company filed suit in the Court of Chancery State of Delaware against SunEdison and SEV Merger Sub Inc. alleging that SunEdison willfully breached its obligations under the Merger Agreement pursuant to which the Company was to be acquired and breached its implied covenant of good faith and fair dealing. The Company is seeking declaratory judgment, award damages, costs and reasonable attorney's fees and such further relief that the court finds equitable, appropriate and just. On April 21, 2016, SunEdison filed for Chapter 11 bankruptcy, thereby creating a temporary stay on the prosecution of the Company's litigation in

the Delaware court. On July 7, 2016, the Company filed a motion with the bankruptcy court seeking to lift the stay and allow the Company to litigate its claim against SunEdison. On September 13, 2016, the bankruptcy court denied the Company's motion to lift the stay, effectively requiring that the Company's claim be litigated in the bankruptcy proceeding. On September 22, 2016, the Company submitted a proof of claim in the bankruptcy case for an unsecured claim in the amount of \$1.0 billion. The Company is participating in the bankruptcy case so as to maximize the recovery from the claims against SunEdison.

In March 2016, a civil complaint was filed against the Company alleging negligence and related claims arising from damage to a customer's residence. In June 2016, the Company reached agreement between the Company, the plaintiffs and the Company's liability insurance provider to participate in an arbitration proceeding to determine the extent of the damages. The arbitration took place in September 2016. Following the arbitration, the arbitrator awarded the plaintiffs damages in the amount of \$2.8 million. In December 2016, the Company's liability insurance provider paid the damages award in full.

In March 2017, the Company received notice that the New Mexico Attorney General's office intends to file an action against the Company and its officers alleging violation of state consumer protection statutes. The Company disputes the allegations and intends to defend itself in the action. The Company is unable to estimate a range of loss, if any, that could result were there to be an adverse final decision. If an unfavorable outcome were to occur in this case, it is possible that the impact could be material to the Company's results of operations in the period(s) in which any such outcome becomes probable and estimable.

In addition to the matters discussed above, in the normal course of business, the Company has from time to time been named as a party to various legal claims, actions and complaints. While the outcome of these matters cannot be predicted with certainty, the Company does not currently believe that the outcome of any of these claims will have a material adverse effect, individually or in the aggregate, on its consolidated financial position, results of operations or cash flows.

The Company accrues for losses that are probable and can be reasonably estimated. The Company evaluates the adequacy of its legal reserves based on its assessment of many factors, including interpretations of the law and assumptions about the future outcome of each case based on available information.

#### 19. Basic and Diluted Net Income (Loss) Per Share

The Company computes basic net income (loss) per share by dividing net income available or loss attributable to common stockholders by the weighted-average number of common shares outstanding for the period. Diluted earnings per share reflects the potential dilution of securities that could be exercised or converted into common shares, and is computed by dividing net earnings available to common stockholders by the weighted-average number of common shares outstanding plus the effect of potentially dilutive shares to purchase common stock.

The following table sets forth the computation of the Company's basic and diluted net income available (loss attributable) per share to common stockholders for the years ended December 31, 2016, 2015 and 2014 (in thousands, except per share amounts):

	Year Ended December 31,		
	2016	2015	2014
<b>Numerator:</b>			
Net income available (loss attributable) to common stockholders	\$ 17,986	\$ 13,080	\$ (28,883)
<b>Denominator:</b>			
Shares used in computing net income available (loss attributable) per share to common stockholders, basic	108,190	106,088	83,446
Weighted-average effect of potentially dilutive shares to purchase common stock	4,348	3,770	—
Shares used in computing net income available (loss attributable) per share to common stockholders, diluted	112,538	109,858	83,446
<b>Net income available (loss attributable) per share to common stockholders:</b>			
Basic	\$ 0.17	\$ 0.12	\$ (0.35)
Diluted	\$ 0.16	\$ 0.12	\$ (0.35)

In May 2016, the Company modified the unvested performance stock options to vest annually over three years with the first vesting date occurring in May 2017. See Note 15—Equity Compensation Plans. As such, all stock options were considered in the computation of diluted net income (loss) per share on a weighted-average basis as of December 31, 2016. As of December 31, 2015, stock-based awards for 3.3 million underlying shares of common stock were subject to performance conditions that had not yet been met. Accordingly, these performance-based stock awards were not included in the computation of diluted net income per share for the year ended December 31, 2015. In addition, options remaining to be granted under the LTIP Pools were not included in the computation of diluted net income per share as these shares had not been granted as of December 31, 2016 and 2015. For the years ended December 31, 2016 and 2015, 0.3 million and a de minimis number of shares were excluded from the dilutive share calculations as the effect on net income per share would have been antidilutive.

For the year ended December 31, 2014, the Company incurred net losses attributable to common stockholders. As such, the potentially dilutive shares were antidilutive and were not considered in the weighted-average number of common shares outstanding for that period.

## **20. Subsequent Events**

### ***2017 Term Loan***

On January 5, 2017, the Company entered into a long-term fixed rate credit agreement (the “2017 Term Loan”) pursuant to which the Company borrowed \$203.8 million with certain financial institutions for which Wells Fargo Bank, National Association is acting as administrative agent. The borrower under the 2017 Term Loan is Vivint Solar Financing III, LLC, a wholly owned indirect subsidiary of the Company. Proceeds of the 2017 Term Loan were used to (1) repay existing indebtedness of \$140.3 million under the Aggregation Facility with respect to the portfolio of projects being used as collateral for the 2017 Term Loan (the “2017 Term Loan Portfolio”), (2) fund a debt service reserve account and other agreed reserves of \$20.1 million, (3) pay transaction costs and fees in connection with the 2017 Term Loan of \$5.5 million, (4) pay the ITC insurance premium of \$2.0 million on behalf of one of the Company’s investment funds, and (5) distribute \$35.9 million to the Company as reimbursement for capital costs associated with deployment of the 2017 Term Loan Portfolio.

Interest on borrowings accrue at an annual fixed rate equal to 6.0% and is payable in arrears. Certain principal payments are due on a quarterly basis, subject to the occurrence of certain events. The Company’s first principal and interest payment is due on April 30, 2017. Principal and interest payable under the 2017 Term Loan will be paid over the term of the loan until the final maturity date of January 5, 2035. Optional prepayments are permitted under the 2017 Term Loan without premium or penalty.

The 2017 Term Loan includes customary events of default, conditions to borrowing and covenants, including negative covenants that restrict, subject to certain exceptions, the borrower’s and guarantors’ ability to incur indebtedness, incur liens, make fundamental changes to their respective businesses, make certain types of restricted payments and investments or enter into certain transactions with affiliates. The borrower is required to maintain an average debt service coverage ratio of 1.20 to 1.

The obligations of the borrower are secured by a pledge of the membership interests in the borrower, all of the borrower’s assets, and the assets of the borrower’s directly owned subsidiaries acting as managing members of the 2017 Term Loan Portfolio. In addition, the Company shall guarantee certain obligations of the borrower under the 2017 Term Loan.

### ***Aggregation Facility Amendment***

On March 9, 2017, the Company amended and restated the Aggregation Facility. Pursuant to the Aggregation Facility, as amended, the parties agreed to (1) extend the date through which the Company may incur borrowings under the Aggregation Facility to March 31, 2020 (“Availability Period”), with an option to extend such period by an additional 12 months to the extent the lenders agree to such extension; (2) extend the maturity date for the initial loans under the Aggregation Facility from March 12, 2018 to September 30, 2020; and (3) increase the “Applicable Margin” used to determine the applicable interest rate on outstanding borrowings after the Availability Period from 3.50% to 3.75%. The “Applicable Margin” used to determine the applicable interest rate on outstanding borrowings during the Availability Period remains unchanged at 3.25%.

In addition, the amendments to the Aggregation Facility, (1) allow the Company to satisfy concentration covenants by maintaining insurance policies with respect to certain tax equity funds for the benefit of the lenders to cover any indemnification payments the Company may be required to make to certain of its tax equity investors in connection with the loss of ITCs and (2) modify the customer FICO score requirement thresholds to enable the Company to borrow more against certain solar energy systems. The amendments to the Aggregation Facility also provide the ability for the Company to enter into forward-starting interest rate hedges and require no less than 75% of outstanding loan balances to be hedged at all times.

**Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.**

None.

**Item 9A. Controls and Procedures.****Internal Control Over Financial Reporting*****Background***

We previously reported a material weakness in internal control over financial reporting for the years ended December 31, 2015 and 2014 associated with the HLBV method of attributing net income or loss to non-controlling interests and redeemable non-controlling interests and with our financial statement close process. A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected on a timely basis. As disclosed below, management has concluded that the material weakness has been remediated as of December 31, 2016.

***Evaluation of Disclosure Controls and Procedures***

Our management, with the participation of our chief executive officer and chief financial officer, evaluated the effectiveness of our disclosure controls and procedures as of December 31, 2016 pursuant to Rule 13a-15 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"). The term "disclosure controls and procedures," as defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act, means controls and other procedures of a company that are designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by a company in the reports that it files or submits under the Exchange Act is accumulated and communicated to the company's management, including its principal executive and principal financial officers, as appropriate to allow timely decisions regarding required disclosure.

***Management's Report on Internal Control over Financial Reporting***

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined by Rule 13a-15(f) under the Exchange Act). In assessing the effectiveness of our internal control over financial reporting as of December 31, 2016, our management used the criteria set forth by the Committee of Sponsoring Organizations of the Treadway Commission (2013 framework).

Based on our assessment using those criteria, our management has concluded that our internal control over financial reporting was effective as of December 31, 2016.

***Inherent Limitation on the Effectiveness of Internal Control***

The effectiveness of any system of internal control over financial reporting, including ours, is subject to inherent limitations, including the exercise of judgment in designing, implementing, operating, and evaluating the controls and procedures, and the inability to eliminate misconduct completely. Accordingly, any system of internal control over financial reporting, including ours, no matter how well designed and operated, can only provide reasonable, not absolute assurances. The nature of our investment funds increases the complexity of our accounting for the allocation of net income (loss) between our stockholders and non-controlling interests under the HLBV method and the calculation of our tax provision. As we enter into additional investment funds, which may have contractual provisions different from those of our existing funds, the calculation under the HLBV method and the calculation of our tax provision could become increasingly complicated. This additional complexity could increase the chance that we experience a material weakness in the future. In addition, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate. We intend to continue to monitor and upgrade our internal controls as necessary or appropriate for our business, but cannot assure you that such improvements will be sufficient to provide us with effective internal control over financial reporting.

We will be required to engage an independent registered public accounting firm to opine on the effectiveness of our internal control over financial reporting beginning at the date we are no longer an “emerging growth company” as defined in the JOBS Act. At such time, our management may conclude that our internal control over financial reporting is not effective. Moreover, even if our management concludes that our internal control over financial reporting is effective, our independent registered public accounting firm may issue a report that is adverse if such firm is not satisfied with the level at which our controls are documented, designed, operated or reviewed. As a result, we may need to undertake various actions, such as implementing new internal controls and procedures and hiring additional accounting or internal audit staff. Our remediation efforts may not enable us to avoid a material weakness in the future. In addition, as a public company, our reporting obligations may place a significant strain on our management, operational and financial resources and systems for the foreseeable future.

***Changes in Internal Control over Financial Reporting***

To remediate the material weakness described above, we hired a number of additional financial, accounting and tax personnel, including a director of internal audit to assist us in implementing and improving our existing internal controls. We also hired a chief information officer to assist us in improving our underlying information technology systems and to decrease our reliance on manual processes. We engaged and continue to engage third-party consultants to provide support over our accounting and tax processes to assist us with our evaluation of complex technical accounting matters. We also continue to engage consultants to advise us on making further improvements to our internal controls over financial reporting. Based on these measures, management has tested the internal control activities and found them to be effective and has concluded that the material weaknesses described above has been remediated as of December 31, 2016.

Other than the remediation efforts related to our prior material weakness, there were no changes in our internal control over financial reporting during the quarter ended December 31, 2016 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

**Item 9B. Other Information.**

None.

## PART III

### **Item 10. Directors, Executive Officers and Corporate Governance.**

The information required by this Item 10 of Form 10-K that is found in our 2016 Proxy Statement to be filed with the SEC in connection with the solicitation of proxies for our 2017 Annual Meeting of Stockholders, or the 2016 Proxy Statement, is incorporated by reference to our 2016 Proxy Statement. The 2016 Proxy Statement will be filed with the SEC within 120 days after the end of the fiscal year to which this report relates.

### **Item 11. Executive Compensation.**

The information required by Item 11 of Form 10-K is found in our 2016 Proxy Statement and is incorporated here by reference to our 2016 Proxy Statement.

### **Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.**

The information required by Item 12 of Form 10-K is found in our 2016 Proxy Statement and is incorporated here by reference to our 2016 Proxy Statement.

### **Item 13. Certain Relationships and Related Transactions, and Director Independence.**

The information required by Item 13 of Form 10-K is found in our 2016 Proxy Statement and is incorporated here by reference to our 2016 Proxy Statement.

### **Item 14. Principal Accounting Fees and Services.**

The information required by Item 14 of Form 10-K is found in our 2016 Proxy Statement and is incorporated here by reference to our 2016 Proxy Statement.

## PART IV

### Item 15. Exhibits, Financial Statement Schedules.

#### (a)(1.) Consolidated Financial Statements:

The following documents are filed as a part of this Annual Report on Form 10-K for Vivint Solar, Inc.:

Report of Ernst & Young LLP, Independent Registered Public Accounting Firm.

Consolidated Balance Sheets as of December 31, 2016 and 2015.

Consolidated Statements of Operations for the years ended December 31, 2016, 2015 and 2014.

Consolidated Statements of Comprehensive Income (Loss) for the years ended December 31, 2016, 2015 and 2014.

Consolidated Statements of Redeemable Non-Controlling Interest and Stockholders' Equity for the years ended December 31, 2016, 2015 and 2014.

Consolidated Statements of Cash Flows for the years ended December 31, 2016, 2015 and 2014.

Notes to the Consolidated Financial Statements.

#### (2.) Financial Statement Schedules:

Financial statement schedules are omitted because they are not required, not applicable or because the required information is shown in the consolidated financial statements or notes thereto.

#### (3.) Exhibits:

Required exhibits are incorporated by reference or are filed with this Annual Report as set forth in the following Exhibit Index, which immediately precedes such exhibits.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized .

Vivint Solar, Inc.

Date: March 16, 2017

By: /s/ David Bywater

\_\_\_\_\_  
David Bywater  
Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, this report has been signed below by the following persons on behalf of the Registrant in the capacities and on the dates indicated.

<u>Name</u>	<u>Title</u>	<u>Date</u>
<u>/s/ David Bywater</u> David Bywater	Chief Executive Officer, Director (Principal Executive Officer)	March 16, 2017
<u>/s/ Dana Russell</u> Dana Russell	Chief Financial Officer and Executive Vice President (Principal Accounting and Financial Officer)	March 16, 2017
<u>/s/ David F. D'Alessandro</u> David F. D'Alessandro	Director	March 16, 2017
<u>/s/ Alex J. Dunn</u> Alex J. Dunn	Director	March 16, 2017
<u>/s/ Bruce McEvoy</u> Bruce McEvoy	Director	March 16, 2017
<u>/s/ Jay D. Pauley</u> Jay D. Pauley	Director	March 16, 2017
<u>/s/ Todd R. Pedersen</u> Todd R. Pedersen	Director	March 16, 2017
<u>/s/ Joseph S. Tibbetts, Jr.</u> Joseph S. Tibbetts, Jr.	Director	March 16, 2017
<u>/s/ Peter F. Wallace</u> Peter F. Wallace	Director	March 16, 2017

**Exhibit Index**

<u>Exhibit Number</u>	<u>Description</u>	<u>Form</u>	<u>File No.</u>	<u>Incorporated by Reference</u>	<u>Filing Date</u>
3.1	Amended and Restated Certificate of Incorporation of the Company	10-Q	001-36642	3.1	November 12, 2014
3.2	Amended and Restated Bylaws of the Company	10-Q	001-36642	3.2	November 12, 2014
4.1	Registration Rights Agreement, dated as of October 6, 2014, by and among the Company and the investors named therein	10-K	001-36642	4.1	March 13, 2015
10.1+	Form of Director and Executive Officer Indemnification Agreement	S-1	333-198372	10.1	August 26, 2014
10.2+	2013 Omnibus Incentive Plan, as amended	S-1	333-198372	10.2	August 26, 2014
10.3+	Form of Stock Option Agreement under the 2013 Omnibus Incentive Plan	10-Q	001-36642	10.17	November 12, 2014
10.4+	2014 Equity Incentive Plan	S-1/A	333-198372	10.3	September 18, 2014
10.5+	Form of Notice of Stock Option Grant and Stock Option Agreement under the 2014 Equity Incentive Plan	10-Q	001-36642	10.15	November 12, 2014
10.6+	Form of Notice of Restricted Stock Unit Grant and Restricted Stock Unit Agreement under the 2014 Equity Incentive Plan	10-Q	001-36642	10.16	November 12, 2014
10.7+	Amended and Restated 2013 Long-Term Incentive Pool Plan for District Sales Managers, and forms of agreements thereunder	S-1	333-198372	10.4A	August 26, 2014
10.8+	Amended and Restated 2013 Long-Term Incentive Pool Plan for Operations Leaders, and forms of agreements thereunder	S-1	333-198372	10.4B	August 26, 2014
10.9+	Amended and Restated 2013 Long-Term Incentive Pool Plan for Recruiting Regional Sales Managers, and forms of agreements thereunder	10-K	001-36642	10.9	March 13, 2015
10.10+	Amended and Restated 2013 Long-Term Incentive Pool Plan for Regional Managers (Technicians), and forms of agreements thereunder	S-1	333-198372	10.4D	August 26, 2014
10.11+	Amended and Restated 2013 Long-Term Incentive Pool Plan for Regional Sales Managers, and forms of agreements thereunder	S-1	333-198372	10.4E	August 26, 2014
10.12+	Amended and Restated 2013 Long-Term Incentive Pool Plan for Sales Managers, and forms of agreements thereunder	S-1	333-198372	10.4F	August 26, 2014
10.13+	Form of 313 Acquisition LLC Unit Plan	S-1/A	333-198372	10.5	September 18, 2014

<u>Exhibit Number</u>	<u>Description</u>	<u>Form</u>	<u>File No.</u>	<u>Incorporated by Reference</u>	<u>Filing Date</u>
10.14+	Executive Incentive Compensation Plan, and forms of agreements thereunder	S-1	333-198372	10.6	August 26, 2014
10.15+	Form of Involuntary Termination Protection Agreement between the Company and certain of its officers	S-1	333-198372	10.7	August 26, 2014
10.16+	Offer Letter, dated as of May 2, 2016, by and between the Company and David Bywater	10-Q	001-36642	10.2	August 8, 2016
10.17+*	Letter Agreement, dated as of December 14, 2016, by and between the Company and David Bywater				
10.18+*	Involuntary Termination Protection Agreement, dated as of December 14, 2016, by and between the Company and David Bywater				
10.19+	Letter Agreement, dated as of August 28, 2014, with Gregory S. Butterfield	S-1/A	333-198372	10.8	September 18, 2014
10.20+	Letter Agreement, dated as of July 19, 2015, by and between the Company and Gregory S. Butterfield	10-Q	001-36642	10.4	November 16, 2015
10.21+	Release of Claims, dated as of May 2, 2016, by and between the Company and Gregory S. Butterfield	10-Q	001-36642	10.1	August 8, 2016
10.22+	Letter Agreement, dated as of August 28, 2014, with Dana C. Russell	10-K	001-36642	10.17	March 13, 2015
10.23+	Letter Agreement, dated as of July 19, 2015, by and between the Company and Dana C. Russell	10-Q	001-36642	10.5	November 16, 2015
10.24+	Employment Agreement, dated as of September 25, 2013, by and between the Company and Thomas Plagemann	S-1	333-198372	10.9	August 26, 2014
10.25+*	Amendment to Employment Agreement, dated as of September 1, 2016, by and between the Company and Thomas Plagemann				
10.26+	Amended and Restated Involuntary Termination Protection Agreement, dated as of May 12, 2016, by and between the Company and Dana C. Russell	10-Q	001-36642	10.3	August 8, 2016
10.27	Subordinated Note and Loan Agreement, dated as of December 27, 2012, by and between the Company and APX Group, Inc.	S-1	333-198372	10.11	August 26, 2014
10.28	First Amendment to Note and Loan Agreement, dated as of July 26, 2013, by and between the Company and APX Group, Inc.	S-1	333-198372	10.11A	August 26, 2014

<u>Exhibit Number</u>	<u>Description</u>	<u>Form</u>	<u>File No.</u>	<u>Incorporated by Reference</u>	<u>Filing Date</u>
10.29	Amended and Restated Subordinated Note and Loan Agreement, dated as of January 20, 2014, by and between the Company and APX Parent Holdco, Inc.	S-1	333-198372	10.12	August 26, 2014
10.30	First Amendment to Amended and Restated Subordinated Note and Loan Agreement, dated as of April 25, 2014, by and between the Company and APX Parent Holdco, Inc.	S-1	333-198372	10.12A	August 26, 2014
10.31†	Credit Agreement, dated as of May 1, 2014, by and between the Company, as a guarantor, Vivint Solar Holdings, Inc., as the borrower, and Bank of America, N.A. as administrative agent, collateral agent and lender	S-1	333-198372	10.13	August 26, 2014
10.32†	Loan Agreement, dated as of September 12, 2014, by and among Vivint Solar Financing I, LLC, Bank of America, N.A. and the parties named therein	10-K	001-36642	10.71	March 15, 2016
10.33†	Collateral Agency and Depositary Agreement, dated as of September 12, 2014, by and among Vivint Solar Financing I, LLC, Bank of America, N.A. and the parties named therein	S-1/A	333-198372	10.45	September 18, 2014
10.34†	Pledge and Security Agreement, dated as of September 12, 2014, by and among Vivint Solar Financing I, LLC, Bank of America, N.A. and the parties named therein	S-1/A	333-198372	10.46	September 18, 2014
10.35†	Credit Agreement, dated as of March 3, 2015, by and among the Company, Goldman Sachs Lending Partners LLC, Goldman Sachs Lending Partners LLC, Credit Suisse Securities (USA) LLC, Barclays Bank plc, Citibank, N.A. and Morgan Stanley Senior Funding, Inc.	10-Q	001-36642	10.1	May 14, 2015
10.36†	Financing Agreement, dated as of March 14, 2016, by and among Vivint Solar Financing Holdings Parent, LLC, Vivint Solar Financing Holdings, LLC, the Guarantors party thereto, the Lenders from time to time party thereto, and HighBridge Principal Strategies, LLC	10-Q	001-36642	10.1	May 9, 2016
10.37†	Credit Agreement, dated as of August 4, 2016, by and among Vivint Solar Financing II, LLC, Investec Bank PLC, ING Capital LLC, Silicon Valley Bank, SunTrust Robinson Humphrey, Inc., BankUnited, N.A., Deutsche Bank AG, New York Branch, ING Capital LLC, SunTrust Bank, and Silicon Valley Bank	10-Q	001-36642	10.1	November 8, 2016

<b>Exhibit Number</b>	<b>Description</b>	<b>Form</b>	<b>File No.</b>	<b>Incorporated by Reference</b>	<b>Filing Date</b>
10.38†*	Fixed Rate Loan Agreement, dated as of January 5, 2017, by and among, Vivint Solar Financing III, LLC, the lenders party thereto, and Wells Fargo Bank, National Association				
10.39	Stockholders Agreement, dated as of October 6, 2014, by and among the Company and other parties thereto	10-K	001-36642	10.24	March 13, 2015
10.40	Master Intercompany Framework Agreement, dated as of September 30, 2014, by and between the Company and Vivint, Inc.	10-Q	001-36642	10.1	November 12, 2014
10.41	Transition Services Agreement, dated as of September 30, 2014, by and between the Company and Vivint, Inc.	10-Q	001-36642	10.2	November 12, 2014
10.42	Non-Competition Agreement, dated as of September 30, 2014, by and between the Company and Vivint, Inc.,	10-Q	001-36642	10.3	November 12, 2014
10.43	Product Development and Supply Agreement, dated as of September 30, 2014, by and between Vivint Solar Developer, LLC and Vivint, Inc.	10-Q	001-36642	10.4	November 12, 2014
10.44	Marketing and Customer Relations Agreement, dated as of September 30, 2014, by and between Vivint Solar Developer, LLC and Vivint, Inc.	10-Q	001-36642	10.5	November 12, 2014
10.45	Trademark Assignment Agreement, dated as of September 30, 2014, by and between Vivint Solar Licensing LLC and Vivint, Inc.	10-Q	001-36642	10.6	November 12, 2014
10.46	Trademark Assignment Agreement, dated as of September 30, 2014, by and between the Company and Vivint, Inc.	10-Q	001-36642	10.7	November 12, 2014
10.47	Bill of Sale and Assignment, dated as of September 30, 2014, by and between the Company and Vivint, Inc.	10-Q	001-36642	10.9	November 12, 2014
10.48	Limited Liability Company Agreement of Vivint Solar Licensing, LLC, dated as of September 30, 2014, by and between the Company and Vivint, Inc.	10-Q	001-36642	10.10	November 12, 2014
10.49	Trademark License Agreement, dated as of September 30, 2014, by and between the Company and Vivint Solar Licensing, LLC	10-Q	001-36642	10.11	November 12, 2014
10.50	Canyon Park Technology Center Office Building Lease Agreement, dated as of June 11, 2014, by and between the Company and TCU-Canyon Park, LLC	S-1	333-198372	10.28	August 26, 2014
10.51	Lease Agreement, dated as of August 12, 2014, by and between the Company and T-Stat One, LLC	S-1/A	333-198372	10.48	September 18, 2014

<u>Exhibit Number</u>	<u>Description</u>	<u>Form</u>	<u>File No.</u>	<u>Incorporated by Reference</u>	<u>Filing Date</u>
10.52*	First Amendment to Lease, dated as of July 20, 2015, by and between the Company and T-Stat One, LLC				
10.53*	Second Amendment to Lease, dated as of October 4, 2016, by and between the Company and T-Stat One, LLC				
10.54†	Limited Liability Company Agreement of Vivint Solar Mia Project Company, LLC, dated as of July 16, 2013, by and between Vivint Solar Mia Manager, LLC and Blackstone Holdings Finance Co. L.L.C.	S-1/A	333-198372	10.29	September 18, 2014
10.55†	First Amendment to the Limited Liability Company Agreement of Vivint Solar Mia Project Company, LLC, dated as of September 12, 2013, by and between Vivint Solar Mia Manager, LLC and Blackstone Holdings Finance Co. L.L.C.	S-1/A	333-198372	10.29A	September 18, 2014
10.56	Second Amendment to Limited Liability Company Agreement of Vivint Solar Mia Project Company, LLC, dated as of August 31, 2013, by and between Vivint Solar Mia Manager, LLC and Blackstone Holdings Finance Co. L.L.C.	S-1	333-198372	10.29B	September 18, 2014
10.57†	Third Amendment to Limited Liability Company Agreement of Vivint Solar Mia Project Company, LLC, dated as of April 15, 2015, by and between Vivint Solar Mia Manager, LLC and Blackstone Holdings I, L.P.	10-Q	001-36642	10.2	May 14, 2015
10.58†	Development, EPC and Purchase Agreement, dated as of July 16, 2013, by and among Vivint Solar Developer, LLC, Vivint Solar Holdings, Inc., and Vivint Solar Mia Project Company, LLC	S-1/A	333-198372	10.30	September 18, 2014
10.59	First Amendment to Development, EPC and Purchase Agreement, dated as of January 13, 2014, by and among Vivint Solar Developer, LLC, Vivint Solar Holdings, Inc., and Vivint Solar Mia Project Company, LLC	S-1/A	333-198372	10.30A	September 18, 2014
10.60	Second Amendment to Development, EPC and Purchase Agreement, dated as of April 25, 2014, by and among, Vivint Solar Developer, LLC, Vivint Solar Holdings, Inc., and Vivint Solar Mia Project Company, LLC	S-1/A	333-198372	10.30B	September 18, 2014

<b>Exhibit Number</b>	<b>Description</b>	<b>Form</b>	<b>File No.</b>	<b>Incorporated by Reference</b>	<b>Filing Date</b>
10.61	Third Amendment to Development, EPC and Purchase Agreement, dated as of April 15, 2015, by and between Vivint Solar Developer, LLC, Vivint Solar Holdings, Inc. and Vivint Solar Mia Project Company, LLC	10-Q	001-36642	10.4	May 14, 2015
10.62	Maintenance Services Agreement, dated as of July 16, 2013, by and between Vivint Solar Provider, LLC and Vivint Solar Mia Project Company, LLC	S-1/A	333-198372	10.31	September 18, 2014
10.63	First Amendment to Maintenance Services Agreement, dated as of April 15, 2015, by and between Vivint Solar Provider, LLC and Vivint Solar Mia Project Company, LLC	10-Q	001-36642	10.3	May 14, 2015
10.64	Guaranty, dated as of July 16, 2013, by the Company in favor of Blackstone Holdings Finance Co. L.L.C. and Vivint Solar Mia Project Company, LLC	S-1	333-198372	10.32	September 18, 2014
10.65†	Limited Liability Company Agreement of Vivint Solar Aaliyah Project Company, LLC, dated as of November 5, 2013, by and between Vivint Solar Aaliyah Manager, LLC and Stoneco IV Corporation	S-1/A	333-198372	10.33	September 18, 2014
10.66†	First Amendment to Limited Liability Company Agreement of Vivint Solar Aaliyah Project Company, LLC, dated as of January 13, 2014, by and between Vivint Solar Aaliyah Manager, LLC and Stoneco IV Corporation	S-1/A	333-198372	10.33A	September 18, 2014
10.67	Second Amendment to Limited Liability Company Agreement of Vivint Solar Aaliyah Project Company, LLC, dated as of April 15, 2015, by and between Vivint Solar Aaliyah Manager, LLC and Stoneco IV Corporation	10-Q	001-36642	10.5	May 14, 2015
10.68†	Development, EPC and Purchase Agreement, dated as of November 5, 2013, by and among Vivint Solar Developer, LLC, Vivint Solar Holdings, Inc., and Vivint Solar Aaliyah Project Company, LLC	S-1/A	333-198372	10.34	September 18, 2014
10.69	First Amendment to Development, EPC and Purchase Agreement, dated as of January 13, 2014, by and among, Vivint Solar Developer, LLC, Vivint Solar Holdings, Inc., and Vivint Solar Aaliyah Project Company, LLC	S-1/A	333-198372	10.34A	September 18, 2014

<u>Exhibit Number</u>	<u>Description</u>	<u>Form</u>	<u>File No.</u>	<u>Incorporated by Reference</u>	<u>Filing Date</u>
10.70†	Second Amendment to Development, EPC and Purchase Agreement, dated as of February 13, 2014, by and among Vivint Solar Developer, LLC, Vivint Solar Holdings, Inc., and Vivint Solar Aaliyah Project Company, LLC	S-1/A	333-198372	10.34B	September 18, 2014
10.71	Third Amendment to Development, EPC and Purchase Agreement, dated as of April 15, 2015, by and between Vivint Solar Developer, LLC, Vivint Solar Holdings, Inc. and Vivint Solar Aaliyah Project Company, LLC	10-Q	001-36642	10.7	May 14, 2015
10.72	Maintenance Services Agreement, dated as of November 5, 2013, by and between Vivint Solar Provider, LLC and Vivint Solar Aaliyah Project Company, LLC	S-1/A	333-198372	10.35	September 18, 2014
10.73	First Amendment to Maintenance Services Agreement, dated as of April 15, 2015, by and between Vivint Solar Provider, LLC and Vivint Solar Aaliyah Project Company, LLC	10-Q	001-36642	10.6	May 14, 2015
10.74	Guaranty, dated as of November 5, 2013, by the Company in favor of Stoneco IV Corporation, LLC and Vivint Solar Aaliyah Project Company, LLC	S-1	333-198372	10.36	September 18, 2014
10.75†	Limited Liability Company Agreement of Vivint Solar Rebecca Project Company, LLC, dated as of February 13, 2014, by and between Vivint Solar Rebecca Manager, LLC and Blackstone Holdings I L.P.	S-1/A	333-198372	10.37	September 18, 2014
10.76	First Amendment to Limited Liability Company Agreement of Vivint Solar Rebecca Project Company, LLC, dated as of April 15, 2015, by and between Vivint Solar Rebecca Manager, LLC and Blackstone Holdings I, L.P.	10-Q	001-36642	10.8	May 14, 2015
10.77†	Development, EPC and Purchase Agreement, dated as of February 13, 2014, by and among Vivint Solar Developer, LLC, Vivint Solar Holdings, Inc. and Vivint Solar Rebecca Project Company, LLC	S-1/A	333-198372	10.38	September 18, 2014
10.78	First Amendment to Development, EPC and Purchase Agreement, dated as of April 15, 2015, by and between Vivint Solar Developer, LLC, Vivint Solar Holdings, Inc. and Vivint Solar Rebecca Project Company, LLC	10-Q	001-36642	10.10	May 14, 2015

<b>Exhibit Number</b>	<b>Description</b>	<b>Form</b>	<b>File No.</b>	<b>Incorporated by Reference</b>	<b>Filing Date</b>
10.79	Maintenance Services Agreement, dated as of February 13, 2014, by and between Vivint Solar Provider, LLC and Vivint Solar Rebecca Project Company, LLC	S-1/A	333-198372	10.39	September 18, 2014
10.80	First Amendment to Maintenance Services Agreement, dated as of April 15, 2015, by and between Vivint Solar Provider, LLC and Vivint Solar Rebecca Project Company, LLC	10-Q	001-36642	10.9	May 14, 2015
10.81	Guaranty, dated as of February 13, 2014, by the Company in favor of Blackstone Holdings I L.P. and Vivint Solar Rebecca Project Company, LLC	S-1	333-198372	10.40	September 18, 2014
10.82	Subscription Agreement, dated as of August 14, 2014, by and between the Company and 313 Acquisition LLC	S-1	333-198372	10.41	August 26, 2014
10.83	Subscription Agreement, dated as of September 3, 2014, by and between the Company and the investors named therein	S-1/A	333-198372	10.43	September 18, 2014
21.1*	List of subsidiaries of the Company				
23.1*	Consent of Ernst & Young LLP				
24.1*	Powers of Attorney (contained on signature page).				
31.1*	Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.				
31.2*	Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.				
32.1*	Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.				
32.2*	Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.				
101.INS*	XBRL Instance Document				
101.SCH*	XBRL Taxonomy Extension Schema Document				
101.CAL*	XBRL Taxonomy Extension Calculation Linkbase Document				

<u>Exhibit Number</u>	<u>Description</u>	<u>Form</u>	<u>File No.</u>	<u>Incorporated by Reference</u>	<u>Filing Date</u>
101.DEF*	XBRL Taxonomy Extension Definition Linkbase Document				
101.LAB*	XBRL Taxonomy Extension Label Linkbase Document				
101.PRE*	XBRL Taxonomy Extension Presentation Linkbase Document				

**Legend:**

- + Indicates a management contract or compensatory plan.
- † Confidential treatment has been requested with respect to certain portions of this exhibit. Omitted portions have been filed separately with the Securities and Exchange Commission.
- \* Filed herewith. The Certifications attached as Exhibits 32.1 and 32.2 that accompany this Annual Report on Form 10-K are not deemed filed with the Securities and Exchange Commission and are not to be incorporated by reference into any filing of the Company under the Securities Act of 1933, as amended, or the Securities Exchange Act of 1934, as amended, whether made before or after the date of this Form 10-K, irrespective of any general incorporation language contained in such filing.

Vivint Solar, Inc.  
1800 West Ashton Blvd.  
Lehi, Utah 84043

December 14, 2016

Mr. David Bywater

RE: CEO Appointment

Mr. Bywater:

On behalf of Vivint Solar, Inc. (the "Company"), I am pleased to offer you the position of Chief Executive Officer ("CEO") of the Company on the terms set forth in this letter agreement (the "Agreement").

**Position:** You will serve as the CEO, reporting to the Company's Board of Directors (the "Board"). In addition, you shall be appointed to serve as a member of the Board. For so long as you serve as the CEO, the Company will use commercially reasonable efforts, subject to applicable law and regulations of the New York Stock Exchange, to cause you to be nominated for election as a director and to be recommended to its stockholders for election as a director. Upon any termination of employment as CEO, you will be deemed to have resigned from all officer and director positions of the Company and any subsidiary of the Company, and you agree that you will execute any and all documents necessary to effect such actions.

**Start Date:** Your employment under this Agreement will commence as of December 14, 2016 (the "Start Date"). Following the Start Date, you will continue to be an "at-will" employee of the Company in accordance with the provisions of the At-Will Employment Agreement, attached hereto as Exhibit A.

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**Compensation:**

Your annual base salary shall be \$660,000, subject to increase (but not decrease) as may be approved by the Compensation Committee of the Board (the “Compensation Committee”) from time to time. Your base salary will be payable in accordance with the Company’s regular payroll practices.

With the first pay-period after your Start Date, you will receive a signing bonus equal to \$166,667. Such amount will be payable within 30 days of your Start Date.

You will be eligible to participate in the Company’s annual executive bonus program with a target incentive bonus of \$650,000, subject to increase (but

not decrease), earned and determined at the sole discretion of the Compensation Committee and based on multiple factors, including, but not limited to, achievement of individual and Company performance objectives. For 2016, you will receive an annual bonus equal to \$346,667. Such amount will be payable at such time as annual bonuses are paid to other senior executives of the Company.

Unless otherwise determined by the Compensation Committee, to earn any bonus you must be an employee on the date the Company pays such bonus, and you will not earn or be entitled to any pro rata bonus payments if your employment ends for any reason prior to such date. All earned bonuses will be paid in accordance with the Company’s policies and practices regarding incentive compensation awards.

**Incentive Awards:**

In connection with your appointment as CEO, the Company will award you long-term equity incentive awards (collectively, the “Equity Incentive Awards”) under its 2014 Equity Incentive Plan (as amended from time to time) (the “Plan”) according to the following terms, subject to the terms of the Plan and the award agreement(s) that you will be required to execute in connection with such grants (collectively, the “Equity Documents”):

- A restricted stock unit award covering shares of common stock of the Company with a grant date fair value of \$1,025,000 (the “RSU Award”). The RSU Award will be settled in shares of common stock of the Company, and it shall be subject to the following 4 year vesting schedule: 25% of the total units subject to the RSU Award will vest on December 6, 2017; and an additional 6.25% of the total number of units subject to the RSU Award will vest on a quarterly basis thereafter until the RSU Award is fully vested, subject to your remaining a Service Provider (as defined in the Equity Documents) through each vesting date.
- An option to purchase shares of common stock of the Company, with such option having a grant date fair value of \$1,025,000 (the “Option Award”). The per share exercise price of the Option Award will be equal to the fair market value of one share of common stock of the Company on the effective date of the grant of the Option Award. The Option Award shall be subject to the following 4 year vesting schedule: 25% of the total number of shares subject to the Option Award shall become vested on December 6, 2017, and an additional 6.25% of the total number of shares subject to the Option Award will vest on a quarterly basis thereafter until the Option Award is fully vested, subject to your remaining a Service Provider (as defined in the Equity Documents) through each vesting date. The vested portion of the Option Award will remain outstanding and exercisable for 180 days following a termination of your employment by the Company without Cause (as defined in the Equity Documents).

Beginning with the Company’s annual grant cycle in 2018, and each year thereafter, it is anticipated but not guaranteed that the Company will grant to you long-term equity incentive awards in accordance with the Plan (or such other equity incentive plan of the Company as may be in effect at such time) subject to the approval of the Board or an authorized committee thereof at such time, on terms substantially similar to the Equity Documents, with substantially similar vesting terms, and with an aggregate grant date fair value equal to or greater than \$2,000,000.

In addition, on the Start Date, with your acceptance of this role as permanent CEO of the Company, your equity incentive award that you received in connection with your employment as interim CEO will automatically vest pursuant to the terms and conditions of that equity incentive award.

**Employee Benefits:**

We maintain certain employee benefits plans, and you will be able to participate in those plans for which you meet the eligibility requirements. To the extent that any employee contribution is owed for such benefits, you will continue to be responsible for paying the employee portion, which will be deducted from your pay.

With your employment as CEO, you will also be entitled to participate in the employee benefits and perquisites provide to senior executives of the Company. In addition, you will be provided with use of a leased company vehicle and gas card paid by the Company and an individual excess employee liability insurance policy, and the Company will pay dues for membership at a country club membership of your choosing.

**Holidays; Out of Office Time:**

We believe in work-life balance. A calendar of Company-paid holidays is available through Human Resources. Out of office time is managed and coordinated directly with your manager and in accordance with Company policy for employees exempt from overtime laws in the state where you work.

**Severance**

In connection with your appointment as CEO, you will be eligible to enter into an Involuntary Termination Protection Agreement, attached hereto as Exhibit B (the “ITPA”) applicable to you based on your senior position within the Company. The ITPA will specify the severance payments and benefits you would be entitled to in connection with a change of control transaction and certain terminations of employment. These protections will supersede all other severance or other benefits you would otherwise be entitled to under any plan, program or policy that the Company may have in effect from time to time.

**Vivint Solar, Inc.  
Policies and  
Employment  
Conditions:**

You agree to review the Company's employee handbook, and you agree to thoroughly familiarize yourself with the policies contained in the handbook and other corporate policies of the Company and to abide by them. Additionally, from time to time, the Company may adopt new policies or make important changes to existing policies and will communicate information about its policies to you by way of electronic mail notification, the Company intranet or otherwise, and you agree to thoroughly review such policy communications and to abide by them. The Company may modify salaries, bonuses and benefits from time to time.

**Withholdings and  
Taxes:**

All forms of compensation referred to in this Agreement are subject to reduction to reflect applicable withholdings and payroll taxes.

**Employment  
Relationship:**

Your employment with the Company is for no specific period of time and continues to be "at will," meaning that either you or the Company may terminate your employment at any time and for any reason, with or without notice or cause. Any contrary representations that may have been made to you are superseded by this Agreement. This is the full and complete agreement between you and the Company on this term. Although your job, duties, compensation and benefits may change from time to time, the "at will" nature of your employment may only be changed in an express written agreement signed by you and by the Chief Legal Officer of the Company.

In addition, as a condition of employment with the Company, you will be required to sign the Company's standard At-Will Employment Agreement, attached hereto as Exhibit A, which requires, among other provisions, the assignment of patent rights to any invention made during your employment at the Company and non-disclosure of Company proprietary information. Also, in the event of any dispute or claim relating to or arising out of our employment relationship, you and the Company agree that (i) any and all disputes between you and the Company shall be fully and finally resolved by binding arbitration, and (ii) you are waiving any and all rights to a jury trial.

**Outside Activities**

Except as specifically approved by the Board, you agree that, during the term of your employment with the Company, you will devote substantially all of your business time and reasonable best efforts to the operation and oversight of the Company’s businesses and performance of your duties hereunder (excluding periods of vacation and sick leave) and will not engage in any other business activities that could conflict with his duties or services to the Company; provided that nothing herein shall preclude you, subject to obtaining consent of the Board, from (i) accepting appointment to or continuing to serve on any board of directors or trustees of any business corporation, and (ii) serving as an officer or director or otherwise participating in non-profit educational, welfare, social, religious and civil organizations. You similarly agree that you will not engage in any other activities that conflict with your obligations to the Company or any of its

subsidiaries or affiliates. Furthermore, you agree not to bring any third party confidential information to the Company, including that of your former employer, and that in performing your duties for the Company you will not in any way utilize any such information.

**Miscellaneous:**

This Agreement, the At-Will Employment Agreement, the Equity Documents, and the ITPA shall set forth the terms of your employment with the Company and supersede and replace any prior understandings or agreements, whether oral or written, express or implied, related to the subject matter hereof. This Agreement is entered into without reliance upon any promise, warranty or representation, written or oral, express or implied, other than those expressly contained herein, and it supersedes any other such promises, warranties, representations or agreements. It may not be amended or modified except by a written instrument signed by you and the Chief Legal Officer of the Company. If any provision of this Agreement is determined to be invalid or unenforceable, in whole or in part, this determination will not affect any other provision of this Agreement, which will remain in full force and effect. This Agreement will be construed and interpreted in accordance with the laws of the State of Utah, without reference to the choice of law provisions thereof.

We have a dynamic organization and look forward to continuing to work with you both to strengthen the Company and to rise to meet the challenges ahead. Please sign this letter, the At-Will Employment Agreement ( Exhibit A ) and the Involuntary Termination Protection Agreement ( Exhibit B ) where indicated and return the same to us promptly.

Sincerely,

Vivint Solar, Inc.

By: /s/ Dana C. Russel

Name: Dana C. Russell

Title: Chief Financial Officer

Agreed and accepted this 14<sup>th</sup> day of December 2016:

/s/ David Bywater  
David Bywater

**EXHIBIT A**

**At-Will Employment Agreement**

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**AT-WILL EMPLOYMENT AGREEMENT**

This AT-WILL EMPLOYMENT AGREEMENT is entered into as of the date set forth on the signature page below (this “ **Agreement** ”), by the UNDERSIGNED EMPLOYEE (the “ **Employee** ”) in favor of VIVINT SOLAR, INC., a Delaware corporation (the “ **Company** ”). For good and valuable consideration, the receipt and sufficiency of which is hereby established, Employee agree as follows:

1. Definitions.

(a) “ **Confidential Information** ” means any present or future information belonging to the Company or its Affiliates (as defined below) that pertains to the Company’s or its Affiliates’ business, whether developed by Employee or by other employees, contractors, or agents, that is confidential or proprietary in nature, and that is not generally known in the public domain. Confidential Information includes, without limitation, information regarding the Company’s finances, financial condition, operations, business plans, business opportunities, purchasing activities, suppliers or potential suppliers, costs of materials, pricing, margins, sales, markets, marketing strategies, plans and ideas, customers, customer lists, customer agreements, customer purchases, customer documents, potential customers, employees, technical data, research, product plans, products, methodologies, services, software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, trade secrets, Confidential Materials, Inventions, Employment Inventions, Intellectual Property, or any other confidential business information of the Company that is disclosed to or obtained by Employee, directly or indirectly, whether in writing, orally, by observation or electronically (through email, computer disk, DVD, CD-ROM, or other electronic means). For these purposes, “Affiliate(s)” means any corporation, firm, partnership or other entity that controls, is controlled by or is under common control with Company – including, but not limited to, Vivint Solar, Inc. and any of its subsidiaries.

(b) “ **Confidential Materials** ” means any tangible medium containing Confidential Information, including but not limited to paper, electronic or magnetic media, prototypes, products, and other materials.

(c) “ **Employment Inventions** ” means any Invention or part thereof conceived, developed, reduced to practice, or created by Employee which is:

(i) conceived, developed, reduced to practice, or created by the Employee: (1) within the scope of the Employee’s employment with the Company; (2) on the Company’s time; or (3) with the aid, assistance, or use of any of the Company’s property, equipment, facilities, supplies, resources, or Intellectual Property;

(ii) the result of any work, services, or duties performed by the Employee for the Company;

(iii) related to the industry or trade of the Company; or

(iv) related to the current or demonstrably anticipated business, research, or development of the Company.

(d) “ **Intellectual Property** ” means any and all patents, copyrights, trademarks, service marks, trade secrets, know how, technology, ideas, or computer software belonging to the Company or its affiliates.

(e) “ **Inventions** ” means any and all inventions, products, formulations, discoveries, ideas, developments, improvements, technology, know-how, products, devices, structures, equipment, processes, methods, techniques, formulas, trade secrets, texts, research, program, software, computer programs, source codes, data, designs, works of authorship, and or other materials, whether or not published, patented, copyrighted, registered or suitable therefor, and all intellectual property rights therein, to the extent they relate to the Company’s past, present, future, or anticipated business, research, development or trade.

(f) “ **Pre-Existing Inventions** ” means any and all inventions, discoveries, ideas, original works of authorship, developments, improvements, trade secrets and other proprietary information or intellectual property rights owned by Employee or in which Employee has an interest prior to, or separate from, Employee’s employment with the Company, including, without limitation, any such inventions that qualifies fully under the provisions of California Labor Code Section 2870, Del.Code tit. 19, § 805, N.C.Gen.Stat. §§ 66-57.1, and Utah Code § 34-39-3(1) (attached hereto as Exhibit A).

(g) “ **Restricted Business** ” means providing products and/or services that are substantially similar to or competitive with those offered or provided by the Company or any of its subsidiaries at any time during the Restricted Period or for which the Company or any of its subsidiaries has adopted a plan or authorized a budget prior to the effective date of Employee’s last day of employment, including (without limitation) providing services, as an employee or otherwise to the following companies: [Sungevity, Inc., RPS, Sunrun Inc., SolarCity Corporation, Clean Power Finance, SunPower Corporation, Corbin Solar Solutions LLC, Galkos, Construction, Inc., Zing Solar, Terrawatt, Inc., and any of their respective affiliates or current or future dealers.

(h) “ **Restricted Period** ” means the period of time beginning with the date the Employee begins his or her employment with the Company and ending twelve (12) months after the date the Employee left his or her employment with the Company.

(i) “ **Restricted Territory** ” means the geographic area consisting of each of the states, territories, districts, and lands of the United States, and any other geographic area in which the Company or any of its affiliates conducts, has conducted within the immediately preceding year, or has proposed to conduct within the immediately preceding year, its business.

2. At-Will Employment. Employee represents and agrees that this Agreement is not, and shall not be construed as, an offer or contract of employment for any period, an offer or guarantee of future employment, or an offer or guarantee of a future contractual relationship. Pursuant to the Vivint Solar Employee Handbook, Employee is an employee “at will” and subject to termination at any time. Employee understands that any representation to the contrary is not valid unless obtained in writing and signed by the Chief Executive Officer of the Company.

Employee acknowledges that this employment relationship may be terminated at any time, with or without good cause or for any or no cause, at the option either of the Company or Employee, with or without notice.

3. Policies and Practices. Employee agrees to abide by all of the Company's rules, regulations, handbooks, manuals, training, policies, practices and procedures, including, but not limited to, the Vivint Solar Employee Handbook. The Company, in its sole and absolute discretion, may from time to time amend, modify or revise its rules, regulations, handbooks, manuals, policies, practices and procedures.

4. Background Check. Employee understands and agrees that employment with the Company is contingent on the Company's receipt, evaluation, and approval of a background check concerning Employee.

5. Covenant of Ownership and Disclosure of Developments.

(a) Employee agrees to promptly disclose to the Company the existence, use, and/or manner of operation of any and all Employment Inventions.

(b) Employee acknowledges and agrees that all Employment Inventions are the sole and exclusive property of the Company. Employee hereby assigns to the Company any and all copyrights, patent rights, trade secrets, and other rights that Employee may have in any Employment Invention. Employee agrees to take all actions reasonably requested by the Company, both during and after the term of Employee's employment, to assign to the Company and to establish, perfect, exercise or protect the Company's rights in any Employment Inventions or title thereto, including without limitation, assisting in obtaining or registering copyrights, patents, trademarks or similar intellectual property rights and executing assignments to the Company. If the Company is unable, because of Employee's mental or physical incapacity, geographic distance or for any other reason, to obtain Employee's approval or signature on any document necessary or useful to claim, secure, extend, protect or enforce any right in intellectual property to which the Company has a reasonable claim, then Employee hereby appoints the Company and its duly authorized officers as Employee's agent and attorney-in-fact to act for Employee for the purpose of accomplishing such act with the same legal force and effect as if executed by Employee. Employee will not incorporate any inventions, discoveries, ideas, original works of authorship, developments, improvements, trade secrets and other proprietary information or intellectual property rights owned by any third party into any Invention without the Company's prior written permission.

(c) Employee will inform the Company in writing prior to incorporating any Pre-Existing Inventions into any Invention or otherwise utilizing any such Pre-Existing Inventions in the course of Employee's employment with the Company; and the Company is hereby granted a nonexclusive, royalty-free, perpetual, irrevocable, transferable worldwide license (with the right to grant and authorize sublicenses) to make, have made, use, import, offer for sale, sell, reproduce, distribute, modify, adapt, prepare derivative works of, display, perform, and otherwise exploit such Pre-Existing Inventions, without restriction, including, without limitation, as part of or in connection with such Invention, and to practice any method related thereto. Employee has attached hereto as Exhibit B, a list describing all Pre-Existing Inventions or, if no such list is attached,

represents and warrants that there are no such Pre-Existing Inventions. Furthermore, Employee represents and warrants that if any Pre-Existing Inventions are included on Exhibit B, they will not materially affect Employee's ability to perform all obligations under this Agreement.

6. Confidentiality and Non-Disclosure Agreement.

(a) *Covenant to Safeguard Confidential Information*. In connection with Employee's Services hereunder, Employee may receive or have access to Confidential Information and Confidential Materials. Employee acknowledges and agrees that:

(i) All Confidential Information shall remain the sole property of the Company;

(ii) All Confidential Information belonging to the Company is valuable, special and unique to the Company's business, that the Company's business depends upon such Confidential Information, and that the Company wishes to protect such Confidential Information by keeping it confidential for the use and benefit of the Company;

(iii) Unless Employee is engaging in Protected Activity, as described below in Section 6(e), Employee shall keep all Confidential Information confidential and will not, without the prior written consent of the Company's Chief Executive Officer or General Counsel, disclose (whether directly or through some other person or entity), in whole or in part, and will not use such information, directly or indirectly, for any purpose other than as expressly allowed by the Company;

(iv) Unless Employee is engaging in Protected Activity, as described below in Section 6(e), Employee shall not use the Company's Confidential Information for Employee's direct or indirect benefit or for the direct or indirect benefit of any person or entity other than the Company;

(v) Unless Employee is engaging in Protected Activity, as described below in Section 6(e), Employee shall not aid, encourage, or allow any other person or entity to use the Company's Confidential Information without authorization;

(vi) Employee shall use reasonable and diligent efforts to protect the confidentiality of the Company's Confidential Information;

(vii) Unless Employee is engaging in Protected Activity, as described below in Section 6(e), Employee shall use the Company's Confidential Information solely to fulfill the duties of Employee's employment relationship with the Company and not otherwise to use such information for Employee's benefit or the benefit of others;

(viii) Employee shall not use, view, or access Confidential Information where it can be seen or viewed by unauthorized persons, and not to leave such information or materials where they can be seen or accessed by unauthorized persons;

(ix) Employee shall notify the Company if Employee becomes aware of any loss, misuse, wrongful disclosure, or other unauthorized access of the Company's Confidential Information by any person;

(x) Employee shall take all other reasonable steps necessary, or reasonably requested by the Company, to safeguard the Company's Confidential Information from unauthorized disclosure or use; and

(xi) Employee shall not disclose to the Company any trade secrets or confidential information of party to whom Employee owes a duty of confidentiality.

(b) *Permission to Notify* . Employee authorizes the Company to notify others, including (without limitation) the Employee's current or future clients, of the terms of this Agreement and the Employee's covenants and obligations hereunder.

(c) *Return of Information* . Upon the request of the Company, or upon the termination of Employee's employment with the Company, Employee shall deliver promptly (and in no event later than two (2) business days after termination) to the Company all Confidential Information and other documents or materials belonging to the Company (including all copies thereof), and all other property belonging to the Company, which are in Employee's possession, custody or control.

(d) *Notice of Compelled Disclosure* . In the event that Employee or anyone to whom Employee transmits any Confidential Information ("**Compelled Person**") becomes legally compelled (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand, or other similar judicial or other compulsory process) to disclose any of the Confidential Information, such Compelled Person will provide the Company with prompt written notice so that it may seek a protective order or other appropriate remedy to protect and preserve the confidentiality of such Confidential Information and/or waive compliance with the provisions of this Agreement. In the event that such a protective order or other remedy is not obtained, or compliance with the provisions of this Agreement is waived, Employee shall disclose or furnish only that portion of the Confidential Information that Employee is legally required to produce and will exercise his or her best efforts to obtain reliable assurance that the Confidential Information will be kept confidential to the greatest extent possible. This provision shall not restrict an Employee who is requested by a law enforcement agency not to provide such notice to the Company, nor does it limit Employee from engaging in Protected Activity, as defined below in Section 6(e).

(e) *Protected Activity Not Prohibited*. Nothing in this Agreement limits or prohibits Employee from filing a charge or complaint with, or otherwise communicating or cooperating with or participating in any investigation or proceeding that may be conducted by, any federal, state or local government agency or commission, including the Securities and Exchange Commission, the Equal Employment Opportunity Commission, the Occupational Safety and Health Administration, and the National Labor Relations Board ("**Government Agencies**"), including disclosing documents or other information as permitted by law, without giving notice to, or receiving authorization from, the Company. Notwithstanding, in making any such disclosures or communications, Employee must take all reasonable precautions to prevent

any unauthorized use or disclosure of any information that may constitute Company Confidential Information to any parties other than the Government Agencies. Employee is not permitted to disclose the Company's attorney-client privileged communications or attorney work product.

7. Former Employer Information. Employee agrees that (i) he/she will not, during employment with the Company, improperly use or disclose any proprietary information or trade secrets of any former or concurrent employer or other person or entity; and (ii) Employee will not bring onto the premises of the Company any document, electronic data, or proprietary information belonging to any such employer, person or entity unless consented to in writing by such employer, person or entity.

8. Covenant Not to Solicit Employees. To the fullest extent permitted under applicable law, Employee agrees that during the Restricted Period, Employee will not directly or indirectly engage in the following conduct, nor will Employee aid, abet, assist, encourage, or influence others to do so: Induce or attempt to induce, solicit or attempt to solicit, or encourage or attempt to encourage, in any capacity, on Employee's behalf or on behalf of any other firm, person or entity, any employee of the Company to leave his/her employment at the Company. Employee agrees that nothing in this Section shall affect his/her continuing obligations under this Agreement during and after the Restricted Period, including, without limitation, Employee's obligations under the Confidentiality and Non-Disclosure Agreement section in this Agreement.

9. Covenant Not to Solicit Customers. This Covenant Not to Solicit Customers applies to Employee if he/she is employed by the Company outside of California. This Covenant Not to Solicit Customers does not apply to Employee if he/she is employed by the Company in California. During the Restricted Period, Employee will not directly or indirectly engage in the following conduct, nor will Employee aid, abet, assist, encourage, or influence others to do so: Induce or attempt to induce, solicit or attempt to solicit, or encourage or attempt to encourage, in any capacity, on Employee's behalf or on behalf of any other firm, person, or entity, any current or former customer of the Company (herein defined as a "**Vivint Solar Customer**") to terminate a contract with the Company or any other entity, or to allow such contract to be canceled, not renewed, or to enter into a contract with another company. Employee acknowledges and agrees that (i) the names, addresses, product specifications, pricing, and information regarding Vivint Solar Customers and the Company, are the confidential and proprietary information of the Company (collectively, "**Proprietary Information**"); and (ii) Employee shall not, nor shall it permit any other person or entity within its control, to sell, disclose, or otherwise disseminate Proprietary Information (each, "**Improper Disclosure**"). Employee promises not to engage in any Improper Disclosure during or after his/her employment with the Company.

10. Covenant Not to Compete. This Covenant Not to Compete applies to Employee if he/she is employed by the Company outside of California. This Covenant Not to Compete does not apply to Employee if he/she is employed by the Company in California.

(a) To the maximum extent permitted under applicable law, during the Restricted Period, Employee shall not, in any manner, directly or indirectly, in the Restricted Territory: (i) engage or invest in; (ii) own, manage, operate, finance, control; (iii) participate in the ownership, management, operation, financing, or control of; or (iv) be employed by, work for or with, or in any way assist, any business, person, firm, corporation, partnership, limited liability

company, governmental or private entity, or any other entity of whatever kind, engaged in the Restricted Business.

(b) Nothing contained in this Agreement shall prohibit Employee from being a passive owner of not more than two percent (2%) of the outstanding stock of any class of a corporation, any securities of which are publicly traded, so long as Employee has no active participation in the business of such corporation.

(c) During the Restricted Period, Employee shall communicate the contents of this Agreement to any person (including any business) that Employee intends to be retained or employed by, associated with, or represent and which Employee knows is engaged in the Restricted Business in the Restricted Territory.

11. Tolling of Covenants. If a court of competent jurisdiction determines that Employee has violated any of Employee's obligations under this Agreement, then the Restricted Period will automatically be extended by a period of time equal in length to the period during which such violation or violations occurred.

12. Reasonableness of Covenants. Employee acknowledges and understands that the covenants of Employee under this Agreement are limited to the extent necessary to protect the legitimate business interests of the company, including the loss of goodwill, unfair competition and to preserve the Company's Confidential Information. Employee expressly acknowledges and agrees that the respective covenants and agreements contained herein are reasonable as to both scope and time.

EMPLOYEE ACKNOWLEDGES AND UNDERSTANDS THAT HIS OR HER STRICT COMPLIANCE WITH THE COVENANTS HEREUNDER IS A MATERIAL CONDITION OF THIS AGREEMENT, AND THAT THE COMPANY WOULD NOT HAVE ENGAGED, OR CONTINUED TO ENGAGE, EMPLOYEE WITHOUT THIS AGREEMENT.

13. Requests for Clarification. In the event Employee is uncertain as to the meaning of any provision of this Agreement or its application to any particular information, document, item or activity, Employee should inquire in writing to the Chief Executive Officer, General Counsel, and/or Human Resources Director of the Company, specifying any areas of uncertainty. The Company will respond in writing within a reasonable time and will endeavor to clarify any areas of uncertainty, including such things as whether it considers particular information or documents to be Confidential Information, and will endeavor to explain any provisions of this Agreement.

14. Remedies for Breach of the Covenants. Employee recognizes that the Company's business interest in maintaining the confidentiality of its Confidential Information, its relationships and goodwill with its customers, and the stability of its work force, is so great that the remedy at law for Employee's breach or threatened breach of the covenants contained in this Agreement may be an inadequate remedy. Employee agrees that, in the event of a breach or threatened breach by Employee of any of the covenants contain in this Agreement, a court of competent jurisdiction may issue a restraining order or an injunction against Employee, restraining or enjoining Employee from engaging in conduct or actions that violate the said covenant. In addition, the Company shall be entitled to any and all other remedies available to the Company at law or in equity, and no

action by the Company in pursuing a given remedy shall constitute an election to forego other remedies.

15. Arbitration and Equitable Relief. This Arbitration provision applies to Employee if he/she is employed by the Company outside of California. This Arbitration provision does not apply to Employee if he/she is employed by the Company in California. Instead, the Arbitration provision attached hereto as Exhibit C applies to Employee if he/she is employed by the Company in California.

(a) *Arbitration*. IN CONSIDERATION OF MY EMPLOYMENT WITH THE COMPANY, ITS PROMISE TO ARBITRATE ALL EMPLOYMENT-RELATED DISPUTES AND MY RECEIPT OF THE COMPENSATION, PAY RAISES AND OTHER BENEFITS PAID TO ME BY THE COMPANY, AT PRESENT AND IN THE FUTURE, I AGREE THAT ANY AND ALL CONTROVERSIES, CLAIMS, OR DISPUTES WITH ANYONE (INCLUDING THE COMPANY AND ANY EMPLOYEE, OFFICER, DIRECTOR, SHAREHOLDER OR BENEFIT PLAN OF THE COMPANY, IN THEIR CAPACITY AS SUCH OR OTHERWISE), ARISING OUT OF, RELATING TO, OR RESULTING FROM MY EMPLOYMENT WITH THE COMPANY OR THE TERMINATION OF MY EMPLOYMENT WITH THE COMPANY, INCLUDING ANY BREACH OF THIS AGREEMENT, SHALL BE SUBJECT TO BINDING ARBITRATION UNDER THE ARBITRATION PROVISIONS SET FORTH IN THE UTAH UNIFORM ARBITRATION ACT (THE “ **RULES** ”) AND PURSUANT TO UTAH LAW. THE FEDERAL ARBITRATION ACT SHALL CONTINUE TO APPLY WITH FULL FORCE AND EFFECT NOTWITHSTANDING THE APPLICATION OF PROCEDURAL RULES SET FORTH IN THE ACT. DISPUTES THAT I AGREE TO ARBITRATE, AND THEREBY AGREE TO WAIVE ANY RIGHT TO A TRIAL BY JURY, INCLUDE ANY STATUTORY CLAIMS UNDER LOCAL, STATE, OR FEDERAL LAW, INCLUDING, BUT NOT LIMITED TO, CLAIMS UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, THE CIVIL RIGHTS ACT OF 1991, THE AMERICANS WITH DISABILITIES ACT OF 1990, THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967, THE OLDER WORKERS BENEFIT PROTECTION ACT, THE WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT, THE FAIR CREDIT REPORTING ACT, THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, THE FAMILY AND MEDICAL LEAVE ACT, THE UTAH ANTIDISCRIMINATION ACT, CLAIMS OF HARASSMENT, DISCRIMINATION AND WRONGFUL TERMINATION, AND ANY STATUTORY OR COMMON LAW CLAIMS, EXCEPT AS PROHIBITED BY LAW. NOTWITHSTANDING THE FOREGOING, I UNDERSTAND THAT NOTHING IN THIS AGREEMENT CONSTITUTES A WAIVER OF MY RIGHTS UNDER SECTION 7 OF THE NATIONAL LABOR RELATIONS ACT OR THE SARBANES-OXLEY ACT, INCLUDING ANY RIGHTS PROHIBITING COMPULSORY ARBITRATION. SIMILARLY, NOTHING IN THIS AGREEMENT PROHIBITS ME FROM ENGAGING IN PROTECTED ACTIVITY, AS SET FORTH BELOW. I FURTHER UNDERSTAND THAT THIS AGREEMENT TO ARBITRATE ALSO APPLIES TO ANY DISPUTES THAT THE COMPANY MAY HAVE WITH ME. UNLESS I AM EMPLOYED IN MISSOURI, WASHINGTON, MONTANA, OREGON, IDAHO, NEVADA, ARIZONA, ALASKA, HAWAII, ILLINOIS, OR INDIANA, I AGREE THAT I MAY ONLY COMMENCE AN ACTION IN ARBITRATION, OR ASSERT COUNTERCLAIMS IN AN ARBITRATION, ON AN INDIVIDUAL BASIS AND, THUS, I

HEREBY WAIVE MY RIGHT TO COMMENCE OR PARTICIPATE IN ANY CLASS OR COLLECTIVE ACTION(S) AGAINST THE COMPANY, AS PERMITTED BY LAW.

(b) **Procedure** . I AGREE THAT ANY ARBITRATION WILL BE ADMINISTERED BY JUDICIAL ARBITRATION & MEDIATION SERVICES, INC. (“**JAMS**”), PURSUANT TO ITS EMPLOYMENT ARBITRATION RULES & PROCEDURES (THE “**JAMS RULES**”), WHICH ARE AVAILABLE AT <http://www.jamsadr.com/rules-employment-arbitration/> AND FROM HUMAN RESOURCES. I UNDERSTAND THAT THE PARTIES TO THE ARBITRATION SHALL EACH PAY AN EQUAL SHARE OF THE COSTS AND EXPENSES OF SUCH ARBITRATION, EXCEPT AS PROHIBITED BY LAW, AND UNDERSTAND THAT EACH PARTY SHALL SEPARATELY PAY FOR ITS RESPECTIVE ATTORNEYS’ FEES AND COSTS. I AGREE THAT THE ARBITRATOR SHALL HAVE THE POWER TO DECIDE ANY MOTIONS BROUGHT BY ANY PARTY TO THE ARBITRATION, INCLUDING MOTIONS FOR SUMMARY JUDGMENT AND/OR ADJUDICATION, AND MOTIONS TO DISMISS, PRIOR TO ANY ARBITRATION HEARING. I AGREE THAT THE ARBITRATOR SHALL ISSUE A WRITTEN DECISION ON THE MERITS. I ALSO AGREE THAT THE ARBITRATOR SHALL HAVE THE POWER TO AWARD ANY REMEDIES AVAILABLE UNDER APPLICABLE LAW. I AGREE THAT THE DECREE OR AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED AS A FINAL AND BINDING JUDGMENT IN ANY COURT HAVING JURISDICTION THEREOF. I AGREE THAT THE ARBITRATOR SHALL ADMINISTER AND CONDUCT ANY ARBITRATION IN ACCORDANCE WITH UTAH LAW, INCLUDING THE UTAH RULES OF CIVIL PROCEDURE AND THE UTAH RULES OF EVIDENCE, AND THAT THE ARBITRATOR SHALL APPLY SUBSTANTIVE AND PROCEDURAL UTAH LAW TO ANY DISPUTE OR CLAIM, WITHOUT REFERENCE TO RULES OF CONFLICT OF LAW. TO THE EXTENT THAT THE JAMS RULES CONFLICT WITH UTAH LAW, UTAH LAW SHALL TAKE PRECEDENCE. I AGREE THAT THE DECISION OF THE ARBITRATOR SHALL BE IN WRITING. I AGREE THAT ABRITRATION UNDER THIS AGREEMENT SHALL BE CONDUCTED IN UTAH COUNTY, UTAH.

(c) **Remedy** . EXCEPT AS PROVIDED BY THE RULES AND THIS AGREEMENT, ARBITRATION SHALL BE THE SOLE, EXCLUSIVE AND FINAL REMEDY FOR ANY DISPUTE BETWEEN ME AND THE COMPANY. ACCORDINGLY, EXCEPT AS PROVIDED FOR BY THE RULES AND THIS AGREEMENT, NEITHER I NOR THE COMPANY WILL BE PERMITTED TO PURSUE COURT ACTION REGARDING CLAIMS THAT ARE SUBJECT TO ARBITRATION.

(d) **Availability of Injunctive Relief** . I AGREE THAT ANY PARTY MAY ALSO PETITION THE COURT FOR INJUNCTIVE RELIEF WHERE EITHER PARTY ALLEGES OR CLAIMS A VIOLATION OF THE AT-WILL EMPLOYMENT, CONFIDENTIAL INFORMATION, INVENTION ASSIGNMENT, AND ARBITRATION AGREEMENT BETWEEN ME AND THE COMPANY OR ANY OTHER AGREEMENT REGARDING TRADE SECRETS, INTELLECTUAL PROPERTY, CONFIDENTIAL INFORMATION, PROPRIETARY INFORMATION, NONCOMPETITION OR NONSOLICITATION. I UNDERSTAND THAT ANY BREACH OR THREATENED BREACH OF SUCH AN AGREEMENT WILL CAUSE IRREPARABLE INJURY AND THAT MONEY DAMAGES WILL NOT PROVIDE AN ADEQUATE REMEDY THEREFOR AND

BOTH PARTIES HEREBY CONSENT TO THE ISSUANCE OF AN INJUNCTION WITHOUT POSTING OF A BOND. IN THE EVENT EITHER PARTY SEEKS INJUNCTIVE RELIEF, THE PREVAILING PARTY SHALL BE ENTITLED TO RECOVER REASONABLE COSTS AND ATTORNEYS ' FEES WITHOUT REGARD FOR THE PREVAILING PARTY IN THE FINAL JUDGMENT, IF ANY. SUCH ATTORNEYS ' FEES AND COSTS SHALL BE RECOVERABLE ON WRITTEN DEMAND AT ANY TIME, INCLUDING, BUT NOT LIMITED TO, PRIOR TO ENTRY OF A FINAL JUDGMENT, IF ANY, BY THE COURT, AND MUST BE PAID WITHIN THIRTY (30) DAYS AFTER DEMAND OR ELSE SUCH AMOUNTS SHALL BE SUBJECT TO THE ACCRUAL OF INTEREST AT A RATE EQUAL TO.

(e) *Administrative Relief* . I UNDERSTAND THAT THIS AGREEMENT DOES NOT PROHIBIT ME FROM PURSUING AN ADMINISTRATIVE CLAIM WITH A LOCAL, STATE, OR FEDERAL ADMINISTRATIVE BODY OR GOVERNMENT AGENCY THAT IS AUTHORIZED TO ENFORCE OR ADMINISTER LAWS RELATED TO EMPLOYMENT, INCLUDING, BUT NOT LIMITED TO, THE UTAH LABOR COMMISSION, THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, THE SECURITIES AND EXCHANGE COMMISSION, THE NATIONAL LABOR RELATIONS BOARD, OR THE WORKERS' COMPENSATION BOARD. THIS AGREEMENT DOES, HOWEVER, PRECLUDE ME FROM PURSUING COURT ACTION REGARDING ANY SUCH CLAIM, EXCEPT AS PERMITTED BY LAW.

(f) *Voluntary Nature of Agreement* . I ACKNOWLEDGE AND AGREE THAT I AM EXECUTING THIS AGREEMENT VOLUNTARILY AND WITHOUT ANY DURESS OR UNDUE INFLUENCE BY THE COMPANY OR ANYONE ELSE. I FURTHER ACKNOWLEDGE AND AGREE THAT I HAVE CAREFULLY READ THIS AGREEMENT AND THAT I HAVE ASKED ANY QUESTIONS NEEDED FOR ME TO UNDERSTAND THE TERMS, CONSEQUENCES, AND BINDING EFFECT OF THIS AGREEMENT AND FULLY UNDERSTAND IT, INCLUDING THAT I AM WAIVING MY RIGHT TO A JURY TRIAL. FINALLY, I AGREE THAT I HAVE BEEN PROVIDED AN OPPORTUNITY TO SEEK THE ADVICE OF AN ATTORNEY OF MY CHOICE BEFORE SIGNING THIS AGREEMENT.

16. Miscellaneous.

(a) *Notices* . All notices, requests, demands, and other communications required or permitted to be given under this Agreement by any Party shall be in writing delivered, if to the Company, to the address set forth below, and if to Employee, to the address set forth on the signature page hereto, or to such other address as any Party may designate from time to time by written notice to all other Parties. Each such notice, request, demand, or other communication shall be deemed given and effective, as follows: (i) if sent by hand delivery, upon delivery; (ii) if sent by first-class U.S. Mail, postage prepaid, upon the earlier to occur of receipt or three (3) days after deposit in the U.S. Mail; (iii) if sent by a recognized prepaid overnight courier service, one (1) day after the date it is given to such service; (iv) if sent by facsimile, upon receipt of confirmation of successful transmission by the facsimile machine; and (v) if sent by email, upon acknowledgement of receipt by the recipient.

VIVINT SOLAR, INC.

Address: 1800 West Ashton Boulevard  
City, State Zip: Lehi, Utah 84043  
Attention: Tessa White  
Senior VP, Human Capital

WITH COPY TO:

VIVINT SOLAR, INC.

Address: 1800 West Ashton Boulevard  
City, State Zip: Lehi, Utah 84043  
Attention: Legal Department

(b) *Survival* . The provisions of this Agreement shall survive the termination of Employee's employment with the Company.

(c) *Severability* . If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, such provision shall be enforced to the fullest extent permitted by applicable law, and the remainder of this Agreement shall remain in full force and effect. In the event that the time period or scope of any provision is declared by a court of competent jurisdiction to exceed the maximum time period or scope that such court deems enforceable, then such court shall reduce the time period or scope to the maximum time period or scope permitted by law. In the event that the scope of any provision is declared by a court of competent jurisdiction to exceed the maximum scope that such court deems enforceable, then such court shall reduce the scope to the maximum scope permitted by law.

(d) *Binding Effect* . This Agreement shall be binding upon and inure to the benefit of Employee and his/her respective heirs, legal representatives, successors, and permitted assigns. Except as otherwise expressly provided in this Agreement, or by operation of law, neither this Agreement nor any of the rights, interests, or obligations hereunder may be assigned by Employee without the prior written consent of the Company. The Company may assign, transfer, or sell its rights under this Agreement, in its sole and absolute discretion, without the consent of Employee.

(e) *Attorneys' Fees and Costs* . In the event that either Party commences an action to enforce the terms of this Agreement, or to seek damages or injunctive relief for the alleged breach thereof, the prevailing Party shall be entitled to collect from the non-prevailing Party its, his or her reasonable attorneys' fees and costs incurred therein.

(f) *Amendments and Waivers* . The failure of either Party to require the performance of any term or obligation of this Agreement, or the waiver by either Party of any breach of this Agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach. This Agreement may only be amended, waived, or modified by an instrument in writing signed by all of the Parties. No modification, waiver, or amendment of this Agreement shall be effective or binding against the Company unless signed by the Company's Chief Executive Officer or General Counsel.

(g) *Choice of Law* . This agreement shall be governed by, and construed under, the internal laws of the state of Utah, without reference to conflicts of laws rules thereof.

(h) *Submission to Jurisdiction* . This Submission to Jurisdiction applies to Employee if he/she is employed by the Company outside of California. Each Party irrevocably consents and agrees that any action, proceeding, or other litigation by or against any other Party or Parties with respect to any claim or cause of action based upon or arising out of or related to this Agreement or the transactions contemplated hereby, shall be brought and tried exclusively in the state and federal courts located in the City of Salt Lake, County of Salt Lake, in the State of Utah, and any such legal action or proceeding must be removed to the aforesaid courts. By execution and delivery of the Agreement, each Party accepts, for itself and in respect of its property, generally and unconditionally, the exclusive jurisdiction of the aforesaid courts. Each Party hereby irrevocably waives (a) any objection which it may now or hereafter have to the laying of venue with respect any such action, proceeding, or litigation arising out of or in connection with this Agreement or the transactions contemplated hereby brought in the aforesaid courts, and (b) any right to stay or dismiss any such action, proceeding, or litigation brought before the aforesaid courts on the basis of forum *non-conveniens* . Each Party further agrees that personal jurisdiction over it may be affected by service of process by certified mail, postage prepaid, addressed as provided in Section 16(a) of this Agreement, and when so made shall be as if served upon it personally within the State of Utah.

(i) *Submission to Jurisdiction (California Employee)* . This Submission to Jurisdiction applies to Employee if he/she is employed by the Company in California. Each Party irrevocably consents and agrees that any action, proceeding, or other litigation by or against any other Party or Parties with respect to any claim or cause of action based upon or arising out of or related to this Agreement or the transactions contemplated hereby, shall be brought and tried exclusively in the state and federal courts located in the City of Los Angeles, in the State of California, and any such legal action or proceeding may be removed to the aforesaid courts. By execution and delivery of the Agreement, each Party accepts, for itself and in respect of its property, generally and unconditionally, the exclusive jurisdiction of the aforesaid courts. Each Party hereby irrevocably waives (a) any objection which it may now or hereafter have to the laying of venue with respect any such action, proceeding, or litigation arising out of or in connection with this Agreement or the transactions contemplated hereby brought in the aforesaid courts, and (b) any right to stay or dismiss any such action, proceeding, or litigation brought before the aforesaid courts on the basis of forum *non-conveniens* . Each Party further agrees that personal jurisdiction over it may be affected by service of process by certified mail, postage prepaid, addressed as provided in Section 16(a) of this Agreement, and when so made shall be as if served upon it personally within the State of California.

(j) *Headings* . The Article, Section, and Paragraph headings used in this Agreement are for convenience only and are not to be considered in construing or interpreting this Agreement.

(k) *Counterparts* . This Agreement may be executed by Employee by facsimile, email, or digital signature, and all of said counterparts taken together shall be deemed to constitute one and the same instrument . A facsimile, digital signature, or portable document format (“pdf”) signature page shall constitute an original for purposes hereof.

**[SIGNATURE PAGES FOLLOW]**

**BY SIGNING THIS AGREEMENT, EMPLOYEE ACKNOWLEDGES THAT EMPLOYEE HAS CAREFULLY READ AND FULLY UNDERSTANDS ALL OF THE PROVISIONS OF THIS AGREEMENT AND THAT EMPLOYEE IS VOLUNTARILY ENTERING INTO THIS AGREEMENT.**

Dated as of: December 14, 2016

**EMPLOYEE :**

Signature:

Print Full Name:

Address:

City, State ZIP:

E-Mail:

**EXHIBIT A**  
**to At-Will Employment Agreement**

**CALIFORNIA LABOR CODE SECTION 2870**  
**INVENTION ON OWN TIME-EXEMPTION FROM AGREEMENT**

- “(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer’s equipment, supplies, facilities, or trade secret information except for those inventions that either:
- (1) Relate at the time of conception or reduction to practice of the invention to the employer’s business, or actual or demonstrably anticipated research or development of the employer; or
  - (2) Result from any work performed by the employee for the employer.
- (b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.”

**N.C.GEN.STAT. §§ 66-57.1**

Any provision in an employment agreement which provides that the employee shall assign or offer to assign any of his rights in an invention to his employer shall not apply to an invention that the employee developed entirely on his own time without using the employer’s equipment, supplies, facility or trade secret information except for those inventions that

- (i) relate to the employer’s business or actual or demonstrably anticipated research or development, or
- (ii) result from any work performed by the employee for the employer.

To the extent a provision in an employment agreement purports to apply to the type of invention described, it is against the public policy of this State and is unenforceable . The employee shall bear the burden of proof in establishing that his invention qualifies under this section.

**DEL.CODE TIT. 19, § 805**

Any provision in an employment agreement which provides that the employee shall assign or offer to assign any of the employee’s rights in an invention to the employee’s employer shall not apply to an invention that the employee developed entirely on the employee’s own time without using the employer’s equipment, supplies, facility or trade secret information, except for those inventions that:

- (1) Relate to the employer’s business or actual or demonstrably anticipated research or development; or
- (2) Result from any work performed by the employee for the employer.

To the extent a provision in an employment agreement purports to apply to the type of invention described, it is against the public policy of this State and is unenforceable . An employer may not require a provision of an employment agreement made unenforceable under this section as a condition of employment or continued employment.

**UTAH CODE § 34-39-3(1)**

(1) An employment agreement between an employee and his employer is not enforceable against the employee to the extent that the agreement requires the employee to assign or license, or to

offer to assign or license, to the employer any right or intellectual property in or to an invention that is:

- (a) created by the employee entirely on his own time; and
- (b) not an employment invention.

**EXHIBIT A**

**EXHIBIT B**  
**to At-Will Employment Agreement**  
**LIST OF PRIOR INVENTIONS**  
**AND ORIGINAL WORKS OF AUTHORSHIP**

Title	Date	Identifying Number or Brief Description
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No inventions or improvements  
 Additional Sheets Attached

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Employee (typed or printed)

**EXHIBIT C**  
**to At-Will Employment Agreement**

**ARBITRATION AND EQUITABLE RELIEF**

This Arbitration provision applies to Employee only if he/she is employed by and works for the Company in California . This Arbitration provision does not apply to Employee if he/she is employed by the Company outside of California . Instead, the Arbitration provision set forth in Section 14 applies to Employee if he/she is employed by the Company outside of California.

(a) *Arbitration* . IN CONSIDERATION OF MY EMPLOYMENT WITH THE COMPANY, ITS PROMISE TO ARBITRATE ALL EMPLOYMENT-RELATED DISPUTES, AND MY RECEIPT OF THE COMPENSATION, PAY RAISES, AND OTHER BENEFITS PAID TO ME BY THE COMPANY, AT PRESENT AND IN THE FUTURE, I AGREE THAT ANY AND ALL CONTROVERSIES, CLAIMS, OR DISPUTES WITH ANYONE (INCLUDING THE COMPANY AND ANY EMPLOYEE, OFFICER, DIRECTOR, SHAREHOLDER, OR BENEFIT PLAN OF THE COMPANY, IN THEIR CAPACITY AS SUCH OR OTHERWISE), ARISING OUT OF, RELATING TO, OR RESULTING FROM MY EMPLOYMENT WITH THE COMPANY OR THE TERMINATION OF MY EMPLOYMENT WITH THE COMPANY, INCLUDING ANY BREACH OF THIS AGREEMENT, SHALL BE SUBJECT TO BINDING ARBITRATION UNDER THE ARBITRATION PROVISIONS SET FORTH IN THE UTAH UNIFORM ARBITRATION ACT (THE “*ACT*”), AND PURSUANT TO UTAH LAW. THE FEDERAL ARBITRATION ACT SHALL CONTINUE TO APPLY WITH FULL FORCE AND EFFECT NOTWITHSTANDING THE APPLICATION OF PROCEDURAL RULES SET FORTH IN THE ACT. **DISPUTES THAT I AGREE TO ARBITRATE, AND THEREBY AGREE TO WAIVE ANY RIGHT TO A TRIAL BY JURY, INCLUDE ANY STATUTORY CLAIMS UNDER LOCAL, STATE, OR FEDERAL LAW, INCLUDING, BUT NOT LIMITED TO, CLAIMS UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, THE AMERICANS WITH DISABILITIES ACT OF 1990, THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967, THE OLDER WORKERS BENEFIT PROTECTION ACT, THE WORKER ADJUSTMENT AND RETRAINING NOTIFICATION ACT, THE FAIR LABOR STANDARDS ACT, THE FAMILY AND MEDICAL LEAVE ACT, THE UTAH ANTIDISCRIMINATION ACT, CLAIMS OF HARASSMENT, DISCRIMINATION, AND WRONGFUL TERMINATION, AND ANY OTHER STATUTORY OR COMMON LAW CLAIMS, EXCEPT AS PROHIBITED BY LAW. NOTWITHSTANDING THE FOREGOING, I UNDERSTAND THAT NOTHING IN THIS AGREEMENT CONSTITUTES A WAIVER OF MY RIGHTS UNDER SECTION 7 OF THE NATIONAL LABOR RELATIONS ACT OR THE SARBANES-OXLEY ACT, INCLUDING ANY RIGHTS PROHIBITING COMPULSORY ARBITRATION. SIMILARLY, NOTHING IN THIS AGREEMENT PROHIBITS ME FROM ENGAGING IN PROTECTED ACTIVITY, AS SET FORTH BELOW. I UNDERSTAND THAT I MAY BRING A PROCEEDING AS A PRIVATE ATTORNEY GENERAL, AS PERMITTED BY LAW. I FURTHER UNDERSTAND THAT THIS AGREEMENT TO ARBITRATE ALSO APPLIES TO ANY DISPUTES THAT THE COMPANY MAY HAVE WITH ME.**

(b) *Procedure* . I AGREE THAT ANY ARBITRATION WILL BE ADMINISTERED BY JUDICIAL ARBITRATION & MEDIATION SERVICES, INC. (“*JAMS*”), PURSUANT TO ITS EMPLOYMENT ARBITRATION RULES & PROCEDURES (THE “*JAMS RULES*”), WHICH ARE AVAILABLE AT <http://www.jamsadr.com/rules-employment-arbitration/> AND FROM HUMAN RESOURCES. I AGREE THAT THE ARBITRATOR SHALL HAVE THE POWER TO DECIDE ANY MOTIONS BROUGHT BY ANY PARTY TO THE ARBITRATION, INCLUDING MOTIONS FOR SUMMARY JUDGMENT AND/OR ADJUDICATION, AND MOTIONS TO DISMISS AND DEMURRERS, APPLYING THE STANDARDS SET FORTH UNDER THE UTAH RULES OF CIVIL

EXHIBIT C

AT-WILL EMPLOYMENT AGREEMENT  
( Rev . 12/2016)

PROCEDURE. I AGREE THAT THE ARBITRATOR SHALL ISSUE A WRITTEN DECISION ON THE MERITS. I ALSO AGREE THAT THE ARBITRATOR SHALL HAVE THE POWER TO AWARD ANY REMEDIES AVAILABLE UNDER APPLICABLE LAW, AND THAT THE ARBITRATOR SHALL AWARD ATTORNEYS' FEES AND COSTS TO THE PREVAILING PARTY, WHERE PROVIDED BY APPLICABLE LAW. I AGREE THAT THE DECREE OR AWARD RENDERED BY THE ARBITRATOR MAY BE ENTERED AS A FINAL AND BINDING JUDGMENT IN ANY COURT HAVING JURISDICTION THEREOF. I UNDERSTAND THAT THE COMPANY WILL PAY FOR ANY ADMINISTRATIVE OR HEARING FEES CHARGED BY THE ARBITRATOR OR JAMS EXCEPT THAT I SHALL PAY ANY FILING FEES ASSOCIATED WITH ANY ARBITRATION THAT I INITIATE, BUT ONLY SO MUCH OF THE FILING FEES AS I WOULD HAVE INSTEAD PAID HAD I FILED A COMPLAINT IN A COURT OF LAW. I AGREE THAT THE ARBITRATOR SHALL ADMINISTER AND CONDUCT ANY ARBITRATION IN ACCORDANCE WITH UTAH LAW, INCLUDING THE UTAH RULES OF CIVIL PROCEDURE AND THE UTAH RULES OF EVIDENCE, AND THAT THE ARBITRATOR SHALL APPLY SUBSTANTIVE AND PROCEDURAL UTAH LAW TO ANY DISPUTE OR CLAIM, WITHOUT REFERENCE TO RULES OF CONFLICT OF LAW. TO THE EXTENT THAT THE JAMS RULES CONFLICT WITH UTAH LAW, UTAH LAW SHALL TAKE PRECEDENCE. I AGREE THAT ANY ARBITRATION UNDER THIS AGREEMENT SHALL BE CONDUCTED IN LOS ANGELES COUNTY, CALIFORNIA.

(c) *Remedy* . EXCEPT AS PROVIDED BY THE ACT AND THIS AGREEMENT, ARBITRATION SHALL BE THE SOLE, EXCLUSIVE, AND FINAL REMEDY FOR ANY DISPUTE BETWEEN ME AND THE COMPANY. ACCORDINGLY, EXCEPT AS PROVIDED FOR BY THE ACT AND THIS AGREEMENT, NEITHER I NOR THE COMPANY WILL BE PERMITTED TO PURSUE OR PARTICIPATE IN COURT ACTION REGARDING CLAIMS THAT ARE SUBJECT TO ARBITRATION.

(d) *Administrative Relief* . I UNDERSTAND THAT THIS AGREEMENT DOES NOT PROHIBIT ME FROM PURSUING AN ADMINISTRATIVE CLAIM WITH A LOCAL, STATE, OR FEDERAL ADMINISTRATIVE BODY OR GOVERNMENT AGENCY THAT IS AUTHORIZED TO ENFORCE OR ADMINISTER LAWS RELATED TO EMPLOYMENT, INCLUDING, BUT NOT LIMITED TO, THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, THE NATIONAL LABOR RELATIONS BOARD, THE SECURITIES AND EXCHANGE COMMISSION, OR THE WORKERS' COMPENSATION BOARD. THIS AGREEMENT DOES, HOWEVER, PRECLUDE ME FROM PURSUING COURT ACTION REGARDING ANY SUCH CLAIM, EXCEPT AS PERMITTED BY LAW.

(e) *Voluntary Nature of Agreement* . I ACKNOWLEDGE AND AGREE THAT I AM EXECUTING THIS AGREEMENT VOLUNTARILY AND WITHOUT ANY DURESS OR UNDUE INFLUENCE BY THE COMPANY OR ANYONE ELSE. I ACKNOWLEDGE AND AGREE THAT I HAVE RECEIVED A COPY OF THE TEXT OF CALIFORNIA LABOR CODE SECTION 2870 IN EXHIBIT A. I FURTHER ACKNOWLEDGE AND AGREE THAT I HAVE CAREFULLY READ THIS AGREEMENT AND THAT I HAVE ASKED ANY QUESTIONS NEEDED FOR ME TO UNDERSTAND THE TERMS, CONSEQUENCES, AND BINDING EFFECT OF THIS AGREEMENT AND FULLY UNDERSTAND IT, INCLUDING THAT ***I AM WAIVING MY RIGHT TO A JURY TRIAL*** . FINALLY, I AGREE THAT I HAVE BEEN PROVIDED AN OPPORTUNITY TO SEEK THE ADVICE OF AN ATTORNEY OF MY CHOICE BEFORE SIGNING THIS AGREEMENT.

EXHIBIT C

AT-WILL EMPLOYMENT AGREEMENT  
(Rev . 12/2016)

**EXHIBIT B**

**Involuntary Termination Protection Agreement**

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VIVINT SOLAR, INC.

INVOLUNTARY TERMINATION PROTECTION AGREEMENT

THIS INVOLUNTARY TERMINATION PROTECTION AGREEMENT (this “*Agreement*”) is made and entered into by and between David Bywater (“*Executive*”) and Vivint Solar, Inc. (the “*Company*”), effective as of December 14, 2016 (the “*Effective Date*”).

**RECITALS**

The Board of Directors of the Company (the “*Board*”) believes that it is in the best interest of the Company and its stockholders to assure that the Company shall have the continued dedication and objectivity of Executive, to provide Executive with an incentive to continue Executive’s employment with the Company, and to motivate Executive to maximize the value of the Company for the benefit of its stockholders.

The Board believes that it is important to provide Executive with certain severance benefits upon Executive’s termination of employment under certain circumstances. These benefits shall provide Executive with enhanced financial security and incentive and encouragement to remain with the Company.

**AGREEMENT**

***NOW, THEREFORE***, for good and valuable consideration, including the mutual covenants contained herein, the Company and Executive hereby agree as follows:

1. Term of Agreement. This Agreement shall terminate upon the date that all of the obligations of the parties hereto with respect to this Agreement have been satisfied.

2. At-Will Employment. The Company and Executive acknowledge that Executive’s employment is and shall continue to be at-will, as defined under applicable law. If Executive’s employment terminates for any reason, including (without limitation) any termination for Cause, Executive shall not be entitled to any payments, benefits, damages, awards or compensation other than as provided by this Agreement or as may otherwise be available in accordance with the Company’s established employee plans that provide benefits other than in the nature of severance or separation pay.

3. Severance Benefits.

(a) Voluntary Resignation; Termination for Cause. If Executive’s employment with the Company terminates (i) voluntarily by Executive other than for Good Reason, or (ii) for Cause by the Company, then Executive shall not be entitled to receive any payment other than accrued but unpaid vacation, expense reimbursements, wages, and other benefits due to Executive under any Company’s established employee plans, policies, and arrangements that provide benefits other than in the nature of severance or separation pay (“*Accrued Compensation*”).

(b) Involuntary Termination other than for Cause or Voluntary Termination for Good Reason outside of the Change of Control Period. If, outside of the Change of Control Period, (i) the Company terminates Executive’s employment with the Company other than for Cause (excluding by reason of death or Disability) or (ii) if Executive resigns from such employment for Good Reason, then subject to Section 4 below and in addition to any Accrued Compensation, Executive shall receive the following:

(i) Non-COC Severance Payment. Executive shall be paid an amount equal to 1.5x the sum of (A) Executive’s base salary rate, as then in effect, less \$10,000, plus (B) (i) if Executive has been employed with the Company for at least one year as of the date of Executive’s termination of employment, the average of performance bonuses paid to Executive for each year Executive was employed by the Company during the 3-year period immediately preceding the date of Executive’s termination of employment or (ii) if Executive has been employed with the Company for less than one year as of the date of Executive’s termination

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of employment, Executive's target annual performance bonus, in effect for the Company's fiscal year in which Executive's employment with the Company terminates (the "**Non-COC Severance**"). The Non-COC Severance will be paid, less applicable withholdings, in equal installments over a period of 18 months following the date Executive's employment with the Company terminates (the "**Non-COC Severance Period**"), with the first payment to be made on the 61<sup>st</sup> day following Executive's termination of employment (and to include any severance payments that otherwise would have been paid to Executive within the 60 days following the date of Executive's termination of employment), with any remaining payments paid in accordance with the Company's normal payroll practices for the remainder of the Non-COC Severance Period.

(ii) Non-COC Additional Bonus Payment. Executive shall be paid an amount equal to a pro-rata portion of the annual bonus paid to Executive in respect of the fiscal year which ended prior to the fiscal year that contained the date of Executive's termination of employment; provided, however, that if the duration of Executive's employment with the Company in the prior fiscal year did not entitle Executive to annual bonus for that fiscal year, such pro-rata portion instead will be determined using Executive's target annual bonus in the fiscal year that contained the date of Executive's termination of employment (the "**Non-COC Additional Bonus**"). The pro-rata portion will be based on the number of days that elapsed in the fiscal year between the first day of the fiscal year and the date of Executive's termination of employment compared to 365. This Non-COC Additional Bonus will be paid, less applicable withholdings, in equal installments over the Non-COC Severance Period, with the first payment to be made on the 61<sup>st</sup> day following Executive's termination of employment (and to include any Non-COC Additional Bonus amount that otherwise would have been paid to Executive within the 60 days following the date of Executive's termination of employment), with any remaining payments paid in accordance with the Company's normal payroll practices for the remainder of the Non-COC Severance Period.

(iii) Continued Employee Benefits. If Executive elects continuation coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("**COBRA**") within the time period prescribed pursuant to COBRA for Executive and Executive's eligible dependents, then the Company will reimburse Executive for the COBRA premiums for such coverage (at the coverage levels in effect immediately prior to Executive's termination) until the earlier of (A) the end of the Non-COC Severance Period or (B) the date upon which Executive and/or Executive's eligible dependents are no longer eligible for COBRA continuation coverage. The reimbursements will be made by the Company to Executive consistent with the Company's normal expense reimbursement policy. Notwithstanding the first sentence of this Section 3(b)(iii), if, at the time of Executive's termination of employment, it would result in a Company excise tax to reimburse Executive for the COBRA premiums than no such premiums will be reimbursed and if do so would not cause imposition of an excise tax, Executive will be paid a single lump sum of \$36,000.

(c) Involuntary Termination other than for Cause or Voluntary Termination for Good Reason within the Change of Control Period. If, within the Change of Control Period, (i) the Company terminates Executive's employment without Cause (excluding by reason of death or Disability) or (ii) Executive terminates Executive's employment with the Company for Good Reason, then, subject to Section 4 below and in addition to any Accrued Compensation, Executive shall receive the following severance from the Company:

(i) COC Severance Payment. Executive shall be paid an amount equal to 2.0x the sum of (A) Executive's base salary rate, as then in effect, less \$10,000 *plus* (B) (i) if Executive has been employed with the Company for at least one year as of the date of Executive's termination of employment, the average of the performance bonuses paid to Executive for each year Executive was employed by the Company during the 3-year period immediately preceding the date of Executive's termination of employment or (ii) if Executive has been employed with the Company for less than one year as of the date of Executive's termination of employment, Executive's target annual performance bonus, in effect for the Company's fiscal year in which Executive's employment with the Company terminates (the "**COC Severance**"). The COC Severance will be paid, less applicable withholdings, in a lump sum on the 61<sup>st</sup> day following Executive's termination of employment. For the avoidance of doubt, if (x) Executive incurred a termination prior to a Change of Control that qualifies Executive for severance payments under Section 3(b)(i) above; and (y) a Change of Control occurs within six months following Executive's termination of employment that qualifies Executive for the superior

benefits under this Section 3(c)(i), then Executive shall be entitled to a lump-sum payment of the amount calculated under this Section 3(c)(i), less amounts already paid under Section 3(b)(i) above.

(ii) COC Additional Bonus Payment. Executive shall be paid an amount equal to a pro-rata portion of the annual performance bonus that would have been paid to Executive had Executive been employed by the Company for the entire fiscal year that contained the date of Executive's termination of employment, based on actual performance for such fiscal year (and assuming that any performance objectives that are based on individual performance are achieved at target levels) (the "**COC Additional Bonus**"). This COC Bonus Severance will be paid in a lump sum, less applicable withholdings, at the same time as annual performance bonuses are paid to other Company executives. For the avoidance of doubt, if (x) Executive incurred a termination prior to a Change of Control that qualifies Executive for severance payments under Section 3(a)(ii) above; and (y) a Change of Control occurs within six months following Executive's termination of employment that qualifies Executive for superior benefits under this Section 3(c)(ii), then Executive shall be entitled to a lump-sum payment of the amount calculated under this Section 3(c)(ii), less amounts already paid under Section 3(b)(ii) above, but in no case less than \$0.

(iii) Equity Compensation Acceleration. 100% of Executive's then unvested outstanding stock options, restricted stock units and other Company equity compensation awards, including any equity awards transferred to Executive's estate planning vehicles (the "**Equity Compensation Awards**") shall immediately vest and become exercisable. In the case of equity awards with performance-based vesting, all performance goals or other vesting criteria will be deemed achieved at target levels. Any Company stock options and stock appreciation rights shall thereafter remain exercisable following Executive's employment termination for the period prescribed in the respective option and stock appreciation right agreements.

(iv) Continued Employee Benefits. If Executive elects continuation coverage pursuant to the COBRA within the time period prescribed pursuant to COBRA for Executive and Executive's eligible dependents, then the Company will reimburse Executive for the COBRA premiums for such coverage (at the coverage levels in effect immediately prior to Executive's termination) until the earlier of (A) the end of 18 months or (B) the date upon which Executive and/or Executive's eligible dependents are no longer eligible for COBRA continuation coverage. The reimbursements will be made by the Company to Executive consistent with the Company's normal expense reimbursement policy. Notwithstanding the first sentence of this Section 3(c)(iv), if, at the time of Executive's termination of employment, it would result in a Company excise tax to reimburse Executive for the COBRA premiums than no such premiums will be reimbursed and if do so would not cause imposition of an excise tax, Executive will be paid a single lump sum of \$36,000.

(d) Termination for Death or Disability. If Executive's employment is terminated as a result of Executive's Disability or death, Executive (or Executive's estate) shall not be entitled to receive any payment other than Accrued Compensation.

(e) Exclusive Remedy. In the event of a termination of Executive's employment, the provisions of Section 3 are intended to be and are exclusive in lieu of any other rights or remedies to which Executive or the Company otherwise may be entitled, whether at law, tort, or contract, in equity, or under this Agreement (other than the payment of Accrued Compensation). For the avoidance of doubt, Executive shall in no circumstances be entitled to both benefits pursuant to Section 3(b) and the benefits pursuant to Section 3(c), except as specifically set out in Section 3(c). Executive will be entitled to no benefits, compensation, or other payments or rights upon a termination of employment other than those benefits expressly set forth in Section 3 of this Agreement.

#### 4. Conditional Nature of Severance Payments and Benefits.

(a) Release of Claims Agreement. The receipt of any severance payments or benefits pursuant to this Agreement is subject to Executive signing and not revoking a separation agreement and release of claims in substantially the form attached hereto as Exhibit A (the "**Release**"), which must become effective and irrevocable no later than the 60<sup>th</sup> day following Executive's termination of employment (the "**Release**").

**Deadline** ”). If the Release does not become effective and irrevocable by the Release Deadline, Executive shall forfeit any right to severance payments or benefits under this Agreement. In no event shall severance payments or benefits be paid or provided until the Release actually becomes effective and irrevocable . Any severance payments or benefits under this Agreement will be paid, or, in the case of installments, will commence, on the first regularly scheduled payroll date following the date the Release becomes effective and irrevocable, or if later, such time as required by Section 4(c)(iii) below.

(b) Restrictive Covenants. During the term of Executive’s employment and for the Restricted Period, Executive shall comply with the restrictive covenants set forth on Appendix A (collectively, the “**Restrictive Covenants** ”). Executive’s receipt of any payments or benefits under Section 3 shall be subject to Executive continuing to comply with the terms of the Restrictive Covenants.

(c) Section 409A.

(i) Notwithstanding anything to the contrary in this Agreement, no severance pay or benefits to be paid or provided to Executive, if any, pursuant to this Agreement that, when considered together with any other severance payments or separation benefits, are considered deferred compensation under Section 409A of the Internal Revenue Code of 1986, as amended (the “**Code** ”), and the final regulations and any guidance promulgated thereunder (“**Section 409A** ”) (together, the “**Deferred Payments** ”) shall be paid or otherwise provided until Executive has a “separation from service” within the meaning of Section 409A. Similarly, no severance payable to Executive, if any, pursuant to this Agreement that otherwise would be exempt from Section 409A pursuant to Treasury Regulation Section 1.409A-1(b)(9) shall be payable until Executive has a “separation from service” within the meaning of Section 409A.

(ii) It is intended that none of the severance payments under this Agreement will constitute “Deferred Payments” but rather will be exempt from Section 409A as a payment that would fall within the “short-term deferral period” as described in Section 4(c)(iv) below or resulting from an involuntary separation from service as described in Section 4(c)(v) below. However, any severance payments or benefits under this Agreement that would be considered Deferred Payments shall be paid on, or, in the case of installments, shall not commence until, the 61<sup>st</sup> day following Executive’s separation from service, or, if later, such time as required by Section 4(c)(iii). Except as required by Section 4(c)(iii), any installment payments that would have been made to Executive during the 60 day period immediately following Executive’s separation from service but for the preceding sentence shall be paid to Executive on the 61<sup>st</sup> day following Executive’s separation from service and the remaining payments shall be made as provided in this Agreement.

(iii) Notwithstanding anything to the contrary in this Agreement, if Executive is a “specified employee” within the meaning of Section 409A at the time of Executive’s termination (other than due to death), then the Deferred Payments, if any, that are payable within the first six months following Executive’s separation from service, shall become payable on the first payroll date that occurs on or after the date six months and one day following the date of Executive’s separation from service. All subsequent Deferred Payments, if any, shall be payable in accordance with the payment schedule applicable to each payment or benefit. Notwithstanding anything herein to the contrary, if Executive dies following Executive’s separation from service, but before the six month anniversary of the separation from service, then any payments delayed in accordance with this paragraph shall be payable in a lump sum as soon as administratively practicable after the date of Executive’s death and all other Deferred Payments shall be payable in accordance with the payment schedule applicable to each payment or benefit. Each payment and benefit payable under this Agreement is intended to constitute a separate payment under Section 1.409A-2(b)(2) of the Treasury Regulations.

(iv) Any amount paid under this Agreement that satisfies the requirements of the “short-term deferral” rule set forth in Section 1.409A-1(b)(4) of the Treasury Regulations shall not constitute Deferred Payments for purposes of Section 4(c)(i) above.

(v) Any amount paid under this Agreement that qualifies as a payment made as a result of an involuntary separation from service pursuant to Section 1.409A-1(b)(9)(iii) of the Treasury

Regulations that does not exceed the Section 409A Limit (as defined below) shall not constitute Deferred Payments for purposes of Section 4(c) (i)above.

(vi) The foregoing provisions are intended to comply with the requirements of Section 409A so that none of the severance payments and benefits to be provided hereunder shall be subject to the additional tax imposed under Section 409A, and any ambiguities herein shall be interpreted to so comply. The Company and Executive agree to work together in good faith to consider amendments to this Agreement and to take such reasonable actions which are necessary, appropriate or desirable to avoid imposition of any additional tax or income recognition before actual payment to Executive under Section 409A. In no event will the Company reimburse Executive for any tax obligations incurred by Executive as a result of the application of Section 409A.

5. Golden Parachute Excise Tax Best Results. In the event that the severance and other benefits provided for in this agreement or otherwise payable to Executive (a) constitute “parachute payments” within the meaning of Code Section 280G and (b) would be subject to the excise tax imposed by Code Section 4999, then such benefits shall be either:

(i) delivered in full, or

(ii) delivered as to such lesser extent which would result in no portion of such severance benefits being subject to excise tax under Section 4999 of the Code, whichever of the foregoing amounts, taking into account the applicable federal, state and local income and employment taxes and the excise tax imposed by Code Section 4999, results in the receipt by Executive, on an after-tax basis, of the greatest amount of benefits, notwithstanding that all or some portion of such benefits may be taxable under Code Section 4999. Unless the Company and Executive otherwise agree in writing, the determination of Executive’s excise tax liability and the amount required to be paid under this Section 5 shall be made in writing by a nationally recognized certified professional services firm selected by the Company, the Company’s legal counsel or such other person or entity to which the parties mutually agree (the “*Firm*”). For purposes of making the calculations required by this Section 5, the Firm may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Code Sections 280G and 4999. The Company and Executive shall furnish to the Firm such information and documents as the Firm may reasonably request in order to make a determination under this Section 5. The Company shall bear all costs the Firm may reasonably incur in connection with any calculations contemplated by this Section 5. Any reduction in payments and/or benefits required by this Section 5 shall occur in the following order: (i) reduction of cash payments; (ii) cancellation of awards granted “contingent on a change in ownership or control” (within the meaning of Code Section 280G); (iii) cancellation of accelerated vesting of equity awards; or (iv) reduction of employee benefits. In the event that acceleration of vesting of equity award compensation is to be reduced, such acceleration of vesting will be cancelled in the reverse order of the date of grant of Executive’s equity awards. If two or more equity compensation awards are granted on the same date, each award shall be reduced on a pro-rata basis.

6. Definition of Terms. The following terms referred to in this Agreement shall have the following meanings:

(a) Cause. “*Cause*” means any of the following occurring during Executive’s employment by the Company (except with respect to clause (v) below): (i) material personal dishonesty by Executive involving Company business or participation in a fraud against the Company, or Executive’s breach of Executive’s fiduciary duty to Company; (ii) Executive’s indictment or conviction of a felony or other crime involving moral turpitude or dishonesty; (iii) Executive’s willful material refusal to comply with the lawful requests made of Executive by the Board reasonably related to Executive’s employment by the Company and the performance of Executive’s duties with respect thereto (but which shall not include a request to waive or amend any portion of this Agreement or terminate this Agreement or to consent to an action that would result in Executive’s loss of a right under this Agreement); (iv) Executive’s material violation of the Company’s policies, after written notice to Executive and an opportunity to be heard by the Board and Executive’s failure

to fully cure such violations within a reasonable period of time of not less than 30 days after such hearing; (v) Executive's threats or acts of violence in the workplace; (vi) Executive's unlawful harassment in the course of any business activity of any employee or independent contractor of the Company; (vii) Executive's theft or unauthorized conversion by or transfer of any Company asset or business opportunity to Executive or any third party; and (viii) a material breach by Executive of any material provision of this Agreement or any other agreement with the Company after written notice to Executive and an opportunity to be heard by the Board and Executive's failure to fully cure such breach within a reasonable period of time of not less than 30 days after such hearing.

(b) Change of Control. "Change of Control" means the occurrence of any of the following events:

(i) *Change in Ownership of the Company* . A change in the ownership of the Company which occurs on the date that any one person, or more than one person acting as a group (" **Person** "), acquires ownership of the stock of the Company that, together with the stock held by such Person, constitutes more than 50% of the total voting power of the stock of the Company; or

(ii) *Change in Effective Control of the Company* . A change in the effective control of the Company which occurs on the date that a majority of members of the Board is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the Board prior to the date of the appointment or election. For purposes of this clause (ii), if any Person is considered to be in effective control of the Company, the acquisition of additional control of the Company by the same Person shall not be considered a Change of Control; or

(iii) *Change in Ownership of a Substantial Portion of the Company's Assets* . A change in the ownership of a substantial portion of the Company's assets which occurs on the date that any Person acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) assets from the Company that have a total gross fair market value equal to or more than 50% of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions; provided, however, that for purposes of this subsection (iii), the following will not constitute a change in the ownership of a substantial portion of the Company's assets: (A) a transfer to an entity that is controlled by the Company's stockholders immediately after the transfer, or (B) a transfer of assets by the Company to: (1) a stockholder of the Company (immediately before the asset transfer) in exchange for or with respect to the Company's stock, (2) an entity, 50% or more of the total value or voting power of which is owned, directly or indirectly, by the Company, (3) a Person, that owns, directly or indirectly, 50% or more of the total value or voting power of all the outstanding stock of the Company, or (4) an entity, at least 50% of the total value or voting power of which is owned, directly or indirectly, by a Person described in this subsection (iii)(B)(3). For purposes of this subsection (iii), gross fair market value means the value of the assets of the Company, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets. For purposes of this subsection (iii), gross fair market value means the value of the assets of the Company, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets.

For these purposes, persons shall be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the Company.

Notwithstanding the foregoing provisions of this definition, a transaction will not constitute a Change of Control unless the transaction qualifies as a change in control event within the meaning of Section 409A.

Further and for the avoidance of doubt, a transaction will not constitute a Change of Control if: (i) its sole purpose is to change the state of the Company's incorporation, or (ii) its sole purpose is to create a holding company that will be owned in substantially the same proportions by the persons who held the Company's securities immediately before such transaction.

(c) Change of Control Period. “ **Change of Control Period** ” means the period beginning on the date six months prior to, and ending on the date that is 18 months following, a Change of Control.

(d) Disability. “ **Disability** ” means that Executive has been unable to perform Executive’s duties at the Company as the result of Executive’s incapacity due to physical or mental illness, and such inability, at least 26 weeks after its commencement, is determined to be total and permanent by a physician selected by the Company or its insurers and acceptable to Executive or Executive’s legal representative (such Agreement as to acceptability not to be unreasonably withheld). Termination resulting from Disability may only be effected after at least 30 days’ written notice by the Company of its intention to terminate Executive’s employment. In the event that Executive resumes the performance of substantially all of Executive’s duties hereunder before the termination of Executive’s employment becomes effective, the notice of intent to terminate shall automatically be deemed to have been revoked.

(e) Good Reason. “ **Good Reason** ” means Executive’s resignation within 90 days following the expiration of any Company cure period (discussed below) following the occurrence of one or more of the following, without Executive’s express written consent:

(i) a material diminution in Executive’s title, duties, authority, reporting position or responsibilities measured in the aggregate; or

(ii) a material reduction of Executive’s base compensation (in other words, a material reduction in Executive’s base salary or target bonus opportunity) as in effect immediately prior to such reduction, other than reductions implemented as part of an overall Company-wide reduction program that is applied similarly to all executive officers and is no more than 20%; or

(iii) a material change in the geographic location at which Executive must perform services (in other words, Executive’s relocation to a facility or an office location more than a seventy-five (75)-mile radius from Executive’s then current location); or

(iv) a material breach by the Company of a material provision of any material agreement between Executive and the Company.

Notwithstanding the foregoing, Executive agrees not to resign for Good Reason without first providing the Company with written notice of the acts or omissions constituting the grounds for Good Reason within ninety (90) days of the initial existence of the grounds for Good Reason and a reasonable cure period of thirty (30) days following the date of such notice.

(f) Restricted Period. “ **Restricted Period** ” means a period of 12 months following the date of Executive’s termination of employment; provided, however, that if Executive’s termination of employment occurs under the circumstances giving rise to payment under Section 3(b) of this Agreement, the Restricted Period will equal the Non-COC Severance Period.

## 7. Successors.

(a) The Company’s Successors. Any successor to the Company (whether direct or indirect and whether by purchase, merger, consolidation, liquidation or otherwise) to all or substantially all of the Company’s business and/or assets shall assume the obligations under this Agreement and agree expressly to perform the obligations under this Agreement in the same manner and to the same extent as the Company would be required to perform such obligations in the absence of a succession. For all purposes under this Agreement, the term “ **Company** ” shall include any successor to the Company’s business and/or assets which executes and delivers the assumption agreement described in this Section 7(a) or which becomes bound by the terms of this Agreement by operation of law.

(b) Executive's Successors. The terms of this Agreement and all rights of Executive hereunder shall inure to the benefit of, and be enforceable by, Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

#### 8. Notice.

(a) General. All notices and other communications required or permitted hereunder shall be in writing, shall be effective when given, and shall in any event be deemed to be given upon receipt or, if earlier, (a) five days after deposit with the U.S. Postal Service or other applicable postal service, if delivered by first class mail, postage prepaid, (b) upon delivery, if delivered by hand, (c) one business day after the business day of deposit with Federal Express or similar overnight courier, freight prepaid or (d) one business day after the business day of facsimile transmission, if delivered by facsimile transmission with copy by first class mail, postage prepaid, and shall be addressed (i) if to Executive, at Executive's last known residential address and (ii) if to the Company, at the address of its principal corporate offices (attention: Secretary), or in any such case at such other address as a party may designate by 10 days' advance written notice to the other party pursuant to the provisions above.

(b) Notice of Termination. Any termination by the Company for Cause or by Executive for Good Reason or Disability or as a result of a voluntary resignation shall be communicated by a notice of termination to the other party hereto given in accordance with Section 8(a) above. Such notice shall indicate the specific termination provision in this Agreement relied upon, shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination under the provision so indicated, and shall specify the termination date (which shall be not more than 30 days after the giving of such notice). The failure by Executive to include in the notice any fact or circumstance which contributes to a showing of Good Reason or Disability shall not waive any right of Executive hereunder or preclude Executive from asserting such fact or circumstance in enforcing Executive's rights hereunder.

#### 9. Miscellaneous Provisions.

(a) No Duty to Mitigate. Executive shall not be required to mitigate the amount of any payment contemplated by this Agreement, nor shall any such payment be reduced by any earnings that Executive may receive from any other source.

(b) Waiver. No provision of this Agreement shall be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by Executive and by an authorized officer of the Company (other than Executive). No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.

(c) Headings. All captions and section headings used in this Agreement are for convenient reference only and do not form a part of this Agreement.

(d) Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto and supersedes all prior representations, understandings, undertakings or agreements (whether oral or written and whether expressed or implied) of the parties with respect to the subject matter hereof, including Executive's employment signed offer letter with the Company in effect as of the Effective Date. This Agreement may not be altered, modified, or amended, nor may any subsequent equity awards granted to Executive have less favorable change in control or severance protection unless such amendment or subsequent document is in writing signed by Executive and specifically referencing this Section 9(d).

(e) Choice of Law. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Utah, without regard to the choice-of-law provisions. The Utah state courts in Provo, Utah and/or the United States District Court for the District of Utah, located in Provo, Utah, shall have exclusive jurisdiction and venue over all controversies relating to or arising out of this Agreement. Executive hereby expressly consents to the exclusive jurisdiction and venue of the state courts in

Utah County, Utah and/or the United States District Court for the District of Utah, located in Provo, Utah for any disputes arising out of or relating to this Agreement.

(f) Severability. The invalidity or unenforceability of any provision or provisions of this Agreement shall not affect the validity or enforceability of any other provision hereof, which shall remain in full force and effect.

(g) Tax Withholding. All payments made pursuant to this Agreement shall be subject to withholding of applicable income and employment taxes.

(h) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

*[Remainder of Page Intentionally Left Blank]*

*IN WITNESS WHEREOF*, each of the parties has executed this Agreement, in the case of the Company by its duly authorized officer, to be effective as of the Effective Date.

**COMPANY VIVINT SOLAR, INC.**

By:

Dana C. Russell  
Chief Financial Officer

**EXECUTIVE**

By:

David Bywater

**APPENDIX A**  
**Restrictive Covenants**

This Appendix A shall supplement the terms of the Involuntary Termination Protection Agreement (the “*Agreement*”). Unless otherwise defined below, capitalized terms used herein shall have the meaning prescribed to them under the Agreement.

1. Noncompetition; Nonsolicitation; Nondisparagement.

(a) Executive acknowledges and recognizes the highly competitive nature of the businesses of the Company and its affiliates and accordingly agrees as follows:

(b) During Executive’s Employment with the Company or its Affiliates (the “*Employment Term*”), Executive will not, whether on Executive’s own behalf or on behalf of or in conjunction with any person, firm, partnership, joint venture, association, corporation or other business organization, entity or enterprise whatsoever (“*Person*”), directly or indirectly solicit or assist in soliciting in competition with the Restricted Group in the Business, the business of any then current or prospective client or customer with whom Executive (or his direct reports) had personal contact or dealings on behalf of the Company.

(i) Unless Executive was employed in California, North Dakota, or Oklahoma, during the Restricted Period, Executive will not directly or indirectly:

(A) engage in the Business anywhere in the United States, or in any geographical area that is within 100 miles of any geographical area where the Restricted Group engages in the Business, including, for the avoidance of doubt, by entering into the employment of or rendering any services to a Core Competitor, except where such employment or services do not relate in any manner to the Business;

(B) acquire a financial interest in, or otherwise become actively involved with, any Person engaged in the Business, directly or indirectly, as an individual, partner, shareholder, officer, director, principal, agent, trustee or consultant;

(C) intentionally and adversely interfere with, or attempt to adversely interfere with, business relationships between the members of the Restricted Group and any of their clients, customers, suppliers, partners, members or investors; or

(D) solicit or assist in soliciting in competition with the Restricted Group in the Business, the business of any then current or prospective client or customer with whom Executive (or his direct reports) had personal contact or dealings on behalf of the Company.

(ii) Notwithstanding anything to the contrary in this Appendix A, Executive may, directly or indirectly own, solely as an investment, securities of any Person engaged in a Business (including, without limitation, a Core Competitor) which are publicly traded on a national or regional stock exchange or on the over-the-counter market if Executive (i) is not a controlling person of, or a member of a group which controls, such person and (ii) does not, directly or indirectly, own 2% or more of any class of securities of such Person.

(iii) During the Employment Term and the Restricted Period, Executive will not, whether on Executive’s own behalf or on behalf of or in conjunction with any Person, directly or indirectly:

(A) solicit or encourage any employee of the Restricted Group to leave the employment of the Restricted Group;

(B) hire any executive-level employee, key personnel, or manager-level employee (i.e., any operations manager or district sales manager) who was employed by the Restricted Group as of the

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date of Executive's termination of employment with the Company or who left the employment of the Restricted Group coincident with, or within one year prior to or after, the termination of Executive's employment with the Company; or

(C) encourage any consultant of the Restricted Group to cease working with the Restricted Group.

(iv) For purposes of this Agreement:

(A) "**Affiliate**" means (i) any person or entity that directly or indirectly controls, is controlled by or is under common control with the Company and/or (ii) to the extent provided by the Committee, any person or entity in which the Company has a significant interest. The term "control" (including, with correlative meaning, the terms "controlled by" and "under common control with"), as applied to any person or entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting or other securities, by contract or otherwise.

(B) "**Business**" shall mean (1) origination, installation, or monitoring services related to residential or commercial security, life-safety, energy management or home automation services, (2) installation or servicing of residential or commercial solar panels or sale of electricity generated by solar panels, (3) design, engineering or manufacturing of technology or products related to residential or commercial security, life-safety, energy management or home automation services and/or (4) provision of wireless voice or data services, including internet, into the home.

(C) "**Core Competitor**" shall mean ADT Security Services/Tyco Integrated Security, Security Networks, LLC, Protection 1, Inc., Protect America, Inc., Stanley Security Solutions, Inc., Vector Security, Inc., Slomins, Inc., Monitronics International, Inc., Life Alert, Comcast Corporation, Time Warner, Inc., AT&T Inc., Verizon Communications, Inc., DISH Network Corp., DIRECTV, Pinnacle, JAB Wireless, Inc., Clearwire Corporation, CenturyLink, Inc., Cox Communication, Inc. and any of their respective Affiliates and current or future dealers, and Sungevity, Inc., RPS, Sunrun Inc., Solar City Corporation, Clean Power Finance, SunPower Corporation, Corbin Solar Solutions LLC, Galkos Construction, Inc., Zing Solar, Terrawatt, Inc. and any of their respective Affiliates or current or future dealers.

(D) "**Restricted Group**" shall mean, collectively, the Company and its subsidiaries and, to the extent engaged in the Business, their respective Affiliates (including The Blackstone Group L.P. and its Affiliates).

(c) During the Employment Term and the three-year period beginning immediately following the Employment Term, Executive agrees not to make, or cause any other person to make, any communication that is intended to criticize or disparage, or has the effect of criticizing or disparaging, the Company or any of its affiliates, agents or advisors (or any of its or their respective employees, officers or directors (it being understood that comments made in Executive's good faith performance of his duties hereunder shall not be deemed disparaging or defamatory for purposes of this Agreement). Nothing set forth herein shall be interpreted to prohibit Executive from responding truthfully to incorrect public statements, making truthful statements when required by law, subpoena or court order and/or from responding to any inquiry by any regulatory or investigatory organization. In addition, nothing set forth herein (or in any other Company document, policy, or agreement) limits or prohibits Executive from filing a charge or complaint with, or otherwise communicating or cooperating with or participating in any investigation or proceeding that may be conducted by, any federal, state or local government agency or commission, including the Securities and Exchange Commission, the Equal Employment Opportunity Commission, the Occupational Safety and Health Administration, and the National Labor Relations Board ("**Government Agencies**"), including disclosing documents or other information as permitted by law, without giving notice to, or receiving authorization from, the Company (such actions, the "**Protected Activity**"). Notwithstanding, in making any such disclosures or communications, Executive must take all reasonable precautions to prevent any unauthorized use or disclosure of any information that may

constitute Confidential Information to any parties other than the Government Agencies. Executive is not permitted to disclose the Company's attorney-client privileged communications or attorney work product.

(d) It is expressly understood and agreed that although Executive and the Company consider the restrictions contained in this Section 1 to be reasonable, if a final judicial determination is made by a court of competent jurisdiction that the time or territory or any other restriction contained in this Appendix A is an unenforceable restriction against Executive, the provisions of this Appendix A shall not be rendered void but shall be deemed amended to apply as to such maximum time and territory and to such maximum extent as such court may judicially determine or indicate to be enforceable. Alternatively, if any court of competent jurisdiction finds that any restriction contained in this Appendix A is unenforceable, and such restriction cannot be amended so as to make it enforceable, such finding shall not affect the enforceability of any of the other restrictions contained herein.

(e) The period of time during which the provisions of this Section 1 shall be in effect shall be extended by the length of time during which Executive is in breach of the terms hereof as determined by any court of competent jurisdiction on the Company's application for injunctive relief.

(f) The provisions of Section 1 hereof shall survive the termination of Executive's employment for any reason.

2. Confidentiality; Intellectual Property.

(a) Confidentiality.

(i) Executive will not at any time (whether during or after Executive's employment with the Company) (x) retain or use for the benefit, purposes or account of Executive or any other Person; or (y) unless Executive is engaging in Protected Activity, disclose, divulge, reveal, communicate, share, transfer or provide access to any Person outside the Company (other than Executive's professional advisers who are bound by confidentiality obligations or otherwise in performance of Executive's duties under Executive's employment and pursuant to customary industry practice), any non-public, proprietary or confidential information --including without limitation trade secrets, know-how, research and development, software, databases, inventions, processes, formulae, technology, designs and other intellectual property, information concerning finances, investments, profits, pricing, costs, products, services, vendors, customers, clients, partners, investors, personnel, compensation, recruiting, training, advertising, sales, marketing, promotions, government and regulatory activities and approvals -- concerning the past, current or future business, activities and operations of the Company, its subsidiaries or Affiliates and/or any third party that has disclosed or provided any of same to the Company on a confidential basis (" **Confidential Information** ") without the prior written authorization of the Board.

(ii) " **Confidential Information** " shall not include any information that is (a) generally known to the industry or the public other than as a result of Executive's breach of this covenant; (b) made legitimately available to Executive by a third party without breach of any confidentiality obligation of which Executive has knowledge; or (c) required by law to be disclosed; provided that with respect to subsection (c) Executive shall give prompt written notice to the Company of such requirement, disclose no more information than is so required, and reasonably cooperate with any attempts by the Company to obtain a protective order or similar treatment.

(iii) Except as required by law, or unless Executive is engaging in Protected Activity, Executive will not disclose to anyone, other than Executive's family (it being understood that, in this Agreement, the term "family" refers to Executive, Executive's spouse, children, parents and spouse's parents) and advisors, the existence or contents of this Agreement; provided that Executive may disclose to any prospective future employer the provisions of this Appendix A. This Section 2(a)(iii) shall terminate if the Company publicly discloses a copy of this Agreement (or, if the Company publicly discloses summaries or excerpts of this Agreement, to the extent so disclosed) unless Executive is engaging in Protected Activity.

(iv) Upon termination of Executive's employment with the Company for any reason, Executive shall (x) cease and not thereafter commence use of any Confidential Information or intellectual property (including without limitation, any patent, invention, copyright, trade secret, trademark, trade name, logo, domain name or other source indicator) owned or used by the Company, its subsidiaries or Affiliates; and (y) immediately destroy, delete, or return to the Company, at the Company's option, all originals and copies in any form or medium (including memoranda, books, papers, plans, computer files, letters and other data) in Executive's possession or control (including any of the foregoing stored or located in Executive's office, home, laptop or other computer, whether or not Company property) that contain Confidential Information, except that Executive may retain only those portions of any personal notes, notebooks and diaries that do not contain any Confidential Information.

(b) Intellectual Property.

(i) If Executive creates, invents, designs, develops, contributes to or improves any works of authorship, inventions, intellectual property, materials, documents or other work product (including without limitation, research, reports, software, databases, systems, applications, presentations, textual works, content, or audiovisual materials) ("**Works**"), either alone or with third parties, at any time during Executive's employment by the Company and within the scope of such employment and/or with the use of any the Company resources ("**Company Works**"), Executive shall promptly and fully disclose same to the Company and hereby irrevocably assigns, transfers and conveys, to the maximum extent permitted by applicable law, all of Executive's right, title, and interest therein (including rights under patent, industrial property, copyright, trademark, trade secret, unfair competition, other intellectual property laws, and related laws) to the Company to the extent ownership of any such rights does not vest originally in the Company. If Executive creates any written records (in the form of notes, sketches, drawings, or any other tangible form or media) of any Company Works, Executive will keep and maintain same. The records will be available to and remain the sole property and intellectual property of the Company at all times.

(ii) Executive shall take all requested actions and execute all requested documents (including any licenses or assignments required by a government contract) at the Company's expense (but without further remuneration) to assist the Company in validating, maintaining, protecting, enforcing, perfecting, recording, patenting or registering any of the Company's rights in the Company Works.

(iii) Executive shall not improperly use for the benefit of, bring to any premises of, divulge, disclose, communicate, reveal, transfer or provide access to, or share with the Company any confidential, proprietary or non-public information or intellectual property relating to a former employer or other third party without the prior written permission of such third party. Executive shall comply with all relevant policies and guidelines of the Company that are from time to time previously disclosed to Executive, including regarding the protection of Confidential Information and intellectual property and potential conflicts of interest.

(iv) The provisions of Section 2 hereof shall survive the termination of Executive's employment for any reason.

**EXHIBIT A**

**FORM OF RELEASE OF CLAIMS**

**RELEASE OF CLAIMS**

*THIS RELEASE OF CLAIMS* (this “**Agreement**”) is made by and between Vivint Solar, Inc. (the “**Company**”), and David Bywater (“**Executive**”). The Company and Executive are sometimes collectively referred to herein as the “**Parties**” and individually referred to as a “**Party**”.

**RECITALS**

**WHEREAS**, Executive was employed by the Company until \_\_\_\_\_, 20\_\_, when Executive’s employment was terminated (“**Termination Date**”);

**WHEREAS**, Executive signed an [At-Will Employment, Proprietary Information, Invention Assignment, and Arbitration Agreement] with the Company, effective as of \_\_\_\_\_ (the “**Proprietary Rights Agreement**”);

**WHEREAS**, in accordance with Section 3[(b)]/[(c)] of that certain Involuntary Termination Protection Agreement between the Company and Executive, effective as of \_\_\_\_\_ (the “**Termination Agreement**”), Executive has agreed to enter into and not revoke a standard release of claims in favor of the Company as a condition to receiving the severance benefits described in the Termination Agreement; and

**WHEREAS**, the Parties wish to resolve any and all disputes, claims, complaints, grievances, charges, actions, petitions and demands that Executive may have against the Company and any of the Releasees (as defined below), including, but not limited to, any and all claims arising out of or in any way related to Executive’s employment relationship with the Company and the termination of that relationship.

**NOW THEREFORE**, for good and valuable consideration, including the mutual promises and covenants made herein, the Company and Executive hereby agree as follows:

**COVENANTS**

1. **Termination**. Executive’s employment with the Company terminated on the Termination Date.

2. **Payment of Salary and Receipt of All Benefits**. Executive acknowledges and represents that, other than the consideration to be paid in accordance with the terms and conditions of the Termination Agreement, the Company has paid or provided all salary, wages, bonuses, accrued vacation/paid time off, premiums, leaves, housing allowances, relocation costs, interest, severance, outplacement costs, fees, reimbursable expenses, commissions, draws, stock, stock options or other equity awards (including restricted stock unit awards), vesting, and any and all other benefits and compensation due to Executive and that no other reimbursements or compensation are owed to Executive.

3. **Release of Claims**. Executive agrees that the consideration to be paid in accordance with the terms and conditions of the Termination Agreement represents settlement in full of all outstanding obligations owed to Executive by the Company and its current and former officers, directors, Executives, agents, investors, attorneys, stockholders, administrators, affiliates, benefit plans, plan administrators, insurers, trustees, divisions, and subsidiaries, and predecessor and successor corporations and assigns (collectively, the “**Releasees**”). Executive, on Executive’s own behalf and on behalf of Executive’s respective heirs, family

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members, executors, agents, and assigns, hereby and forever releases the Releasees from, and agrees not to sue concerning, or in any manner to institute, prosecute, or pursue, any claim, complaint, charge, duty, obligation, demand, or cause of action relating to any matters of any kind, whether presently known or unknown, suspected or unsuspected, that Executive may possess against any of the Releasees arising from any omissions, acts, facts, or damages that have occurred up until and including the Effective Date of this Agreement, including, without limitation the following:

(a) any and all claims relating to or arising from Executive's employment relationship with the Company and the termination of that relationship;

(b) any and all claims relating to, or arising from, Executive's right to purchase, or actual purchase of shares of stock of the Company, including, without limitation, any claims for fraud, misrepresentation, breach of fiduciary duty, breach of duty under applicable state corporate law, and securities fraud under any state or federal law;

(c) any and all claims for wrongful discharge of employment; termination in violation of public policy; discrimination; harassment; retaliation; breach of contract, both express and implied; breach of covenant of good faith and fair dealing, both express and implied; promissory estoppel; negligent or intentional infliction of emotional distress; fraud; negligent or intentional misrepresentation; negligent or intentional interference with contract or prospective economic advantage; unfair business practices; defamation; libel; slander; negligence; personal injury; assault; battery; invasion of privacy; false imprisonment; conversion; and disability benefits;

(d) any and all claims for violation of any federal, state, or municipal statute, including, but not limited to, Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Equal Pay Act; the Fair Labor Standards Act; the Fair Credit Reporting Act; the Age Discrimination in Employment Act of 1967; the Older Workers Benefit Protection Act; the Employee Retirement Income Security Act of 1974; the Worker Adjustment and Retraining Notification Act; the Family and Medical Leave Act; the Sarbanes-Oxley Act of 2002; the Utah Antidiscrimination Act; the California Family Rights Act; the California Equal Pay Law; the California Unruh Civil Rights Act; the California Workers' Compensation Act; the California Labor Code; and the California Fair Employment and Housing Act; the Utah Antidiscrimination Act;

(e) any and all claims for violation of the federal, or any state, constitution;

(f) any and all claims arising out of any other laws and regulations relating to employment or employment discrimination;

(g) any claim for any loss, cost, damage, or expense arising out of any dispute over the nonwithholding or other tax treatment of any of the proceeds received by Executive as a result of this Agreement; and

(h) any and all claims for attorneys' fees and costs.

Executive agrees that the release set forth in this Section 3 (the "**Release**") shall be and remain in effect in all respects as a complete general release as to the matters released. The Release does not extend to any severance obligations due Executive under the Termination Agreement. The Release does not release claims that cannot be released as a matter of law, including, but not limited to, Executive's right to file a charge with or participate in a charge by the Equal Employment Opportunity Commission, or any other local, state, or federal administrative body or government agency that is authorized to enforce or administer laws related to employment, against the Company (with the understanding that any such filing or participation does not give Executive the right to recover any monetary damages against the Company; Executive's release of claims

herein bars Executive from recovering such monetary relief from the Company). Executive represents that Executive has made no assignment or transfer of any right, claim, complaint, charge, duty, obligation, demand, cause of action, or other matter waived or released by this Section 3. Nothing in this Agreement waives Executive's (i) rights under that certain Indemnification Agreement between the Company and Executive, effective as of [DATE] (the "**Indemnification Agreement**"), or (ii) rights to indemnification or any payments under any fiduciary insurance policy, if any, provided by any act or agreement of the Company, state or federal law or policy of insurance.

4. Acknowledgment of Waiver of Claims under ADEA. Executive acknowledges that Executive is waiving and releasing any rights Executive may have under the Age Discrimination in Employment Act of 1967 ("**ADEA**") and that this waiver and release is knowing and voluntary. Executive agrees that this waiver and release does not apply to any rights or claims that may arise under the ADEA after the Effective Date of this Agreement. Executive acknowledges that the consideration given for this waiver and release Agreement is in addition to anything of value to which Executive was already entitled. Executive further acknowledges that Executive has been advised by this writing that (a) Executive should consult with an attorney *prior* to executing this Agreement; (b) Executive has at least 21 days within which to consider this Agreement; (c) Executive has 7 days following the execution of this Agreement by the parties to revoke the Agreement; (d) this Agreement shall not be effective until the revocation period has expired; and (e) nothing in this Agreement prevents or precludes Executive from challenging or seeking a determination in good faith of the validity of this waiver under the ADEA, nor does it impose any condition precedent, penalties or costs for doing so, unless specifically authorized by federal law. In the event Executive signs this Agreement and delivers it to the Company in less than the 21-day period identified above, Executive hereby acknowledges that Executive has freely and voluntarily chosen to waive the time period allotted for considering this Agreement. Executive acknowledges and understands that revocation must be accomplished by a written notification to the Chief Legal Officer of the Company that is received prior to the Effective Date.

5. Unknown Claims. Executive acknowledges that Executive has been advised to consult with legal counsel and that Executive is familiar with the principle that a general release does not extend to claims that the releaser does not know or suspect to exist in Executive's favor at the time of executing the release, which, if known by Executive, must have materially affected Executive's settlement with the releasee. Executive, being aware of this principle, agrees to expressly waive any rights Executive may have to that effect, as well as under any other statute or common law principles of similar effect.

6. No Pending or Future Lawsuits. Executive represents that Executive has no lawsuits, claims, or actions pending in Executive's name, or on behalf of any other person or entity, against the Company or any of the other Releasees. Executive also represents that Executive does not intend to bring any claims on Executive's own behalf or on behalf of any other person or entity against the Company or any of the other Releasees. Executive confirms that Executive has no knowledge of any wrongdoing involving improper or false claims against a federal or state governmental agency, or any other wrongdoing that involves Executive or any other present or former Company employees, including violations of the federal and state securities laws or the Sarbanes-Oxley Act of 2002.

7. Confidential Information. Executive reaffirms and agrees to observe and abide by the terms of the Proprietary Rights Agreement, specifically including the provisions therein regarding nondisclosure of the Company's trade secrets and confidential and proprietary information, which agreement shall continue in force; *provided, however*, that: (a) as to any provisions regarding competition contained in the Proprietary Rights Agreement that conflict with the provisions regarding competition contained in Appendix A of the Termination Agreement, the provisions of Appendix A of the Termination Agreement shall control; (b) as to any provisions regarding solicitation of employees contained in Appendix A of the Proprietary Rights Agreement that conflict with the provisions regarding solicitation of employees contained in this Agreement, the provisions of Appendix A of the Termination Agreement shall control.

8. Return of Company Property; Passwords and Password-protected Documents. Executive confirms that Executive has returned to the Company in good working order all keys, files, records (and copies thereof), equipment (including, but not limited to, computer hardware, software and printers, wireless handheld devices, cellular phones and pagers), access or credit cards, Company identification, and any other Company-owned property in Executive's possession or control. Executive further confirms that Executive has cancelled all accounts for Executive's benefit, if any, in the Company's name, including, but not limited to, credit cards, telephone charge cards, cellular phone and/or pager accounts and computer accounts. Executive also confirms that Executive has delivered all passwords in use by Executive at the time of Executive's termination, a list of any documents that Executive created or of which Executive is otherwise aware that are password-protected, along with the password(s) necessary to access such password-protected documents.

9. No Cooperation. Executive agrees that Executive will not knowingly encourage, counsel, or assist any attorneys or their clients in the presentation or prosecution of any disputes, differences, grievances, claims, charges, or complaints by any third party against any of the Releasees, unless under a subpoena or other court order to do so or as related directly to the ADEA waiver in this Agreement. Executive agrees both to immediately notify the Company upon receipt of any such subpoena or court order, and to furnish, within three (3) business days of its receipt, a copy of such subpoena or other court order. If approached by anyone for counsel or assistance in the presentation or prosecution of any disputes, differences, grievances, claims, charges, or complaints against any of the Releasees, Executive shall state no more than that Executive cannot provide any such counsel or assistance.

10. Breach. In addition to the rights provided in the Section 11 below, Executive acknowledges and agrees that any material breach of this Agreement (unless such breach constitutes a legal action by Executive challenging or seeking a determination in good faith of the validity of the waiver herein under the ADEA), or of any provision of the Proprietary Rights Agreement, shall entitle the Company immediately to recover and/or cease providing the consideration provided to Executive under this Agreement and to obtain damages, except as provided by law, *provided, however*, that the Company shall not recover One Hundred Dollars (\$100.00) of the consideration already paid pursuant to this Agreement and such amount shall serve as full and complete consideration for the promises and obligations assumed by Executive under this Agreement and the Proprietary Rights Agreement.

11. Attorneys' Fees. In the event that either Party brings an action to enforce or effect its rights under this Agreement, the prevailing Party shall be entitled to recover its costs and expenses, including the costs of mediation, arbitration, litigation, court fees, and reasonable attorneys' fees incurred in connection with such an action.

12. No Admission of Liability. Executive understands and acknowledges that this Agreement constitutes a compromise and settlement of any and all actual or potential disputed claims by Executive. No action taken by the Company hereto, either previously or in connection with this Agreement, shall be deemed or construed to be (a) an admission of the truth or falsity of any actual or potential claims or (b) an acknowledgment or admission by the Company of any fault or liability whatsoever to Executive or to any third party.

13. Noncompetition/Nonsolicitation/Nondisparagement. Executive agrees to adhere to the noncompetition, nonsolicitation, and the nondisparagement restrictions set forth in Appendix A of the Termination Agreement.

14. Protected Activity Not Prohibited. Nothing in this Agreement limits or prohibits Executive from filing a charge or complaint with, or otherwise communicating or cooperating with or participating in any investigation or proceeding that may be conducted by, any federal, state or local government agency or commission, including the Securities and Exchange Commission, the Equal Employment Opportunity

Commission, the Occupational Safety and Health Administration, and the National Labor Relations Board (“ **Government Agencies** ”), including disclosing documents or other information as permitted by law, without giving notice to, or receiving authorization from, the Company. Notwithstanding, in making any such disclosures or communications, Executive must take all reasonable precautions to prevent any unauthorized use or disclosure of any information that may constitute Company confidential information to any parties other than the Government Agencies. Executive is not permitted to disclose the Company’s attorney-client privileged communications or attorney work product.

15. Costs. The Parties shall each bear their own costs, attorneys’ fees and other fees incurred in connection with the preparation of this Agreement.

16. Arbitration. THE PARTIES AGREE THAT ANY AND ALL DISPUTES ARISING OUT OF THE TERMS OF THIS AGREEMENT, THEIR INTERPRETATION, AND ANY OF THE MATTERS HEREIN RELEASED, SHALL BE SUBJECT TO ARBITRATION IN UTAH COUNTY IN THE STATE OF UTAH, BEFORE JUDICIAL ARBITRATION & MEDIATION SERVICES (“ **JAMS** ”), PURSUANT TO ITS EMPLOYMENT ARBITRATION RULES & PROCEDURES (“ **JAMS RULES** ”). THE ARBITRATOR MAY GRANT INJUNCTIONS AND OTHER RELIEF IN SUCH DISPUTES. THE ARBITRATOR SHALL ADMINISTER AND CONDUCT ANY ARBITRATION IN ACCORDANCE WITH UTAH LAW, INCLUDING THE UTAH RULES OF CIVIL PROCEDURE, AND THE ARBITRATOR SHALL APPLY SUBSTANTIVE AND PROCEDURAL UTAH LAW TO ANY DISPUTE OR CLAIM, WITHOUT REFERENCE TO ANY CONFLICT-OF-LAW PROVISIONS OF ANY JURISDICTION. TO THE EXTENT THAT THE JAMS RULES CONFLICT WITH UTAH LAW, UTAH LAW SHALL TAKE PRECEDENCE. THE DECISION OF THE ARBITRATOR SHALL BE FINAL, CONCLUSIVE, AND BINDING ON THE PARTIES TO THE ARBITRATION. THE PARTIES AGREE THAT THE PREVAILING PARTY IN ANY ARBITRATION SHALL BE ENTITLED TO INJUNCTIVE RELIEF IN ANY COURT OF COMPETENT JURISDICTION TO ENFORCE THE ARBITRATION AWARD. THE PARTIES TO THE ARBITRATION SHALL EACH PAY AN EQUAL SHARE OF THE COSTS AND EXPENSES OF SUCH ARBITRATION, AND EACH PARTY SHALL SEPARATELY PAY FOR ITS RESPECTIVE COUNSEL FEES AND EXPENSES; PROVIDED, HOWEVER, THAT THE ARBITRATOR SHALL AWARD ATTORNEYS’ FEES AND COSTS TO THE PREVAILING PARTY, EXCEPT AS PROHIBITED BY LAW. THE PARTIES HEREBY AGREE TO WAIVE THEIR RIGHT TO HAVE ANY DISPUTE BETWEEN THEM RESOLVED IN A COURT OF LAW BY A JUDGE OR JURY. NOTWITHSTANDING THE FOREGOING, THIS SECTION 16 WILL NOT PREVENT EITHER PARTY FROM SEEKING INJUNCTIVE RELIEF (OR ANY OTHER PROVISIONAL REMEDY) FROM ANY COURT HAVING JURISDICTION OVER THE PARTIES AND THE SUBJECT MATTER OF THEIR DISPUTE RELATING TO THIS AGREEMENT AND THE AGREEMENTS INCORPORATED HEREIN BY REFERENCE. SHOULD ANY PART OF THE ARBITRATION AGREEMENT CONTAINED IN THIS PARAGRAPH CONFLICT WITH ANY OTHER ARBITRATION AGREEMENT BETWEEN THE PARTIES, THE PARTIES AGREE THAT THIS ARBITRATION AGREEMENT SHALL GOVERN.

17. Authority. The Company represents and warrants that the undersigned has the authority to act on behalf of the Company and to bind the Company and all who may claim through it to the terms and conditions of this Agreement. Executive represents and warrants that Executive has the capacity to act on Executive’s own behalf and on behalf of all who might claim through Executive to bind them to the terms and conditions of this Agreement. Each Party warrants and represents that there are no liens or claims of lien or assignments in law or equity or otherwise of or against any of the claims or causes of action released herein.

18. No Representations. Executive represents that Executive has had the opportunity to consult with an attorney, and has carefully read and understands the scope and effect of the provisions of this Agreement. Executive has relied upon any representations or statements made by the Company that are not specifically set forth in this Agreement.

19. Severability. In the event that any provision or any portion of any provision hereof or any surviving agreement made a part hereof becomes or is declared by a court of competent jurisdiction or arbitrator to be illegal, unenforceable, or void, this Agreement shall continue in full force and effect without said provision or portion of provision.

20. Entire Agreement. This Agreement represents the entire agreement and understanding between the Company and Executive concerning the subject matter of this Agreement and Executive's employment with and separation from the Company and the events leading thereto and associated therewith, and supersedes and replaces any and all prior agreements and understandings concerning the subject matter of this Agreement and Executive's relationship with the Company, with the exception of the Proprietary Rights Agreement, the Termination Agreement, the Indemnification Agreement, and Executive's written equity compensation agreements with the Company.

21. No Oral Modification. This Agreement may only be amended in writing signed by Executive and the Chairman of the Compensation Committee of the Board of Directors of the Company.

22. Governing Law. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Utah, without regard to the choice-of-law provisions. The Utah state courts located in Utah County, Utah and/or the United States District Court for the District of Utah, located in Provo, Utah, shall have exclusive jurisdiction and venue over all controversies relating to or arising out of this Agreement. Executive hereby expressly consents to the exclusive jurisdiction and venue of the Utah state courts in Utah County, Utah and/or the United States District Court for the District of Utah for any disputes arising out of or relating to this Agreement.

23. Effective Date. Executive understands that this Agreement shall be null and void if not executed by Executive within 21 days. Each Party has seven days after that Party signs this Agreement to revoke it. This Agreement will become effective on the eighth (8th) day after Executive signed this Agreement, so long as it has been signed by the Parties and has not been revoked by either Party before that date (the "**Effective Date**").

24. Counterparts. This Agreement may be executed in counterparts and by facsimile, and each counterpart and facsimile shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned.

25. Voluntary Execution of Agreement. Executive understands and agrees that Executive executed this Agreement voluntarily, without any duress or undue influence on the part or behalf of the Company or any third party, with the full intent of releasing all of Executive's claims against the Company and any of the other Releasees. Executive expressly acknowledges that:

- (a) Executive has read this Agreement;
- (b) Executive has been represented in the preparation, negotiation, and execution of this Agreement by legal counsel of Executive's own choice or has elected not to retain legal counsel;
- (c) Executive understands the terms and consequences of this Agreement and of the releases it contains; and
- (d) Executive is fully aware of the legal and binding effect of this Agreement.

*IN WITNESS WHEREOF* , the Parties have executed this Agreement on the respective dates set forth below.

**COMPANY**        VIVINT SOLAR, INC.

By:

Name:

Title:

Dated:

**EXECUTIVE**

David Bywater, an individual

(Signature)

Dated:

## VIVINT SOLAR, INC.

## INVOLUNTARY TERMINATION PROTECTION AGREEMENT

THIS INVOLUNTARY TERMINATION PROTECTION AGREEMENT (this “*Agreement*”) is made and entered into by and between David Bywater (“*Executive*”) and Vivint Solar, Inc. (the “*Company*”), effective as of December 14, 2016 (the “*Effective Date*”).

RECITALS

The Board of Directors of the Company (the “*Board*”) believes that it is in the best interest of the Company and its stockholders to assure that the Company shall have the continued dedication and objectivity of Executive, to provide Executive with an incentive to continue Executive’s employment with the Company, and to motivate Executive to maximize the value of the Company for the benefit of its stockholders.

The Board believes that it is important to provide Executive with certain severance benefits upon Executive’s termination of employment under certain circumstances. These benefits shall provide Executive with enhanced financial security and incentive and encouragement to remain with the Company.

AGREEMENT

**NOW, THEREFORE**, for good and valuable consideration, including the mutual covenants contained herein, the Company and Executive hereby agree as follows:

1. Term of Agreement. This Agreement shall terminate upon the date that all of the obligations of the parties hereto with respect to this Agreement have been satisfied.

2. At-Will Employment. The Company and Executive acknowledge that Executive’s employment is and shall continue to be at-will, as defined under applicable law. If Executive’s employment terminates for any reason, including (without limitation) any termination for Cause, Executive shall not be entitled to any payments, benefits, damages, awards or compensation other than as provided by this Agreement or as may otherwise be available in accordance with the Company’s established employee plans that provide benefits other than in the nature of severance or separation pay.

3. Severance Benefits.

(a) Voluntary Resignation; Termination for Cause. If Executive’s employment with the Company terminates (i) voluntarily by Executive other than for Good Reason, or (ii) for Cause by the Company, then Executive shall not be entitled to receive any payment other than accrued but unpaid vacation, expense reimbursements, wages, and other benefits due to Executive under any Company’s established employee plans, policies, and arrangements that provide benefits other than in the nature of severance or separation pay (“*Accrued Compensation*”).

(b) Involuntary Termination other than for Cause or Voluntary Termination for Good Reason outside of the Change of Control Period. If, outside of the Change of Control Period, (i) the Company terminates Executive’s employment with the Company other than for Cause (excluding by reason of death or Disability) or (ii) if Executive resigns from such employment for Good Reason, then subject to Section 4 below and in addition to any Accrued Compensation, Executive shall receive the following:

(i) Non-COC Severance Payment. Executive shall be paid an amount equal to 1.5x the sum of (A) Executive’s base salary rate, as then in effect, less \$10,000, plus (B) (i) if Executive has been employed with the Company for at least one year as of the date of Executive’s termination of employment, the average of performance bonuses paid to Executive for each year Executive was employed by the Company during the 3-year period immediately preceding the date of Executive’s termination of employment or (ii) if Executive has been employed with the Company for less than one year as of the date of Executive’s termination

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of employment, Executive's target annual performance bonus, in effect for the Company's fiscal year in which Executive's employment with the Company terminates (the "**Non-COC Severance**"). The Non-COC Severance will be paid, less applicable withholdings, in equal installments over a period of 18 months following the date Executive's employment with the Company terminates (the "**Non-COC Severance Period**"), with the first payment to be made on the 61<sup>st</sup> day following Executive's termination of employment (and to include any severance payments that otherwise would have been paid to Executive within the 60 days following the date of Executive's termination of employment), with any remaining payments paid in accordance with the Company's normal payroll practices for the remainder of the Non-COC Severance Period.

(ii) Non-COC Additional Bonus Payment. Executive shall be paid an amount equal to a pro-rata portion of the annual bonus paid to Executive in respect of the fiscal year which ended prior to the fiscal year that contained the date of Executive's termination of employment; provided, however, that if the duration of Executive's employment with the Company in the prior fiscal year did not entitle Executive to annual bonus for that fiscal year, such pro-rata portion instead will be determined using Executive's target annual bonus in the fiscal year that contained the date of Executive's termination of employment (the "**Non-COC Additional Bonus**"). The pro-rata portion will be based on the number of days that elapsed in the fiscal year between the first day of the fiscal year and the date of Executive's termination of employment compared to 365. This Non-COC Additional Bonus will be paid, less applicable withholdings, in equal installments over the Non-COC Severance Period, with the first payment to be made on the 61<sup>st</sup> day following Executive's termination of employment (and to include any Non-COC Additional Bonus amount that otherwise would have been paid to Executive within the 60 days following the date of Executive's termination of employment), with any remaining payments paid in accordance with the Company's normal payroll practices for the remainder of the Non-COC Severance Period.

(iii) Continued Employee Benefits. If Executive elects continuation coverage pursuant to the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("**COBRA**") within the time period prescribed pursuant to COBRA for Executive and Executive's eligible dependents, then the Company will reimburse Executive for the COBRA premiums for such coverage (at the coverage levels in effect immediately prior to Executive's termination) until the earlier of (A) the end of the Non-COC Severance Period or (B) the date upon which Executive and/or Executive's eligible dependents are no longer eligible for COBRA continuation coverage. The reimbursements will be made by the Company to Executive consistent with the Company's normal expense reimbursement policy. Notwithstanding the first sentence of this Section 3(b)(iii), if, at the time of Executive's termination of employment, it would result in a Company excise tax to reimburse Executive for the COBRA premiums than no such premiums will be reimbursed and if do so would not cause imposition of an excise tax, Executive will be paid a single lump sum of \$36,000.

(c) Involuntary Termination other than for Cause or Voluntary Termination for Good Reason within the Change of Control Period. If, within the Change of Control Period, (i) the Company terminates Executive's employment without Cause (excluding by reason of death or Disability) or (ii) Executive terminates Executive's employment with the Company for Good Reason, then, subject to Section 4 below and in addition to any Accrued Compensation, Executive shall receive the following severance from the Company:

(i) COC Severance Payment. Executive shall be paid an amount equal to 2.0x the sum of (A) Executive's base salary rate, as then in effect, less \$10,000 *plus* (B) (i) if Executive has been employed with the Company for at least one year as of the date of Executive's termination of employment, the average of the performance bonuses paid to Executive for each year Executive was employed by the Company during the 3-year period immediately preceding the date of Executive's termination of employment or (ii) if Executive has been employed with the Company for less than one year as of the date of Executive's termination of employment, Executive's target annual performance bonus, in effect for the Company's fiscal year in which Executive's employment with the Company terminates (the "**COC Severance**"). The COC Severance will be paid, less applicable withholdings, in a lump sum on the 61<sup>st</sup> day following Executive's termination of employment. For the avoidance of doubt, if (x) Executive incurred a termination prior to a Change of Control that qualifies Executive for severance payments under Section 3(b)(i) above; and (y) a Change of Control occurs within six months following Executive's termination of employment that qualifies Executive for the superior benefits under this Section 3(c)(i), then Executive shall be entitled to a lump-sum payment of the amount calculated under this Section 3(c)(i), less amounts already paid under Section 3(b)(i) above.

(ii) COC Additional Bonus Payment. Executive shall be paid an amount equal to a pro-rata portion of the annual performance bonus that would have been paid to Executive had Executive been employed by the Company for the entire fiscal year that contained the date of Executive's termination of employment, based on actual performance for such fiscal year (and assuming that any performance objectives that are based on individual performance are achieved at target levels) (the "**COC Additional Bonus**"). This COC Bonus Severance will be paid in a lump sum, less applicable withholdings, at the same time as annual performance bonuses are paid to other Company executives. For the avoidance of doubt, if (x) Executive incurred a termination prior to a Change of Control that qualifies Executive for severance payments under Section 3(a)(ii) above; and (y) a Change of Control occurs within six months following Executive's termination of employment that qualifies Executive for superior benefits under this Section 3(c)(ii), then Executive shall be entitled to a lump-sum payment of the amount calculated under this Section 3(c)(ii), less amounts already paid under Section 3(b)(ii) above, but in no case less than \$0.

(iii) Equity Compensation Acceleration. 100% of Executive's then unvested outstanding stock options, restricted stock units and other Company equity compensation awards, including any equity awards transferred to Executive's estate planning vehicles (the "**Equity Compensation Awards**") shall immediately vest and become exercisable. In the case of equity awards with performance-based vesting, all performance goals or other vesting criteria will be deemed achieved at target levels. Any Company stock options and stock appreciation rights shall thereafter remain exercisable following Executive's employment termination for the period prescribed in the respective option and stock appreciation right agreements.

(iv) Continued Employee Benefits. If Executive elects continuation coverage pursuant to the COBRA within the time period prescribed pursuant to COBRA for Executive and Executive's eligible dependents, then the Company will reimburse Executive for the COBRA premiums for such coverage (at the coverage levels in effect immediately prior to Executive's termination) until the earlier of (A) the end of 18 months or (B) the date upon which Executive and/or Executive's eligible dependents are no longer eligible for COBRA continuation coverage. The reimbursements will be made by the Company to Executive consistent with the Company's normal expense reimbursement policy. Notwithstanding the first sentence of this Section 3(c)(iv), if, at the time of Executive's termination of employment, it would result in a Company excise tax to reimburse Executive for the COBRA premiums then no such premiums will be reimbursed and if do so would not cause imposition of an excise tax, Executive will be paid a single lump sum of \$36,000.

(d) Termination for Death or Disability. If Executive's employment is terminated as a result of Executive's Disability or death, Executive (or Executive's estate) shall not be entitled to receive any payment other than Accrued Compensation.

(e) Exclusive Remedy. In the event of a termination of Executive's employment, the provisions of Section 3 are intended to be and are exclusive in lieu of any other rights or remedies to which Executive or the Company otherwise may be entitled, whether at law, tort, or contract, in equity, or under this Agreement (other than the payment of Accrued Compensation). For the avoidance of doubt, Executive shall in no circumstances be entitled to both benefits pursuant to Section 3(b) and the benefits pursuant to Section 3(c), except as specifically set out in Section 3(c). Executive will be entitled to no benefits, compensation, or other payments or rights upon a termination of employment other than those benefits expressly set forth in Section 3 of this Agreement.

#### 4. Conditional Nature of Severance Payments and Benefits.

(a) Release of Claims Agreement. The receipt of any severance payments or benefits pursuant to this Agreement is subject to Executive signing and not revoking a separation agreement and release of claims in substantially the form attached hereto as Exhibit A (the "**Release**"), which must become effective and irrevocable no later than the 60<sup>th</sup> day following Executive's termination of employment (the "**Release Deadline**"). If the Release does not become effective and irrevocable by the Release Deadline, Executive shall forfeit any right to severance payments or benefits under this Agreement. In no event shall severance payments or benefits be paid or provided until the Release actually becomes effective and irrevocable. Any severance payments or benefits under this Agreement will be paid, or, in the case of installments, will commence, on the first regularly scheduled payroll date following the date the Release becomes effective and irrevocable, or if later, such time as required by Section 4(c)(iii) below.

(b) Restrictive Covenants. During the term of Executive's employment and for the Restricted Period, Executive shall comply with the restrictive covenants set forth on Appendix A (collectively, the "**Restrictive Covenants**"). Executive's receipt of any payments or benefits under Section 3 shall be subject to Executive continuing to comply with the terms of the Restrictive Covenants.

(c) Section 409A.

(i) Notwithstanding anything to the contrary in this Agreement, no severance pay or benefits to be paid or provided to Executive, if any, pursuant to this Agreement that, when considered together with any other severance payments or separation benefits, are considered deferred compensation under Section 409A of the Internal Revenue Code of 1986, as amended (the "**Code**"), and the final regulations and any guidance promulgated thereunder ("**Section 409A**") (together, the "**Deferred Payments**") shall be paid or otherwise provided until Executive has a "separation from service" within the meaning of Section 409A. Similarly, no severance payable to Executive, if any, pursuant to this Agreement that otherwise would be exempt from Section 409A pursuant to Treasury Regulation Section 1.409A-1(b)(9) shall be payable until Executive has a "separation from service" within the meaning of Section 409A.

(ii) It is intended that none of the severance payments under this Agreement will constitute "Deferred Payments" but rather will be exempt from Section 409A as a payment that would fall within the "short-term deferral period" as described in Section 4(c)(iv) below or resulting from an involuntary separation from service as described in Section 4(c)(v) below. However, any severance payments or benefits under this Agreement that would be considered Deferred Payments shall be paid on, or, in the case of installments, shall not commence until, the 61<sup>st</sup> day following Executive's separation from service, or, if later, such time as required by Section 4(c)(iii). Except as required by Section 4(c)(iii), any installment payments that would have been made to Executive during the 60 day period immediately following Executive's separation from service but for the preceding sentence shall be paid to Executive on the 61<sup>st</sup> day following Executive's separation from service and the remaining payments shall be made as provided in this Agreement.

(iii) Notwithstanding anything to the contrary in this Agreement, if Executive is a "specified employee" within the meaning of Section 409A at the time of Executive's termination (other than due to death), then the Deferred Payments, if any, that are payable within the first six months following Executive's separation from service, shall become payable on the first payroll date that occurs on or after the date six months and one day following the date of Executive's separation from service. All subsequent Deferred Payments, if any, shall be payable in accordance with the payment schedule applicable to each payment or benefit. Notwithstanding anything herein to the contrary, if Executive dies following Executive's separation from service, but before the six month anniversary of the separation from service, then any payments delayed in accordance with this paragraph shall be payable in a lump sum as soon as administratively practicable after the date of Executive's death and all other Deferred Payments shall be payable in accordance with the payment schedule applicable to each payment or benefit. Each payment and benefit payable under this Agreement is intended to constitute a separate payment under Section 1.409A-2(b)(2) of the Treasury Regulations.

(iv) Any amount paid under this Agreement that satisfies the requirements of the "short-term deferral" rule set forth in Section 1.409A-1(b)(4) of the Treasury Regulations shall not constitute Deferred Payments for purposes of Section 4(c)(i) above.

(v) Any amount paid under this Agreement that qualifies as a payment made as a result of an involuntary separation from service pursuant to Section 1.409A-1(b)(9)(iii) of the Treasury Regulations that does not exceed the Section 409A Limit (as defined below) shall not constitute Deferred Payments for purposes of Section 4(c)(i) above.

(vi) The foregoing provisions are intended to comply with the requirements of Section 409A so that none of the severance payments and benefits to be provided hereunder shall be subject to the additional tax imposed under Section 409A, and any ambiguities herein shall be interpreted to so comply. The Company and Executive agree to work together in good faith to consider amendments to this Agreement and to take such reasonable actions which are necessary, appropriate or desirable to avoid imposition of any additional tax or income recognition before actual payment to Executive under Section 409A. In no event will

the Company reimburse Executive for any tax obligations incurred by Executive as a result of the application of Section 409A.

5. Golden Parachute Excise Tax Best Results. In the event that the severance and other benefits provided for in this agreement or otherwise payable to Executive (a) constitute “parachute payments” within the meaning of Code Section 280G and (b) would be subject to the excise tax imposed by Code Section 4999, then such benefits shall be either:

(i) delivered in full, or

(ii) delivered as to such lesser extent which would result in no portion of such severance benefits being subject to excise tax under Section 4999 of the Code, whichever of the foregoing amounts, taking into account the applicable federal, state and local income and employment taxes and the excise tax imposed by Code Section 4999, results in the receipt by Executive, on an after-tax basis, of the greatest amount of benefits, notwithstanding that all or some portion of such benefits may be taxable under Code Section 4999. Unless the Company and Executive otherwise agree in writing, the determination of Executive’s excise tax liability and the amount required to be paid under this Section 5 shall be made in writing by a nationally recognized certified professional services firm selected by the Company, the Company’s legal counsel or such other person or entity to which the parties mutually agree (the “*Firm*”). For purposes of making the calculations required by this Section 5, the Firm may make reasonable assumptions and approximations concerning applicable taxes and may rely on reasonable, good faith interpretations concerning the application of Code Sections 280G and 4999. The Company and Executive shall furnish to the Firm such information and documents as the Firm may reasonably request in order to make a determination under this Section 5. The Company shall bear all costs the Firm may reasonably incur in connection with any calculations contemplated by this Section 5. Any reduction in payments and/or benefits required by this Section 5 shall occur in the following order: (i) reduction of cash payments; (ii) cancellation of awards granted “contingent on a change in ownership or control” (within the meaning of Code Section 280G); (iii) cancellation of accelerated vesting of equity awards; or (iv) reduction of employee benefits. In the event that acceleration of vesting of equity award compensation is to be reduced, such acceleration of vesting will be cancelled in the reverse order of the date of grant of Executive’s equity awards. If two or more equity compensation awards are granted on the same date, each award shall be reduced on a pro-rata basis.

6. Definition of Terms. The following terms referred to in this Agreement shall have the following meanings:

(a) Cause. “*Cause*” means any of the following occurring during Executive’s employment by the Company (except with respect to clause (v) below): (i) material personal dishonesty by Executive involving Company business or participation in a fraud against the Company, or Executive’s breach of Executive’s fiduciary duty to Company; (ii) Executive’s indictment or conviction of a felony or other crime involving moral turpitude or dishonesty; (iii) Executive’s willful material refusal to comply with the lawful requests made of Executive by the Board reasonably related to Executive’s employment by the Company and the performance of Executive’s duties with respect thereto (but which shall not include a request to waive or amend any portion of this Agreement or terminate this Agreement or to consent to an action that would result in Executive’s loss of a right under this Agreement); (iv) Executive’s material violation of the Company’s policies, after written notice to Executive and an opportunity to be heard by the Board and Executive’s failure to fully cure such violations within a reasonable period of time of not less than 30 days after such hearing; (v) Executive’s threats or acts of violence in the workplace; (vi) Executive’s unlawful harassment in the course of any business activity of any employee or independent contractor of the Company; (vii) Executive’s theft or unauthorized conversion by or transfer of any Company asset or business opportunity to Executive or any third party; and (viii) a material breach by Executive of any material provision of this Agreement or any other agreement with the Company after written notice to Executive and an opportunity to be heard by the Board and Executive’s failure to fully cure such breach within a reasonable period of time of not less than 30 days after such hearing.

(b) Change of Control. “Change of Control” means the occurrence of any of the following events:

(i) *Change in Ownership of the Company* . A change in the ownership of the Company which occurs on the date that any one person, or more than one person acting as a group (“ **Person** ”), acquires ownership of the stock of the Company that, together with the stock held by such Person, constitutes more than 50% of the total voting power of the stock of the Company; or

(ii) *Change in Effective Control of the Company* . A change in the effective control of the Company which occurs on the date that a majority of members of the Board is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the Board prior to the date of the appointment or election. For purposes of this clause (ii), if any Person is considered to be in effective control of the Company, the acquisition of additional control of the Company by the same Person shall not be considered a Change of Control; or

(iii) *Change in Ownership of a Substantial Portion of the Company’s Assets* . A change in the ownership of a substantial portion of the Company’s assets which occurs on the date that any Person acquires (or has acquired during the 12-month period ending on the date of the most recent acquisition by such person or persons) assets from the Company that have a total gross fair market value equal to or more than 50% of the total gross fair market value of all of the assets of the Company immediately prior to such acquisition or acquisitions; provided, however, that for purposes of this subsection (iii), the following will not constitute a change in the ownership of a substantial portion of the Company’s assets: (A) a transfer to an entity that is controlled by the Company’s stockholders immediately after the transfer, or (B) a transfer of assets by the Company to: (1) a stockholder of the Company (immediately before the asset transfer) in exchange for or with respect to the Company’s stock, (2) an entity, 50% or more of the total value or voting power of which is owned, directly or indirectly, by the Company, (3) a Person, that owns, directly or indirectly, 50% or more of the total value or voting power of all the outstanding stock of the Company, or (4) an entity, at least 50% of the total value or voting power of which is owned, directly or indirectly, by a Person described in this subsection (iii)(B)(3). For purposes of this subsection (iii), gross fair market value means the value of the assets of the Company, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets. For purposes of this subsection (iii), gross fair market value means the value of the assets of the Company, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets.

For these purposes, persons shall be considered to be acting as a group if they are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of stock, or similar business transaction with the Company.

Notwithstanding the foregoing provisions of this definition, a transaction will not constitute a Change of Control unless the transaction qualifies as a change in control event within the meaning of Section 409A.

Further and for the avoidance of doubt, a transaction will not constitute a Change of Control if: (i) its sole purpose is to change the state of the Company’s incorporation, or (ii) its sole purpose is to create a holding company that will be owned in substantially the same proportions by the persons who held the Company’s securities immediately before such transaction.

(c) Change of Control Period . “ **Change of Control Period** ” means the period beginning on the date six months prior to, and ending on the date that is 18 months following, a Change of Control.

(d) Disability . “ **Disability** ” means that Executive has been unable to perform Executive’s duties at the Company as the result of Executive’s incapacity due to physical or mental illness, and such inability, at least 26 weeks after its commencement, is determined to be total and permanent by a physician selected by the Company or its insurers and acceptable to Executive or Executive’s legal representative (such Agreement as to acceptability not to be unreasonably withheld). Termination resulting from Disability may only be effected after at least 30 days’ written notice by the Company of its intention to terminate Executive’s employment. In the event that Executive resumes the performance of substantially all of Executive’s duties hereunder before the termination of Executive’s employment becomes effective, the notice of intent to terminate shall automatically be deemed to have been revoked.

(e) Good Reason. “ **Good Reason** ” means Executive’s resignation within 90 days following the expiration of any Company cure period (discussed below) following the occurrence of one or more of the following, without Executive’s express written consent:

(i) a material diminution in Executive’s title, duties, authority, reporting position or responsibilities measured in the aggregate; or

(ii) a material reduction of Executive’s base compensation (in other words, a material reduction in Executive’s base salary or target bonus opportunity) as in effect immediately prior to such reduction, other than reductions implemented as part of an overall Company-wide reduction program that is applied similarly to all executive officers and is no more than 20%; or

(iii) a material change in the geographic location at which Executive must perform services (in other words, Executive’s relocation to a facility or an office location more than a seventy-five (75)-mile radius from Executive’s then current location); or

(iv) a material breach by the Company of a material provision of any material agreement between Executive and the Company.

Notwithstanding the foregoing, Executive agrees not to resign for Good Reason without first providing the Company with written notice of the acts or omissions constituting the grounds for Good Reason within ninety (90) days of the initial existence of the grounds for Good Reason and a reasonable cure period of thirty (30) days following the date of such notice.

(f) Restricted Period. “ **Restricted Period** ” means a period of 12 months following the date of Executive’s termination of employment; provided, however, that if Executive’s termination of employment occurs under the circumstances giving rise to payment under Section 3(b) of this Agreement, the Restricted Period will equal the Non-COC Severance Period.

#### 7. Successors.

(a) The Company’s Successors. Any successor to the Company (whether direct or indirect and whether by purchase, merger, consolidation, liquidation or otherwise) to all or substantially all of the Company’s business and/or assets shall assume the obligations under this Agreement and agree expressly to perform the obligations under this Agreement in the same manner and to the same extent as the Company would be required to perform such obligations in the absence of a succession. For all purposes under this Agreement, the term “ **Company** ” shall include any successor to the Company’s business and/or assets which executes and delivers the assumption agreement described in this Section 7(a) or which becomes bound by the terms of this Agreement by operation of law.

(b) Executive’s Successors. The terms of this Agreement and all rights of Executive hereunder shall inure to the benefit of, and be enforceable by, Executive’s personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

#### 8. Notice.

(a) General. All notices and other communications required or permitted hereunder shall be in writing, shall be effective when given, and shall in any event be deemed to be given upon receipt or, if earlier, (a) five days after deposit with the U.S. Postal Service or other applicable postal service, if delivered by first class mail, postage prepaid, (b) upon delivery, if delivered by hand, (c) one business day after the business day of deposit with Federal Express or similar overnight courier, freight prepaid or (d) one business day after the business day of facsimile transmission, if delivered by facsimile transmission with copy by first class mail, postage prepaid, and shall be addressed (i) if to Executive, at Executive’s last known residential address and (ii) if to the Company, at the address of its principal corporate offices (attention: Secretary), or in any such case at such other address as a party may designate by 10 days’ advance written notice to the other party pursuant to the provisions above.

(b) Notice of Termination. Any termination by the Company for Cause or by Executive for Good Reason or Disability or as a result of a voluntary resignation shall be communicated by a notice of termination to the other party hereto given in accordance with Section 8(a) above. Such notice shall indicate the specific termination provision in this Agreement relied upon, shall set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination under the provision so indicated, and shall specify the termination date (which shall be not more than 30 days after the giving of such notice). The failure by Executive to include in the notice any fact or circumstance which contributes to a showing of Good Reason or Disability shall not waive any right of Executive hereunder or preclude Executive from asserting such fact or circumstance in enforcing Executive's rights hereunder.

#### 9. Miscellaneous Provisions.

(a) No Duty to Mitigate. Executive shall not be required to mitigate the amount of any payment contemplated by this Agreement, nor shall any such payment be reduced by any earnings that Executive may receive from any other source.

(b) Waiver. No provision of this Agreement shall be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by Executive and by an authorized officer of the Company (other than Executive). No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision at another time.

(c) Headings. All captions and section headings used in this Agreement are for convenient reference only and do not form a part of this Agreement.

(d) Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto and supersedes all prior representations, understandings, undertakings or agreements (whether oral or written and whether expressed or implied) of the parties with respect to the subject matter hereof, including Executive's employment signed offer letter with the Company in effect as of the Effective Date. This Agreement may not be altered, modified, or amended, nor may any subsequent equity awards granted to Executive have less favorable change in control or severance protection unless such amendment or subsequent document is in writing signed by Executive and specifically referencing this Section 9(d).

(e) Choice of Law. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Utah, without regard to the choice-of-law provisions. The Utah state courts in Provo, Utah and/or the United States District Court for the District of Utah, located in Provo, Utah, shall have exclusive jurisdiction and venue over all controversies relating to or arising out of this Agreement. Executive hereby expressly consents to the exclusive jurisdiction and venue of the state courts in Utah County, Utah and/or the United States District Court for the District of Utah, located in Provo, Utah for any disputes arising out of or relating to this Agreement.

(f) Severability. The invalidity or unenforceability of any provision or provisions of this Agreement shall not affect the validity or enforceability of any other provision hereof, which shall remain in full force and effect.

(g) Tax Withholding. All payments made pursuant to this Agreement shall be subject to withholding of applicable income and employment taxes.

(h) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

*[Remainder of Page Intentionally Left Blank]*

*IN WITNESS WHEREOF*, each of the parties has executed this Agreement, in the case of the Company by its duly authorized officer, to be effective as of the Effective Date.

**COMPANY**

**VIVINT SOLAR, INC.**

By: /s/ Dana C. Russell

Dana C. Russell  
Chief Financial Officer

**EXECUTIVE**

By: /s/ David Bywater

David Bywater

**APPENDIX A**  
**Restrictive Covenants**

This Appendix A shall supplement the terms of the Involuntary Termination Protection Agreement (the “*Agreement*”). Unless otherwise defined below, capitalized terms used herein shall have the meaning prescribed to them under the Agreement.

1. Noncompetition; Nonsolicitation; Nondisparagement.

(a) Executive acknowledges and recognizes the highly competitive nature of the businesses of the Company and its affiliates and accordingly agrees as follows:

(b) During Executive’s Employment with the Company or its Affiliates (the “*Employment Term*”), Executive will not, whether on Executive’s own behalf or on behalf of or in conjunction with any person, firm, partnership, joint venture, association, corporation or other business organization, entity or enterprise whatsoever (“*Person*”), directly or indirectly solicit or assist in soliciting in competition with the Restricted Group in the Business, the business of any then current or prospective client or customer with whom Executive (or his direct reports) had personal contact or dealings on behalf of the Company.

(i) Unless Executive was employed in California, North Dakota, or Oklahoma, during the Restricted Period, Executive will not directly or indirectly:

(A) engage in the Business anywhere in the United States, or in any geographical area that is within 100 miles of any geographical area where the Restricted Group engages in the Business, including, for the avoidance of doubt, by entering into the employment of or rendering any services to a Core Competitor, except where such employment or services do not relate in any manner to the Business;

(B) acquire a financial interest in, or otherwise become actively involved with, any Person engaged in the Business, directly or indirectly, as an individual, partner, shareholder, officer, director, principal, agent, trustee or consultant;

(C) intentionally and adversely interfere with, or attempt to adversely interfere with, business relationships between the members of the Restricted Group and any of their clients, customers, suppliers, partners, members or investors; or

(D) solicit or assist in soliciting in competition with the Restricted Group in the Business, the business of any then current or prospective client or customer with whom Executive (or his direct reports) had personal contact or dealings on behalf of the Company.

(ii) Notwithstanding anything to the contrary in this Appendix A, Executive may, directly or indirectly own, solely as an investment, securities of any Person engaged in a Business (including, without limitation, a Core Competitor) which are publicly traded on a national or regional stock exchange or on the over-the-counter market if Executive (i) is not a controlling person of, or a member of a group which controls, such person and (ii) does not, directly or indirectly, own 2% or more of any class of securities of such Person.

(iii) During the Employment Term and the Restricted Period, Executive will not, whether on Executive’s own behalf or on behalf of or in conjunction with any Person, directly or indirectly:

(A) solicit or encourage any employee of the Restricted Group to leave the employment of the Restricted Group;

(B) hire any executive-level employee, key personnel, or manager-level employee (i.e., any operations manager or district sales manager) who was employed by the Restricted Group as of the date of Executive’s termination of employment with the Company or who left the employment of the Restricted

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Group coincident with, or within one year prior to or after, the termination of Executive's employment with the Company; or

(C) encourage any consultant of the Restricted Group to cease working with the Restricted Group.

(iv) For purposes of this Agreement:

(A) “ *Affiliate* ” means (i) any person or entity that directly or indirectly controls, is controlled by or is under common control with the Company and/or (ii) to the extent provided by the Committee, any person or entity in which the Company has a significant interest. The term “control” (including, with correlative meaning, the terms “controlled by” and “under common control with”), as applied to any person or entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person or entity, whether through the ownership of voting or other securities, by contract or otherwise.

(B) “ *Business* ” shall mean (1) origination, installation, or monitoring services related to residential or commercial security, life-safety, energy management or home automation services, (2) installation or servicing of residential or commercial solar panels or sale of electricity generated by solar panels, (3) design, engineering or manufacturing of technology or products related to residential or commercial security, life-safety, energy management or home automation services and/or (4) provision of wireless voice or data services, including internet, into the home.

(C) “ *Core Competitor* ” shall mean ADT Security Services/Tyco Integrated Security, Security Networks, LLC, Protection 1, Inc., Protect America, Inc., Stanley Security Solutions, Inc., Vector Security, Inc., Slomins, Inc., Monitronics International, Inc., Life Alert, Comcast Corporation, Time Warner, Inc., AT&T Inc., Verizon Communications, Inc., DISH Network Corp., DIRECTV, Pinnacle, JAB Wireless, Inc., Clearwire Corporation, CenturyLink, Inc., Cox Communication, Inc. and any of their respective Affiliates and current or future dealers, and Sungevity, Inc., RPS, Sunrun Inc., Solar City Corporation, Clean Power Finance, SunPower Corporation, Corbin Solar Solutions LLC, Galkos Construction, Inc., Zing Solar, Terrawatt, Inc. and any of their respective Affiliates or current or future dealers.

(D) “ *Restricted Group* ” shall mean, collectively, the Company and its subsidiaries and, to the extent engaged in the Business, their respective Affiliates (including The Blackstone Group L.P. and its Affiliates).

(c) During the Employment Term and the three-year period beginning immediately following the Employment Term, Executive agrees not to make, or cause any other person to make, any communication that is intended to criticize or disparage, or has the effect of criticizing or disparaging, the Company or any of its affiliates, agents or advisors (or any of its or their respective employees, officers or directors (it being understood that comments made in Executive's good faith performance of his duties hereunder shall not be deemed disparaging or defamatory for purposes of this Agreement). Nothing set forth herein shall be interpreted to prohibit Executive from responding truthfully to incorrect public statements, making truthful statements when required by law, subpoena or court order and/or from responding to any inquiry by any regulatory or investigatory organization. In addition, nothing set forth herein (or in any other Company document, policy, or agreement) limits or prohibits Executive from filing a charge or complaint with, or otherwise communicating or cooperating with or participating in any investigation or proceeding that may be conducted by, any federal, state or local government agency or commission, including the Securities and Exchange Commission, the Equal Employment Opportunity Commission, the Occupational Safety and Health Administration, and the National Labor Relations Board (“ *Government Agencies* ”), including disclosing documents or other information as permitted by law, without giving notice to, or receiving authorization from, the Company (such actions, the “ *Protected Activity* ”). Notwithstanding, in making any such disclosures or communications, Executive must take all reasonable precautions to prevent any unauthorized use or disclosure of any information that may

constitute Confidential Information to any parties other than the Government Agencies. Executive is not permitted to disclose the Company's attorney-client privileged communications or attorney work product.

(d) It is expressly understood and agreed that although Executive and the Company consider the restrictions contained in this Section 1 to be reasonable, if a final judicial determination is made by a court of competent jurisdiction that the time or territory or any other restriction contained in this Appendix A is an unenforceable restriction against Executive, the provisions of this Appendix A shall not be rendered void but shall be deemed amended to apply as to such maximum time and territory and to such maximum extent as such court may judicially determine or indicate to be enforceable. Alternatively, if any court of competent jurisdiction finds that any restriction contained in this Appendix A is unenforceable, and such restriction cannot be amended so as to make it enforceable, such finding shall not affect the enforceability of any of the other restrictions contained herein.

(e) The period of time during which the provisions of this Section 1 shall be in effect shall be extended by the length of time during which Executive is in breach of the terms hereof as determined by any court of competent jurisdiction on the Company's application for injunctive relief.

(f) The provisions of Section 1 hereof shall survive the termination of Executive's employment for any reason.

## 2. Confidentiality; Intellectual Property.

### (a) Confidentiality.

(i) Executive will not at any time (whether during or after Executive's employment with the Company) (x) retain or use for the benefit, purposes or account of Executive or any other Person; or (y) unless Executive is engaging in Protected Activity, disclose, divulge, reveal, communicate, share, transfer or provide access to any Person outside the Company (other than Executive's professional advisers who are bound by confidentiality obligations or otherwise in performance of Executive's duties under Executive's employment and pursuant to customary industry practice), any non-public, proprietary or confidential information --including without limitation trade secrets, know-how, research and development, software, databases, inventions, processes, formulae, technology, designs and other intellectual property, information concerning finances, investments, profits, pricing, costs, products, services, vendors, customers, clients, partners, investors, personnel, compensation, recruiting, training, advertising, sales, marketing, promotions, government and regulatory activities and approvals -- concerning the past, current or future business, activities and operations of the Company, its subsidiaries or Affiliates and/or any third party that has disclosed or provided any of same to the Company on a confidential basis (" **Confidential Information** ") without the prior written authorization of the Board.

(ii) " **Confidential Information** " shall not include any information that is (a) generally known to the industry or the public other than as a result of Executive's breach of this covenant; (b) made legitimately available to Executive by a third party without breach of any confidentiality obligation of which Executive has knowledge; or (c) required by law to be disclosed; provided that with respect to subsection (c) Executive shall give prompt written notice to the Company of such requirement, disclose no more information than is so required, and reasonably cooperate with any attempts by the Company to obtain a protective order or similar treatment.

(iii) Except as required by law, or unless Executive is engaging in Protected Activity, Executive will not disclose to anyone, other than Executive's family (it being understood that, in this Agreement, the term "family" refers to Executive, Executive's spouse, children, parents and spouse's parents) and advisors, the existence or contents of this Agreement; provided that Executive may disclose to any prospective future employer the provisions of this Appendix A. This Section 2(a)(iii) shall terminate if the Company publicly discloses a copy of this Agreement (or, if the Company publicly discloses summaries or excerpts of this Agreement, to the extent so disclosed) unless Executive is engaging in Protected Activity.

(iv) Upon termination of Executive's employment with the Company for any reason, Executive shall (x) cease and not thereafter commence use of any Confidential Information or intellectual property (including without limitation, any patent, invention, copyright, trade secret, trademark, trade name, logo, domain name or other source indicator) owned or used by the Company, its subsidiaries or Affiliates; and (y) immediately destroy, delete, or return to the Company, at the Company's option, all originals and copies in any form or medium (including memoranda, books, papers, plans, computer files, letters and other data) in Executive's possession or control (including any of the foregoing stored or located in Executive's office, home, laptop or other computer, whether or not Company property) that contain Confidential Information, except that Executive may retain only those portions of any personal notes, notebooks and diaries that do not contain any Confidential Information.

(b) Intellectual Property.

(i) If Executive creates, invents, designs, develops, contributes to or improves any works of authorship, inventions, intellectual property, materials, documents or other work product (including without limitation, research, reports, software, databases, systems, applications, presentations, textual works, content, or audiovisual materials) ("**Works**"), either alone or with third parties, at any time during Executive's employment by the Company and within the scope of such employment and/or with the use of any the Company resources ("**Company Works**"), Executive shall promptly and fully disclose same to the Company and hereby irrevocably assigns, transfers and conveys, to the maximum extent permitted by applicable law, all of Executive's right, title, and interest therein (including rights under patent, industrial property, copyright, trademark, trade secret, unfair competition, other intellectual property laws, and related laws) to the Company to the extent ownership of any such rights does not vest originally in the Company. If Executive creates any written records (in the form of notes, sketches, drawings, or any other tangible form or media) of any Company Works, Executive will keep and maintain same. The records will be available to and remain the sole property and intellectual property of the Company at all times.

(ii) Executive shall take all requested actions and execute all requested documents (including any licenses or assignments required by a government contract) at the Company's expense (but without further remuneration) to assist the Company in validating, maintaining, protecting, enforcing, perfecting, recording, patenting or registering any of the Company's rights in the Company Works.

(iii) Executive shall not improperly use for the benefit of, bring to any premises of, divulge, disclose, communicate, reveal, transfer or provide access to, or share with the Company any confidential, proprietary or non-public information or intellectual property relating to a former employer or other third party without the prior written permission of such third party. Executive shall comply with all relevant policies and guidelines of the Company that are from time to time previously disclosed to Executive, including regarding the protection of Confidential Information and intellectual property and potential conflicts of interest.

(iv) The provisions of Section 2 hereof shall survive the termination of Executive's employment for any reason.

**EXHIBIT A**

**FORM OF RELEASE OF CLAIMS**

**RELEASE OF CLAIMS**

*THIS RELEASE OF CLAIMS* (this “**Agreement**”) is made by and between Vivint Solar, Inc. (the “**Company**”), and David Bywater (“**Executive**”). The Company and Executive are sometimes collectively referred to herein as the “**Parties**” and individually referred to as a “**Party**”.

**RECITALS**

**WHEREAS**, Executive was employed by the Company until \_\_\_\_\_, 20\_\_, when Executive’s employment was terminated (“**Termination Date**”);

**WHEREAS**, Executive signed an [At-Will Employment, Proprietary Information, Invention Assignment, and Arbitration Agreement] with the Company, effective as of \_\_\_\_\_ (the “**Proprietary Rights Agreement**”);

**WHEREAS**, in accordance with Section 3[(b)]/[(c)] of that certain Involuntary Termination Protection Agreement between the Company and Executive, effective as of \_\_\_\_\_ (the “**Termination Agreement**”), Executive has agreed to enter into and not revoke a standard release of claims in favor of the Company as a condition to receiving the severance benefits described in the Termination Agreement; and

**WHEREAS**, the Parties wish to resolve any and all disputes, claims, complaints, grievances, charges, actions, petitions and demands that Executive may have against the Company and any of the Releasees (as defined below), including, but not limited to, any and all claims arising out of or in any way related to Executive’s employment relationship with the Company and the termination of that relationship.

**NOW THEREFORE**, for good and valuable consideration, including the mutual promises and covenants made herein, the Company and Executive hereby agree as follows:

**COVENANTS**

1. **Termination**. Executive’s employment with the Company terminated on the Termination Date.

2. **Payment of Salary and Receipt of All Benefits**. Executive acknowledges and represents that, other than the consideration to be paid in accordance with the terms and conditions of the Termination Agreement, the Company has paid or provided all salary, wages, bonuses, accrued vacation/paid time off, premiums, leaves, housing allowances, relocation costs, interest, severance, outplacement costs, fees, reimbursable expenses, commissions, draws, stock, stock options or other equity awards (including restricted stock unit awards), vesting, and any and all other benefits and compensation due to Executive and that no other reimbursements or compensation are owed to Executive.

3. **Release of Claims**. Executive agrees that the consideration to be paid in accordance with the terms and conditions of the Termination Agreement represents settlement in full of all outstanding obligations owed to Executive by the Company and its current and former officers, directors, Executives, agents, investors, attorneys, stockholders, administrators, affiliates, benefit plans, plan administrators, insurers, trustees, divisions, and subsidiaries, and predecessor and successor corporations and assigns (collectively, the “**Releasees**”). Executive, on Executive’s own behalf and on behalf of Executive’s respective heirs, family

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members, executors, agents, and assigns, hereby and forever releases the Releasees from, and agrees not to sue concerning, or in any manner to institute, prosecute, or pursue, any claim, complaint, charge, duty, obligation, demand, or cause of action relating to any matters of any kind, whether presently known or unknown, suspected or unsuspected, that Executive may possess against any of the Releasees arising from any omissions, acts, facts, or damages that have occurred up until and including the Effective Date of this Agreement, including, without limitation the following:

(a) any and all claims relating to or arising from Executive's employment relationship with the Company and the termination of that relationship;

(b) any and all claims relating to, or arising from, Executive's right to purchase, or actual purchase of shares of stock of the Company, including, without limitation, any claims for fraud, misrepresentation, breach of fiduciary duty, breach of duty under applicable state corporate law, and securities fraud under any state or federal law;

(c) any and all claims for wrongful discharge of employment; termination in violation of public policy; discrimination; harassment; retaliation; breach of contract, both express and implied; breach of covenant of good faith and fair dealing, both express and implied; promissory estoppel; negligent or intentional infliction of emotional distress; fraud; negligent or intentional misrepresentation; negligent or intentional interference with contract or prospective economic advantage; unfair business practices; defamation; libel; slander; negligence; personal injury; assault; battery; invasion of privacy; false imprisonment; conversion; and disability benefits;

(d) any and all claims for violation of any federal, state, or municipal statute, including, but not limited to, Title VII of the Civil Rights Act of 1964; the Civil Rights Act of 1991; the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Equal Pay Act; the Fair Labor Standards Act; the Fair Credit Reporting Act; the Age Discrimination in Employment Act of 1967; the Older Workers Benefit Protection Act; the Employee Retirement Income Security Act of 1974; the Worker Adjustment and Retraining Notification Act; the Family and Medical Leave Act; the Sarbanes-Oxley Act of 2002; the Utah Antidiscrimination Act; the California Family Rights Act; the California Equal Pay Law; the California Unruh Civil Rights Act; the California Workers' Compensation Act; the California Labor Code; and the California Fair Employment and Housing Act; the Utah Antidiscrimination Act;

(e) any and all claims for violation of the federal, or any state, constitution;

(f) any and all claims arising out of any other laws and regulations relating to employment or employment discrimination;

(g) any claim for any loss, cost, damage, or expense arising out of any dispute over the nonwithholding or other tax treatment of any of the proceeds received by Executive as a result of this Agreement; and

(h) any and all claims for attorneys' fees and costs.

Executive agrees that the release set forth in this Section 3 (the "**Release**") shall be and remain in effect in all respects as a complete general release as to the matters released. The Release does not extend to any severance obligations due Executive under the Termination Agreement. The Release does not release claims that cannot be released as a matter of law, including, but not limited to, Executive's right to file a charge with or participate

in a charge by the Equal Employment Opportunity Commission , or any other local, state, or federal administrative body or government agency that is authorized to enforce or administer laws related to employment , against the Company (with the understanding that any such filing or participation does not give Executive the right to recover any monetary damages against the Company; Executive's release of claims herein bars Executive from recovering such monetary relief from the Company). Executive represents that Executive has made no assignment or transfer of any right, claim, complaint, charge, duty, obligation, demand, cause of action, or other matter waived or released by this Section 3. Nothing in this Agreement waives Executive 's (i) rights under that certain Indemnification Agreement between the Company and Executive, effective as of [DATE] (the "**Indemnification Agreement**"), or (ii) rights to indemnification or any payments under any fiduciary insurance policy, if any, provided by any act or agreement of the Company, state or federal law or policy of insurance.

4. Acknowledgment of Waiver of Claims under ADEA. Executive acknowledges that Executive is waiving and releasing any rights Executive may have under the Age Discrimination in Employment Act of 1967 ("**ADEA**") and that this waiver and release is knowing and voluntary. Executive agrees that this waiver and release does not apply to any rights or claims that may arise under the ADEA after the Effective Date of this Agreement. Executive acknowledges that the consideration given for this waiver and release Agreement is in addition to anything of value to which Executive was already entitled. Executive further acknowledges that Executive has been advised by this writing that (a) Executive should consult with an attorney *prior* to executing this Agreement; (b) Executive has at least 21 days within which to consider this Agreement; (c) Executive has 7 days following the execution of this Agreement by the parties to revoke the Agreement; (d) this Agreement shall not be effective until the revocation period has expired; and (e) nothing in this Agreement prevents or precludes Executive from challenging or seeking a determination in good faith of the validity of this waiver under the ADEA, nor does it impose any condition precedent, penalties or costs for doing so, unless specifically authorized by federal law. In the event Executive signs this Agreement and delivers it to the Company in less than the 21-day period identified above, Executive hereby acknowledges that Executive has freely and voluntarily chosen to waive the time period allotted for considering this Agreement. Executive acknowledges and understands that revocation must be accomplished by a written notification to the Chief Legal Officer of the Company that is received prior to the Effective Date.

5. Unknown Claims. Executive acknowledges that Executive has been advised to consult with legal counsel and that Executive is familiar with the principle that a general release does not extend to claims that the releaser does not know or suspect to exist in Executive's favor at the time of executing the release, which, if known by Executive, must have materially affected Executive's settlement with the releasee. Executive, being aware of this principle, agrees to expressly waive any rights Executive may have to that effect, as well as under any other statute or common law principles of similar effect.

6. No Pending or Future Lawsuits. Executive represents that Executive has no lawsuits, claims, or actions pending in Executive's name, or on behalf of any other person or entity, against the Company or any of the other Releasees. Executive also represents that Executive does not intend to bring any claims on Executive's own behalf or on behalf of any other person or entity against the Company or any of the other Releasees. Executive confirms that Executive has no knowledge of any wrongdoing involving improper or false claims against a federal or state governmental agency, or any other wrongdoing that involves Executive or any other present or former Company employees, including violations of the federal and state securities laws or the Sarbanes-Oxley Act of 2002.

7. Confidential Information. Executive reaffirms and agrees to observe and abide by the terms of the Proprietary Rights Agreement, specifically including the provisions therein regarding nondisclosure of the Company's trade secrets and confidential and proprietary information, which agreement shall continue in force; *provided, however* , that: (a) as to any provisions regarding competition contained in the Proprietary Rights Agreement that conflict with the provisions regarding competition contained in Appendix A of the Termination

Agreement, the provisions of Appendix A of the Termination Agreement shall control; (b) as to any provisions regarding solicitation of employees contained in Appendix A of the Proprietary Rights Agreement that conflict with the provisions regarding solicitation of employees contained in this Agreement, the provisions of Appendix A of the Termination Agreement shall control.

8. Return of Company Property: Passwords and Password-protected Documents. Executive confirms that Executive has returned to the Company in good working order all keys, files, records (and copies thereof), equipment (including, but not limited to, computer hardware, software and printers, wireless handheld devices, cellular phones and pagers), access or credit cards, Company identification, and any other Company-owned property in Executive's possession or control. Executive further confirms that Executive has cancelled all accounts for Executive's benefit, if any, in the Company's name, including, but not limited to, credit cards, telephone charge cards, cellular phone and/or pager accounts and computer accounts. Executive also confirms that Executive has delivered all passwords in use by Executive at the time of Executive's termination, a list of any documents that Executive created or of which Executive is otherwise aware that are password-protected, along with the password(s) necessary to access such password-protected documents.

9. No Cooperation. Executive agrees that Executive will not knowingly encourage, counsel, or assist any attorneys or their clients in the presentation or prosecution of any disputes, differences, grievances, claims, charges, or complaints by any third party against any of the Releasees, unless under a subpoena or other court order to do so or as related directly to the ADEA waiver in this Agreement. Executive agrees both to immediately notify the Company upon receipt of any such subpoena or court order, and to furnish, within three (3) business days of its receipt, a copy of such subpoena or other court order. If approached by anyone for counsel or assistance in the presentation or prosecution of any disputes, differences, grievances, claims, charges, or complaints against any of the Releasees, Executive shall state no more than that Executive cannot provide any such counsel or assistance.

10. Breach. In addition to the rights provided in the Section 11 below, Executive acknowledges and agrees that any material breach of this Agreement (unless such breach constitutes a legal action by Executive challenging or seeking a determination in good faith of the validity of the waiver herein under the ADEA), or of any provision of the Proprietary Rights Agreement, shall entitle the Company immediately to recover and/or cease providing the consideration provided to Executive under this Agreement and to obtain damages, except as provided by law, *provided, however*, that the Company shall not recover One Hundred Dollars (\$100.00) of the consideration already paid pursuant to this Agreement and such amount shall serve as full and complete consideration for the promises and obligations assumed by Executive under this Agreement and the Proprietary Rights Agreement.

11. Attorneys' Fees. In the event that either Party brings an action to enforce or effect its rights under this Agreement, the prevailing Party shall be entitled to recover its costs and expenses, including the costs of mediation, arbitration, litigation, court fees, and reasonable attorneys' fees incurred in connection with such an action.

12. No Admission of Liability. Executive understands and acknowledges that this Agreement constitutes a compromise and settlement of any and all actual or potential disputed claims by Executive. No action taken by the Company hereto, either previously or in connection with this Agreement, shall be deemed or construed to be (a) an admission of the truth or falsity of any actual or potential claims or (b) an acknowledgment or admission by the Company of any fault or liability whatsoever to Executive or to any third party.

13. Noncompetition/Nonsolicitation/Nondisparagement. Executive agrees to adhere to the noncompetition, nonsolicitation, and the nondisparagement restrictions set forth in Appendix A of the Termination Agreement.

14. Protected Activity Not Prohibited. Nothing in this Agreement limits or prohibits Executive from filing a charge or complaint with, or otherwise communicating or cooperating with or participating in any investigation or proceeding that may be conducted by, any federal, state or local government agency or commission, including the Securities and Exchange Commission, the Equal Employment Opportunity Commission, the Occupational Safety and Health Administration, and the National Labor Relations Board (“**Government Agencies**”), including disclosing documents or other information as permitted by law, without giving notice to, or receiving authorization from, the Company. Notwithstanding, in making any such disclosures or communications, Executive must take all reasonable precautions to prevent any unauthorized use or disclosure of any information that may constitute Company confidential information to any parties other than the Government Agencies. Executive is not permitted to disclose the Company’s attorney-client privileged communications or attorney work product.

15. Costs. The Parties shall each bear their own costs, attorneys’ fees and other fees incurred in connection with the preparation of this Agreement.

16. Arbitration. THE PARTIES AGREE THAT ANY AND ALL DISPUTES ARISING OUT OF THE TERMS OF THIS AGREEMENT, THEIR INTERPRETATION, AND ANY OF THE MATTERS HEREIN RELEASED, SHALL BE SUBJECT TO ARBITRATION IN UTAH COUNTY IN THE STATE OF UTAH, BEFORE JUDICIAL ARBITRATION & MEDIATION SERVICES (“**JAMS**”), PURSUANT TO ITS EMPLOYMENT ARBITRATION RULES & PROCEDURES (“**JAMS RULES**”). THE ARBITRATOR MAY GRANT INJUNCTIONS AND OTHER RELIEF IN SUCH DISPUTES. THE ARBITRATOR SHALL ADMINISTER AND CONDUCT ANY ARBITRATION IN ACCORDANCE WITH UTAH LAW, INCLUDING THE UTAH RULES OF CIVIL PROCEDURE, AND THE ARBITRATOR SHALL APPLY SUBSTANTIVE AND PROCEDURAL UTAH LAW TO ANY DISPUTE OR CLAIM, WITHOUT REFERENCE TO ANY CONFLICT-OF-LAW PROVISIONS OF ANY JURISDICTION. TO THE EXTENT THAT THE JAMS RULES CONFLICT WITH UTAH LAW, UTAH LAW SHALL TAKE PRECEDENCE. THE DECISION OF THE ARBITRATOR SHALL BE FINAL, CONCLUSIVE, AND BINDING ON THE PARTIES TO THE ARBITRATION. THE PARTIES AGREE THAT THE PREVAILING PARTY IN ANY ARBITRATION SHALL BE ENTITLED TO INJUNCTIVE RELIEF IN ANY COURT OF COMPETENT JURISDICTION TO ENFORCE THE ARBITRATION AWARD. THE PARTIES TO THE ARBITRATION SHALL EACH PAY AN EQUAL SHARE OF THE COSTS AND EXPENSES OF SUCH ARBITRATION, AND EACH PARTY SHALL SEPARATELY PAY FOR ITS RESPECTIVE COUNSEL FEES AND EXPENSES; PROVIDED, HOWEVER, THAT THE ARBITRATOR SHALL AWARD ATTORNEYS’ FEES AND COSTS TO THE PREVAILING PARTY, EXCEPT AS PROHIBITED BY LAW. THE PARTIES HEREBY AGREE TO WAIVE THEIR RIGHT TO HAVE ANY DISPUTE BETWEEN THEM RESOLVED IN A COURT OF LAW BY A JUDGE OR JURY. NOTWITHSTANDING THE FOREGOING, THIS SECTION 16 WILL NOT PREVENT EITHER PARTY FROM SEEKING INJUNCTIVE RELIEF (OR ANY OTHER PROVISIONAL REMEDY) FROM ANY COURT HAVING JURISDICTION OVER THE PARTIES AND THE SUBJECT MATTER OF THEIR DISPUTE RELATING TO THIS AGREEMENT AND THE AGREEMENTS INCORPORATED HEREIN BY REFERENCE. SHOULD ANY PART OF THE ARBITRATION AGREEMENT CONTAINED IN THIS PARAGRAPH CONFLICT WITH ANY OTHER ARBITRATION AGREEMENT BETWEEN THE PARTIES, THE PARTIES AGREE THAT THIS ARBITRATION AGREEMENT SHALL GOVERN.

17. Authority. The Company represents and warrants that the undersigned has the authority to act on behalf of the Company and to bind the Company and all who may claim through it to the terms and conditions of this Agreement. Executive represents and warrants that Executive has the capacity to act on Executive’s own behalf and on behalf of all who might claim through Executive to bind them to the terms and conditions of this Agreement. Each Party warrants and represents that there are no liens or claims of lien or assignments in law or equity or otherwise of or against any of the claims or causes of action released herein.

18. No Representations. Executive represents that Executive has had the opportunity to consult with an attorney, and has carefully read and understands the scope and effect of the provisions of this Agreement. Executive has relied upon any representations or statements made by the Company that are not specifically set forth in this Agreement.

19. Severability. In the event that any provision or any portion of any provision hereof or any surviving agreement made a part hereof becomes or is declared by a court of competent jurisdiction or arbitrator to be illegal, unenforceable, or void, this Agreement shall continue in full force and effect without said provision or portion of provision.

20. Entire Agreement. This Agreement represents the entire agreement and understanding between the Company and Executive concerning the subject matter of this Agreement and Executive's employment with and separation from the Company and the events leading thereto and associated therewith, and supersedes and replaces any and all prior agreements and understandings concerning the subject matter of this Agreement and Executive's relationship with the Company, with the exception of the Proprietary Rights Agreement, the Termination Agreement, the Indemnification Agreement, and Executive's written equity compensation agreements with the Company.

21. No Oral Modification. This Agreement may only be amended in writing signed by Executive and the Chairman of the Compensation Committee of the Board of Directors of the Company.

22. Governing Law. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of Utah, without regard to the choice-of-law provisions. The Utah state courts located in Utah County, Utah and/or the United States District Court for the District of Utah, located in Provo, Utah, shall have exclusive jurisdiction and venue over all controversies relating to or arising out of this Agreement. Executive hereby expressly consents to the exclusive jurisdiction and venue of the Utah state courts in Utah County, Utah and/or the United States District Court for the District of Utah for any disputes arising out of or relating to this Agreement.

23. Effective Date. Executive understands that this Agreement shall be null and void if not executed by Executive within 21 days. Each Party has seven days after that Party signs this Agreement to revoke it. This Agreement will become effective on the eighth (8th) day after Executive signed this Agreement, so long as it has been signed by the Parties and has not been revoked by either Party before that date (the "**Effective Date**").

24. Counterparts. This Agreement may be executed in counterparts and by facsimile, and each counterpart and facsimile shall have the same force and effect as an original and shall constitute an effective, binding agreement on the part of each of the undersigned.

25. Voluntary Execution of Agreement. Executive understands and agrees that Executive executed this Agreement voluntarily, without any duress or undue influence on the part or behalf of the Company or any third party, with the full intent of releasing all of Executive's claims against the Company and any of the other Releasees. Executive expressly acknowledges that:

- ( a ) Executive has read this Agreement;
- ( b ) Executive has been represented in the preparation, negotiation, and execution of this Agreement by legal counsel of Executive's own choice or has elected not to retain legal counsel;

- ( c ) Executive understands the terms and consequences of this Agreement and of the releases it contains; and
- ( d ) Executive is fully aware of the legal and binding effect of this Agreement.

*IN WITNESS WHEREOF* , the Parties have executed this Agreement on the respective dates set forth below.

**COMPANY**

VIVINT SOLAR, INC.

By:

Name:

Title:

Dated:

**EXECUTIVE**

David Bywater, an individual

(Signature)

Dated:

**AMENDMENT TO EMPLOYMENT AGREEMENT**

THIS AMENDMENT TO EMPLOYMENT AGREEMENT (the “Amendment”) is made and effective as of September 1, 2016, by and between VIVINT SOLAR, INC., a Delaware corporation (the “Company”) and THOMAS PLAGEMANN (hereinafter referred to as “Executive”).

WHEREAS, Executive and Company entered into a certain Employment Agreement, dated September 25, 2013 (the “Agreement”);

WHEREAS, Executive and Company desire to amend the terms of the Agreement in accordance with the terms provided herein;

NOW, THEREFORE, in consideration of the above facts and the mutual promises set forth in this Addendum, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Paragraph 2(a) of the Agreement is hereby deleted in its entirety and replaced with the following paragraph:

(a) Beginning September 1, 2016, Executive shall serve as the Company’s Chief Commercial Officer, Executive Vice President and Head of Capital Markets. In such position, Executive shall have such duties, responsibilities and authority as shall be determined from time to time by the Chief Executive Officer of the company (the “CEO”). Executive shall report to the CEO and Executive’s office will be in New York, New York.

2. Paragraph 3(c) of the Agreement is hereby deleted in its entirety and replaced with the following paragraph:

(c) Bonus. Beginning October 15, 2016, and on each anniversary thereafter for the duration of the Employment Term, Executive shall be entitled to a performance bonus equal to the sum of 0.15% of tax equity raised by the Company during the preceding year and 0.1% of non-recourse debt raised by the Company in the preceding year (or such other bonus and incentive arrangements as may be mutually agreed by the Company and Executive from time to time). For purposes of this Agreement, the term “non-recourse debt” does not include the extension of any debt previously raised by the Company.

Both parties recognize that the performance metrics upon which the performance bonus is based are not directly aligned with the metrics upon which the bonuses of the other members of the Company’s Executive Leadership Team are based (the “ELT Bonus Metrics”) and, in the future, may not align with Executive’s duties and obligations as periodically modified by the CEO. Accordingly, on October 15, 2017, and each year thereafter, the parties agree to reevaluate Executive’s performance bonus and determine whether it is necessary to modify the performance metrics to more closely align Executive’s performance bonus with Executive’s modified duties and/or the ELT Bonus Metrics. If the parties determine that Executive’s performance bonus should be modified in any way, the Company and Executive will in good faith negotiate

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appropriate modified or substitute performance metrics given the then current circumstances (“Modified Performance Metrics”), provided, however, that the Company shall make the final determination with respect to such Modified Performance Metrics in its sole and absolute discretion.

3. All other terms of the Agreement, shall continue in full force and effect for the duration of the Agreement; provided, however, that in the case of any discrepancy between this Amendment and the Agreement, this Amendment shall prevail.

4. This Amendment shall be deemed to be part of the Agreement and any reference to the Agreement in any other documents shall be construed as including this Amendment.

5. This Amendment may be executed separately by the parties hereto, and each executed copy shall be deemed as an original. All originals shall constitute the same document.

**[Remainder of page left intentionally blank; signature page to follow.]**

**IN WITNESS WHEREOF** , the parties have caused this Addendum to be executed effective as of the date set forth above.

**EXECUTIVE :**

Signature: /s/ Thomas G. Plagemann

Print Full Name: Thomas G. Plagemann

**COMPANY :**

VIVINT SOLAR, INC.  
a Delaware corporation

By: /s/ Tessa White

Name: Tessa White

Title: SVP, Human Capital

Address: 1800 W. Ashton Blvd.  
Lehi, Utah 84043

\*\*\*\*\*

FIXED RATE LOAN AGREEMENT

Dated as of January 5, 2017

among

VIVINT SOLAR FINANCING III, LLC,  
as Borrower

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Administrative Agent

and

THE LENDERS PARTY TO THIS AGREEMENT  
FROM TIME TO TIME

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[\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

## TABLE OF CONTENTS

This Table of Contents is not part of the Agreement to which it is attached but is inserted for convenience only.

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This FIXED RATE LOAN AGREEMENT (this “ Agreement ”), dated as of January 5 , 20 17 , is made among Vivint Solar Financing III, LLC, a Delaware limited liability company (the “ Borrower ”), each Person that is a signatory to this Agreement identified as a “Lender” on the signature pages to this Agreement or that, pursuant to Section 12.05 ( *Successors and Assigns* ), shall become a “Lender” under this Agreement (individually, a “ Lender ” and, collectively, the “ Lenders ” or the “ Lenders ”) and Wells Fargo Bank , N ational A ssociation , as Administrative Agent for the Lenders (in such capacity, and together with its successors and permitted assigns, the “ Administrative Agent ”).

#### RECITALS

WHEREAS, Vivint Solar, Inc., a Delaware corporation (the “ Sponsor ”), indirectly owns 100% of the membership interests in Vivint Solar Financing III Parent, LLC, a Delaware limited liability company (“ Pledgor ”);

WHEREAS, Pledgor owns 100% of the membership interests in the Borrower;

WHEREAS, the Borrower owns 100% of the membership interests in each of the Partnership Flip Manager Guarantors, the Lessor Manager Guarantor and the SREC Guarantor;

WHEREAS, each Partnership Flip Manager Guarantor owns 100% of the Fund Manager Membership Interests in each Partnership Flip Fund and the Lessor Manager Guarantor owns 100% of the Fund Manager Membership Interests in the Lessor;

WHEREAS, each of the Partnership Flip Funds and the Lessor owns certain residential photovoltaic systems that are the subject of a Customer Agreement, whereby the Customer thereunder either purchases Energy produced by the system or leases the system;

WHEREAS, the Lessor leases the residential photovoltaic systems it owns to the Lessee pursuant to the Master Lease Agreement; and

WHEREAS, the Borrower desires that the Lenders make a loan in an aggregate principal amount equal to the Commitment, secured and supported by, among other things, a guaranty from each of the Guarantors and all other Property and Assets of the Guarantors and Membership Interests of the Owned Funds, as set forth herein and in the other Loan Documents.

NOW, THEREFORE, in consideration of the premises and the respective representations, warranties, covenants, agreements, and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Borrower, the Administrative Agent, and the Lenders hereby agree as follows:

#### FIXED RATE LOAN AGREEMENT

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ARTICLE I. DEFINITIONS AND INTERPRETIVE MATTERS

Section 1.01 Definitions. Except as otherwise specified in this Agreement or as the context may otherwise require, the following terms have the respective meanings set forth below for all purposes of this Agreement (including in the Recitals hereto).

“Acceptable Audit Election Provision” means, with respect to a Partnership Flip Fund, a provision contained in the applicable Limited Liability Company Agreement that provides, if such Partnership Flip Fund receives a notice of final partnership administrative adjustment that would, with the passing of time, result in an “imputed underpayment” imposed on such Partnership Flip Fund as that term is defined in Code Section 6225 (as amended by the Budget Act), then, any member may, or may cause such Partnership Flip Fund (by directing the “tax representative” or otherwise), and no other member shall have any right to block such member’s request, (x) to elect pursuant to Code Section 6226 (as amended by the Budget Act) to make inapplicable to such Partnership Flip Fund the requirement in Code Section 6225 (as amended by the Budget Act) to pay the “imputed underpayment” as that term is used in that section and (y) to comply with all of the requirements and procedures required in connection with such election.

“Acceptable Bank” shall mean any bank, trust company or other financial institution which is organized or licensed under the applicable Laws of the United States of America or Canada or any state, province or territory thereof which has a tangible net worth of at least five hundred million Dollars (\$500 ,000 ,000) and has at least one of the following Credit Ratings: “A-” or better by S&P or “A3” or better by Moody’s.

“Acceptable DSR Letter of Credit” shall have the meaning given to such term in the Depositary Agreement.

“Administrative Agent” shall have the meaning given to such term in the preamble hereto, and include any successor Administrative Agents pursuant to Section 11.07 (*Resignation or Removal of Administrative Agent*).

“Administrative Agent’s Office” shall mean the Administrative Agent’s address and, as appropriate, account as set forth on Appendix C (*Addresses for Notices*), or such other address or account as the Administrative Agent may from time to time notify to the Borrower and the Lenders.

“Administrative Services” shall mean the services provided by a Fund Provider under its applicable Administrative Services Agreement.

“Administrative Services Agreements” shall mean individually or collectively, as the context requires, each agreement listed under the heading “Administrative Services Agreements” on Schedule 7.22(a) (*Portfolio Documents*) and any replacement administrative services agreement entered into in accordance with Section 9.10(d) (*Portfolio Documents*).

“Administrative Questionnaire” shall mean an administrative questionnaire in the form furnished by the Administrative Agent.

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“Affiliate” shall mean, with respect to any specified Person, any other Person controlling or controlled by or under common control with such specified Person. For the purposes of this definition, “control” when used with respect to any Person shall mean the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” shall have meanings correlative to the foregoing. For the avoidance of doubt, each of the Relevant Parties is an Affiliate of the other Relevant Parties. In no event shall (a) the Administrative Agent or Collateral Agent be considered an Affiliate of another Person solely because any Loan Document contemplates that it shall act at the instruction of any such Person or such Person’s Affiliate, or (b) any Tax Equity Member be considered an Affiliate of a Relevant Party.

“Affiliate Transaction” shall have the meaning given to such term in Section 9.16 ( *Transactions with Affiliates* ).

“Affiliated Lender” shall have the meaning given to such term in Section 12.05(b)(v)( *Prohibited Assignments* ).

“Agency Expense Cap” shall mean \$100,000 per annum.

“Agency Expenses” shall mean the expenses and indemnification payments to the Agents, and certain other persons related to the same as described under the Loan Documents. For the avoidance of doubt, Agency Expenses shall not include Service Fees or amounts payable to the Manager under the Management Agreement.

“Agency Fee” shall have the meaning assigned to that term in Section 2.03( *Agency Fee* ).

“Agency Fee Letter” shall mean the fee letter dated as of November 17, 2016 and executed by the Borrower on November 29, 2016, among the Borrower and the Agents.

“Agents” shall mean, collectively, the Administrative Agent, the Collateral Agent and the Depository Agent.

“Aggregation Facility” shall mean the Amended and Restated Loan Agreement dated as of September 12, 2014, as amended and restated as of November 25, 2015, as amended by Amendment No. 1, dated December 9, 2015, Amendment No. 2, dated January 15, 2016 and Amendment No. 3, dated March 7, 2016 by and among Aggregation Facility Borrower, Vivint Solar Holdings, Inc., the guarantors party thereto, the lenders party thereto, and Bank of America, N.A., as collateral and administrative agent, as amended, modified, supplemented or restated from time to time.

“Aggregation Facility Administrative Agent” shall mean Bank of America, N.A.

“Aggregation Facility Borrower” shall mean Vivint Solar Financing I, LLC, a Delaware limited liability company.

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“ Aggregation Facility Collateral Agent ” shall mean Bank of America, N.A.

“ Aggregator SRECs ” shall mean the SRECs transferred from a Fund to SREC Guarantor pursuant to the Fund XVIII SREC Transfer Agreement (as such term is defined in Schedule 7.22(a) ( *Portfolio Documents* )).

“ Agreement ” shall have the meaning assigned to that term in the preamble.

“ Amortization Schedule ” shall mean the amortization schedule attached as Appendix B ( *Loan Amortization Schedule* ).

“ Anti-Corruption Laws ” shall mean any law or regulation in a U.S. or any non-U.S. jurisdiction regarding bribery or any other corrupt activity, including the U.S. Foreign Corrupt Practices Act and the U.K. Bribery Act 2010.

“ Anti-Money Laundering Laws ” shall mean any applicable law or regulation in a U.S. or any non-U.S. jurisdiction regarding money laundering, drug trafficking or terrorism financing, including the Bank Secrecy Act (31 CFR 5311 *et seq.* ), as amended by the Patriot Act.

“ Approved Fund ” shall mean any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

“ Assets ” shall mean, with respect to any Person, all right, title and interest of such Person in land, Properties, buildings, improvements, fixtures, foundations, assets and rights of any kind, whether tangible or intangible, real, personal or mixed, including contracts, equipment, systems, books and records, proprietary rights, intellectual property, Permits, rights under or pursuant to all warranties, representations and guarantees, cash, accounts receivable, deposits and prepaid expenses.

“ Assignment Agreement ” shall mean the Assignment and Assumption Agreement, dated as of the date hereof, by and between the Aggregation Facility Borrower and the Borrower.

“ Assignment and Assumption ” shall mean an assignment and assumption entered into by a Lender and an assignee lender (with the consent of any party whose consent is required by Section 12.05 ( *Successors and Assigns* )), and accepted by the Administrative Agent, in substantially the form of Exhibit F ( *Form of Assignment and Assumption Agreement of Loans/Commitments* ) or any other form approved by the Administrative Agent.

“ Authorized Officer ” shall mean: (a) in relation to any Relevant Party, for so long as the Management Agreement is in full force and effect, any officer of the Manager who is authorized to act for the Manager in matters relating to the Borrower and the Subsidiaries and to be acted upon by the Manager pursuant to the Management Agreement, and who is identified on the list of Authorized Officers delivered by the Borrower to the Administrative Agent on the

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Closing Date (as such list may be modified or supplemented from time to time thereafter by delivery to the Administrative Agent of a duly executed officer's certificate and an incumbency certificate of the Borrower) and (b) in relation to any Relevant Party, any director, member or officer who is a natural Person authorized to act for or on behalf of the applicable Relevant Party in matters relating to such Relevant Party and who is identified on the list of Authorized Officers delivered by such Relevant Party to the Administrative Agent on the Closing Date (as such list may be modified or supplemented from time to time thereafter by delivery to the Administrative Agent of a duly executed officer's certificate and an incumbency certificate of such Relevant Party).

“Back-Up Servicer” shall mean Wells Fargo Bank, National Association, and its successors and assigns as Back-Up Servicer under each Back-Up Servicing Agreement.

“Back-Up Servicing Agreement” shall mean (i) the Master Back-Up Servicing Agreement as modified by each applicable Back-Up Servicing Agreement Addendum and (ii) each replacement for each such agreement entered into in accordance with Section 9.10(d) (*Portfolio Documents*).

“Back-Up Servicing Agreement Addendum” shall mean each addendum under the Master Back-Up Servicing Agreement entered into among the Back-Up Servicer, Provider and the applicable Fund, listed under the heading “Back-Up Servicing Agreement Addenda” on Schedule 7.22(a) (*Portfolio Documents*).

“Bail-In Action” shall mean the exercise of any Write-down and Conversion Powers.

“Bail-In Legislation” shall mean:

(a) in relation to an EEA Member Country which has implemented, or which at any time implements, Article 55 of Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms (as amended or re-enacted), the relevant implementing law or regulation (including any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organization) as described in the EU Bail-In Legislation Schedule from time to time; and

(b) in relation to any other state, any analogous law or regulation from time to time which requires contractual recognition of any Write-down and Conversion Powers contained in that law or regulation.

“Bankruptcy Code” shall mean Title 11 of the United States Code, as amended from time to time, and all rules and regulations promulgated thereunder.

“Base Case Model” shall mean the comprehensive long-term financial model delivered on the Closing Date and attached as Exhibit L (*Base Case Model*) to this Agreement, reflecting among other things (i) quarterly payment periods ending on each Scheduled Payment

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Date and (ii) the projected Net Cash Flow from the Projects in the Project Pool, Debt Service after giving effect to the transactions contemplated by the Transaction Documents, the making of the Loans, covering the period from the Closing Date until the Final Maturity Date. All amounts determined in accordance with the Base Case Model shall be determined assuming a P50 Production and shall take into account (i) Eligible Revenues and (ii) all Operating Expenses with respect to the Project Pool.

“Board” shall mean the Board of Governors of the Federal Reserve System.

“Borrower” shall have the meaning assigned to such term in the preamble.

“Borrower Collateral Agreement” shall mean that certain pledge and security agreement dated as of the Closing Date by and between the Borrower and the Collateral Agent for the benefit of the Secured Parties.

“Borrower Membership Interests” shall mean all of the outstanding limited liability company interests issued by the Borrower (including all Economic Interests and Voting Rights).

“BP SREC Consent” shall mean that certain consent and acknowledgment dated as of January 5, 2017 by and between BP Energy Company, a Delaware corporation, the SREC Seller Parties and the Collateral Agent for the benefit of the Secured Parties, as acknowledged by BP Corporation North America Inc. (as buyer guarantor) and SREC Guarantor.

“Budget Act” shall mean the Bipartisan Budget Act of 2015 (P.L. 114-74).

“Business Day” shall mean any day on which commercial banks are not authorized or required to be closed in New York, New York and Maryland and, if such day relates to a borrowing of, a payment or prepayment of principal of or interest on, a Loan or a notice by the Borrower with respect to any such borrowing, payment or prepayment.

“Calculation Date” shall mean each of March 31, June 30, September 30 and December 31 of each year falling after the date hereof.

“Capital Stock” shall mean:

(a) in the case of a corporation, corporate stock;

(b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock;

(c) in the case of a partnership or limited liability company, partnership interests (whether general or limited) or membership interests; and

(d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of Assets of, the issuing Person including, all warrants, options or other rights to acquire any of the foregoing.

#### FIXED RATE LOAN AGREEMENT

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“ Change in Law ” shall mean the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided, that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“ Change of Control ” shall occur if

(a) (i) the Sponsor and/or Qualified Purchaser(s) shall cease to directly or indirectly own, beneficially and of record, 100% of the Pledgor Membership Interests, (ii) Sponsor or a Qualified Purchaser, directly or indirectly through Pledgor, shall cease to have management control of the Borrower, (iii) Sponsor shall cease to directly or indirectly own, beneficially and of record, at least (x) 25% or (y) at all times after the Wholly-Owned Fund Perfection Date, 5%, in each case, of the Pledgor Membership Interests or (iv) Sponsor shall cease to directly or indirectly own, beneficially and of record, at least 50.1% of the issued and outstanding equity interests in Provider;

(b) the Borrower shall cease to directly own, beneficially and of record, 100% of the Guarantor Manager Membership Interests;

(c) Pledgor shall cease to, directly or indirectly, beneficially and of record, own 100% of the Borrower Membership Interests; or

(d) the Lessor Manager Guarantor or any Partnership Flip Manager Guarantor shall cease to directly own, beneficially and of record, 100% of the applicable Fund Manager Membership Interests.

“ Claims ” shall have the meaning assigned to that term in Section 8.11 ( *Payment of Claims* ).

“ Closing Date ” shall mean the date on which all conditions precedent set forth in Section 6.01 ( *Conditions of Borrowing* ) have been satisfied (or waived by the Lenders).

“ Closing Date Assignment Agreements ” shall mean each of (i) the Assignment Agreement, (ii) the Consent Termination Agreements, (iii) the Fund Termination Agreements and (iv) the Payoff Letter.

“ Closing Date Assignments ” shall mean the assignments contemplated under the Closing Date Assignment Agreements such that the Guarantor Manager Membership Interests are all under the ownership of the Borrower.

#### FIXED RATE LOAN AGREEMENT

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“ Closing Date Funds Flow Memorandum ” shall have the meaning given to such term in the Depository Agreement.

“ Code ” shall mean the United States Internal Revenue Code of 1986, and the regulations promulgated pursuant thereto, all as amended or as may be amended from time to time.

“ Collateral ” shall mean the Assets and Property of, and equity interests in, the Borrower and each Guarantor and each SREC Seller Party’s interest in its respective Eligible SREC Contracts, which is now owned or hereafter acquired upon which a Lien is or is purported to be created by any Collateral Document and shall include, without limitation, all Assets and Property included within the terms “Collateral”, “Depository Collateral”, “Collateral Account” and “Pledged Collateral”, as applicable, in the Collateral Documents all of which collectively constitute the “Collateral”; provided, that Excluded Property and Fund SREC Property shall be excluded from Collateral hereunder and under all Collateral Documents.

“ Collateral Accounts ” shall have the meaning have the meaning given to such term in the Depository Agreement.

“ Collateral Agency Agreement ” shall mean the Collateral Agency Agreement dated as of the Closing Date, among the Borrower, the Administrative Agent and the Collateral Agent and substantially in the form of Exhibit C ( *Form of Collateral Agency Agreement* )

“ Collateral Agent ” shall mean Wells Fargo Bank, National Association, and its successors and permitted assigns in such capacity.

“ Collateral Documents ” shall mean, collectively, the Pledge Agreement, the Borrower Collateral Agreement, the Guarantor Collateral Agreement, the SREC Security Agreement, the Collateral Agency Agreement, the Depository Agreement, the Tax Equity Consents and Notices, the SREC Consents, the Management Consent Agreement and each other collateral document, pledge agreement, account control agreement or standing instruction delivered to the Administrative Agent pursuant to Section 8.08 ( *Preservation of Rights; Maintenance of Projects; Warranty Claims; Security* ) and Section 6.01(a) ( *Conditions of Borrowing* ), any other document or agreement that creates or purports to create a Lien in favor of the Collateral Agent for the benefit of the Secured Parties.

“ Collections ” shall mean without duplication (a) with respect to the Wholly-Owned Funds, the related (i) Rents, including all scheduled payments and prepayments under any Customer Agreement, (ii) all proceeds of SRECs and SREC Contracts, (iii) pending assumption of a Customer Agreement relating to a Project, payments of Rent relating to such Project by lenders with respect to, or subsequent owners of, the Property where such Project has been installed, (iv) proceeds of the sale, assignment or other disposition of any Collateral, (v) insurance proceeds and proceeds of any warranty claims arising from manufacturer, installer and other warranties, in each case, with respect to any Projects, (vi) all recoveries including all amounts received in respect of litigation settlements and work-outs, (vii) all purchase and lease prepayments received from a Customer with respect to any Project, and (viii) all other revenues,

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receipts and other payments to such Wholly-Owned Funds of every kind whether arising from their ownership, operation or management of the Projects, (b) with respect to any Guarantor (other than the SREC Guarantor), all distributions with respect to the Fund Membership Interests, (c) with respect to the SREC Guarantor, all payments in connection with SRECs and SREC Contracts, (d) amounts contributed or otherwise paid by Sponsor to Borrower and (e) interest earned on amounts deposited in the Collateral Accounts during the relevant period; provided, that the Collections shall not include any Excluded Property or Fund SREC Property.

“Collections Account” shall have the meaning given to such term in the Depositary Agreement.

“Commitment” shall mean, for each Lender, the obligation of such Lender to make a Loan up to an aggregate principal amount equal to the amount set forth under such Lender’s name on Appendix A ( Lender Commitments ) opposite the heading “Commitment” (as the same may be adjusted from time to time as a consequence of an assignment in accordance with Section 12.05 ( Successors and Assigns )). The aggregate amount of the Commitments of the Lenders on the Closing Date is \$203,750,000.

“Communications” shall have the meaning assigned to that term in Section 8.01(g) ( Data Site ).

“Competitor” means any Person directly or through its Affiliates engaged in the business of owning, managing, operating, maintaining or developing renewable energy systems for use in distributed generation applications (whether residential or commercial) in the United States; *provided*, that (x) a Person who is involved in such activities solely as a result of such Person being engaged as a back-up servicer or transition manager (including Wells Fargo Bank, National Association or U.S. Bank National Association) or as a result of making passive investments (including tax equity investments) in such activities or (y) each Lender party hereto as of the Closing Date, and each Affiliate of each such Lender, shall, in each case, not be considered a “Competitor” hereunder.

“Consent Termination Agreements” shall mean each of (i) the Termination Agreement, dated as of the date hereof, by and among the Aggregation Facility Borrower, Fund XI Guarantor, the Aggregation Facility Collateral Agent, Firstar Development, LLC and USB VS SIF, LLC, (ii) the Termination Agreement, dated as of the date hereof, by and among the Aggregation Facility Borrower, Fund XIII Guarantor, the Aggregation Facility Collateral Agent and Firstar Development, LLC, and (iii) the Termination Agreement, dated as of the date hereof, by and among the Aggregation Facility Borrower, Fund XVIII Guarantor, the Aggregation Facility Collateral Agent and BAL Investment & Advisory, Inc.

“Credit Rating” shall mean, with respect to any Person, the rating by a Rating Agency or any other rating agency agreed to by the Parties then assigned to such Person’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such Person as an issuer rating by a Rating Agency or any other rating agency

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approved with the consent of the Administrative Agent (acting on the written instructions of the Majority Lenders).

“Credit Requirements” shall mean, with respect to any Person, that such Person has at least one of the following Credit Ratings: “Baa2” (outlook stable and not on credit watch for downgrade) or higher from Moody’s, “BBB-” (outlook stable and not on credit watch for downgrade) from S&P or “BBB-” (outlook stable and not on credit watch for downgrade) or higher from Fitch.

“Cumulative Loss Event” shall mean, on any Calculation Date, (a) the amount of the reduction in Portfolio Value resulting from or attributable to each Ineligibility Event occurring since the Closing Date exceeds (b)(i) the amount of the reduction in Portfolio Value projected to occur by such Calculation Date under the Base Case Model as a result of each Ineligibility Event plus (ii) the principal amount of all prior Ineligible Project Prepayments.

“Customer” shall mean a natural person or trust party to a Customer Agreement who leases, or agrees to purchase Energy produced by, a Project.

“Customer Agreement” shall mean those power purchase agreements or customer lease agreements (together with all ancillary agreements and documents related thereto, including any assignment agreement to a replacement Customer) with respect to a Project between a Fund, as owner or lessor, and a Customer, whereby the Customer agrees to purchase the Energy produced by the related Project for a fixed fee (subject to escalation) per kWh, or agrees to lease the Project for monthly lease payments, as applicable, in each case for a specified term of years and including agreements where the Customer has the ability to prepay such amounts.

“Debt Service” shall mean, for any period, the sum, computed without duplication, of the following: (a) all amounts payable by the Borrower in respect of principal of Indebtedness hereunder (other than prepayments of Loans during such period pursuant to Section 3.03 ( *Optional Prepayments* ) or Section 3.04 ( *Mandatory Prepayments* )), including the aggregate amount of all principal, Agency Expenses, or any other recurrent analogous costs and damages (including gross-ups and increased cost payments) payable pursuant to any Loan Document plus (b) all amounts payable by the Borrower in respect of Interest Expense for such period.

“Debt Service Reserve Account” shall have the meaning given to such term in the Depositary Agreement.

“Debt Service Reserve Required Amount” shall have the meaning given to such term in the Depositary Agreement.

“Debt Termination Date” shall mean the date on which (a) the Commitments have expired or been terminated, (b) the principal of and interest on each Loan and all fees payable hereunder shall have been paid indefeasibly paid in cash in full and (c) all other Obligations

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(other than any inchoate indemnification or expense reimbursement Obligations that expressly survive termination of this Agreement) shall have indefeasibly paid in cash in full.

“ Debtor Relief Laws ” shall mean the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect.

“ Default ” shall mean any event, occurrence or circumstance that is, or with notice or the lapse of time or both would become, an Event of Default.

“ Deficient Project ” shall mean a Project that is a “Deficient Project” or “Cancelled Project”, each as defined in the applicable Limited Liability Company Agreement, Master Lease Agreement or Master Purchase Agreement, or any other Project that was ineligible to be tranching or funded, or in respect of which returns have been or are required to be prepaid, under the applicable Tax Equity Documents.

“ Depository Agent ” shall mean Wells Fargo Bank, National Association, and its successors and assigns in such capacity in accordance with the Depository Agreement.

“ Depository Agreement ” shall mean the Depository Agreement dated as of the Closing Date, among the Borrower, the Guarantors party thereto, the Administrative Agent, the Collateral Agent and the Depository Agent and substantially in the form of Exhibit D ( *Form of Depository Agreement* ).

“ Distribution Conditions ” shall mean:

- (a) no Default or Event of Default has occurred and is continuing;
- (b) the Debt Service Reserve Account is fully funded, or an Acceptable DSR Letter of Credit has been posted, in an aggregate amount at least equal to the then applicable Debt Service Reserve Required Amount;
- (c) the Inverter Replacement Reserve Account is fully funded in an amount at least equal to the then applicable Inverter Replacement Reserve Required Amount;
- (d) at all times until the first Scheduled Payment Date to occur after the third anniversary of the Closing Date, the Supplemental Reserve Account is fully funded in an amount at least equal to the then applicable Supplemental Reserve Required Amount;
- (e) no Manager Event, Provider Event or Lessor Default, or any other event that would with the giving of notice, passage of time or both would result in any of the foregoing, shall have occurred and be continuing; and
- (f) as of the applicable Scheduled Payment Date, (i) the Historical Debt Service Coverage Ratio for the Rolling Period ending on such Scheduled Payment Date is not less than 1.20:1.00; and (ii) the Projected Debt Service Coverage Ratio for the

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subsequent Rolling Period commencing on the day following the applicable Scheduled Payment Date is not less than 1.20:1.00, and the Borrower shall have delivered a Scheduled Payment Date Report to the Administrative Agent and Lenders certifying to the same.

“Distribution Suspense Account” shall have the meaning given to such term in the Depositary Agreement.

“Dollars” and “\$” shall mean lawful money of the United States.

“DTE SREC Consent” shall mean that certain consent and acknowledgment dated as of January 5, 2017 by and between the DTE Energy Trading, Inc. a Michigan corporation, the SREC Seller Parties and the Collateral Agent for the benefit of the Secured Parties, as acknowledged by DTE Energy Company, a Michigan corporation (as buyer guarantor).

“Early Amortization Period” shall mean a period beginning on any Scheduled Payment Date where the Distribution Conditions have not been satisfied on such Scheduled Payment Date and the immediately prior Scheduled Payment Date (two consecutive Scheduled Payment Dates in total) and continuing until the Scheduled Payment Date upon which the Distribution Conditions have been satisfied.

“Economic Interest” shall mean the direct or indirect ownership by one Person of Capital Stock in another Person. A Person who directly holds all of the Capital Stock of another Person is understood to hold an Economic Interest of one hundred percent (100%) in such other Person. For purposes of determining the Economic Interest of one Person in another Person where there are one or more other Persons in the chain of ownership, the Economic Interest of the first Person in the second Person shall be deemed proportionately diluted by Economic Interests of less than one hundred percent (100%) held by such other Persons in the chain of ownership. For example, if Company A owns eighty percent (80%) of the Capital Stock of Company B, which in turn owns eighty percent (80%) of the partnership interests in Partnership C, which in turn owns fifty percent (50%) of the Capital Stock in Company D, then Company A would have an Economic Interest in Company D of thirty-two percent (32%).

“EEA Member Country” shall mean any member state of the European Union, Iceland, Liechtenstein and Norway.

“Eligible Customer Agreement” shall mean a Customer Agreement substantially in the form of one of the form agreements attached to the Officer’s Certificate or such other form of agreement as approved by the Majority Lenders in writing, which forms may be modified in a manner permitted under the Tax Equity Documents so long as such revisions could not reasonably be expected, in the aggregate across all such revisions to all Customer Agreements, to have a Material Adverse Effect.

“Eligible Project” shall mean a Project installed on a dwelling owned by the applicable Customer, which Project is owned by a Fund and (a) has been Placed in Service, (b) is

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not the subject of any Revenue Termination Event or Ineligibility Event, and (c) is not a Deficient Project.

“Eligible Revenues” shall mean Operating Revenue from Eligible Projects to the extent such Operating Revenues solely consist of (a) payments by Customers pursuant to the applicable Customer Agreement and (b) Eligible SREC Proceeds.

“Eligible SREC Contract” shall mean individually or collectively, as the context requires, each agreement and each associated guaranty listed under the heading “Eligible SREC Contracts” on Schedule 7.22(a) (*Portfolio Documents*).

“Eligible SREC Counterparty” shall mean the counterparty to a SREC Seller Party under an Eligible SREC Contract (and its applicable guarantor).

“Eligible SREC Proceeds” shall mean all revenues and proceeds under any Eligible SREC Contract to the extent that a direct agreement has been entered into with the applicable Eligible SREC Counterparty.

“Employee Benefit Plan” shall mean any employee pension benefit plan within the meaning of Section 3(2) of ERISA (excluding any Multiemployer Plan) which is subject to Title IV of ERISA or to Section 412 of the Code.

“Energy” shall mean electric energy, expressed in megawatt hours or kilowatt hours (“kWh”), of the character that passes through transformers and transmission wires, where it eventually becomes alternating current electric energy delivered at nominal voltage.

“Environmental Laws” shall mean all present and future Laws pertaining to or imposing liability or standards of conduct concerning environmental protection, human health and safety, contamination or clean-up or the use, handling, generation, Release or storage of Hazardous Material, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, the Resource Conservation and Recovery Act, as amended, the Emergency Planning and Community Right-to-Know Act of 1986, as amended, the Hazardous Substances Transportation Act, as amended, the Solid Waste Disposal Act, as amended, the Clean Water Act, as amended, the Clean Air Act, as amended, the Toxic Substances Control Act, as amended, the Safe Drinking Water Act, as amended, the Occupational Safety and Health Act, as amended (to the extent relating to human exposure to Hazardous Materials), the National Environmental Policy Act, as amended, and all analogous state or local statutes, (including, with respect to the Projects located in the State of New York, the New York State Environmental Quality Review Act, as amended and, with respect to the Projects located in the State of New Jersey, the New Jersey Site Remediation Reform Act), any state superlien Law and environmental clean-up Laws and all regulations adopted in respect of the foregoing Laws whether now or hereafter in effect.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended or as may be amended from time to time.

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“ ERISA Affiliate ” shall mean, in relation to any Person, any other Person under common control with the first Person, within the meaning of Section 4001(a)(14) of ERISA.

“ EU Bail-In Legislation Schedule ” shall mean the document described as such and published by the Loan Market Association (or any successor Person) from time to time.

“ Event of Default ” shall have the meaning assigned to that term in Section 10.01 ( *Events of Default* ).

“ Event of Loss ” shall mean (a) an event which causes all or a material portion of an Asset of a Relevant Party to be damaged, destroyed or rendered unfit for normal use for any reason whatsoever (including any covered loss under a casualty insurance policy) and (b) any compulsory transfer or taking, or transfer under threat of compulsory transfer, of any Asset of a Relevant Party pursuant to the power of eminent domain, condemnation or otherwise.

“ Excess Agency Expenses ” shall mean, at all times other than when an Event of Default has occurred and is continuing, the amount of Agency Expenses in excess of the Agency Expense Cap.

“ Excluded Property ” shall mean, solely to the extent no Event of Default shall have occurred and be continuing, each of the following:

(a) all cash proceeds from any upfront solar energy incentive programs, including proceeds disbursed as an expected performance based buydown pursuant to the California Solar Initiative (which are not subject to state income tax), or any other state or local solar power incentive program which provides incentives that are substantially similar to the expected performance based buydown provided under the California Solar Initiative (and which are similarly not subject to state income tax);

(b) all cash proceeds from any state income tax credit, including proceeds pursuant to the refundable Hawaii Energy Tax Credits;

(c) Rebates; and

(d) proceeds of any true-up payment paid to any applicable Guarantor in respect of Fund XIII and Fund

XVIII.

“ Excluded Taxes ” shall mean any of the following Taxes imposed on or with respect to any Recipient or required to be withheld or deducted from a payment to any Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the Laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Recipient with respect to any right to payment hereunder or an applicable interest in a Loan or Commitment pursuant to a Law in effect on the date on which (i) such Recipient acquires such interest in the Loan or Commitment or in this Agreement or (ii) such

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Recipient (if the Recipient is a Lender) changes its Lending Office, except in each case to the extent that, pursuant to Section 5.02(a) (*Taxes*), amounts with respect to such Taxes were payable either to such Recipient's assignor immediately before such Recipient became a party hereto or to such Recipient immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient's failure to comply with Section 5.02(e) (*Taxes*) and (d) any withholding Taxes imposed pursuant to FATCA.

“ Exempt Customer Agreements ” shall mean (a) any Customer Agreement which has unpaid Rents that are \*\*\* days or more past due, (b) any Customer Agreement where (i) the Customer's interest in the underlying host Property for the applicable Project has been sold or otherwise transferred without either the Customer purchasing the Project or the new owner assuming such Customer Agreement and (ii) the applicable Fund Provider reasonably determines that the current Customer will not make any purchase payment due under the Customer Agreement and the new owner will refuse to assume such Customer Agreement but for a Payment Facilitation Agreement in respect thereof, or (c) any Customer Agreement subject to a dispute between the applicable Fund and the Customer which, in light of the facts and circumstances known at the time of such dispute, the Fund Provider reasonably determines the Customer under such Customer Agreement could reasonably be expected to stop making Rent payments due under the Customer Agreement but for a Payment Facilitation Agreement.

“ FATCA ” shall mean Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code, any applicable intergovernmental agreements entered into in connection with the foregoing and any Law, regulation or practice adopted pursuant to any such intergovernmental agreement.

“ FERC ” shall mean the Federal Energy Regulatory Commission and any successor authority.

“ FICO® Score ” shall mean, in respect of any Customer, a credit score obtained from (a) Experian Information Solutions, Inc., (b) Transunion, LLC or (c) Equifax Inc., in each case, as obtained in connection with such Customer Agreement. If the Customer is a trust, the applicable credit score for that Customer shall be the credit score of the trustee.

“ Final Maturity Date ” shall mean January 5, 2035.

“ Financial Statements ” shall mean in relationship to any Person, its consolidated statements of operations and members' equity, statements of cash flow and balance sheets.

“ Financing SRECs ” shall mean the SRECs transferred from a Fund or a Guarantor to SREC Guarantor pursuant to the Fund XI SREC Transfer Agreement, the Fund XIII SREC Transfer Agreement and the Fund I SREC Transfer Agreement (as each such term is defined in Schedule 7.22(a) (*Portfolio Documents*)).

“ Fitch ” shall mean Fitch Ratings Ltd. and its successors.

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“Flip Point” shall have the meaning given to the term “Flip Point” in the applicable Limited Liability Company Agreement of Fund XVIII.

“Foreign Lender” shall mean any Recipient that is not a U.S. Person.

“FPA” shall mean the Federal Power Act, as amended, and FERC’s regulations thereunder.

“Fund” shall mean each Owned Fund and the Lessee.

“Fund Account” shall mean a deposit account or securities account in the name of a Fund into which all Rents and other Operating Revenues paid to such Fund are deposited and each “Lessee Account” and the “Lessor Account” (each as defined in the Lease Depository Agreement).

“Fund Manager Membership Interests” shall mean (a) in the case of the Partnership Flip Funds, all of the outstanding class B membership interests issued by the Funds (including all Economic Interests and Voting Rights applicable to the class B member) and (b) in the case of the Lessor, all of the outstanding membership interests issued by the Lessor.

“Fund Membership Interests” shall mean all of the outstanding Fund Manager Membership Interests and all other membership interests issued by a Fund that have been acquired by a Guarantor or where the Tax Equity Member has withdrawn (including all acquired Economic Interests and Voting Rights).

“Fund Provider” shall mean the Provider and any replacement services provider appointed under a replacement Administrative Services Agreement or Maintenance Services Agreement in accordance with Section 9.10(d) (*Portfolio Documents*).

“Fund Purchase Option” shall mean any option under the Tax Equity Documents to purchase the outstanding “class A” membership interests of a Tax Equity Fund or any membership interests held by a Tax Equity Member in such Tax Equity Fund.

“Fund Representations” shall mean the representations set forth in Annex A (*Fund Representations*).

“Fund SREC Property” shall mean (i) all Aggregator SRECs, (ii) receivables pursuant to the SREC Aggregator Master PSA and proceeds from the sale of SRECs received pursuant to the SREC Aggregator Master PSA and (iii) the Unpledged SREC Account and all amounts deposited therein; provided, that, for the avoidance of doubt, no cash distributions with respect to the Fund Membership Interests shall be Fund SREC Property.

“Fund SREC Transfer Agreements” shall mean individually or collectively, as the context requires, each agreement listed under the heading “Fund SREC Transfer Agreements” on Schedule 7.22(a) (*Portfolio Documents*), which may be modified from time to time subject to Section 9.10 (*Portfolio Documents*).

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“Fund Termination Agreements” shall mean each of (i) the Termination Agreement, dated as of the date hereof, by and between Fund XI Guarantor, the Aggregation Facility Administrative Agent and the Aggregation Facility Collateral Agent, and acknowledged and agreed by the Aggregation Facility Borrower, (ii) the Termination Agreement, dated as of the date hereof, by and between Fund XIII Guarantor, the Aggregation Facility Administrative Agent and the Aggregation Facility Collateral Agent, and acknowledged and agreed by the Aggregation Facility Borrower, (iii) the Termination Agreement, dated as of the date hereof, by and between Lessor Manager Guarantor, the Aggregation Facility Administrative Agent and the Aggregation Facility Collateral Agent, and acknowledged and agreed by the Aggregation Facility Borrower, and (iv) the Termination Agreement, dated as of the date hereof, by and between Fund XVIII Guarantor, the Aggregation Facility Administrative Agent and the Aggregation Facility Collateral Agent, and acknowledged and agreed by the Aggregation Facility Borrower.

“Fund XI” shall mean Vivint Solar Fund XI Project Company, LLC, a Delaware limited liability company.

“Fund XI Guarantor” shall mean Vivint Solar Fund XI Manager, LLC, a Delaware limited liability company.

“Fund XIII” shall mean Vivint Solar Fund XIII Project Company, LLC, a Delaware limited liability company.

“Fund XIII Guarantor” shall mean Vivint Solar Fund XIII Manager, LLC, a Delaware limited liability company.

“Fund XVIII” shall mean Vivint Solar Fund XVIII Project Company, LLC, a Delaware limited liability company.

“Fund XVIII Guarantor” shall mean Vivint Solar Fund XVIII Manager, LLC, a Delaware limited liability company.

“Fund XVIII Projects” shall mean each of the Projects owned by Fund XVIII.

“Fund XVIII Tax Equity Member” shall mean each Tax Equity Member in Fund XVIII.

“Funding Account” shall have the meaning given to it in the Depositary Agreement.

“Further Guidance” means statutory amendments; temporary, proposed or final Treasury Regulations; any IRS guidance published in the Internal Revenue Bulletin and/or Cumulative Bulletin; any notice, announcement, revenue ruling or revenue procedure or similar authority issued by the IRS; or any other administrative guidance, in each case, interpreting or applying Section 1101 of the Budget Act.

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“ GAAP ” shall mean generally accepted accounting principles in the United States applied on a basis consistent with those principles set forth in Section 1.02(a) ( *Accounting Terms and Determinations* ).

“ Government Official ” means any governmental official or employee, employee of any government-owned or government-controlled entity, political party, any official of political party, candidate for political office, official of any public international organization or anyone else acting in an official capacity.

“ Governmental Authority ” shall mean any supranational, national, federal or state or local government or other political subdivision thereof or any entity, including any regulatory or administrative authority or court or central bank, exercising executive, legislative, judicial, regulatory or administrative or quasi-administrative functions of or pertaining to government (including any supra-national bodies such as the European Union or the European Central Bank).

“ Grant ” means a cash grant under section 1603 of the American Recovery and Reinvestment Act of 2009, as amended.

“ Guarantor ” shall mean each of the Lessor Manager Guarantor, the Partnership Flip Manager Guarantors, SREC Guarantor and any Wholly-Owned Fund.

“ Guarantor Account ” shall have the meaning given to such term in the Depositary Agreement.

“ Guarantor Collateral Agreement ” shall mean the guaranty and pledge agreement dated as of the Closing Date between each Guarantor from time to time and the Collateral Agent for the benefit of the Secured Parties.

“ Guarantor Manager Membership Interests ” shall mean all of the outstanding limited liability company interests issued by the Partnership Flip Manager Guarantors, the Lessor Manager Guarantor and the SREC Guarantor (including all Economic Interests and Voting Rights).

“ Hazardous Material ” shall mean any pollutant, contaminant or hazardous or toxic substance, material or waste that is regulated by or could form the basis of liability now or hereafter under, any Environmental Law, including any (a) petroleum, petroleum hydrocarbons, petroleum products, crude oil or any fraction or by-product derivatives; (b) flammable substances, explosives or radioactive materials; (c) asbestos or asbestos-containing materials in any form; (d) polychlorinated biphenyls; and (e) any other radioactive, hazardous, toxic or noxious waste, substance, material, pollutant or contaminant that, whether by its nature or its use, is subject to regulation or giving rise to liability or obligation under any Environmental Law.

“ Historical Debt Service Coverage Ratio ” shall mean, for any Rolling Period, the ratio of (a) the sum of Net Cash Flow *plus* Ineligible SREC Proceeds *plus* any amounts withdrawn from the Supplemental Reserve Account during such Rolling Period solely to the extent withdrawn for application in accordance with Section 4.02(d)(ii) or (iii) of the Depositary Agreement to (b) Debt Service required to be paid during such Rolling Period.

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“Included System Services” shall have the meaning given to the terms “System Services”, “Base System Services” and “Administrative Services” (other than “Additional Administrative Services” as defined in the Lease Services Agreements) in the applicable Services Agreements, or such other term used to describe included services under the Services Agreements.

“Indebtedness” shall mean, for any Person, without duplication: (a) all indebtedness of such Person for borrowed money, for amounts drawn under a letter of credit, or for the deferred purchase price of Property for which such Person or its Assets is liable, (b) all unfunded amounts under a loan agreement, letter of credit, surety bond or other similar instrument (unless secured in full by cash), or other credit facility for which such Person would be liable if such amounts were advanced thereunder, (c) all amounts required to be paid by such Person as a guaranteed payment to partners or a preferred or special dividend, including any mandatory redemption of shares or interests and any other payment required to be made in respect of any equity interests in any Person or rights or options to acquire any equity interests in any Person, but excluding any distributions required to be made (i) in respect of the outstanding class A membership interests issued by the Tax Equity Funds, (ii) to Borrower or any Subsidiary in respect of the outstanding Fund Membership Interests or Guarantor Manager Membership Interests or (iii) target lessee distributions payable under the Tax Equity Documents, (d) all obligations (including all amounts to be capitalized) under leases that constitute capital leases for which such Person is liable, (e) all obligations of such Person under interest rate swaps, caps, floors, collars and other interest hedge agreements, in each case whether such Person is liable contingently or otherwise, as borrower, guarantor or otherwise, or in respect of which obligations such Person otherwise assures a creditor against loss, (f) all obligations of such Person under conditional sale or other title retention agreements relating to Property or Assets acquired by such Person (even though the rights of the seller or lender thereunder may be limited in recourse), and (g) all guarantees of such Person in respect of any of the foregoing. The Indebtedness of a Person shall include the Indebtedness of any partnership in which such Person is a general partner, other than to the extent that the instrument or agreement evidencing such Indebtedness expressly limits the liability of such Person in respect thereof.

“Indemnified Taxes” shall mean (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by or on account of any obligation of the Borrower under any Loan Document and (b) to the extent not otherwise described in clause (a), Other Taxes.

“Indemnitee” shall have the meaning assigned to that term in Section 12.03(b) (*Expenses; Etc* ).

“Indemnity Claims” shall have the meaning assigned to that term in Section 12.03(b) (*Expenses; Etc* ).

“Independent” shall mean, when used with respect to any specified Person, that such Person (a) is in fact independent of each of the Relevant Parties and any Affiliate thereof, (b) does not have any direct financial interest or any material indirect financial interest in any of the Relevant Parties or any Affiliate thereof and (c) is not connected with any of the Relevant

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Parties or any Affiliate thereof as an officer, employee, member, manager, contractor, promoter, underwriter, trustee, partner, director or person performing similar functions.

“Independent Engineer” shall mean Leidos Engineering or any other Person from time to time appointed by the Administrative Agent (at the written instructions of the Majority Lenders) to act as “Independent Engineer” for the purposes of this Agreement.

“Ineligibility Amount” shall have the meaning given to it in the definition of “Ineligibility Prepayment Amount”.

“Ineligibility Event” shall mean in respect of any Project:

(a) the applicable Customer becomes more than \*\*\* days past due on any amount due under the related Customer Agreement;

(b) the applicable Customer makes an Ineligible Customer Reassignment;

(c) such Project is discovered not to have been an Eligible Project as of the Closing Date; or

(d) the early termination of its applicable Customer Agreement (without a replacement being entered into that would cause the Project to continue to meet the criteria for an Eligible Project) and no termination payment has been paid by the Customer by the date that is \*\*\* days after such termination; except to the extent any of the events in paragraphs (a) through (d) above occur in respect of a Non-PTO Project.

“Ineligibility Prepayment Amount” shall mean, on any Scheduled Payment Date, the product of (a) the Repayment Factor multiplied by (b) an amount (the “Ineligibility Amount”) equal to (i) the reduction in Portfolio Value resulting from or attributable to each Ineligibility Prepayment Project occurring during the calendar quarter ending on the immediately prior Calculation Date (which shall be calculated assuming no further Net Cash Flow or other proceeds shall be received in respect of such Ineligibility Prepayment Projects) minus (ii) any applicable Prepayment Reduction Amount (provided that the Ineligibility Amount shall not be less than zero); provided that if the Repayment Factor at the time of the applicable prepayment of the Loans with such Ineligibility Prepayment Amount is greater than the Projected Repayment Factor for such payment period, then the Ineligibility Prepayment Amount shall be equal to the lesser of (i) the Ineligibility Amount and (ii) an amount that would cause the Repayment Factor (based on the principal outstanding immediately after a prepayment of the Loans in such amount) to be equal to the Projected Repayment Factor for such prepayment period.

“Ineligibility Prepayment Project” shall mean, in respect of any Scheduled Payment Date, a Project that became the subject of an Ineligibility Event during the calendar quarter ending on the immediately prior Calculation Date and where a Cumulative Loss Event occurred on such Calculation Date.

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“Ineligible Customer Reassignment” shall mean a Customer Agreement has been assigned and (i) if the Customer is not a trust, the assignee Customer has a FICO® Score of less than \*\*\*, or (ii) if the Customer is a trust, the trustee has a FICO® Score of less than \*\*\*.

“Ineligible Project Prepayment” shall mean, in respect of any Scheduled Payment Date, the mandatory prepayment payable on such applicable Scheduled Payment Date in accordance with Section 3.04(c) (*Ineligibility Events*).

“Ineligible SREC Contracts” shall mean any SREC Contracts that are not Eligible SREC Contracts.

“Ineligible SREC Proceeds” shall mean all revenues and proceeds under Ineligible SREC Contracts that have been received by the Borrower from the Funds or any Guarantor.

“Information” shall have the meaning given to such term in Section 7.25(a) (*Full Disclosure*).

“Institutional Investor” shall mean any bank, trust company, savings and loan association or other financial institution, any pension plan, any investment company, any insurance company, any broker or dealer, or any other similar financial institution or entity, regardless of legal form.

“Insurance Consultant” shall mean Moore-McNeil, LLC or any other Person from time to time appointed by the Administrative Agent (at the written instructions of the Majority Lenders) to act as “Insurance Consultant” for the purposes of this Agreement.

“Interest Expense” shall mean, for any period, all interest in respect of Indebtedness hereunder accrued or capitalized during such period (whether or not actually paid during such period).

“Interest Rate” shall mean 6.04% per annum.

“Inverter Replacement Reserve Account” shall have the meaning given to such term in the Depositary Agreement.

“Inverter Replacement Reserve Required Amount” shall have the meaning given to such term in the Depositary Agreement.

“Investment Company Act” shall mean the United States Investment Company Act of 1940, as amended or as may be amended from time to time.

“Involuntary Bankruptcy” shall mean any involuntary case under the Bankruptcy Code or any applicable bankruptcy, insolvency or other similar Law now or hereafter in effect, in which the Sponsor or any Relevant Party is a debtor or any Assets of any such entity is property of the estate therein.

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“IRS” shall mean the United States Internal Revenue Service.

“ITC” shall mean the 30% investment tax credit under Section 48 of the Code.

“ITC Insurance Coverage Amount” shall mean \$20,000,000.

“ITC Insurance Loss” shall have the meaning given to it in the Depository Agreement.

“ITC Insurance Policy” shall mean a final binding Tax Insurance Policy issued by ITC Underwriting Representative in the ITC Insurance Coverage Amount to Fund XVIII Guarantor, as named insured, and Fund XVIII, as insured, in substantially the form of Exhibit N (*Form of ITC Insurance Policy*).

“ITC Insurance Policy Account” shall have the meaning given to it in the Depository Agreement.

“ITC Insurance Policy Retention Reserve Amount” shall have the meaning given to it in the Depository Agreement.

“ITC Insurer” shall mean the “Insurers” as defined in the ITC Insurance Policy.

“ITC Underwriting Representative” shall mean Ambridge Partners LLC.

“KBRA” shall mean Kroll Bond Rating Agency, Inc. and any successor to its rating agency business.

“Knowledge” whenever used in this Agreement or any of the Loan Documents, or in any document or certificate executed pursuant to this Agreement or any of the Loan Documents, (whether by use of the words “knowledge” or “known”, or other words of similar meaning, and whether or not the same are capitalized), shall mean, with respect to the Borrower: actual knowledge of the Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Chief Commercial Officer, General Counsel, Chief Revenue Officer, Chief Sales Officer, Chief Technology and Information Officer and Controller of the Sponsor or any other position with substantially the same responsibilities of such Persons and any other Person that is an officer of, or is employed by, a Relevant Party or the Manager and is authorized with managerial responsibilities. The Borrower shall cause each Subsidiary and the Manager to promptly notify it of any event or circumstance that would require the Borrower to provide notice to a Lender Party under the Loan Documents upon Knowledge of the Borrower. Any notice delivered to the Sponsor or any Relevant Party (including to the Manager as their agent) by a Secured Party shall provide such Person with Knowledge of the facts included therein.

“Laws” shall mean, collectively, all international, foreign, Federal, state and local statutes, common law, treaties, rules, guidelines, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority, and all applicable administrative orders, decrees,

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directed duties, requests, licenses, authorizations and permits of, and agreements with, any Governmental Authority, in each case whether or not having the force of law.

“Lease Depository Agreement” shall mean that certain Depository Agreement dated as of June 1, 2015, by and between Lessor and Lessee, as amended by the Amendment to Depository Agreement dated March 10, 2016.

“Lease Manager” shall mean the Provider and any replacement services provider assuming the position of “manager” of the Lessee, under a replacement Administrative Services Agreement and the Lessee Limited Liability Company Agreement, in accordance with Section 9.10(d)( *Portfolio Documents* ).

“Lease Services Agreements” shall mean (a) that certain Administrative Services Agreement, dated June 1, 2015, among Provider, Lessor, and VS BC Solar Lessee I, LLC and (b) that certain Maintenance Services Agreement, dated June 1, 2015, among Provider, Lessor, and VS BC Solar Lessee I, LLC.

“Lease Term” shall mean the “Lease Term” under, and as defined in, the Master Lease Agreement.

“Lender” shall have the meaning given to such term in the preamble hereto.

“Lender Parties” shall mean the Administrative Agent and each Lender.

“Lending Office” shall mean, with respect to each Lender, such Lender’s address and, as appropriate, account on file with the Administrative Agent, or such other address or account as such Lender may from time to time notify to the Administrative Agent. “Lessee” shall mean VS BC Solar Lessee I, LLC, a Delaware limited liability company in writing.

“Lessee Default” shall mean a “Lessee Default” under, and as defined in, the Master Lease Agreement.

“Lessor” shall mean Vivint Solar Fund XVI Lessor, LLC, a Delaware limited liability company.

“Lessor Default” shall mean the occurrence of an uncured “Lessor Default” under, and as defined in, the Master Lease Agreement. A Lessor Default may be cured if, within forty (45) days, the applicable default is waived in writing by the Lessee or is otherwise cured without the exercise of remedies by the Lessee.

“Lessor Manager Guarantor” shall mean Vivint Solar Fund XVI Manager, LLC, a Delaware limited liability company.

“Lien” shall mean, with respect to any Property of any Person, any mortgage, lien, pledge, charge, lease, easement, servitude, security interest or encumbrance of any kind in respect of such Property of such Person. For purposes of this Agreement and the other Loan Documents, a Person shall be deemed to own subject to a Lien any Property which it has

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acquired or holds subject to the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement (other than an operating lease) relating to such Property or, in the case of securities, subject to any purchase option, call or other similar rights of a third party with respect to such securities.

“ Limited Liability Company Agreement ” shall mean the respective limited liability company agreement or operating agreement of each Tax Equity Fund.

“ Loan ” shall have the meaning assigned to that term in Section 2.01(a)( *Loans* ).

“ Loan Documents ” shall mean, collectively, this Agreement, the Notes, the Agency Fee Letter, the Collateral Documents, the Closing Date Assignment Agreements, the Master SREC Purchase and Sale Agreements, each Back-Up Servicing Agreement entered into in respect of a Wholly-Owned Fund, and all other documents, agreements or instruments executed in connection with the Obligations. For the avoidance of doubt, the term “Loan Documents” shall not include the Portfolio Documents.

“ Loan Exposure ” shall mean, at any time, for any Lender, the sum of (a) the available amount of such Lender’s Commitments at such time plus (b) the aggregate outstanding principal amount of the Loans held by such Lender at such time. The Loan Exposure of all the Lenders at any time shall be the aggregate of the Loan Exposures of each Lender at such time.

“ Loan Parties ” shall mean the Borrower, Pledgor and each Guarantor.

“ Loss Proceeds ” shall mean all amounts and proceeds (including instruments) from an Event of Loss received by the Loan Parties, including, without limitation, insurance proceeds or other amounts actually received, except proceeds of business interruption insurance.

“ Maintenance Services ” shall mean the services provided by a Fund Provider under its applicable Maintenance Services Agreement.

“ Maintenance Services Agreements ” shall mean individually or collectively, as the context requires, each agreement listed under the heading “Maintenance Services Agreements” on Schedule 7.22(a) ( *Portfolio Documents* ) and any replacement maintenance services agreement entered into in accordance with Section 9.10(d)( *Portfolio Documents* ).

“ Major Decision ” shall mean, as to each Fund, any of the decisions contemplated to be made in any of the Limited Liability Company Agreements which (i) require a vote by or the consent or approval of all or a supermajority or majority of the members or the Tax Equity Members of the applicable Fund and (ii) could, if made or not made, reasonably be expected (x) to have a Material Adverse Effect, (y) to result in a reduction of Net Cash Flow during any quarterly period or (z) to result in the Portfolio Value, calculated immediately after giving effect to such modification to be less than the Portfolio Value, calculated immediately prior to giving effect to such modification.

“ Majority Lenders ” shall mean, subject to Section 12.04 ( *Amendments; Etc* ), Lenders having Loan Exposure representing more than 50% of the sum of the total Loan

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Exposure at such time; provided that, at all times when two or more Lenders that are not Affiliates have loan Exposure, “Majority Lenders” must include two or more such Lenders that are not Affiliates.

“ Make-Whole Amount ” shall mean, with respect to any Loan, an amount equal to the excess, if any, of the Discounted Value of the Remaining Scheduled Payments with respect to the Called Principal of such Loan over the amount of such Called Principal, provided that the Make-Whole Amount may in no event be less than zero. For the purposes of determining the Make-Whole Amount, the following terms have the following meanings:

“ **Called Principal** ” means, with respect to any Loan, the principal of such Loan that is to be prepaid pursuant to Section 3.03 ( *Optional Prepayments* ) and Section 3.04(a) ( *Incurrence of Indebtedness* ) or has become or is declared to be immediately due and payable pursuant to Section 10.01 ( *Events of Default* ), as the context requires.

“ **Discounted Value** ” means, with respect to the Called Principal of any Loan, the amount obtained by discounting all Remaining Scheduled Payments with respect to such Called Principal from their respective scheduled due dates to the Settlement Date with respect to such Called Principal, in accordance with accepted financial practice and at a discount factor (applied on the same periodic basis as that on which interest on such Loan is payable) equal to the Reinvestment Yield with respect to such Called Principal.

“ **Reinvestment Yield** ” means, with respect to the Called Principal of any Loan, 0.50 % plus the yield to maturity implied by (i) the yields reported, as of 10:00 a.m. (New York City time) on the second Business Day preceding the Settlement Date with respect to such Called Principal, on the display designated as “Page PX1” (or such other display as may replace Page PX1) on Bloomberg Financial Markets for the most recently issued actively traded on the run U.S. Treasury securities having a maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date, or (ii) if such yields are not reported as of such time or the yields reported as of such time are not ascertainable (including by way of interpolation), the Treasury Constant Maturity Series Yields reported, for the latest day for which such yields have been so reported as of the second Business Day preceding the Settlement Date with respect to such Called Principal, in Federal Reserve Statistical Release H.15 (or any comparable successor publication) for U.S. Treasury securities having a constant maturity equal to the Remaining Average Life of such Called Principal as of such Settlement Date]. In the case of each determination under clause (i) or clause (ii), as the case may be, of the preceding sentence, such implied yield will be determined, if necessary, by (a) converting U.S. Treasury bill quotations to bond-equivalent yields in accordance with accepted financial practice and (b) interpolating linearly between (1) the actively traded on the run U.S. Treasury security with the maturity closest to and greater than such Remaining Average Life and (2) the actively traded on the run U.S. Treasury security with the

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maturity closest to and less than such Remaining Average Life. The Reinvestment Yield shall be rounded to the number of decimal places as appears in the interest rate of the applicable Loan.

“ **Remaining Average Life** ” means, with respect to any Called Principal, the number of years (calculated to the nearest two decimal places) obtained by dividing (i) such Called Principal into (ii) the sum of the products obtained by multiplying (a) the principal component of each Remaining Scheduled Payment with respect to such Called Principal by (b) the number of years (calculated to the nearest two decimal places) that will elapse between the Settlement Date with respect to such Called Principal and the scheduled due date of such Remaining Scheduled Payment.

“ **Remaining Scheduled Payments** ” means, with respect to the Called Principal of any Loan, all payments of such Called Principal and interest thereon that would be due after the Settlement Date with respect to such Called Principal if no payment of such Called Principal were made prior to its scheduled due date, provided that if such Settlement Date is not a date on which interest payments are due to be made on such Loan hereunder, then the amount of the next succeeding scheduled interest payment will be reduced by the amount of interest accrued to such Settlement Date and required to be paid on such Settlement Date pursuant to Section 3.03 (Optional Prepayments), Section 3.04(a) (Incurrence of Indebtedness) or Section 10.01 (Events of Default); provided, further, that the interest that would be due after the Settlement Date with respect to the Called Principal shall be deemed to accrue at the rate of 3.50% per annum for all payment periods from and after the seven year anniversary of the Closing Date.

“ **Settlement Date** ” means, with respect to the Called Principal of any Loan, the date on which such Called Principal is to be prepaid pursuant to Section 3.03 (Optional Prepayments), Section 3.04(a) (Incurrence of Indebtedness) or has become or is declared to be immediately due and payable pursuant to Section 10.01 (Events of Default), as the context requires.

“ Management Agreement ” shall mean the Management Agreement by and between the Manager and the Borrower dated as of the Closing Date and any replacement management agreement entered into in accordance with Section 9.10(e) (Portfolio Documents).

“ Management Consent Agreement ” shall mean the Management Consent and Agreement dated as of the Closing Date by and among the Manager, the Borrower and the Collateral Agent and any replacement management consent agreement entered into in accordance with Section 9.10(e) (Portfolio Documents).

“ Manager ” shall mean Provider and any replacement services provider appointed under a replacement Administrative Services Agreement or Maintenance Services Agreement in accordance with Section 9.10(d) (Portfolio Documents).

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“ Manager Event ” shall mean the removal of any Guarantor as “managing member” of a Partnership Flip Fund. A Manager Event may be cured, within the lesser of (i) thirty ( 30 ) days and (ii) such shorter period ending on the date when Collateral Agent’s cure period commences pursuant to the applicable consent to collateral assignment with the applicable Tax Equity Member (and otherwise at any time prior to the exercise of remedies for an Event of Default ) , if (x) the grounds for removal are waived in writing by the Tax Equity Member or cease to exist or (y) by the appointment of a Qualified Manager as replacement “managing member” in accordance with each of the requirements in sub-clauses (i)-(iii) of Section 9.10(f) ( *Portfolio Documents* ) .

“ Margin Stock ” shall mean margin stock within the meaning of Regulation U and Regulation X.

“ Master Back-Up Servicing Agreement ” shall mean the Master Backup Servicer Agreement between Back-Up Servicer and Provider dated June 15, 2016, as amended by that certain Amendment and Joinder Agreement, dated as of November 7, 2016, among Provider, Back-Up Servicer, and Vivint Solar Servicer, LLC, which may be modified from time to time subject to Section 9.10(a) ( *Portfolio Documents* ) .

“ Master Lease Agreement ” shall mean that certain Master Lease Agreement dated as of June 1, 2015 by and between Lessor and Lessee.

“ Master Purchase Agreements ” shall mean individually or collectively, as the context requires, each agreement listed under the heading “Master Purchase Agreements” on Schedule 7.22(a) ( *Portfolio Documents* ) , which may be modified from time to time subject to Section 9.10 ( *Portfolio Documents* ) .

“ Master SREC Purchase and Sale Agreements ” shall mean shall mean the SREC Financing Master PSA and the SREC Aggregator Master PSA.

“ Material Adverse Effect ” shall mean, (a) a material adverse effect upon the business, operations, Property, Assets or condition (financial or otherwise) of the Borrower and its Subsidiaries taken as a whole, (b) the material impairment of the ability of the Borrower or the SREC Seller Parties to perform their respective obligations under any Loan Document, or (c) a material adverse effect on the legality, validity or enforceability against any Relevant Party or the Sponsor of any of the (i) Loan Documents or the rights and remedies of any Secured Party under any of the Loan Documents (including the validity, perfection or priority of the Collateral Agent’s Liens on the Collateral) or (ii) Limited Liability Company Agreements, Master Lease Agreement, Eligible SREC Contracts or Sponsor Guaranties.

“ Membership Interests ” shall mean the Borrower Membership Interests, the Guarantor Manager Membership Interests and the Fund Membership Interests.

“ Memorandum ” shall mean the Confidential Information Memorandum dated October 2016 prepared by Merrill Lynch, Pierce, Fenner & Smith Incorporated relating to the transactions contemplated hereby.

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“Model Auditor” shall mean Novogradac & Company LLP or any other Person from time to time appointed by the Administrative Agent (at the written instructions of the Majority Lenders) to act as “Model Auditor” for the purposes of this Agreement.

“Moody’s” shall mean Moody’s Investors Service, Inc.

“Multiemployer Plan” shall mean a “multiemployer plan” (as defined in Section 3(37) or Section 4001(a)(3) of ERISA).

“Net Available Amount” shall mean, with respect to the issuance or incurrence of any Indebtedness by any Relevant Party, debt proceeds received in connection therewith net of any such debt proceeds required to be distributed to any Tax Equity Member pursuant to a Tax Equity Document solely to the extent such distribution to such Tax Equity Member reduces the cash distributions that would otherwise be payable to such Tax Equity Member in the future had such distribution to such Tax Equity Member of such debt proceeds not been made (whether through application against any priority return payable to such Tax Equity Member or an acceleration of any “flip date” or lease expiration date or otherwise).

“Net Cash Flow” shall mean, in respect of any period, the amount of Operating Revenues received by the Borrower during such period less Operating Expenses paid during such period; provided, that, where Net Cash Flow is projected (whether under the Base Case Model or otherwise) it shall exclude (x) any Operating Revenues that are not Eligible Revenues from projected Operating Expenses.

“Non-Covered Services” shall have the meaning given to the term “Non-Included System Services”, “Non-Agreed System Services”, “Non-Routine Additional Services” or “Non-Included Administrative Services” in each applicable Services Agreement or such other term used to describe services which are not Included System Services.

“Non-PTO Projects” shall mean each Project identified on Schedule A ( *Project Information* ) as not having been Placed in Service as of the Closing Date.

“Note” shall have the meaning given to such term in Section 2.02(b) ( *Execution and Delivery of Notes* ).

“Notice of Borrowing” shall mean a request for a Loan by the Borrower substantially in the form of Exhibit B ( *Form of Notice of Borrowing* ).

“Obligations” shall mean the principal amount of the Loans, accrued interest thereon, any Make-Whole Amount and all advances to, fees, costs, expenses and debts, liabilities, obligations, covenants and duties of, any Loan Party or SREC Seller Party to any Secured Party or Indemnitee arising under any Loan Document (including any other premium, damages, expenses, fees, costs, charges, disbursements, indemnities, and other liabilities) or otherwise with respect to any Loan, in each case whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including interest that would accrue on any of the foregoing during the pendency of any bankruptcy or related proceeding with respect to any Loan Party or SREC Seller Party.

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“OFAC” means the Office of Foreign Assets Control of the U.S. Department of the Treasury.

“Officer’s Certificate” shall mean a certificate signed by any Authorized Officer of the Borrower and delivered to the Administrative Agent in substantially the form attached as Exhibit H ( *Form of Officer’s Certificate*).

“Operating Budget” shall mean the operating budget for the Relevant Parties set out under Section 8.01(e)(i) ( *Operating Budgets* ) and as approved when required by the Administrative Agent (acting on the written instructions of the Majority Lenders).

“Operating Expenses” shall mean for any applicable period, all expenses and other amounts in the nature of expenses incurred by the Borrower, the Wholly-Owned Funds and, except (in order to avoid double counting) where used in the definition of “Net Cash Flow,” the other Funds during that period on a cash basis, including (without duplication) (a) payments under the Management Agreement, Back-Up Servicing Agreements, the Services Agreements and the other Project Documents (including, without duplication, all Service Fees and capital expenditures), (b) payments to comply with Laws (including Environmental Laws), (c) insurance premiums to the extent not covered in the Service Fees under the Services Agreements, (d) Taxes (including payments in lieu of taxes), and (e) any other fee, cost and expense incurred in connection with (i) ownership, leasing and operation of the Projects held by the Wholly-Owned Funds and, except (in order to avoid double counting) where used in the definition of “Net Cash Flow,” the other Funds and (ii) the ownership of the Membership Interests (including Agency Expenses), but excluding (A) Debt Service and (B) expenses and amounts in the nature of expenses which are paid with the proceeds of Excluded Property or a contribution by or on behalf of the Sponsor or Pledgor.

“Operating Revenues” shall mean for any applicable period, all Collections or Eligible SREC Proceeds received by the Borrower from the Funds or any Guarantor (including SREC Guarantor) during that period on a cash basis but excluding (without duplication):

- (a) any capital contribution or any other amounts contributed to the Relevant Parties by Sponsor, Pledgor or their Affiliates;
- (b) the proceeds of the Loans or any other Indebtedness incurred by a Relevant Party;
- (c) the proceeds of the sale, assignment or other disposition of any Collateral or other Asset of a Relevant Party (other than (i) ordinary course sales of power or the leasing of a photovoltaic system pursuant to the Customer Agreements and (ii) proceeds of SRECs and SREC Contracts);
- (d) proceeds of any Revenue Termination Event or Ineligibility Event, including any termination payment, elective prepayment or purchase payments;

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(e) Loss Proceeds and any other insurance proceeds (other than business interruption proceeds) and proceeds of any warranty claims arising from manufacturer, installer and other warranties;

(f) any other proceeds or other amounts that are required to be mandatorily prepaid pursuant to Section 3.04 (*Mandatory Prepayments*); and

(g) any Excluded Property and the proceeds thereof and any Fund SREC Property and the proceeds thereof (other than cash distributions with respect to the Fund Membership Interests derived from Fund SREC Property and the proceeds thereof).

“Other Connection Taxes” shall mean, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising solely from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan Document).

“Other Taxes” shall mean all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes imposed with respect to an assignment.

“Owned Fund” shall mean the Lessor, each of the Partnership Flip Funds and each of the Wholly-Owned Funds.

“P50 Production” shall mean the production volume based on the P50 one (1) year confidence levels for Eligible Projects in the Project Pool reflected in the Base Case Model as of the Closing Date.

“Participant” shall have the meaning given to such term in Section 12.05(d)(i).

“Participant Register” shall have the meaning given to such term in Section 12.05(d)(ii).

“Partnership Flip Fund” shall mean each of Fund XI, Fund XIII and Fund XVIII.

“Partnership Flip Manager Guarantor” shall mean shall mean each of Vivint Solar Fund XI Manager, LLC, a Delaware limited liability company, Vivint Solar Fund XIII Manager, LLC, a Delaware limited liability company and Fund XVIII Guarantor.

“Party” shall mean each of the Borrower, the Lenders, and the Administrative Agent.

“Patriot Act” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56,

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signed into law October 26, 2001, as amended from time to time, and the rules and regulations promulgated thereunder.

“ Payment Facilitation Agreement ” shall have the meaning given to such term in Section 9.10(a) ( *Portfolio Documents* ).

“ Payment Facilitation Amount ” shall have the meaning given to it in Section 3.04(d) ( *Payment Facilitation Events* ).

“ Payment Facilitation Event ” shall mean, in respect of a Project that is not a Non-PTO Project, the amendment of the applicable Exempt Customer Agreement by a Payment Facilitation Agreement.

“ Payment Facilitation Prepayment ” shall mean, in respect of any Scheduled Payment Date, the mandatory prepayment payable on such applicable Scheduled Payment Date in accordance with Section 3.04(d) ( *Payment Facilitation Events* ).

“ Payoff Letter ” shall mean that certain Partial Payoff Letter, dated as of the date hereof, made by the Aggregation Facility Collateral Agent and Aggregation Facility Administrative Agent and acknowledged and consented to by the Aggregation Facility Borrower, the Partnership Flip Manager Guarantors, the Lessor Manager Guarantor, Vivint Solar Fund XV Manager, LLC and Vivint Solar Owner I, LLC.

“ Performance Deficit ” shall mean, as of any Calculation Date in respect of a Tracking Model for the applicable Tax Equity Fund difference between:

(i) the amount of cash that the Tracking Model demonstrates is required to be received by the applicable Tax Equity Member in order for its applicable target internal rate of return hurdles to occur by no later than the Target Return Date, and

(ii) the amount of cash that is actually projected under the Tracking Model to be received by the applicable Tax Equity Member from the Calculation Date until the Target Return Date,

provided, that, if such amount is negative it shall be deemed to be equal to zero.

“ Permits ” shall mean any and all franchises, licenses, leases, permits, approvals, notifications, certifications, registrations, authorizations, exemptions, qualifications, easements, rights of way, Liens and other rights, privileges and approvals required to be obtained from a Governmental Authority under any Law, rule or regulation (including those required to interconnect a Project to the applicable transmission grid).

“ Permitted Indebtedness ” shall mean the Indebtedness permitted under Section 9.01 ( *Indebtedness* ).

“ Permitted Liens ” shall mean:

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(a) Liens imposed by any Governmental Authority for taxes, assessments or other governmental charges (i) that are not yet due or (ii) that are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted (and enforcement of such Lien shall have been stayed) so long as (A) such proceeding shall not involve any material risk of the sale, forfeiture or loss of any part of any Project and shall not interfere with the use or disposition of any Project and (B) the payment thereof is fully covered by adequate reserves in accordance with GAAP, bonds or other security.

(b) mechanics', materialmen's, repairmen's and other similar liens arising in the ordinary course of business or incident to the construction, improvement or restoration of a Project in respect of obligations (i) that are not yet due or (ii) that are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted (and enforcement of such Lien shall have been stayed) so long as (A) such proceedings shall not involve any material risk of forfeiture, sale or loss of any part of such Project and shall not interfere with the use or disposition of any Project, and (B) the payment thereof is fully covered by adequate reserves in accordance with GAAP, bonds or other security;

(c) minor defects, easements, rights-of-way, restrictions and other similar encumbrances incurred in the ordinary course of business and that are not incurred to secure Indebtedness and encumbrances, licenses, restrictions on the use of Property or minor imperfections in title that do not materially impair the Property affected thereby for the purpose for which title was acquired or interfere with the operation and maintenance of a Project;

(d) judgment Liens that (i) do not involve any material risk of the sale, forfeiture or loss of any part of any Project and do not interfere with the use or disposition of any Project, (ii) within ten Business Days of their existence or after the entry thereof, are being contested in good faith and by appropriate appeal or review proceedings (and execution thereof is stayed pending such appeal or review), (iii) for which the payment thereof is fully covered by adequate reserves in accordance with GAAP, bonds or other security and (iv) which could not reasonably be expected to result in an Event of Default;

(e) deposits or pledges required to secure the performance of statutory obligations, appeals, supersedes and other bonds in connection with judicial or administrative proceedings and other obligations of a like nature not in excess of \$100,000 in the aggregate;

(f) zoning, entitlement, conservation restrictions and other land use and environmental Laws by Governmental Authorities that do not involve any material risk of the sale, forfeiture or loss of any part of any Project and do not interfere with the use or disposition of any Project, and provided that the relevant owner of legal title to a Project is not in violation thereof;

(g) statutory Liens of banks (and rights of set off) not securing Indebtedness and incurred in the ordinary course of business;

(h) Liens created pursuant to the Loan Documents;

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(i) Liens granted by (i) the Lessee in favor of the Lessor under the Tax Equity Documents and (ii) the Lessor in favor of the SREC Guarantor under the Fund SREC Transfer Agreement to which Lessor is a party ; and

(j) in respect of the Tax Equity Funds only, Liens permitted under the terms of the Tax Equity Documents to the extent not included in clauses (a) through (i) of this definition of “Permitted Liens” that (i) have been approved in writing by the Administrative Agent (at the written instructions of the Majority Lenders) or (ii) subject to Section 9.15 ( Voting on Major Decisions ), when taken together, could not reasonably be expected to result in a material adverse effect upon the business, operations, Assets or condition (financial or otherwise) of any individual Tax Equity Fund.

“ Person ” shall mean any individual, corporation, estate, partnership, joint venture, association, joint stock company, limited liability company, trust (including any beneficiary thereof), unincorporated organization, or government or any agency or political subdivision thereof.

“ Placed in Service ” shall mean, in respect of a Project, that it has been placed in a condition or state of readiness and availability for its specifically assigned function of generating electricity from solar energy and specifically that (a) all necessary Permits for operating such Project have been obtained (including permission to operate from the applicable local utility), (b) all critical tests necessary for proper operation of such Project have been performed, (c) legal title to such Project is held by a Subsidiary (and title and control of such Project has been handed over by the installer under the applicable installation agreement), (d) initial synchronization of such Project to the grid has occurred and (e) daily operation of such Project has begun.

“ Plan ” shall mean an “employee benefit plan” within the meaning of Section 3(3) of ERISA which is subject to ERISA.

“ Platform ” shall mean Intralinks or a substantially similar electronic transmission system established and maintained by the Administrative Agent and to which the Administrative Agent shall have granted access to the Borrower, the Lenders and the Independent Engineer.

“ Pledge Agreement ” shall mean that certain pledge agreement dated as of the Closing Date by and between the Pledgor and the Collateral Agent for the benefit of the Secured Parties, with respect to the Borrower Membership Interests.

“ Pledged SREC Account ” shall have the meaning given to it in the Depository Agreement.

“ Pledgor ” shall have the meaning given to such term in the Recitals.

“ Pledgor Membership Interests ” shall mean all of the outstanding limited liability company interests issued by the Pledgor (including all Economic Interests and Voting Rights).

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“Portfolio Documents” shall mean (a) the Project Documents, (b) the Tax Equity Documents, (c) the Management Agreement, (d) each Back-Up Servicing Agreement and (e) each Eligible SREC Contract.

“Portfolio Value” shall mean, as of the date of determination, the remaining present value of the projected Net Cash Flow from all Eligible Projects in the Project Pool as set forth in the Base Case Model (updated as of such determination date in accordance with Section 8.01(i) ( Updated Projections )) for each quarterly payment period during the remaining term of the Customer Agreements (not to exceed \*\*\* years and assuming no contract renewals), discounted at \*\*\* percent (\*\*\*) per annum.

“Post-Default Rate” shall mean 2.00% per annum above the Interest Rate.

“Prepayment Amount” shall mean, in respect of any Prepayment Event, the product of (a) the Repayment Factor *multiplied by* (b) the reduction in Portfolio Value resulting from or attributable to the applicable Prepayment Event (which shall be calculated assuming no further Net Cash Flow or other proceeds shall be received in respect of the affected Project or SREC Contract, as applicable); provided that if the Repayment Factor at the time of the applicable prepayment of the Loans with such Prepayment Amount is greater than the Projected Repayment Factor for such payment period, then the Prepayment Amount shall be equal to the lesser of (i) the reduction in Portfolio Value resulting from or attributable to the applicable Prepayment Event (which shall be calculated assuming no further Net Cash Flow or other proceeds would be received in respect of the affected Project or SREC Contract, as applicable) and (ii) an amount that would cause the Repayment Factor (based on the principal outstanding immediately after a prepayment of the Loans in such amount) to be equal to the Projected Repayment Factor for such prepayment period.

“Prepayment Reduction Amount” shall mean, on any Scheduled Payment Date, in respect of each Reeligible Project that has not previously been credited for the purposes of determining an Ineligibility Amount and Ineligibility Prepayment Amount on a prior Scheduled Payment Date, the increase in Portfolio Value resulting from or attributable to the applicable Reeligible Project ceasing to be the subject of an Ineligibility Event.

“Prepayment Event” shall mean a Revenue Termination Event, Payment Facilitation Event or a SREC Prepayment Cure Event.

“Project” shall mean a residential photovoltaic system including photovoltaic panels, racking systems, wiring and other electrical devices, conduit, weatherproof housings, hardware, inverters, remote operating equipment, connectors, meters, disconnects, and over current devices (including any replacement or additional parts included from time to time) and, unless the context otherwise requires a reference to such residential photovoltaic system only, shall include the applicable Customer Agreement related to such photovoltaic system and all other related rights, Permits and manufacturer, installer and other warranties applicable thereto, but shall exclude the applicable Customer’s electric distribution system.

“Project Documents” shall mean each Customer Agreement.

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“Project Information” shall mean the information listed on Schedule A (Project Information), to be provided in connection with each Project owned by the Funds in accordance with ARTICLE VI (Conditions Precedent).

“Project Party” shall mean each Person (other than the Borrower, the Collateral Agent, the Administrative Agent, the Depository Agent or any Lender) from time to time party to a Transaction Document.

“Project Pool” shall mean all the Projects owned by the Funds.

“Project State” shall mean each state of the United States of America listed under Schedule 7.22(q) (Project States)).

“Project Transfer Agreements” shall mean individually or collectively, as the context requires, each “Bill of Sale” or “Assignment, Assumption and Transfer Agreement”, as each such term is defined in each applicable Master Purchase Agreement, entered into between the Seller and a Fund and any other agreement providing for the assignment or transfer of ownership of Projects and Customer Agreements from Seller to a Fund.

“Projected Debt Service Coverage Ratio” shall mean, for any subsequent Rolling Period, the ratio of (a) the projected Net Cash Flow for such Rolling Period (to be calculated on a reasonable basis by the Borrower using assumptions and a methodology consistent with those used in the Base Case Model in accordance with Section 8.01(i) (Updated Projections)) to (b) the projected Debt Service for such Rolling Period.

“Projected Repayment Factor” shall mean, for the applicable period, the Repayment Factor projected in the Base Case Model as of the Closing Date for such payment period as set forth in Appendix D.

“Property” shall mean any right or interest in or to property of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

“Provider” shall mean Vivint Solar Provider, LLC, a Delaware limited liability company.

“Provider Event” shall mean termination of a Fund Provider as the provider of the applicable Administrative Services, Maintenance Services and/or services as Lease Manager. A Provider Event may be cured if (x) the grounds for removal are waived in writing by the Tax Equity Member or cease to exist, (y) by the appointment of the Back-Up Servicer as a replacement Fund Provider in respect of the Administrative Services and a Qualified Manager as a replacement Fund Provider in respect of the Maintenance Services and, if applicable, services as Lease Manager, and (z) by the appointment of a Qualified Manager as the replacement Fund Provider in respect of all applicable services.

“Prudent Industry Practice” shall mean, with respect to any Project, those practices, methods, acts, equipment, specifications and standards of safety and performance, as they may change from time to time, that (a) are commonly used to own, manage, repair, operate,

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maintain and improve distributed solar energy generating facilities and associated facilities of the type that are similar to such Project, safely, reliably, prudently and efficiently and in material compliance with applicable requirements of Law and manufacturer, installer and other warranties and (b) are consistent with the exercise of the reasonable judgment, skill, diligence, foresight and care expected of a distributed solar energy generating facility operator or manager in order to accomplish the desired result in material compliance with applicable safety standards, applicable requirements of Law, manufacturer, installer and other warranties and the applicable Customer Agreement, in each case, taking into account the location of such Project, including climate change-related, environmental and general conditions. “Prudent Industry Practices” are not intended to be limited to certain practices or methods to the exclusion of others, but are rather intended to include a broad range of acceptable practices, methods, equipment specifications and standards used in the photovoltaic solar power industry during the relevant time period.

“ PUHCA ” shall mean the Public Utility Holding Company Act of 2005, and FERC’s implementing regulations thereunder.

“ Purchase Standard ” will be the commercially reasonable judgment of the Guarantor exercising the Fund Purchase Option after taking into account (i) the terms of the Limited Liability Company Agreement of the applicable Tax Equity Fund and the other Transaction Documents, (ii) the availability of funds in the Supplemental Reserve Account (which shall include amounts funded into the Supplemental Reserve Account from equity contributions and, in the case of each applicable Partnership Flip Fund, its respective Tax Equity Option Amount) and (iii) the analysis that the Borrower and its Affiliates apply in determining whether or not to exercise similar purchase options for comparable assets owned by the Borrower and its Affiliates.

“ Qualified Insurers ” shall mean financially sound and reputable insurance companies rated “A-, X” or better by A.M. Best Company, “A” or better by S&P or otherwise acceptable to the Majority Lenders, acting reasonably.

“ Qualified Manager ” shall mean a Person that (a) has the Requisite Experience, and (b) either (i) has (A) a Credit Rating of “BBB-” or higher by S&P and “Baa3” or higher by Moody’s or (B) a tangible net worth of at least \$150,000,000, or (ii) has a direct or indirect parent with (A) a Credit Rating of “BBB-” or higher by S&P and “Baa3” or higher by Moody’s, or (B) a tangible net worth of at least \$150,000,000; provided, that such Person can satisfy the Requisite Experience by engaging its direct or indirect parent, or a third party service provider, who has the Requisite Experience.

“ Qualified Purchaser ” shall mean a Person that purchases the direct or indirect equity interests in Pledgor (other than Sponsor or its Affiliates) that is a Qualified Manager and which has certified at the time it acquires such direct or indirect equity interests in Pledgor that it intends to hold such interests and not treat them “as available for sale” or equivalent for accounting purposes.

“ Qualifying Facility ” shall mean a “qualifying facility” as defined in the regulations of FERC at 18 C.F.R. § 292.101(b)(1) that also qualifies for the regulatory

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exemptions from the FPA set forth at 18 C.F.R. § 292.601(c), including the exemption from regulation under Sections 205 and 206 of the FPA set forth at 18 C.F.R. § 292.601(c)(1), the regulatory exemptions from PUHCA set forth at 18 C.F.R. § 292.602(b) and the exemptions from certain state laws and regulations set forth at 18 C.F.R. § 292.602(c).

“Rating Agency” shall mean S&P, Moody’s, Fitch or KBRA.

“Rebate” shall mean any credits, rebates, subsidies, payments or other incentives that relate to self-generation of electricity, the use of technology incorporated into a Project, environmental benefits of using a Project, or other similar programs available from the public utility, any other state-regulated renewable energy program, the manufacturer of any part of a Project or any Governmental Authority; provided that Rebates do not include SRECs or production tax credits, investment tax credits, grants in-lieu of tax credits and other tax benefits or Grants or manufacturer and equipment warranties and similar payments.

“Recapture Period” shall mean, in respect of a Project, the period from the Closing Date through the fifth anniversary of the date that the applicable Project is Placed in Service.

“Recipient” shall mean (a) an Agent, (b) any Lender or (c) any other Secured Party, as applicable.

“Reeligible Project” shall mean, as of any Scheduled Payment Date, an Eligible Project that was an Ineligibility Prepayment Project in respect of which a prepayment was made under Section 3.04(c) ( *Ineligibility Events* ) on a prior Scheduled Payment Date and that is no longer the subject of an Ineligibility Event.

“Register” shall have the meaning given to such term in Section 12.05(c) ( *Register* ).

“Regulation T, Regulation U and Regulation X” shall mean, respectively, Regulation T, Regulation U and Regulation X of the Board.

“Release” shall mean any disposing, discharging, injecting, spilling, leaking, leaching, dumping, pumping, pouring, emitting, escaping, emptying, seeping, migrating, placing and the like, into, under, through or upon any land or water or air, or otherwise entering into the environment.

“Relevant Party” shall mean each of the Loan Parties and each of the Funds (other than the Lessee).

“Rents” shall mean the monies owed to the applicable Relevant Party by the Customers pursuant to the Customer Agreements, including any lease payments under any solar lease agreement and power purchase payments under any solar power service agreement or solar power purchase agreement that is a Customer Agreement.

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“ Repayment Factor ” shall mean the ratio of (a) all principal outstanding hereunder immediately prior to the applicable repayment date to (b) the Portfolio Value .

“ Requisite Experience ” shall mean a person that has, for a period of at least three (3) consecutive years within the five (5) years immediately prior to the date of determination, operated at least (a) 200 megawatts of energy generation facilities (of which at least 25 megawatts are residential or commercial solar distributed generation capacity) or (b) 50 megawatts of total aggregate solar distributed generation capacity (of which at least 25 megawatts are residential or commercial solar distributed generation capacity).

“ Resignation Effective Date ” has the meaning set forth in Section 13.08 ( *Resignation or Removal of Administrative Agent* ).

“ Resolution Authority ” shall mean any body which has authority to exercise any Write-down and Conversion Powers.

“ Responsible Officer ” shall mean, when used with respect to the Administrative Agent, Collateral Agent or the Depository Agent, any officer in the corporate trust office of the Administrative Agent, Collateral Agent or the Depository Agent, including any president, vice president, executive vice president, assistant vice president, treasurer, secretary, assistant secretary, corporate trust officer or any other officer thereof customarily performing functions similar to those performed by the individuals who at the time shall be such officers, respectively, or to whom any matter is referred because of such officer’s knowledge of or familiarity with the particular subject, and, in each case, having direct responsibility for the administration of this Agreement and the other Loan Documents to which such Person is a party. For the avoidance of doubt, receipt of a notice by the Administrative Agent in accordance with Section 12.02 ( *Notices* ) shall be sufficient for delivery of notice to a Responsible Officer of the Administrative Agent and receipt of a notice by the Collateral Agent or Depository Agent in accordance with Section 7.03 ( *Notices* ) of the Depository Agreement shall be sufficient for delivery of notice to a Responsible Officer of such Agent.

“ Restricted Payment ” shall mean, with respect to any Person, (a) any dividend or any distribution (by reduction of capital or otherwise), whether in cash, Property, securities or a combination thereof, to an owner of a beneficial interest in such Person or otherwise with respect to any ownership or equity interest or security in or of such Person and (b) any payments on subordinated debt contemplated by Section 9.01(d) ( *Indebtedness* ).

“ Return Performance ” shall mean the demonstration of the Tax Equity Member’s actual internal rate of return (if applicable, determined on both a pre-tax and after-tax basis) since the initial capital contribution date for the applicable Partnership Flip Fund by comparison to its applicable target internal rate of return (if applicable, measured on both a pre-tax and after-tax basis), as shown in the Tracking Model or associated reports, exhibits or supplemental information.

“ Revenue Termination Amount ” shall have the meaning given to it in Section 3.04(b) ( *Revenue Termination Events* ).

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“ Revenue Termination Event ” shall mean:

- (a) a Project experiences an Event of Loss and is not repaired, restored, replaced or rebuilt to substantially the same condition as existed immediately prior to the Event of Loss within 150 days of such Event of Loss;
- (b) the early termination of any Customer Agreement and payment of the termination payment by the applicable Customer in connection with such termination;
- (c) the prepayment by the Customer of future amounts due under a Customer Agreement; and
- (d) the purchase of any Project by a Customer;

except to the extent any of the events in paragraphs (a) through (d) above occur in respect of a Non-PTO Project.

“ Rolling Period ” means a period of four (4) consecutive fiscal quarters; provided, however, (a) if fewer than four complete consecutive fiscal quarters have elapsed subsequent to the Closing Date, then solely for purposes of calculating the Historical Debt Service Coverage Ratio for the period ending on a Scheduled Payment Date, such period shall be deemed to be the period that has elapsed subsequent to the Closing Date and (b) if fewer than four complete consecutive fiscal quarters remain between any date of measurement and the Final Maturity Date, then solely for purposes of calculating the Projected Debt Service Coverage Ratio for the period commencing on the day following the applicable Scheduled Payment Date, such period shall be deemed to be the period between such date of measurement and the Final Maturity Date.

“ S&P ” shall mean Standard & Poor’s Ratings Group, a division of McGraw-Hill, Inc.

“ Sanctioned Country ” shall mean a country or territory that is the subject of country-wide or territory-wide Sanctions broadly prohibiting dealings with such country or territory (currently, Cuba, Iran, North Korea, Sudan, Syria, and the Crimea region of Ukraine).

“ Sanctioned Person ” shall mean any Person: (a) identified on a Sanctions List; (b) organized, operating from, or ordinarily or resident in, or the government or any agency or instrumentality of the government of, any Sanctioned Country; (c) owned or controlled by, or acting for or on behalf of, directly or indirectly, any Person described in the foregoing clause (a) or (b); or (d) otherwise the subject or target of Sanctions.

“ Sanctions ” shall mean economic or financial sanctions or trade embargoes imposed, administered, or enforced from time to time by any Sanctions Authority.

“ Sanctions Authority ” shall mean: (a) the U.S. government, including OFAC and the U.S. Department of State; (b) the United Nations Security Council; (c) the European Union and each of its member states; or (d) the United Kingdom, including Her Majesty’s Treasury.

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“ Sanctions List ” shall mean any Sanctions-related list of designated Persons maintained by any Sanctions Authority, including, without limitation, the Specially Designated Nationals and Blocked Persons List maintained by OFAC.

“ Scheduled Payment Date ” shall mean (i) each January 31, April 30, July 31 and October 31 of each year falling after the date hereof, or if any such day is not a Business Day, the immediately preceding Business Day and (ii) the Final Maturity Date; provided, that, for the avoidance of doubt, the first Scheduled Payment Date shall occur on April 30, 2017.

“ Scheduled Payment Date Report ” shall mean a report delivered by the Borrower at least three (3) Business Days before each Scheduled Payment Date pursuant to Section 8.01(a)(v) ( *Scheduled Payment Date Report* ), substantially in the form of Exhibit L ( *Form of Scheduled Payment Date Report* ) and certified by an Authorized Officer of the Borrower, which shall (a) report in reasonable detail on the principal and interest payable on such Scheduled Payment Date and each other withdrawal and payment made from the Collateral Accounts during the quarter ending on such Scheduled Payment Date, (b) containing the Borrower’s good faith, reasonable and detailed calculation of (i) the Historical Debt Service Coverage Ratio for the Rolling Period ending on such Scheduled Payment Date and (ii) the Projected Debt Service Coverage Ratio for the subsequent Rolling Period commencing on the day following the applicable Scheduled Payment Date, (c) demonstrate any net cash proceeds or other amounts required to be shown pursuant to Section 3.04(h) and (d) containing (i) a comprehensive report of each Eligible Project that became the subject of an Ineligibility Event, Payment Facilitation Event or a Revenue Termination Event occurring during the quarterly period ending on the applicable Scheduled Payment Date and (ii) the Borrower’s good faith, detailed calculation of (x) the aggregate Ineligibility Amount, Payment Facilitation Amount and Revenue Termination Amount accrued during the applicable calendar quarter and all prior calendar quarters, (y) whether a Cumulative Loss Event occurred on the applicable Scheduled Payment Date (including tracking of the reduction in Portfolio Value resulting from or attributable to each Ineligibility Event occurring since the Closing Date against the amount of such reduction in Portfolio Value projected to occur under the Base Case Model from each Ineligibility Event) and (z) any Ineligible Project Prepayment, Payment Facilitation Prepayment or Revenue Termination Amount due and payable on the applicable Scheduled Payment Date, together with such changes thereto as any Lender may from time to time reasonably request for the purpose of monitoring the Borrower’s compliance with Section 3.04(d) ( *Payment Facilitation Events* ).

“ Secured Parties ” shall mean the Administrative Agent, Collateral Agent, Depositary Agent and each of the Lenders.

“ Securities Act ” shall mean the Securities Act of 1933, as amended.

“ Seller ” shall mean Vivint Solar Developer, LLC, a Delaware limited liability company.

“ Service Fees ” shall mean, collectively, the “Maintenance Services Fee”, “Additional Services Fee”, “Base Maintenance Services Fee”, “Additional Administrative Services Fee”, “Base Administrative Services Fee”, “Accounting Fee” and “Administrative

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Services Fee” as such terms are defined in the applicable Services Agreements, or such other term used to describe payments for Included System Services or Non-Covered Services.

“ Servicer Termination Event ” shall mean, in respect of a Fund Provider, any of the following:

- (a) failure by such Fund Provider to make any payment, transfer or deposit required to be made under the terms of Section 8.15 ( *Collateral Accounts; Collections* ) under a Services Agreement within three (3) Business Days of the date required;
- (b) failure by such Fund Provider to deliver the Fund Provider’s reports referred to in Section 8.01(a)(iv) ( *Provider Reporting* );
- (c) an event of default (howsoever described) or right or cause to remove such Fund Provider arises under a Services Agreement;
- (d) an event described in Section 10.01(e) ( *Involuntary Bankruptcy; Appointment of Receiver, etc* ) or Section 10.01(f) ( *Voluntary Bankruptcy; Appointment of Receiver, etc* ) occurs with respect to such Fund Provider;
- (e) at all times that the Provider, Sponsor, a Qualified Purchaser or any of their Affiliates is the Fund Provider, an Event of Default shall have occurred and is continuing; and
- (f) termination of a Services Agreement by a Tax Equity Fund (including the Tax Equity Member on its behalf) other than at its normal expiry date in accordance with its terms.

“ Services Agreements ” shall mean individually or collectively, as the context requires, each Administrative Services Agreement and each Maintenance Services Agreement.

“ Source ” shall have the meaning assigned to that term in Section 5.04 ( *Source of Funds Representations of the Lenders* ).

“ Sponsor ” shall have the meaning assigned to such term in the Recitals.

“ Sponsor Guaranties ” shall mean individually or collectively, as the context requires, each agreement listed under the heading “Sponsor Guaranties” on Schedule 7.22(a) ( *Portfolio Documents* ).

“ Sponsor Subordinated Indebtedness ” shall mean any unsecured Indebtedness of the Borrower to, or held by, the Sponsor or a Qualified Purchaser which is contractually subordinated to the Obligations pursuant to an instrument in writing containing subordination provisions substantially in the form of Exhibit G ( *Terms of Subordination* ), and pledged by such Sponsor or Qualified Purchaser to the Collateral Agent as contemplated in Exhibit G ( *Terms of Subordination* ), or which is otherwise satisfactory to the Administrative Agent (acting on the written instructions of the Majority Lenders).

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“ SREC ” shall mean any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, and attributable to a Project, the production of electrical energy from a Project and its displacement of conventional energy generation, including (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the earth’s climate by trapping heat in the atmosphere; and (c) the reporting rights related to these avoided emissions, including the right of a party to report the ownership of accumulated green tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party, and include green tag reporting rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program; provided that SRECs do not include any rebates or production tax credits, investment tax credits, grants in-lieu of tax credits and other tax benefits or Grants. Without limiting the generality of the foregoing, SRECs include solar renewable energy certificates issued to comply with a state’s renewable portfolio standard, carbon trading credits, emissions reduction credits, investment credits, emissions allowances, green tags, tradable renewable credits and Green-e® products.

“ SREC Aggregator Master PSA ” shall have the meaning given to it on Schedule 7.22(a) ( *Portfolio Documents* ).

“ SREC Consents ” shall mean the DTE SREC Consent and the BP SREC Consent.

“ SREC Contract ” shall mean a contract for the purchase of SRECs.

“ SREC Financing Master PSA ” shall have the meaning given to it on Schedule 7.22(a) ( *Portfolio Documents* ).

“ SREC Guarantor ” shall mean Vivint Solar SREC Guarantor III, LLC, a Delaware limited liability company.

“ SREC Prepayment Cure Event ” shall have the meaning given to it in Section 10.01(m) ( *SREC Contract Events of Default* ).

“ SREC Security Agreement ” shall mean that certain pledge and security agreement dated as of the Closing Date by and between each SREC Seller Party and the Collateral Agent for the benefit of the Secured Parties, and as acknowledged by the SREC Guarantor.

“ SREC Seller Party ” shall mean each of Vivint Solar SREC Aggregator, LLC, a Delaware limited liability company, and Vivint Solar SREC Financing, LLC, a Delaware limited liability company.

“ Subsidiaries ” shall mean each Guarantor and each Owned Fund.

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“Supplemental Reserve Account” shall have the meaning given to it in the Depositary Agreement.

“Supplemental Reserve Required Amount” shall have the meaning given to it in the Depositary Agreement.

“Swap Agreement” shall mean any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions.

“Target Return Date” shall mean (a) in the case of Fund XVIII, the Target Flip Date (as defined in the Limited Liability Company Agreement of Fund XVIII) or (b) in the case of the Lessee, the end of the Initial Term (as defined in the Master Lease Agreement).

“Tax Equity Consents and Notices” shall mean each of (a) the consents to collateral assignment, each executed by the applicable Tax Equity Member and (b) the notices regarding collateral assignment and estoppel certificates, each delivered to the applicable Tax Equity Member listed on Schedule 7.22(a) (Portfolio Documents).

“Tax Equity Documents” shall mean, for each Tax Equity Fund, the applicable Limited Liability Company Agreement, Master Purchase Agreement, Master Lease Agreement, Project Transfer Agreements, Services Agreement, Fund SREC Transfer Agreement, each Back-Up Servicing Agreement, each Sponsor Guaranty, each other “Transaction Document” as such term is defined in the Limited Liability Company Agreement or Master Lease Agreement of the applicable Tax Equity Funds and any other documents reflecting an agreement between Sponsor (or any Affiliate of Sponsor) and any of the Tax Equity Members relating to such Tax Equity Members’ investment in a Project or Tax Equity Fund.

“Tax Equity Fund” shall mean each Fund that is not a Wholly-Owned Fund.

“Tax Equity Fund Model” shall mean the applicable financial equity base case model agreed and accepted by Guarantor and the Tax Equity Member in respect of such Tax Equity Member’s tax equity investment in the Tax Equity Fund.

“Tax Equity Member” shall mean with respect to (a) any Partnership Flip Fund, a member of such Partnership Flip Fund other than a Guarantor and (b) the Lessor, the Lessee and each member of the Lessee.

“Tax Equity Option Amount” shall have the meaning ascribed to such term in the Depositary Agreement.

“Tax Exempt Person” shall mean (a) the United States, any state or political subdivision thereof, any possession of the United States or any agency or instrumentality of any of the foregoing, (b) any organization which is exempt from tax imposed by the Code (including any former tax-exempt organization within the meaning of Section 168(h)(2)(E) of the Code),

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(c) any Person who is not a United States Person, (d) any Indian tribal government described in Section 7701(a)(40) of the Code, (e) any “tax-exempt controlled entity” under Section 168(h)(6)(F)(iii) of the Code if such entity has not made the election provided in Section 168(h)(6)(F)(ii) of the Code and (f) any partnership or other pass-through entity, any direct or indirect partner (or other holder of an equity or profits interest) of which is a Person described in clauses (a) through (e); provided, however, that any such Person described in clauses (a) through (e) shall not be considered a Tax Exempt Person to the extent that (i) the exception under Section 168(h)(1)(D) of the Code applies with respect to the income from the applicable Projects for that Person or (ii) the Person is described within clause (c) of this definition, and the exception under Section 168(h)(2)(B)(i) of the Code applies with respect to the income from the applicable Projects for that Person. A Person shall cease to be a Tax Exempt Person if (A) such Person ceases to be a “tax-exempt entity” within the meaning of Section 168(h)(2) of the Code or any successor provision thereto, by virtue of a change in such section or provision of the Code; or (B) such Person ceases to be a “tax-exempt controlled entity” within the meaning of Section 168(h)(6)(F) of the Code or any successor provision thereto, by virtue of a change in such section or provision of the Code.

“Taxes” shall mean all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other similar charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“Tracking Model” shall have, as the context requires, the meaning given to the term “Tracking Model” in (a) the Limited Liability Company Agreement for Fund XVIII or (b) the Master Lease Agreement.

“Transaction Documents” shall mean, collectively, each of the Loan Documents and Portfolio Documents.

“Trigger Event Notice” shall have the meaning given to it in the Depository Agreement.

“U.S. Person” shall mean any Person that is a “United States Person” as defined in Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” shall have the meaning given to such term in Section 5.02(e)(ii)(B)(III).

“Uniform Commercial Code” and “UCC” shall mean the Uniform Commercial Code as the same may, from time to time, be in effect in the State of New York.

“United States” and “U.S.” shall mean the United States of America.

“Unpledged SREC Account” shall have the meaning given to it in the Depository Agreement.

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“ Use ” shall mean, with respect to any Hazardous Material and with respect to any Person, the generation, manufacture, processing, distribution, handling, use, treatment, recycling or storage of such Hazardous Material or transportation to or from the Property of such Person of such Hazardous Material.

“ Use of Work Products Agreement ” shall mean the Agreement with Leidos Engineering, LLC for Use of Work Products in connection with Vivint Solar Residential PV Systems dated on or about the date hereof amongst the Independent Engineer and the Administrative Agent.

“ Voting Rights ” shall mean the right, directly or indirectly, to vote on or cause the direction of the management and policies of a Person in ordinary and extraordinary matters through the ownership of voting securities; provided, however, that a Person shall not be deemed to hold Voting Rights if by contract or by order, decree or regulation of any Governmental Authority, such Person has effectively ceded or been divested of the power to exercise such vote on, or cause the direction of, such management and policies.

“ Wholly-Owned Fund ” shall mean (a) any Partnership Flip Fund where all its issued membership interests are owned by its applicable Guarantor after the buy-out or withdrawal of the applicable Tax Equity Member and (b) the Lessor upon expiration of the Lease Term.

“ Wholly-Owned Fund Perfection Date ” shall mean the date that each Fund (other than the Lessee) has become a Wholly-Owned Fund and the Administrative Agent has confirmed in writing that the Borrower, the applicable Guarantor and each Fund (other than the Lessee) have complied with their obligations under Section 8.08(h) ( *Preservation of Rights; Maintenance of Projects; Warranty Claims; Security* ) including, without limitation, by providing a guaranty of, and all Assets security interest for, the Obligations.

“ Withholding Agent ” shall mean Wells Fargo Bank, National Association.

“ Write-down and Conversion Powers ” shall mean: (a) in relation to any Bail-In Legislation described in the EU Bail-In Legislation Schedule from time to time, the powers described as such in relation to that Bail-In Legislation in the EU Bail-In Legislation Schedule; and (b) in relation to any other applicable Bail-In Legislation: (i) any powers under that Bail-In Legislation to cancel, transfer or dilute shares issued by a person that is a bank or investment firm or other financial institution or affiliate of a bank, investment firm or other financial institution, to cancel, reduce, modify or change the form of a liability of such a person or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers; and (ii) any similar or analogous powers under that Bail-In Legislation.

Section 1.02 Accounting Terms and Determinations.

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(a) Except as otherwise expressly provided in this Agreement, all accounting terms used in this Agreement shall be interpreted, and all financial statements and certificates and reports as to financial matters required to be delivered to the Lenders under this Agreement shall (unless otherwise disclosed to the Lenders in writing at the time of delivery in the manner described in subsection (b) below) be prepared, in accordance with GAAP as in effect from time to time, and all calculations made for the purposes of determining compliance with this Agreement shall (except as otherwise expressly provided in this Agreement) be made by application of GAAP referred to above; provided, however, that if any financial statements shall be prepared in accordance with GAAP that are materially different from the principles used for the preparation of the financial statements for the preceding applicable period or if any calculations shall be made for the purposes of determining compliance with this Agreement on a basis that is materially different from the basis used for purposes of determining compliance for the preceding applicable period, then the financial statements for the comparable prior period shall be restated and the calculations re-made as specified above to enable a comparison to be made with such prior period; provided, further, that the restatement and remaking of such calculations shall be made solely for comparison purposes and shall not result in any finding of non-compliance hereunder.

(b) The Borrower shall deliver to the Lenders at the same time as the delivery of any annual or quarterly financial statement under Section 8.01(a) ( *Financial Statements and Other Reports* ) or (b) ( *Material Notices* ) (i) a description in reasonable detail of any material variation between the application of accounting principles employed in the preparation of such statement and the application of accounting principles employed in the preparation of the next preceding annual or quarterly financial statements and (ii) reasonable estimates of the difference between such statements arising as a consequence of any such difference.

(c) To enable the ready and consistent determination of compliance with the terms of this Agreement, the Borrower will not change the last day of its fiscal year from December 31 of each year, or the last days of the first three fiscal quarters in each of its fiscal years from March 31, June 30 and September 30 of each year, respectively.

Section 1.03 Time of Day. Unless otherwise specified, all references herein to times of day shall be references to Eastern time (daylight or standard, as applicable).

Section 1.04 Rules of Construction. Unless the context otherwise requires:

(a) a term has the meaning assigned to it;

(b) an accounting term not otherwise defined herein and accounting terms partly defined herein, to the extent not defined, shall have the respective meanings given to them under GAAP as in effect from time to time;

(c) “or” is not exclusive;

(d) the words “including,” “includes” and “include” shall be deemed to be followed in each instance by the words “without limitation”;

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(e) words in the singular include the plural and words in the plural include the singular;

(f) words importing any gender include the other gender;

(g) all references to "\$" are to United States dollars unless otherwise stated;

(h) any agreement, instrument or statute defined or referred to in this Agreement or in any instrument or certificate delivered in connection herewith means such agreement, instrument or statute as from time to time amended, modified, supplemented, restated, extended, renewed, consolidated or replaced (without, however, limiting any prohibition on any such amendments, modifications, supplements, restatements, extensions, renewals, consolidations or replacements by the terms of this Agreement) and includes (in the case of agreements or instruments) references to all attachments thereto and instruments incorporated therein;

(i) references to "writing" include printing, typing, lithography and other means of reproducing words in a tangible visible form;

(j) references to a Person are also to its successors and permitted assigns and, in the case of Government Authorities, Persons succeeding to their respective functions and capacities; and

(k) the words "hereof", "herein" and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Article, Section, Annex, Schedule and Exhibit references are to this Agreement unless otherwise specified.

## ARTICLE II. COMMITMENTS AND LOANS.

### Section 2.01 Commitments.

(a) Loans. Each Lender severally agrees, on the terms and conditions of this Agreement, to make a loan (each, a "Loan") to the Borrower in Dollars on the Closing Date in a principal amount equal to such Lender's Commitment. Each Lender's Commitment shall terminate immediately and without further action on the Closing Date after giving effect to any funding of such Lender's Commitment on such date. The Lenders' obligations hereunder are several and not joint obligations, and no Lender shall have any liability to any Person for the performance or non-performance of any obligation by any other Lender hereunder.

(b) Conditions and Funding. The Borrower shall give each Lender at least two (2) Business Days (or such shorter period acceptable to the Lenders) prior written notice of the proposed borrowing of the Loans as provided in Section 4.05 (*Certain Notices*), stating:

(i) the aggregate amount of the requested Loans from the Lenders;

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(ii) the proposed Closing Date, which shall be a Business Day no later than January 5, 2017 ;

(iii) that contemporaneously with the borrowing of the Loans, the conditions precedent set forth in Section 6.01( *Conditions of Borrowing* ) shall be satisfied or waived; and

(iv) that the proceeds of such Loans are to be disbursed in accordance with the Closing Date Funds Flow Memorandum.

A Notice of Borrowing submitted by the Borrower pursuant to this clause (b) shall be irrevocable and shall be signed by an Authorized Officer of the Borrower.

(c) The Borrower shall use the proceeds of the Loans borrowed under this Section 2.01 solely (i) to fund (x) the Debt Service Reserve Required Amount into the Debt Service Reserve Account, (y) the Supplemental Reserve Required Amount into the Supplemental Reserve Account and (z) the Inverter Replacement Reserve Required Amount into the Inverter Replacement Reserve Account, in each case in accordance with the Depository Agreement, (ii) to pay fees due pursuant to the Loan Documents and costs and expenses incurred pursuant to the Loan Documents or otherwise in connection with this financing, (iii) to consummate the Closing Date Assignments under the Closing Date Assignment Agreements and release the Guarantors from their guarantees under the Aggregation Facility (with any excess proceeds received by the Aggregation Facility Borrower, after repayment of the Indebtedness under the Aggregation Facility, permitted to be distributed to the Sponsor for working capital purposes) and (iv) after the application of proceeds in accordance with paragraphs (i) through (iii) above, any remaining proceeds may be applied to make distributions to the Sponsor for working capital purposes.

(d) Subject to satisfaction (or waiver) of the conditions to the borrowing of the Loans set forth in ARTICLE VI( *Conditions Precedent* ), each Lender shall make the amount of its Loan available to the Borrower on the Closing Date by causing an amount of same day funds in Dollars equal to the proceeds of its Loan to be credited to the account of the Borrower designated in the Closing Date Funds Flow Memorandum and the Notice of Borrowing delivered pursuant to Section 2.01(b)( *Conditions and Funding* ). Amounts borrowed under Section 2.01(b)( *Conditions and Funding* ) and subsequently repaid or prepaid may not be reborrowed.

#### Section 2.02 Notes.

(a) Evidence of Debt. The Loans made by each Lender shall be evidenced by one or more accounts or records maintained by such Lender and by the Administrative Agent in the ordinary course of business. The accounts or records maintained by the Administrative Agent and each Lender shall constitute prima facie evidence of the accuracy of the information contained therein. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrower hereunder to pay any amount owing with respect to the Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters,

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the accounts and records of the Administrative Agent shall control in the absence of manifest error. Payment by the Administrative Agent to the Lenders in accordance with the terms hereof shall not require presentment of any Note.

(b) Execution and Delivery of Notes. Upon the request of any Lender, the Borrower shall duly execute and deliver to such Lender a promissory note substantially in the form of Exhibit A (Form of Note) (each, a “Note”), in favor of such Lender in a principal amount equal to such Lender’s Loan, with blanks appropriately completed in conformity herewith. Each Lender is hereby authorized, at its option, either (i) to endorse on the schedule attached to each of its Notes (or on a continuation of such schedule attached to such Note and made a part thereof) an appropriate notation evidencing the date, amount and maturity of its Loan and payments with respect thereto or (ii) to record the date, amount and maturity of its Loan and payments with respect thereto in its books and records as contemplated by Section 2.02(a). Such schedule or such books and records, as the case may be, shall constitute prima facie evidence of the accuracy of the information contained therein; provided that the failure of any Lender to make such notations or maintain such records or any error therein shall not in any manner affect the obligation of the Borrower to repay the Loans in accordance with the terms of this Agreement.

Section 2.03 Agency Fee. The Borrower shall pay to the Agents, for their own account, the agency fees (collectively, the “Agency Fee”) for each year in the amount set forth in the Agency Fee Letter.

Section 2.04 Several Obligations; Remedies Independent. The failure of any Lender to make any Loan to be made by it shall not relieve any other Lender of its obligation to make its Loan on such date, but neither Lender nor Administrative Agent shall be responsible for the failure of any other Lender to make a Loan. Each Lender shall independently be entitled to protect and enforce its right to payment of the Obligations which are then due and payable to such Lender (it being understood that the acceleration of the Loans and the termination of the Commitments shall be governed by Section 10.02 ( *Acceleration and Remedies* ) and the exercise of remedies with respect to the Collateral shall be subject to the terms of Section 10.02 ( *Acceleration and Remedies* ) of this Agreement and the Collateral Documents).

### ARTICLE III. PAYMENTS OF PRINCIPAL AND INTEREST

#### Section 3.01 Repayment of Loans.

(a) Loans. The Borrower hereby agrees to pay to each Lender the principal of such Lender’s outstanding Loan at par and without payment of the Make-Whole Amount on each Scheduled Payment Date in accordance with installment amounts set forth for such date in the Amortization Schedule. All unpaid principal of each Loan shall be due and payable at par and without payment of the Make-Whole Amount in full on the Final Maturity Date.

#### Section 3.02 Interest on the Loans.

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(a) Interest on Loans. The Borrower hereby agrees to pay to each Lender interest on the unpaid principal amount of a Loan made by such Lender (and on the Note evidencing such Loan) for the period from and including the date such Loan is made until such Loan shall be paid in full, at a rate per annum equal to the Interest Rate.

(b) Default Interest. Notwithstanding the foregoing, if any principal of, or the Make-Whole Amount or interest on, any Loan or any fee or other amount payable by the Borrower under this Agreement or any other Loan Document is not paid when due (whether at stated maturity, upon acceleration, by mandatory prepayment or otherwise), such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to the Post-Default Rate for the period from and including the due date thereof to but excluding the date such amount is paid in full.

(c) Payment of Interest. Accrued interest on each Loan shall be payable (i) in arrears on each Scheduled Payment Date and (ii) upon the payment or prepayment of such Loan (but only on the principal amount so paid or prepaid), except that interest payable at the Post-Default Rate shall be payable from time to time on demand (or, if no demand is made during any month, on the last day of such month).

Section 3.03 Optional Prepayments. Subject to Section 3.05 ( *Additional Conditions of Prepayment* ) and Section 4.04 ( *Minimum Amounts* ), the Borrower shall have the right to prepay the Loans in whole or in part at any time, provided that the Borrower shall give the Lenders and the Administrative Agent irrevocable notice of each such prepayment as provided in Section 4.05 ( *Certain Notices* ) and, upon the date specified in any such notice of prepayment, the amount to be prepaid shall become due and payable. Each such notice shall specify the prepayment date and the interest to be paid on the prepayment date with respect to such prepayment. Each such notice shall be accompanied by a certificate of the Borrower as to the estimated Make-Whole Amount due in connection with any such prepayment of Loans, setting forth the details of such computation, and two Business Days prior to such prepayment, the Borrower shall deliver to the Lenders and the Administrative Agent a notice specifying the calculation of such Make-Whole Amount as of the specified prepayment date.

Section 3.04 Mandatory Prepayments. The Borrower shall make the following mandatory payments (as prepayments to be effected in each case in the manner specified in Section 3.05 ( *Additional Conditions of Prepayment* )):

(a) Incurrence of Indebtedness. On the date of receipt thereof, the Borrower shall apply towards the mandatory prepayment of the Loans, accrued interest and the applicable Make-Whole Amount in accordance with Section 3.05 ( *Additional Conditions of Prepayment* ), 100% of the Net Available Amount of all proceeds in cash and cash equivalents (including any cash received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) to the Borrower or any other Loan Party from, without limitation to ARTICLE X ( *Events of Default; Remedies* ), the issuance or incurrence of any Indebtedness by any Relevant Party (other than as permitted to be incurred pursuant to Section 9.01 ( *Indebtedness* )).

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(b) Revenue Termination Events. On each Scheduled Payment Date the Borrower shall apply towards the mandatory prepayment of the Loans and applicable accrued interest in accordance with Section 3.05 ( Additional Conditions of Prepayment ), an amount (the “ Revenue Termination Amount ”) equal to the Prepayment Amount for each Revenue Termination Event occurring during the calendar quarter ending on the immediately prior Calculation Date ; provided that a failure to pay the Revenue Termination Amount in full on the applicable Scheduled Payment Date will not, in and of itself, result in an Event of Default hereunder, but such unpaid amount shall remain payable on subsequent Scheduled Payment Dates under this Section 3.04(b) until paid in full.

(c) Ineligibility Events. On each Scheduled Payment Date, the Borrower shall apply towards the mandatory prepayment of the Loans and applicable accrued interest in accordance with Section 3.05 ( Additional Conditions of Prepayment ), the Ineligibility Prepayment Amount determined for such Scheduled Payment Date; provided further, that no prepayment of the Loans shall be required under this Section 3.04(c) ( Ineligibility Events ) if (i) the Historical Debt Service Coverage Ratio for the Rolling Period ending on such Scheduled Payment Date is not less than 1.50:1.00; and (ii) the Projected Debt Service Coverage Ratio for the subsequent Rolling Period commencing on the day following the applicable Scheduled Payment Date is not less than 1.50:1.00, and the Borrower shall have delivered a Scheduled Payment Date Report to the Administrative Agent and Lenders certifying to the same; provided, further that a failure to pay the Ineligibility Prepayment Amount in full on the applicable Scheduled Payment Date will not, in and of itself, result in an Event of Default hereunder, but such unpaid amount shall remain payable on subsequent Scheduled Payment Dates under this Section 3.04(c) until paid in full.

(d) Payment Facilitation Events. On each Scheduled Payment Date, the Borrower shall apply amounts on deposit in the Distribution Suspense Account towards the mandatory prepayment of the Loans and applicable accrued interest in accordance with Section 3.05 ( Additional Conditions of Prepayment ), an amount equal to (i) an amount (the “ Payment Facilitation Amount ”) determined as the Prepayment Amount for each Payment Facilitation Event occurring during the calendar quarter ending on the immediately prior Calculation Date plus (ii) any Payment Facilitation Amount remaining unpaid following any mandatory prepayment under this Section 3.04(d) on a prior Scheduled Payment Date.

(e) Distribution Trap Cash Sweep. On each Scheduled Payment Date during an Early Amortization Period, the Borrower shall apply towards the mandatory prepayment of the Loans and applicable accrued interest in accordance with Section 3.05 ( Additional Conditions of Prepayment ), 100% of the amounts that have been deposited in and standing to the credit of the Distribution Suspense Account.

(f) Eligible SREC Contract Claim Proceeds. In the event that the SREC Guarantor or a SREC Seller Party receives any proceeds from claims made under any Eligible SREC Contract (including any liquidated damages or termination proceeds) or any proceeds are received from the enforcement of the SREC Security Agreement, the Borrower shall apply 100% of such proceeds towards the mandatory prepayment of the Loans and applicable accrued interest in accordance with Section 3.05 ( Additional Conditions of Prepayment ).

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(g) Cash Sweep for Manager Event and Lessor Default. Without limiting Section 10.01(k) (*Removal of Managing Member*) or Section 10.02 (*Acceleration and Remedies*), on each Scheduled Payment Date after the occurrence and during the continuance of a Manager Event or a Lessor Default, the Borrower shall apply towards the mandatory prepayment of the Loans and applicable accrued interest in accordance with Section 3.05 (*Additional Conditions of Prepayment*), 100% of the amounts that have been deposited in and standing to the credit of the Collections Account and the Distribution Suspense Account after giving effect to all prior withdrawals and transfers pursuant to Sections 4.02(a)(i) to (xi) of the Depositary Agreement.

(h) Cash Sweep for Excess ITC Insurance Policy Proceeds. On the Scheduled Payment Date immediately following the Borrower's receipt of proceeds into the ITC Insurance Policy Account in respect of any ITC Insurance Loss, the Borrower shall apply towards the mandatory prepayment of the Loans and applicable accrued interest, in accordance with Section 3.05 (*Additional Conditions of Prepayment*), 100% of the amounts remaining on deposit in and standing to the credit of the ITC Insurance Policy Account, after the ITC Insurance Loss has been paid in full to the Tax Equity Member of Fund XVIII in accordance with Section 4.02(j) of the Depositary Agreement.

(i) Concurrently with any prepayment of the Loans pursuant to Section 3.04(a) (*Incurrence of Indebtedness*) or (f) Section 3.04(f) (*Eligible SREC Contract Claim Proceeds*), Borrower shall deliver to the Administrative Agent a certificate of an Authorized Officer of the Borrower including a demonstration of the calculation of the amount of the applicable net cash proceeds or other amounts to be prepaid, as the case may be. In the event that Borrower shall subsequently determine that the actual amount received exceeded the amount set forth in such certificate, Borrower shall promptly make an additional prepayment of the Loans in an amount equal to such excess, and Borrower shall concurrently therewith deliver to Administrative Agent a certificate of an Authorized Officer of the Borrower demonstrating the derivation of such excess.

(j) No prepayment shall be due and payable (i) under Section 3.04(b) (*Revenue Termination Events*) until the Scheduled Payment Date occurring immediately after the Revenue Termination Amount accrued from all prior calendar quarters is at least equal to \$1,000,000 (and such unpaid accrued aggregate amount shall be paid in full from available cash on such Scheduled Payment Date or future Scheduled Payment Dates), and (ii) under Section 3.04(d) (*Payment Facilitation Events*), until the Scheduled Payment Date occurring immediately after the Payment Facilitation Amount accrued from all prior calendar quarters is at least equal to \$1,000,000 (and such unpaid accrued aggregate amount shall be paid in full from available cash on such Scheduled Payment Date or future Scheduled Payment Dates).

#### Section 3.05 Additional Conditions of Prepayment.

(a) Additional Payments. Any prepayment by the Borrower pursuant to Section 3.03 (*Optional Prepayments*) or Section 3.04 (*Mandatory Prepayments*) shall be made simultaneously with, and is conditioned upon, the payment by the Borrower of accrued interest pursuant to Section 3.02(c) (*Payment of Interest*) and in the case of any prepayment of the Loans

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pursuant to Section 3.03 ( *Optional Prepayments* ) and Section 3.04(a) ( *Incurrence of Indebtedness* ), the applicable Make-Whole Amount for the relevant prepayment date.

(b) Application of Prepayments. Amounts prepaid pursuant to Section 3.03 ( *Optional Prepayments* ) or Section 3.04 ( *Mandatory Prepayments* ) shall be applied on a pro rata basis to the outstanding Loans to be applied pro rata to remaining scheduled installments thereof. Each prepayment shall be paid to the Lenders in accordance with their respective pro rata share of the outstanding principal amount of such Loan. In connection with any prepayment made pursuant to Section 3.04(a) ( *Incurrence of Indebtedness* ) the Borrower shall deliver to the Lenders and the Administrative Agent a notice specifying the calculation of such Make-Whole Amount as of the applicable prepayment date.

#### ARTICLE IV. PAYMENTS; PRO RATA TREATMENT; COMPUTATIONS; ETC.

##### Section 4.01 Payments.

(a) Scheduled Payment Date Report. At least three (3) Business Days prior to each Scheduled Payment Date, the Borrower shall deliver, or cause Manager to deliver, to the Administrative Agent, Collateral Agent, and Depository Agent a Scheduled Payment Date Report. All withdrawals and transfers will be made based upon the information provided in the Scheduled Payment Date Report.

(b) Payments Generally. All payments to be made by the Borrower shall be made free and clear of any Liens and without restriction, condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise provided below, all payments made with respect to the Loans on each Scheduled Payment Date shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's Office in Dollars and in immediately available funds not later than 12:00 p.m. on the date specified herein. The Administrative Agent will promptly distribute to each Lender its pro rata share of the principal amount paid according to the outstanding principal amounts of the applicable Loan held by the Lenders (or other applicable share of such payment as expressly provided herein) in like funds as received by wire transfer to such Lender's Lending Office. All payments received by the Administrative Agent after 12:00 p.m. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue.

(c) The Borrower shall, at the time of making each payment under this Agreement specify the Loans or other amounts payable by the Borrower under this Agreement to which such payment is to be applied (and in the event that it fails to so specify, or if an Event of Default has occurred and is continuing, the Lenders may apply such payment in such manner as the Majority Lenders, subject to Section 4.02 ( *Pro Rata Treatment* ), may determine to be appropriate).

(d) If the due date of any payment under this Agreement would otherwise fall on a day which is not a Business Day such date shall be extended to the next succeeding

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Business Day, and such extension of time shall be reflected in computing interest or fees, as the case may be.

Section 4.02 Pro Rata Treatment. Except to the extent otherwise provided in this Agreement: (a) the borrowing of Loans under Section 2.01 ( *Commitments* ) shall be made from the Lenders pro rata according to the amounts of their respective Commitments, (b) each payment or prepayment of principal of Loans by the Borrower shall be made for the account of the Lenders pro rata in accordance with the respective unpaid principal amounts of the Loans held by them, (c) each payment of interest on the Loans by the Borrower shall be made for the account of the Lenders pro rata in accordance with the amounts of interest on the Loans then due and payable to the respective Lenders, and (d) each payment of any Make-Whole Amount by the Borrower shall be made for the account of the Lenders pro rata in accordance with the amounts of the applicable Make-Whole Amount then due and payable to the respective Lenders.

Section 4.03 Computations. Interest on the Loans will be calculated on the basis of a year of 360 days with twelve (12) thirty day months. Interest on other obligations of the Borrower or the Lenders that are computed on the basis of the Interest Rate shall be computed on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed (including the first day but excluding the last day) occurring in the period for which payable.

Section 4.04 Minimum Amounts. Except for mandatory prepayments made pursuant to Section 3.04 ( *Mandatory Prepayments* ), the borrowing and partial prepayment of principal of Loans shall be in an amount equal to \$5 ,000 ,000 or any higher multiple of \$250 ,000 (or, if less, the full amount of such Loans outstanding).

Section 4.05 Certain Notices. Notices by the Borrower to the Lenders of terminations or reductions of the Commitments, of the borrowing or optional prepayments of Loans shall be irrevocable and shall be effective only if received by the Administrative Agent and the Lenders not later than 11:00 a.m., New York City time, on the number of Business Days prior to the date of the relevant borrowing or prepayment specified below:

<u>Notice</u>	<u>Number of Business Days Prior</u>
Borrowing of Loans	3
Prepayment of Loans	10

The Notice of Borrowing of Loans shall be in the form of Exhibit B ( *Form of Notice of Borrowing* ) and shall be subject to the satisfaction of the conditions set forth in Section 6.01 ( *Conditions of Borrowing* ). Each notice of optional prepayment shall specify the amount (subject to Section 4.04 ( *Minimum Amounts* )) of each Loan to be prepaid, the date of optional prepayment (which shall be a Business Day) and other information required pursuant to Section 3.03 ( *Optional Prepayments* ).

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Section 4.06 Set Off; Sharing of Payments; Etc.

(a) The Borrower agrees that, in addition to (and without limitation of) any right of set-off, banker's lien or counterclaim a Lender may otherwise have, each Lender shall be entitled, at its option, to offset balances held by it or any of its Affiliates for account of the Borrower at any of its or any of its Affiliates' offices in Dollars or in any other currency, against any principal of or interest on any of such Lender's Loans or any other amount payable to such Lender under this Agreement, that is not paid when due (regardless of whether such balances are then due to the Borrower), in which case it shall promptly notify the Borrower and each other Lender of such action; provided that such Lender's failure to give such notice shall not affect the validity of such action. If any Lender shall obtain from the Borrower any amount under this Agreement or any other Loan Document through the exercise of any right of set-off, it shall promptly transfer any such amounts (net of any expenses which may be incurred by such Lender in obtaining or preserving such amount) to the Collateral Agent to be applied by the Collateral Agent in accordance with Section 2.02 ( *Distribution of Collateral Proceeds* ) of the Collateral Agency Agreement.

(b) Except as otherwise provided in clause (a) above, if any Lender shall obtain from the Borrower payment of any principal of or interest on any Loan owing to it or payment of any other amount under this Agreement or any other Loan Document through the exercise of any right of set-off, banker's lien or counterclaim or similar right or otherwise, and, as a result of such payment, such Lender shall have received a greater percentage of the principal of or interest on the Loans or such other amounts then due hereunder by the Borrower to such Lender than the percentage received by any other Lender, it shall promptly purchase from such other Lenders participations in (or, if and to the extent specified by such Lender, direct interests in) the Loans or such other amounts, respectively, owing to such other Lenders (or in interest due on such Loans or other amounts, as the case may be) in such amounts, and make such other adjustments from time to time as shall be equitable, with the effect that all the Lenders shall share the benefit of such excess payment (net of any expenses which may be incurred by such Lender in obtaining or preserving such excess payment) pro rata in accordance with the unpaid principal of or interest on the Loans or such other amounts, respectively, owing to each of the Lenders. To such end all the Lenders shall make appropriate adjustments among themselves (by the resale of participations sold or otherwise) if such payment is rescinded or must otherwise be restored.

(c) The Borrower agrees that any Lender so purchasing such a participation (or direct interest) may exercise all rights of set-off, banker's liens, counterclaims or similar rights with respect to such participation as fully as if such Lender were a direct holder of Loans or other amounts (as the case may be) owing to such Lender in the amount of such participation.

(d) Nothing contained in this Agreement shall require any Lender to exercise any such right or shall affect the right of any Lender to exercise, and retain the benefits of exercising, any such right with respect to any other indebtedness or obligation of the Borrower. If, under any applicable bankruptcy, insolvency or other similar law, any Lender receives a secured claim in lieu of a set-off to which this Section 4.06 ( *Set Off; Sharing of Payments; Etc.* ) applies, such Lender shall, to the extent practicable, exercise its rights in respect of such secured

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claim in a manner consistent with the rights of the Lenders entitled under this Section 4.06 ( *Set Off; Sharing of Payments; Etc.* ) to share in the benefits of any recovery on such secured claim .

ARTICLE V. ADDITIONAL PROVISIONS APPLICABLE TO LOANS

Section 5.01 Increased Costs.

(a) If any Change in Law:

(i) imposes, modifies or deems applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender;

(ii) subjects any Recipient to any Taxes (other than Indemnified Taxes and Excluded Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(iii) imposes on any Lender any other condition, cost or expense (other than Taxes) affecting this Agreement or any participation therein;

and the result of any of the foregoing is to increase materially the cost to such Lender or such other Recipient of making or maintaining any Loan (or of maintaining its obligation to make any such Loan) or to reduce materially the amount of any sum received or receivable by it under any Loan Document, then, upon request of such Lender or other Recipient, the Borrower shall pay to such Lender or other Recipient, as the case may be, such additional amount or amounts as will compensate such Lender or other Recipient, as the case may be, for the additional costs incurred or reduction suffered.

(b) If any Lender reasonably determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on its capital or (without duplication) on the capital of its holding company, if any, as a consequence of this Agreement, the Commitments of such Lender or the Loans made by such Lender, to a level below that which such Lender or its holding company would have achieved but for that Change in Law (taking into consideration such of Lender's and its holding company's policies with respect to capital adequacy), then from time to time the Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or (without duplication) its holding company for any such reduction suffered (except to the extent the Borrower is excused from payment pursuant to Section 5.03 ( *Mitigation of Obligations* )).

(c) To claim any amount under this Section 5.01 ( *Increased Costs* ), a Lender must deliver to the Borrower (with a copy to the Administrative Agent) a certificate setting forth the amount or amounts necessary to compensate it or its holding company, as the case may be, under Section 5.01(a) ( *Increased Costs* ) or (b) ( *Increased Costs* ), which certificate shall state in reasonable detail the basis for such claim. The Borrower shall pay such Lender the amount due

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and payable and set forth on any such certificate within 10 Business Days after its receipt, which shall be conclusive absent manifest error.

(d) Failure or delay on the part of any Lender to demand compensation pursuant to this Section 5.01 (Increased Costs) shall not constitute a waiver of its right to demand that compensation; provided that the Borrower shall not be required to compensate a Lender pursuant to this Section 5.01 (Increased Costs) for any increased costs or reductions incurred more than 180 days prior to the date on which it notifies the Borrower of the Change in Law giving rise to those increased costs or reductions and of its intention to claim compensation for those circumstances; provided further that, if the Change in Law giving rise to those increased costs or reductions is retroactive, then the 180-day period referred to above shall be extended to include that period of retroactive effect.

Section 5.02 Taxes.

(a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes.

(i) Any and all payments by or on account of any obligation of the Borrower under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable Law (which, for purposes of this Section 5.02 (Taxes), shall include FATCA). If any applicable Law (as determined in the good faith discretion of the Withholding Agent or the Borrower, as applicable, taking into account the information and documentation delivered pursuant to Section 5.02(e)) requires the deduction or withholding of any Tax from any such payment by the Withholding Agent or the Borrower, then the Withholding Agent or the Borrower shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with such applicable Law.

(ii) If the Administrative Agent or the Borrower are required to deduct or withhold any Tax described in Section 5.02(a)(i) and must timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with an applicable Law, and if the Tax is an Indemnified Tax, then, the sum payable by the Borrower shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 5.02 (Taxes)) the applicable Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Borrower. Without limiting the provisions of Section 5.02(a) above, the Borrower shall timely pay to the relevant Governmental Authority in accordance with applicable Law, or at the option of the Administrative Agent timely reimburse it for the payment of, any Other Taxes.

(c) Tax Indemnifications.

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(i) The Borrower shall and does hereby indemnify each Recipient, and shall make payment in respect thereof within ten (10) days after written demand therefor, for the full amount of any Indemnified Taxes (including Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section 5.02(c) ( *Tax Indemnifications* ) ) payable or paid by such Recipient or required to be withheld or deducted from a payment to such Recipient, and any reasonable out-of-pocket expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority and shall indemnify the Administrative Agent as Withholding Agent ; provided that the Borrower shall not be required to compensate any Recipient pursuant to this Section 5.02(c) ( *Tax Indemnifications* ) for any interest, additions to tax or penalties that accrue after 180 days from the date such Recipient first receives notice of the relevant Indemnified Taxes if such Recipient does not provide such notice to the Borrower within 180 days from such date of receipt . A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender, shall be conclusive absent manifest error. The Borrower shall and does hereby indemnify the Administrative Agent and shall make payment in respect thereof within ten (10) days after demand therefor, for any amount which a Lender for any reason fails to pay indefeasibly to the Administrative Agent as required pursuant to Section 5.02(c)(ii).

(ii) Each Lender shall and does hereby severally indemnify, and shall make payment in respect thereof within ten (10) days after demand therefor, (A) the Administrative Agent against any Indemnified Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Indemnified Taxes and without limiting the obligation of the Borrower to do so), (B) the Administrative Agent and the Borrower, as applicable, against any Taxes attributable to such Lender's failure to comply with the provisions of Section 12.05(d) ( *Participations* ) relating to the maintenance of a Participant Register and (C) the Administrative Agent and the Borrower, as applicable, against any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent or the Borrower in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender, as the case may be, under this Agreement or any other Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this clause (ii).

(d) Evidence of Payments. As soon as practicable after any payment of Taxes by the Borrower or by the Administrative Agent to a Governmental Authority as provided in this Section 5.02, the Borrower shall deliver to the Administrative Agent or the Administrative Agent shall deliver to the Borrower, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required

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by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Borrower or the Administrative Agent, as the case may be.

(e) Status of Lenders; Tax Documentation.

(i) Any Recipient that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Recipient, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable Law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Recipient is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than the documentation set forth in Section 5.02(e)(ii) (A), (B) and (D) below) shall not be required if in the Recipient's reasonable judgment such completion, execution or submission would subject such Recipient to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Recipient.

(ii) Without limiting the generality of the foregoing each Lender agrees that on the Closing Date or any other date after the Closing Date such Lender becomes a party to this Agreement, and from time to time thereafter upon reasonable request, it will deliver to each of the Borrower and the Administrative Agent the applicable documentation described below:

(A) any Recipient that is a U.S. Person shall deliver to the Borrower and the Administrative Agent on or prior to the date on which such Recipient becomes a party to this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from U.S. federal backup withholding tax;

(B) any Foreign Lender shall deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to (x) the Closing Date or (y) such other date on which such Recipient becomes a party to this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), in the case of clause (y) to the extent it is legally entitled to do so, whichever of the following is applicable:

(I) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party (x) with respect to payments of interest under any Loan Document,

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an executed copy of IRS Form W-8BEN or IRS Form W-8BEN-E (whichever is applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty, and/or (y) with respect to any other applicable payments under any Loan Document, an executed copy of IRS Form W-8BEN or IRS Form W-8BEN-E (whichever is applicable) establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(II) executed copies of IRS Form W-8ECI;

(III) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) an executed certificate substantially in the form of Exhibit O-1 (*Form of U.S. Tax Compliance Certificate*) to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (a “U.S. Tax Compliance Certificate”) and (y) an executed copy of IRS Form W-8BEN or IRS Form W-8BEN-E (whichever is applicable); or

(IV) to the extent a Foreign Lender is not the beneficial owner, an executed copy of IRS Form W-8IMY, accompanied by one or more of the following executed forms from each of the Foreign Lender's direct or indirect partners/members, or Participants, or any Participant's direct or indirect partners/ members, as appropriate: IRS Form W-8ECI, IRS Form W-8BEN, or IRS Form W-8BEN-E (whichever is applicable), a U.S. Tax Compliance Certificate substantially in the form of Exhibit O-2 (*Form of U.S. Tax Compliance Certificate*) or Exhibit O-3 (*Form of U.S. Tax Compliance Certificate*), IRS Form W-8IMY, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership for U.S. federal income tax purposes and one or more direct or indirect partners/members of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender shall provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit O-4 (*Form of U.S. Tax Compliance Certificate*) on behalf of each such direct and indirect partner/member;

(C) any Foreign Lender shall deliver to the Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to (x) the Closing Date or (y) such other date on which such

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Foreign Lender becomes a party to this Agreement (and from time to time thereafter upon the reasonable request of the Borrower or the Administrative Agent), in the case of clause (y) to the extent it is legally entitled to do so, executed copies of any other form prescribed by applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by applicable Law to permit the Borrower or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Recipient under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Recipient were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Recipient shall deliver to the Borrower and the Administrative Agent at the time or times prescribed by Law and at such time or times reasonably requested by the Borrower or the Administrative Agent such documentation prescribed by applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrower or the Administrative Agent as may be necessary for the Borrower and the Administrative Agent to comply with their obligations under FATCA and to determine that such Recipient has complied with such Recipient's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the Closing Date.

(iii) Each Recipient agrees that if any form or certification it previously delivered pursuant to this Section 5.02 ( Taxes ) expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrower and the Administrative Agent in writing of its legal inability to do so.

Wells Fargo Bank, National Association, both in its individual capacity and in its capacity as the Administrative Agent, has no liability to the Borrower, the Lenders or any other Person in connection with any tax withholding amounts paid or withheld from any payment pursuant to applicable Law or arising from the Borrower's or a Lender's failure, as applicable, to timely provide an accurate, correct and complete IRS Form W-9, an appropriate IRS Form W-8 or such other documentation contemplated under this Agreement.

(f) Treatment of Certain Refunds. If any Party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 5.02 ( Taxes ) (including by the payment of additional amounts pursuant to this Section 5.02 ( Taxes )), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section 5.02 ( Taxes ) with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such indemnified party, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified

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party the amount paid over pursuant to this Section 5.02(f) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this Section 5.02(f), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this Section 5.02(f) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This Section 5.02(f) shall not be construed to require any indemnified party to make available its tax returns (or any other information relating to its Taxes that it deems confidential) to the Borrower or any other Person.

(g) Survival. Each party's obligations under this Section 5.02 ( *Taxes* ) shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all other Obligations.

Section 5.03 Mitigation of Obligations. If any Lender requests compensation under Section 5.01 ( *Increased Costs* ), or requires the Borrower to pay any Indemnified Taxes or additional amounts to any Lender, or any Governmental Authority for the account of any Lender, pursuant to Section 5.02 ( *Taxes* ), then at the request of the Borrower such Lender shall, as applicable, use reasonable efforts to designate a different Lending Office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 5.02 ( *Taxes* ) or Section 5.01 ( *Increased Costs* ) (as the case may be), in the future, and (ii) in each case, would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

Section 5.04 Source of Funds Representations of the Lenders. Each Lender severally represents that at least one of the following statements is an accurate representation as to each source of funds (a "Source") to be used by it to make the Loans to be made by it hereunder:

(a) the Source is a separate account that is maintained solely in connection with such Lender's fixed contractual obligations under which the amounts payable, or credited, to any employee benefit plan (or its related trust) that has any interest in such separate account (or to any participant or beneficiary of such plan (including any annuitant)) are not affected in any manner by the investment performance of the separate account; or

(b) the Source is either (A) an insurance company pooled separate account, within the meaning of the United States Department of Labor's Prohibited Transaction Exemption ("PTE") 90-1, or (B) a bank collective investment fund, within the meaning of the PTE 91-38 and, except as disclosed by such Lender to the Borrower in writing pursuant to this paragraph (b), no employee benefit plan or group of plans maintained by the same employer or

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employee organization beneficially owns more than 10% of all assets allocated to such pooled separate account or collective investment fund; or

(c) (A) the Source constitutes assets of an “investment fund” (within the meaning of Part VI of PTE 84-14 (the “QPAM Exemption”)) managed by a “qualified professional asset manager” or “QPAM” (within the meaning of Part VI of the QPAM Exemption), (B) no employee benefit plan’s assets that are managed by the QPAM in such investment fund, when combined with the assets of all other employee benefit plans established or maintained by the same employer or by an affiliate (within the meaning of Part VI(c)(1) of the QPAM Exemption) of such employer or by the same employee organization and managed by such QPAM, represent more than 20% of the total client assets managed by such QPAM, (C) the conditions of Part I(c) and (g) of the QPAM Exemption are satisfied, (D) neither the QPAM nor a person controlling or controlled by the QPAM maintains an ownership interest in the Borrower that would cause the QPAM and the Borrower to be “related” within the meaning of Part VI(h) of the QPAM Exemption, and (E) the identity of such QPAM and, except where the Source satisfies the exception set forth in the last paragraph of Part I(a) of the QPAM Exemption, the names of all employee benefit plans whose assets are included in such investment fund have been disclosed to the Borrower in writing pursuant to this paragraph (c); or

(d) the Source is a governmental plan; or

(e) the Source is one or more employee benefit plans, or a separate account or trust fund comprised of one or more employee benefit plans, each of which has been identified to the Borrower in writing pursuant to this paragraph (e); or

(f) the Source does not include assets of any employee benefit plan, other than a plan exempt from the coverage of ERISA and Section 4975 of the Code; or

(g) the Source is an “insurance company general account” (as the term is defined in PTE 95 - 60) in respect of which the reserves and liabilities (as defined by the annual statement for life insurance companies approved by the National Association of Insurance Commissioners (the “NAIC Annual Statement”)) for the general account contract(s) held by or on behalf of any employee benefit plan together with the amount of the reserves and liabilities for the general account contract(s) held by or on behalf of any other employee benefit plans maintained by the same employer (or affiliate thereof as defined in PTE 95 -60) or by the same employee organization in the general account do not exceed 10% of the total reserves and liabilities of the general account (exclusive of separate account liabilities) plus surplus as set forth in the NAIC Annual Statement filed with such Lender’s state of domicile; or

(h) the Source constitutes assets of a “plan(s)” (within the meaning of Part IV(h) of PTE 96 - 23 (the “INHAM Exemption”)) managed by an “in-house asset manager” or “INHAM” (within the meaning of Part IV (a) of the INHAM Exemption), the conditions of Part I(a), (g) and (h) of the INHAM Exemption are satisfied, neither the INHAM nor a person controlling or controlled by the INHAM (applying the definition of “control” in Part IV(d)(3) of the INHAM Exemption) owns a 10% or more interest in the Borrower and (i) the identity of such

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INHAM and (ii) the name(s) of the employee benefit plan(s) whose assets constitute the Source have been disclosed to the Borrower in writing pursuant to this paragraph (h).

As used in this Section 5.04 ( *Source of Funds Representations of the Lenders* ), the terms “ employee benefit plan ”, “ governmental plan ” and “ separate account ” shall have the respective meanings assigned to such terms in section 3 of ERISA.

ARTICLE VI. CONDITIONS PRECEDENT.

Section 6.01 Conditions of Borrowing. The Closing Date shall occur on the date that each of the following conditions precedent have been satisfied or waived in writing by each Lender:

(a) Closing Date Deliverables. The Administrative Agent and the Lenders’ receipt of the following, each of which shall be originals or executed electronic copies unless otherwise specified, each properly executed (where applicable) by an Authorized Officer of the Borrower, and, in the case of the Loan Documents, each dated the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date):

(i) Notice of Borrowing. A Notice of Borrowing in accordance with the requirements of Section 2.01 ( *Commitments* ).

(ii) Loan Documents. Executed counterparts of:

(A) this Agreement, together with all Exhibits, Schedules and Appendices thereto, sufficient in number for distribution to the Administrative Agent, each Lender and the Borrower;

(B) the Collateral Agency Agreement;

(C) the Depositary Agreement;

(D) a Note executed by the Borrower in favor of each Lender;

(E) the Tax Equity Consents and Notices;

(F) the SREC Consents;

(G) the Management Consent Agreement;

(H) the Closing Date Assignment Agreements;

(I) each Back-Up Servicing Agreement;

(J) the Agency Fee Letter; and

(K) the Master SREC Purchase and Sale Agreements.

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(iii) Portfolio Documents. Fully executed copies of all Portfolio Documents (which may be provided electronically on a USB flash drive) (except for the Project Transfer Agreements and the Customer Agreements, which shall be delivered pursuant to Section 8.14 ( *Post-Closing Deliverables* ) ), accompanied by an Officer's Certificate certifying:

(A) that each such copy provided to the Administrative Agent and the Lenders is a true, correct and complete copy of such document;

(B) each such Portfolio Document (1) has been duly executed and delivered by the Sponsor and each Relevant Party party thereto and, to the Knowledge of the Borrower, the other parties thereto, and (2) is in full force and effect and is enforceable against the Sponsor and each Relevant Party party thereto and, to the Knowledge of the Borrower, each other party thereto as of such date;

(C) neither the Sponsor nor any Relevant Party party thereto nor, to the Knowledge of the Borrower and, any other party to such Portfolio Document is or, but for the passage of time or giving of notice or both, will be in breach of any material obligation under a Portfolio Document, except as could not reasonably be expected, in the aggregate across all Portfolio Documents, to have a Material Adverse Effect;

(D) no Portfolio Document has an event of force majeure existing thereunder, except solely with respect to the Project Documents, where such event of force majeure (itself or when coupled with other events of force majeure under such Project Documents) could not reasonably be expected to have a Material Adverse Effect;

(E) to the Knowledge of the Borrower, the warranties for all equipment comprising, and used in the installation of, the Projects is in full force and effect, except as could not reasonably be expected, in the aggregate across all such warranties and Projects, to have a Material Adverse Effect;

(F) to the Knowledge of the Borrower, no condemnation is pending or threatened, and no unrepaired casualty exists, with respect to any of the Projects in the Project Pool, except as could not reasonably be expected, in the aggregate across all such Projects, to have a Material Adverse Effect; and

(G) all conditions precedent to the effectiveness of such Portfolio Documents have been satisfied or waived in writing.

(iv) Collateral Documents. Executed counterparts of the Pledge Agreement, the Borrower Collateral Agreement, the Guarantor Collateral Agreement, the SREC Security Agreement, in each case, duly executed by the applicable Loan Parties, SREC Seller Parties, together with:

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(A) Membership Interest Certificates. Certificates representing the pledged equity referred to therein (in the form required by the applicable limited liability company agreement) accompanied by undated stock powers executed in blank and instruments evidencing any pledged debt indorsed in blank;

(B) Financing Statements. Proper financing statements in form appropriate for filing under the applicable Uniform Commercial Code in order to perfect the Liens created under the Collateral Documents (covering the Collateral described therein);

(C) Perfection. Evidence that all other action necessary in order to perfect the Liens created under the Collateral Documents has been taken or will be taken on the Closing Date; and

(D) Recent Lien Search. The results of a recent lien search in each of the jurisdictions in which UCC financing statement or other filings or recordations should be made to evidence or perfect security interests in all Assets of the Borrower, the Relevant Parties and the SREC Seller Parties and such search shall reveal no Liens on any of the Assets of the Borrower, the Relevant Parties, the SREC Seller Parties or otherwise on the Collateral, other than Permitted Liens.

(v) Financial Statements. To the extent not publicly available, copies of the (i) audited Financial Statements of Sponsor for the 2015 fiscal year and (ii) audited Financial Statements of each Fund for the 2015 fiscal year, in each case accompanied by an officer's certificate of the Borrower certifying that such copies are correct and complete and that such statements have been prepared in accordance with GAAP.

(vi) Organizational Documents. A copy of the certificate of formation, limited liability company agreement, operating agreement or other organizational documents of each Relevant Party and the SREC Seller Parties, certified by the secretary of such Person as being true, correct and complete copy of such document (and includes all schedules, exhibits, attachments, supplements and amendments thereto and any related protocols or side letters).

(vii) Resolutions and Incumbency Certificates. Such certificates of resolutions or other action, incumbency certificates and/or other certificates of Authorized Officers of the Relevant Parties and the SREC Seller Parties authorizing, as applicable, the Loans and the guarantees given by the Loan Parties, the granting of the Liens under the Collateral Documents and the execution delivery and performance of this Agreement and the other Transaction Documents and evidencing the identity, authority and capacity of each Authorized Officer thereof authorized to act as an Authorized Officer in connection with this Agreement and the other Loan Documents to which any SREC Seller Party or any Relevant Party is a party or is to be a party, in each case, certified by the secretary of such Person.

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(viii) Secretary's Certificates. Such documents and certifications as necessary to evidence that each Relevant Party and each SREC Seller Party is duly formed, validly existing, in good standing and qualified to engage in business in each jurisdiction where its ownership, lease or operation of Properties or the conduct of its business requires such qualification, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

(ix) Legal Opinions. Favorable opinions of counsel to the Relevant Parties and the SREC Seller Parties in relation to the Loan Documents, each Back-Up Servicing Agreement, the Management Agreement and the Fund SREC Transfer Agreements, addressed to the Lenders and each Secured Party from Latham & Watkins LLP, counsel for the Relevant Parties, each SREC Seller Party and the Sponsor, including opinions regarding the attachment, perfection of security interests in Collateral and corporate matters (including, without limitation, enforceability, no consents, no conflicts with the Limited Liability Company Agreements, Master Lease Agreement, Lease Depository Agreement, Sponsor Guaranties and certain financing documents and Investment Company Act matters);

(x) Officer's Certificate. An Officer's Certificate:

(A) either (1) attaching copies of all consents, licenses and approvals required from any third party (including a Tax Equity Member) or Governmental Authority in connection with the Loans and the guarantees given by the Loan Parties, the granting of the Liens under the Collateral Documents, the consummation of the Closing Date Assignments and the execution, delivery and performance of this Agreement and the other Transaction Documents and the validity against each Relevant Party of the Loan Documents to which it is a party, and such consents, licenses and approvals shall be in full force and effect and not subject to appeal, or (2) certifying that no such consents, licenses or approvals are so required;

(B) certifying that the conditions specified in Section 6.01(j) (*Representations and Warranties*), Section 6.01(k) (*No Action by Governmental Authority*), Section 6.01(l) (*No Default or Event of Default*), Section 6.01(o) (*Closing Date Assignments*) and Section 6.01(p) (*SREC Transactions*) have been satisfied;

(C) certifying that, (I) after giving effect to the issuance of the Loans (and the use of proceeds thereof), the fair saleable value of the Assets of the Borrower and the Subsidiaries, taken as a whole, exceeds and will, immediately following the making of any Loans, exceed such Persons' total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent obligations; (II) the fair saleable value of Assets of the Borrower and the Subsidiaries, taken as a whole, is and will, immediately following the making of any Loans (and the use of proceeds thereof), be greater than such Persons' probable liabilities, including the maximum amount of its contingent obligations

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on its debts as such debts become absolute and matured; (III) the Assets of the Borrower and the Subsidiaries, taken as a whole, do not and, immediately following the making of any Loans (and the use of proceeds thereof) will not, constitute unreasonably small capital to carry out the business of such Persons as conducted or as proposed to be conducted; and (IV) the Borrower does not intend for it or any Subsidiary to, and does not believe that any such Person will, incur Indebtedness and liabilities beyond its ability to pay such Indebtedness and liabilities as they mature (taking into account the timing and amounts of cash to be received by the Borrower and the amounts to be payable on or in respect of obligations of the Borrower);

(D) certifying that no Provider Event, Manager Event or Lessor Default has occurred and is continuing; and

(E) certifying that there has been no event or circumstance since December 31, 2015 that has had or could reasonably be expected to have a Material Adverse Effect.

(xi) Warranties. Evidence that all warranties relating to the Projects in the Project Pool inure to the benefit of, and are enforceable by, the relevant Subsidiary.

(xii) Funds Flow Memorandum. The Closing Date Funds Flow Memorandum outlining the use of the Loans.

(xiii) Tax Equity Fund Models. The then-current Tax Equity Fund Model for each Fund, as last approved by the applicable Tax Equity Member

(b) Base Case Model and Model Auditor Report

The Administrative Agent and the Lenders have received the Base Case Model and a report from the Model Auditor in respect of the Tax Equity Fund Models in form and substance satisfactory to the Lenders and addressed to the Lenders.

(c) Initial Operating Budget. The Administrative Agent and the Lenders have received the initial Operating Budget required pursuant to Section 8.01(e)(i) (*Operating Budgets*).

(d) KYC. The Administrative Agent and the Lenders have received all documentation and other information required by regulatory authorities under the applicable “know your customer” and Anti-Money Laundering Laws, including the Patriot Act, as and to the extent requested at least five (5) Business Days prior to the Closing Date.

(e) Fees and Expenses.

(i) All documented fees and expenses (including attorney’s fees and disbursements) required to be paid to the Agents and the Lenders pursuant to the Loan Documents on or before the Closing Date shall have been paid or shall be paid contemporaneously with the borrowing of the Loans.

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(ii) All other costs and expenses required to be paid pursuant to Section 12.03 (Expenses; Etc ) for which evidence has been presented at least three (3) Business Days prior to the Closing Date shall have been paid in full by the Borrower on or before the Closing Date.

(iii) The payment of all fees, costs and expenses to be paid on the Closing Date will be reflected in the Closing Date Funds Flow Memorandum and funding instructions given by the Borrower to the Administrative Agent and the Depository Agent prior to the Closing Date.

(f) Collateral Accounts. The Lenders shall have received satisfactory evidence that the Borrower and the applicable Guarantors have established the Collateral Accounts and the Borrower has deposited, or shall deposit contemporaneously with the borrowing of the Loans, (i) the Debt Service Reserve Required Amount shall have been established, through funding cash into the Debt Service Reserve Account pursuant to the Closing Date Funds Flow Memorandum, (ii) the Supplemental Reserve Required Amount into the Supplemental Reserve Account and (iii) the Inverter Replacement Reserve Required Amount into the Inverter Replacement Reserve Account, in each case in accordance with the Depository Agreement. The funding of the Debt Service Reserve Account, the Supplemental Reserve Account and the Inverter Replacement Reserve Account will be reflected in the Closing Date Funds Flow Memorandum and funding instructions given by the Borrower to the Administrative Agent and the Depository Agent prior to the Closing Date.

(g) Technical Report. The Administrative Agent shall have received technical report prepared by the Independent Engineer.

(h) Insurance. The Administrative Agent shall have received (i) an insurance report from the Insurance Consultant, including an opinion as to the adequacy of the insurance maintained by the Borrower and (ii) an insurance certificate from the Borrower's insurance broker identifying the underwriters, types of insurance, applicable insurance limits and policy terms consistent with such insurance report and evidence, including customary insurance certificates, that all insurance required to be obtained and maintained pursuant to the Loan Documents has been obtained and all premiums thereon have been paid in full.

(i) Reliance on Consultant Reports. The Administrative Agent and the Lenders shall have received customary reliance letters, duly executed by the Independent Engineer, the Model Auditor and the Insurance Consultant allowing the Administrative Agent and the Lenders to rely on or use the underlying reports prepared by such consultants, or such reports shall be addressed to the Administrative Agent and the Lenders.

(j) Representations and Warranties. The representations and warranties of the Relevant Parties contained in ARTICLE VII (Representations and Warranties ) or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct on and as of the Closing Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date.

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(k) No Action by Governmental Authority. No action or proceeding has been instituted or threatened in writing by any Governmental Authority against any Relevant Party that seeks to impair, restrain prohibit or invalidate the transactions contemplated by this Agreement and the other Loan Documents or regarding the effectiveness or validity of any required Permits.

(l) No Default or Event of Default. No Default or Event of Default shall exist, or would result from the borrowing of the Loans or from the application of the proceeds thereof.

(m) Discharge of Aggregation Facility Indebtedness. Prior to or, pursuant to a closing protocol acceptable to the Lenders, contemporaneously with the occurrence of the Closing Date, the Relevant Parties shall have delivered to the Lenders evidence to their satisfaction that the Indebtedness of the Relevant Parties under the Aggregation Facility has been discharged and all documents or instruments necessary to release all Liens on the Collateral securing, and any guarantee of the Relevant Parties in respect of, the Indebtedness under the Aggregation Facility on the Closing Date (including receipt of duly executed payoff letters, UCC-3 termination statements and the termination of any consent agreements).

(n) [Reserved].

(o) Closing Date Assignments. Prior to or, pursuant to a closing protocol acceptable to the Lenders, contemporaneously with the occurrence of the Closing Date:

(i) all conditions to the consummation of the Closing Date Assignments set forth in the Closing Date Assignment Agreements shall have been satisfied or the fulfillment of any such conditions shall have been waived with the consent of the Lenders such that the Closing Date Assignments shall become effective in accordance with the terms of the Closing Date Assignment Agreements;

(ii) the Closing Date Assignment Agreements shall be in full force and effect and no provision thereof shall have been modified or waived, in each case without the consent of the Lenders.

(p) SREC Transactions. Each of the SREC Financing Master PSA, SREC Aggregator Master PSA and the Fund SREC Transfer Agreements shall have been duly executed in form and substance satisfactory to the Lenders and UCC-1s shall have been filed (i) in favor of the Collateral Agent (as assignee of SREC Guarantor) in respect of the assignment of receivables under the SREC Financing Master PSA, (ii) in favor of SREC Guarantor in respect of the assignment of receivables under the SREC Aggregator Master PSA and (iii) in favor of the Collateral Agent (as assignee of SREC Guarantor) in respect of the SRECs sold by the Lessor under its applicable Fund SREC Transfer Agreement.

(q) Ratings. Each Lender shall have received reasonably satisfactory evidence that the Loans are rated at least BBB- or equivalent from KBRA.

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(r) ITC Insurance Policy. Each Lender shall have received satisfactory evidence that (i) Fund XVIII Guarantor is insured by the ITC Insurance Policy, which is fully underwritten by Qualified Insurers, with Borrower as loss payee and (ii) the non-refundable premium required to be paid to the ITC Underwriting Representative under the ITC Insurance Policy shall have been paid or shall be paid contemporaneously with the borrowing of the Loans.

ARTICLE VII. REPRESENTATIONS AND WARRANTIES.

As of the Closing Date, the Borrower represents and warrants to the Lenders and the Administrative Agent that:

Section 7.01 Organization, Powers, Capitalization, Good Standing, Business.

(a) Organization and Powers. The Borrower is duly organized, validly existing and in good standing under the Laws of its state of formation. The Borrower has all requisite power and authority to own and operate its Properties, to carry on its businesses as now conducted and proposed to be conducted. The Borrower has all requisite power and authority to enter into each Transaction Document to which it is a party and to perform the terms thereof.

(b) Qualification. The Borrower is duly qualified and in good standing in each state or territory where necessary to carry on its present businesses and operations, except in jurisdictions in which the failure to be qualified and in good standing could not reasonably be expected, in the aggregate across all such jurisdictions, to have a Material Adverse Effect.

(c) Business. The Relevant Parties have not conducted any business other than acquisition, construction, installation, lease, ownership of, and sale of energy from, and the operation, management, maintenance and financing of, the Projects and activities related or incident thereto (including those contemplated by the Transaction Documents).

Section 7.02 Authorization of Borrowing, etc.

(a) Authority. The Borrower has the power and authority to incur, and the Loan Parties have the power and authority to guarantee, the Indebtedness represented by the Loans and the Loan Documents. The execution, delivery and performance by each Loan Party and each SREC Seller Party of the Loan Documents to which it is a party and the consummation of the transactions contemplated thereby have been duly authorized by all necessary limited liability company or other action, as the case may be, on behalf of such Loan Party or SREC Seller Party.

(b) No Conflict. The execution, delivery and performance by each Relevant Party of the Transaction Documents to which it is a party and the consummation of the transactions contemplated thereby do not and will not: (i) conflict with or result in a violation or breach of the terms of (A) its certificate of formation, limited liability company agreement, operating agreement or other organizational documents, as the case may be; (B) any provision of material Law applicable to it or (C) any order, judgment or decree of any Governmental Authority binding on it or any of its material Properties; (ii) result in a material breach of or

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constitute (with due not ice or lapse of time or both) a material default under the Transaction Documents or any other material contractual obligation binding upon a Relevant Party or its material Properties; or (iii) result in or require the creation or imposition of any Lien upon its Assets (other than the Liens created under the Collateral Documents).

(c) Consents. The execution and delivery by each Relevant Party of the Transaction Documents to which it is a party, and the consummation of the transactions contemplated thereby, do not and will not require any registration with, consent or approval of, or notice to, or other action to, with or by, any Governmental Authority or any other Person (including any Tax Equity Member and their Affiliates or any lender to any Loan Party or its Affiliates) which has not been obtained or made, and each such consent or approval is in full force and effect, in each case, other than consents, approvals, registrations, notices or other action which, if not obtained or made, could not reasonably be expected, in the aggregate across all such consents, approvals, registrations, notices or other action not so obtained or made, to have a Material Adverse Effect.

(d) Binding Obligations. Each of the Transaction Documents to which a Loan Party or SREC Seller Party is a party has been duly executed and delivered by such Loan Party or SREC Seller Party thereto and is the legally valid and binding obligation of such Loan Party or SREC Seller Party, enforceable against it, in accordance with its respective terms, subject to bankruptcy, insolvency, moratorium, reorganization and other similar Laws affecting creditor's rights.

Section 7.03 Title to Membership Interests.

(a) Upon the consummation of the Closing Date Assignments on the Closing Date, the Borrower is the sole member of each of the Guarantors, and has good and valid legal and beneficial title to all of the Guarantor Manager Membership Interests, free and clear of all Liens other than Permitted Liens. All of such issued and outstanding Guarantor Manager Membership Interests have been duly authorized and validly issued and, upon the consummation of the Closing Date Assignments on the Closing Date, are owned of record and beneficially by the Borrower and were not issued in violation of any preemptive right. There are no voting agreements or other similar agreements with respect to the Guarantor Manager Membership Interests.

(b) Each Guarantor has good and valid legal and beneficial title to all of the Fund Manager Membership Interests in the applicable Tax Equity Fund held by it as identified on Schedule 7.03(g) ( Subsidiaries ), free and clear of all Liens other than Permitted Liens. All of the issued and outstanding Fund Manager Membership Interests have been duly authorized and validly issued and are owned of record and beneficially by the Guarantor identified on Schedule 7.03(g) ( Subsidiaries ) and were not issued in violation of any preemptive right. There are no voting agreements or other similar agreements with respect to the Fund Manager Membership Interests.

(c) Other than the independent member of the Borrower, the Pledgor is the sole member of the Borrower and has good and valid legal and beneficial title to all of the

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Borrower Membership Interests, free and clear of all Liens other than Permitted Liens. All of the issued and outstanding Borrower Membership Interests have been duly authorized and validly issued and are owned of record and beneficially by Pledgor and were not issued in violation of any pre-emptive right. There are no voting agreements or other similar agreements with respect to the Borrower Membership Interests.

(d) Other than pursuant to the Closing Date Assignment Agreements, there are no outstanding options, warrants or rights for conversion into or acquisition, purchase or transfer of any of the Membership Interests. There are no outstanding options, warrants or rights for conversion into or acquisition, purchase or transfer of any of the membership interests in a Tax Equity Fund, except for (i) the call rights of the Partnership Flip Manager Guarantors under the Tax Equity Documents, with respect to the membership interests of the Tax Equity Members in the Partnership Flip Funds, (ii) the withdrawal right of the applicable Tax Equity Member from the applicable Partnership Flip Fund under the Limited Liability Company Agreement of Fund XI or the Limited Liability Company Agreement of Fund XIII, (iii) contingent buy out rights of any Guarantor or Tax Equity Member to acquire membership interests in any Fund and (iv) any provisions providing for the conversion of a Fund Manager Membership Interest into a non-managing or "economic interest" (in accordance with the express terms of such Fund's Limited Liability Company Agreement). There are no agreements or arrangements for the issuance by any Loan Party of additional equity interests.

(e) Prior to the consummation of the Closing Date Assignments on the Closing Date, Schedule 7.03(e) (*Organizational Structure prior to the Closing Date*) accurately sets forth the ownership structure of the Relevant Parties underneath the Sponsor.

(f) After the consummation of the Closing Date Assignments on the Closing Date, Schedule 7.03(f) (*Organizational Structure following the Closing Date*) accurately sets forth the ownership structure of the Relevant Parties underneath the Sponsor. The Borrower has no subsidiaries other than as shown on Schedule 7.03(f) (*Organizational Structure following the Closing Date*).

(g) Schedule 7.03(g) (*Subsidiaries*) sets forth the name and jurisdiction of incorporation or formation of each Loan Party and the Tax Equity Funds and the percentage of each class of Capital Stock owned by any Loan Party.

#### Section 7.04 Governmental Authorization; Compliance with Laws.

(a) No Permit, approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (i) the execution, delivery or performance by, or enforcement against, any Loan Party or SREC Seller Party of this Agreement or any other Transaction Document, (ii) the grant by any Loan Party or SREC Seller Party of the Liens granted by it pursuant to the Collateral Documents, (iii) the perfection or maintenance of the Liens created under the Collateral Documents or (iv) the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to this Agreement or the Collateral Documents, except for the authorizations, approvals, actions,

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notices and filings listed on Schedule 7.04 (*G overnmental Authorization; Compliance with Laws* ) or with respect to which the Borrower could not reasonably be expected to have Knowledge because they are particular to the identity or character of the Administrative Agent , all of which have been duly obtained, taken, given or made and are in full force and effect as of the Closing Date. All material Permits necessary or required in connection with the development, construction and operation of the Eligible Projects (including permission to operate from the applicable local utility) have been duly obtained, taken, given or made and, if necessary or required to be in effect as of the Closing Date, are in full force and effect as of the Closing Date.

(b) Each of the Loan Parties is, and the business and operations of each such Person and its development, construction and operation of the Projects are, and always have been, conducted in all respects in material compliance with all applicable Laws (including, without limitation, laws with respect to consumer leasing and protection but not including Environmental Laws which are addressed under Section 7.16 (*Environmental Matters* ), or Anti-Corruption Laws, Anti-Money Laundering Laws or Sanctions, which are addressed under Section 7.20 (*Sanctions; Anti-Corruption; Anti-Money Laundering* )), and none of any Loan Party has received written notice from any Governmental Authority of an actual or potential violation of any such Laws, except as does not constitute or could not reasonably be expected, in the aggregate across all such written notices of actual or potential violations, to constitute a Material Adverse Effect.

(c) Each Project in the Project Pool that makes any sale of electricity at wholesale is a qualifying small power production facility in accordance with 18 C.F.R. Part 292 and is exempt from the Public Utility Holding Company Act of 2005 and from certain state laws and regulations as set forth in 18 C.F.R. Section 292.602(c) , and is exempt from all sections of the Federal Power Act and its implementing regulations except for those set forth in 18 C.F.R. Sections 292.601(2) through (5).

(d) No Relevant Party is subject to regulation by any state public utility regulatory authority in any Project State with respect to its rates or finances.

Section 7.05 Solvency. The Borrower has not entered into any Loan Document with the actual intent to hinder, delay, or defraud any creditor. After giving effect to the issuance of the Loans (and the use of proceeds thereof), the fair saleable value of the Loan Parties' Assets, taken as a whole, exceeds and will, immediately following the making of any Loans, exceed the Loan Parties' total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent obligations. The fair saleable value of the Loan Parties' Assets, taken as a whole, is and will, immediately following the making of any Loans (and the use of proceeds thereof), be greater than the Loan Parties' probable liabilities, including the maximum amount of its contingent obligations on its debts as such debts become absolute and matured. The Loan Parties' Assets, taken as a whole, do not and, immediately following the making of any Loans (and the use of proceeds thereof) will not, constitute unreasonably small capital to carry out the business of the Loan Parties as conducted or as proposed to be conducted. The Borrower does not intend for it or any Relevant Party to, and does not believe that any such Person will, incur Indebtedness and liabilities beyond its ability to pay such Indebtedness and liabilities as they

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mature (taking into account the timing and amounts of cash to be received by the Borrower and the amounts to be payable on or in respect of obligations of the Borrower).

Section 7.06 Use of Proceeds and Margin Security; Governmental Regulation.

(a) No portion of the proceeds from the making of the Loans will be used by the Borrower, a Loan Party or their respective Affiliates in any manner that might cause the borrowing or the application of such proceeds to violate Regulation U or Regulation X or any other regulation of the Board. Nor is Borrower engaged principally, or as one of its principal activities in the business of extending credit for the purpose of purchasing or carrying margin stock (as defined or used in Regulation U or Regulation X).

(b) No Relevant Party is an “investment company”, or a company “controlled” by an “investment company”, within the meaning of the Investment Company Act.

(c) No Relevant Party is subject to regulation under any federal or state statute or regulation that limits their ability to incur indebtedness for borrowed money.

Section 7.07 Defaults; No Material Adverse Effect.

(a) No Default or Event of Default has occurred and is continuing.

(b) No event, condition or circumstance has occurred which has resulted in, or could reasonably be expected to result in, a Material Adverse Effect.

(c) No Provider Event, Manager Event or Lessor Default has occurred and is continuing.

Section 7.08 Financial Statements; Books and Records.

(a) Except as set forth on Schedule 7.08 ( *Financial Statement Exceptions* ) , all Financial Statements that have been furnished by or on behalf of any Relevant Party or any of their Affiliates to the Administrative Agent in connection with the Loan Documents have been prepared in accordance with GAAP, consistently applied and present fairly in all material respects the financial condition of the Persons covered thereby as of the respective dates thereof, subject, in the case of any such unaudited Financial Statements, to changes resulting from audit and normal year-end adjustments, including the absence of footnotes and subject to validation of individual capital accounts in calculating net loss attributable to noncontrolling interests in conformity with GAAP.

(b) All books, accounts and files of each Loan Party are accurate and complete in all material respects, and Borrower has access to all such books and records and the authority to grant access to such books and records to the Secured Parties.

Section 7.09 Indebtedness. The Relevant Parties have no outstanding Indebtedness other than (i) the Obligations and other Permitted Indebtedness and (ii) solely prior to the consummation of the Closing Date Assignments on the Closing Date, the Indebtedness

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under the Aggregation Facility. The Obligations under the Loan Documents constitute Indebtedness of the Borrower and the Guarantors secured by a first ranking priority security interest in the Collateral, subject to Permitted Liens. As of the Closing Date, no other Indebtedness of the Borrower or the Guarantors ranks senior in priority to the Obligations.

Section 7.10 Litigation; Adverse Facts. There are no judgments outstanding against any Relevant Party, or affecting any of the Projects or any other Assets or Property of any Relevant Party, nor to the Relevant Parties' Knowledge is there any action, charge, claim, demand, suit, proceeding, petition, governmental investigation or arbitration now pending or threatened against any Relevant Party, respectively, or any of the Projects that relates to the legality, validity or enforceability of any of the Transaction Documents, the ability of a Secured Party to exercise any of its rights in respect of the Collateral or the Collateral Documents or, other than as set forth on Schedule 7.10 ( *Litigation; Adverse Facts* ), that could reasonably be expected, in the aggregate across all such actions, charges, claims, demands, suits, proceedings, petitions, governmental investigations and arbitrations, to result in a Material Adverse Effect.

Section 7.11 Taxes and Tax Status. All U.S. federal, state and local tax returns, information statements and reports, and all other material tax returns, information statements or reports, in each case, related to Taxes, of the Relevant Parties required to be filed have been timely filed (or any such Person has timely filed for a valid extension and such extension has not expired), and all material Taxes (including any payments in lieu of Taxes) upon such Persons and upon their Properties, Assets, income, profits, businesses and franchises which are due and payable have been timely paid except to the extent the same are being contested in accordance with Section 8.11 ( *Payment of Claims* ). All such returns, information statements and reports are true and accurate in all material respects. There are no Liens for Taxes (other than Liens for Taxes not yet due and payable) on any Assets of any Relevant Party, no unresolved written claim or proposed adjustment has been asserted with respect to any Taxes of any Relevant Party, no waiver or agreement by any Relevant Party is in force for the extension of time for the assessment or payment of any Tax or regarding the application the statute of limitations for any Taxes or tax returns, and no request for any such extension or waiver is currently pending. There is no pending or, to the Knowledge of the Borrower, threatened audit or investigation by any Governmental Authority of any Relevant Party with respect to Taxes. No Relevant Party is a party to or bound by any Tax sharing arrangement with any Person or any other agreement pursuant to which it is liable for the Taxes of another Person (including any Affiliate of a Relevant Party), other than the Tax Equity Documents, the Loan Documents and the other Portfolio Documents. No Relevant Party has any liability for Taxes of any Person under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local, or foreign law) or as a transferee or successor. No power of attorney currently in force has been granted with respect to Taxes of any Relevant Party. No written claim has been made by any Governmental Authority and received by any Relevant Party in a jurisdiction where such Relevant Party does not file a tax return that it is or may be subject to taxation in that jurisdiction. No Relevant Party has engaged in any "listed transaction" as defined in Treasury Regulation Section 1.6011-4 or made any disclosure under Treasury Regulation Section 1.6011-4. With respect to each Project that is leased for U.S. federal income tax purposes to a Customer, to the Knowledge of the Borrower, the Customer is not a tax exempt entity within the meaning of Section 168(h)(2) of the Code, except as could not reasonably be expected to have a Material Adverse Effect, when

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combined with other similar Projects. All real property, personal property, sales and use taxes imposed upon any Project or the Energy produced by any Project are fully reimbursable by the applicable Customer or have been timely paid by the Manager, Provider or Seller on behalf of the applicable Relevant Party. No private letter ruling from the IRS has been obtained or requested by any Relevant Party for any of the transactions contemplated hereunder or under any of the Tax Equity Documents. Each Relevant Party is treated for U.S. federal income tax purposes either as disregarded as an entity separate from its owner (as described in U.S. Treasury Regulations Section 301.7701-2(c)(2)(i)) or as a partnership (and not a publicly traded partnership as defined in Section 7704(b) of the Code) and each such owner or partnership for this purpose is a U.S. Person and not a Tax Exempt Person. No Relevant Party has elected to be treated as an association taxable as a corporation for federal income tax purposes.

Section 7.12 Performance of Agreements. None of the Loan Parties, SREC Seller Parties or Provider is in default in the performance, observance or fulfillment of the Loan Documents or the Management Agreement. None of the Loan Parties, SREC Seller Parties or Provider are in material default in the performance, observance or fulfillment of the other Transaction Documents to which they are a party or any of the other obligations, covenants or conditions contained in any material contracts of any such Persons and, to the Knowledge of the Loan Parties, SREC Seller Parties or Provider, no condition exists under such Transaction Documents that, with the giving of notice or the lapse of time or both, would constitute such a material default, other than with respect to the Customer Agreements where such condition (itself or when coupled with other defaults or conditions under such agreements) could not reasonably be expected to have a Material Adverse Effect.

Section 7.13 ERISA.

(a) None of the Loan Parties or SREC Seller Parties, or any of their respective ERISA Affiliates, maintains or contributes to, or has any obligation under, any Employee Benefit Plans or Multiemployer Plans. Without limiting the foregoing, the Relevant Parties do not have any employees or former employees and do not sponsor, maintain, participate in, contribute to or have any obligations under or liability in respect of any Plan.

(b) The execution and delivery of this Agreement and the making of the Loans hereunder will not involve any transaction that is subject to the prohibitions of section 406 of ERISA or in connection with which a tax could be imposed pursuant to section 4975(c)(1)(A)-(D) of the Code. The representation by the Borrower to each Lender in the first sentence of this Section 7.13(b) is made in reliance upon and subject to the accuracy of such Lender's representation in Section 5.04 ( *Source of Funds Representations of the Lenders* ) as to the sources of the funds used to make the Loans.

Section 7.14 Insurance. Set forth on Schedule 7.14 ( *Insurance* ) is a description of all policies of insurance for the Relevant Parties, including those policies of the Sponsor for the benefit of the Relevant Parties which are required to be maintained pursuant to a Transaction Document, that are in effect as of the Closing Date. Such insurance policies conform to the requirements of Section 8.12 ( *Maintenance of Insurance* ) and have been paid in full or are not in arrears. No notice of cancellation has been received with respect to such policies and the

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Relevant Parties are in compliance in all material respects with all conditions contained in such policies.

Section 7.15 Investments. Except as set forth under Schedule 7.03(g) ( *Subsidiaries* ), the Loan Parties have no direct or indirect equity interest in any Person which is not also a Loan Party, including any stock, partnership interest or other equity securities of any other Person.

Section 7.16 Environmental Matters. Each Project is, and has been developed, constructed and operated, in material compliance with all applicable Environmental Laws and Permits; no notice of violation of such Environmental Laws or Permits has been issued by any Governmental Authority with respect to any Project which has not been resolved or which is reasonably expected, in the aggregate across all such notices of violation for all Projects, to have a Material Adverse Effect; there is no pending or, to the Borrower's Knowledge, threatened action, charge, claim, demand, suit, proceeding, petition, governmental investigation or arbitration in respect of any Environmental Laws or Permits against any Relevant Party or with respect to any Project which could reasonably be expected, in the aggregate across all such actions, charges, claims, demands, suits, proceedings, petitions, governmental investigations and arbitrations, to have a Material Adverse Effect; there has been no Release of any Hazardous Material by a Relevant Party on, from or related to any Project that has resulted in or could reasonably be expected, in the aggregate across all such Releases, to result in a Material Adverse Effect; and no action has been taken by any Relevant Party that would cause any Project not to be in material compliance with all applicable Environmental Laws or Permits pertaining to Hazardous Materials. If any Project is located in the State of New York, the gross area of such Project is less than 4,000 square feet.

Section 7.17 [Reserved]. \_

Section 7.18 Representations Under Other Loan Documents. Each of the Relevant Parties' representations and warranties set forth in the other Loan Documents are true, correct and complete in all material respects when made.

Section 7.19 Broker's Fee. Except as disclosed on Schedule 7.19 ( *Brokers* ), no broker's fee or finder's fee, commission or similar compensation will be payable by or pursuant to any contract or other obligation of any Loan Party or SREC Seller Party with respect to the making of the Loans or any of the other transactions contemplated by the Transaction Documents.

Section 7.20 Foreign Assets Control Regulation.

(a) Each of the Loan Parties has implemented and maintains in effect policies and procedures reasonably designed to ensure compliance by it and its Subsidiaries, and their respective directors, officers, employees and agents, with applicable Anti-Corruption Laws, applicable Anti-Money Laundering Laws and applicable Sanctions.

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(b) No Loan Party or any of its Subsidiaries or any of their respective directors or officers or, to the Loan Party's knowledge, any of their respective employees, Affiliates or agents: (i) is a Sanctioned Person; (ii) has engaged in the past five (5) years or intends to engage in the future in any unlawful dealings with, involving or for the benefit of, any Sanctioned Person in violation of Sanctions; or (iii) will directly or indirectly use any part of any proceeds of the Loans or lend, contribute, or otherwise make available such proceeds (A) to fund or facilitate any unlawful activities or business of, with or involving any Sanctioned Person in violation of Sanctions or (B) in any other manner that would constitute or give rise to a violation of applicable Sanctions by any Loan Party, any of its Subsidiaries, the Administrative Agent or any Lender.

(c) No Loan Party or any of its Subsidiaries or any of their respective directors or officers or, to the Loan Party's knowledge, any of their respective employees, Affiliates or agents has taken or will take any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any "government official" (including any officer or employee of a government or government-owned or controlled entity; any officer or employee of a public international organization; any person acting in an official capacity for or on behalf of any of the foregoing; or any political party, party official, or candidate for political office) to improperly influence an official action, secure an improper advantage or in any manner that would constitute or give rise to a violation of applicable Anti-Corruption Laws.

(d) No Loan Party or any of its Subsidiaries or any of their respective directors or officers or, to the Loan Party's knowledge, any of their respective employees, Affiliates or agents is or has been, in the past five (5) years, subject to any action, proceeding, litigation, claim or investigation with regard to any actual or alleged violation of applicable Sanctions, applicable Anti-Corruption Laws or applicable Anti-Money Laundering Laws.

Section 7.21 Property Rights. Each Fund owns (or, in the case of the Lessee, leases pursuant to the Master Lease Agreement) each photovoltaic system included in a Project acquired by it and owns (or, in the case of the Lessee, leases pursuant to the Master Lease Agreement), or, in the case of access rights to Customer Property, has a contractual right to use, all equipment and facilities necessary for the operation of each Project. All equipment and facilities included in the Projects are (or are reasonably expected to be when acquired or contracted for) in good repair and operating condition subject to ordinary wear and tear and casualty and are suitable for the purposes for which they are employed, and, to the Knowledge of Borrower, there was and is no material defect, hazard or dangerous condition existing with respect to any such equipment or facilities except in respect of any material defect, hazard or dangerous condition for which the applicable Fund Provider is taking appropriate action in accordance with Prudent Industry Practices and that could not reasonably be expected, in the aggregate across all such material defects, hazards and dangerous conditions for all Projects, to have a Material Adverse Effect or a material adverse effect on the ability of the Borrower to perform under the Loan Documents at or above the projections in the Base Case Model. Each Fund has the material requisite rights and licenses under the Customer Agreements to which it is party to access, install, operate, maintain, repair, improve and remove its respective Eligible Projects. No Relevant Party is the title owner of any real property.

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Section 7.22 Portfolio Documents and Eligible Projects.

(a) No Relevant Party is party to any agreement or contract other than (i) the Tax Equity Documents to which it is a party listed on Schedule 7.22(a) (*Portfolio Documents*), (ii) the other Transaction Documents to which it is a party, (iii) in the case of SREC Guarantor, the Master SREC Purchase and Sale Agreements and (iv) any contract or agreement incidental or necessary to the operation of its business that does not allocate material risk to any Relevant Party and have a term of less than one year or that has a value over its term not exceeding \$100,000.

(b) Each Customer Agreement to which a Fund is a party is an Eligible Customer Agreement and does not warrant or guarantee any cost savings.

(c) Each Customer Agreement and the origination thereof and the installation of the related Eligible Project, in each case, was in compliance in all material respects with applicable Law (including without limitation, all consumer leasing and protection Law) at the time such Customer Agreement was originated and executed and such Eligible Project was installed.

(d) The Customer under each Customer Agreement in respect of an Eligible Project satisfied the Sponsor's credit underwriting policy as and to the extent in effect at the time of origination.

(e) Except as set forth on Schedule 7.22(e) (*Portfolio Document Exceptions*), all Portfolio Documents when provided to Administrative Agent (in each case, including all schedules, exhibits, attachments, supplements and amendments thereto and any related protocols or side letters) are true, correct and complete copies of such Portfolio Documents, and as of the Closing Date or any other date when additional Portfolio Documents are provided to the Administrative Agent hereunder, each Portfolio Document (i) has been duly executed and delivered by the Sponsor, each SREC Seller Party and each Relevant Party party thereto (as applicable) and, to the Knowledge of Borrower and the Subsidiaries, the other parties thereto, (ii) is in full force and effect and is legal, valid and binding on, and enforceable against the Sponsor and each Relevant Party party thereto (as applicable) and, to the Knowledge of Borrower and the Subsidiaries, each other party thereto as of such date, (iii) neither the Sponsor, any SREC Seller Party nor any Relevant Party or, to the Knowledge of Borrower and each Subsidiary, no other party to such document is or, but for the passage of time or giving of notice or both, would be in breach of any material obligation thereunder, except solely with respect to the Project Documents, where such breach (itself or when coupled with other breaches under such Project Documents) could not reasonably be expected to have a Material Adverse Effect, (iv) has no event of force majeure existing thereunder except solely with respect to the Project Documents, where such event of force majeure (itself or when coupled with other events of force majeure under such Project Documents) could not reasonably be expected to have a Material Adverse Effect and (v) all conditions precedent to the effectiveness of such documents have been satisfied or waived in writing.

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(f) Borrower maintains in its or the applicable Relevant Party's books and records a copy of all material documentation ancillary to the Customer Agreements, including, with respect to each completed Eligible Project: (i) a copy of or access to all of such Eligible Project's manufacturer, installer or other warranties; (ii) a copy of the Eligible Project's completed inspection certificate issued by the applicable Governmental Authority; (iii) evidence of permission to operate from the applicable local utility; and (iv) evidence that any applicable installer of such Eligible Project has been paid in full .

(g) The insurance described in Section 8.12 ( *Maintenance of Insurance* ) satisfies all insurance requirements set forth in the Portfolio Documents.

(h) Except as set forth on Schedule A, each Eligible Project has been Placed in Service.

(i) No Eligible Project been turned off due to a Customer delinquency.

(j) The Project Information for each Eligible Project is true and correct in all material respects and does not omit any necessary information that makes such entry misleading.

(k) To the Knowledge of Borrower, no condemnation is pending or threatened in writing with respect to any Eligible Project, or any portion thereof material to the ownership or operation of the Eligible Project, and no unrepaired, material casualty exists with respect to any Eligible Project or any portion thereof material to the ownership or operation of any Eligible Project or the sale of electricity therefrom.

(l) The Relevant Parties have taken all action in accordance with Prudent Industry Practices to ensure that the manufacturer warranties relating to an Eligible Project are in full force and effect and, to the Knowledge of the Borrower, can be enforced by the applicable Fund and, to the Knowledge of the Borrower and except to the extent the applicable manufacturer is no longer honoring its warranties generally, all manufacturer warranties are in full force and effect.

(m) A Fund Provider is obligated to provide certain maintenance and administrative services associated with such Systems in accordance with the applicable Services Agreements for such Fund and the standards set forth in the Portfolio Documents.

(n) Each Eligible Project and the related Customer Agreement have been assigned to and are owned by the Lessor (subject to the leasehold interest of the Lessee under the Master Lease Agreement) or Partnership Flip Fund, to which a Guarantor has the Fund Manager Membership Interests, free and clear of all liens and encumbrances, except for Permitted Liens.

(o) In respect of each Eligible Project not located in California, a fixture filing has been or will be recorded against each Customer and the applicable Property in respect of such Eligible Project in the real property records where the Eligible Project is located; provided, however, that (i) certain of such filings may be released from time-to-time in order to assist the applicable Customer in a pending refinancing of such Customer's mortgage loan or sale of home and (ii) such filings may not have been filed or maintained in a manner that would provide

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priority under applicable law over an encumbrance or owner of the real property subject to the filing.

(p) In respect of each Eligible Project in California with respect to which a Customer Agreement has been entered into, a filing in respect of such Eligible Project (pursuant to and in compliance with Cal. Pub. Util. Code §§ 2868-2869) was made in the applicable real property records where the Eligible Project is located where the Eligible Project is located; provided, however, that certain of such filings may be released from time-to-time in order to assist the applicable Customer in a pending refinancing of such Customer's mortgage loan or sale of home.

(q) Each Eligible Project is located in a Project State listed on Schedule 7.22(q) (*Project States*).

(r) With respect to each Fund, each of the Fund Representations is true, complete and correct.

(s) The Net Cash Flow included under the Base Case Model from the Project Pool does not include any projections of Operating Revenues other than Eligible Revenues, includes projections of Operating Expenses from all Eligible Projects in the Project Pool and takes into account the impact on projections of Operating Revenues and Operating Expenses from each waiver to eligibility requirements, portfolio criteria or otherwise as provided by a Tax Equity Member. Taking into account all Eligible Projects owned by the applicable Fund: (i) each of the fund constraints and limitations set forth in the related Master Purchase Agreement has been satisfied, (ii) any minimum systems in service requirement set forth in such Master Purchase Agreement shall have been achieved, and (iii) each Eligible Project met the sale conditions and eligibility representations at the time of sale pursuant to such Master Purchase Agreement or such requirements referenced in clauses (i), (ii) and/or (iii) were waived or amended and a copy of any such waiver or amendment has been provided to the Administrative Agent.

(t) All standing orders and transfer instructions, and recordations in any applicable environmental registry and information system that tracks the environmental and fuel attributes of generation, to the extent required on or prior to the date hereof by the Master SREC Purchase and Sale Agreements, Fund SREC Transfer Agreements and Eligible SREC Contracts in respect of the Eligible Projects and their generation of SRECs, have been issued or made.

#### Section 7.23 Security Interests.

(a) The Collateral Documents create, as security for the Obligations, valid, enforceable, and, upon the filing of documents and instruments in the proper places and the taking of other required actions (including, without limitation, possession), which have been filed or taken on or prior to the Closing Date, perfected first-priority Liens in the Collateral, in favor of the Collateral Agent, for the benefit of the Secured Parties, subject to no Liens other than Permitted Liens. All consents and approvals necessary or desirable to create and perfect such Liens have been obtained.

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(b) The descriptions of the Collateral set forth in the Collateral Documents are true, complete, and correct in all material respects and are adequate for the purpose of creating, attaching, and perfecting the Liens in the Collateral granted or purported to be granted in favor of the Collateral Agent for the benefit of the Secured Parties.

(c) All filings, registrations, recordings, notices, and other actions that are necessary or required (including delivery to the Collateral Agent of the certificates evidencing the Membership Interests or giving the Collateral Agent control or possession of the Collateral) to perfect the Collateral Agent's Lien on the Collateral for the benefit of the Secured Parties have been made or taken or will be made or taken on the date of this representation.

#### Section 7.24 Intellectual Property

. Each Relevant Party owns or holds a valid and enforceable agreement, license, permit, certificate, franchise or other authorization or right to use the technology and intellectual property rights necessary to own, lease, operate, maintain and repair the Projects, and no actions by any Relevant Party that have been performed or are expected to be performed under the Portfolio Documents infringe upon or misappropriate in any material respect the intellectual property rights of any other Person.

#### Section 7.25 Full Disclosure.

(a) Other than the Memorandum, all written information contained in any officer's certificate, Loan Document (including all schedules, exhibits, annexes and other attachments), documents, reports or other written information delivered in connection with the transactions hereunder pertaining to the Borrower, the Guarantors, the Funds, the SREC Seller Parties, the Pledgor, the Portfolio Documents, and the Projects (other than any assumptions, projections or forward-looking statements), together with all written updates of such information from time to time (collectively, the "Information"), that have been furnished by or on behalf of the Borrower to any Secured Party or its advisors or consultants are, taken as a whole, true and correct in all material respects and do not contain any material misstatement of fact or omit to state a material fact or any fact necessary to make the statements contained therein not materially misleading in light of the circumstances in which they were made. The Memorandum, taken as a whole, is true and correct in all material respects, does not contain any material misstatements and presents fairly in all material respects the financial position of the Borrower, the Guarantors and the Funds.

(b) The Base Case Model (i) has been prepared in good faith based upon assumptions believed by the Borrower to be reasonable as and when the Base Case Model was prepared, (ii) is, other than with respect to reasonable variances to assumptions, generally consistent with each financial model provided to the Tax Equity Members as and when the Base Case Model was prepared and (iii) does not include any Operating Revenues for Loan sizing purposes other than Eligible Revenues and includes a good faith estimate of all Operating Expenses in respect of all Projects owned by the Funds, it being recognized by the Administrative Agent and the Lenders that such information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such information may differ from the projected results set forth therein by a material amount.

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Section 7.26 No Other Bank Accounts. No Relevant Party maintains any bank accounts other than (i) the Collateral Accounts maintained by the Borrower and the Guarantors, (ii) the Unpledged SREC Account maintained by SREC Guarantor and (iii) the Fund Accounts.

#### ARTICLE VIII. AFFIRMATIVE COVENANTS.

The Borrower covenants and agrees that until the Debt Termination Date, it shall perform and comply with all covenants in this ARTICLE VIII applicable to such Person.

##### Section 8.01 Financial Statements and Other Reports.

###### (a) Financial Statements and Operating Reports.

(i) Annual Reporting. Within one hundred fifty (150 ) days after the end of each fiscal year of the Borrower, the Borrower shall furnish, or cause to be furnished, to the Administrative Agent (on a consolidated basis for the Sponsor and its subsidiaries) copies of the Financial Statements of the Sponsor, Borrower and each Fund; provided, that, the Borrower shall not be required to furnish Financial Statements of the Borrower for the fiscal year ended December 31, 2016. All such Financial Statements shall be prepared in accordance with GAAP consistently applied and shall be audited by an Independent certified public accounting firm of national standing, and shall be accompanied by an unqualified report of such accountants on such Financial Statements which states that such Financial Statements present fairly in all material respects the financial position of the applicable Person and its consolidated subsidiaries for the period covered by such Financial Statements. All such Financial Statements shall also be accompanied by a certification executed by the applicable Person's chief executive officer or chief financial officer (or other officer with similar duties) to the effect set forth in Section 8.01(a)(vi) (*Certifications of Financial Statements and Other Documents* ).

(ii) Quarterly Reporting. Within sixty (60 ) days after the end of each of the first three (3) fiscal quarters in each fiscal year of the applicable Person, commencing with the fiscal quarter ended March 31, 2017, the Borrower shall provide to the Administrative Agent (on a consolidated basis for the applicable Person and its subsidiaries) copies of the unaudited Financial Statements of each of the Borrower and each Fund for each such quarter, together with a certification executed by each respective chief executive officer or chief financial officer (or other officer with similar duties) to the effect set forth in Section 8.01(a)(vi) (*Certifications of Financial Statements and Other Documents* ).

(iii) Portfolio Reporting. The Borrower shall cause the Manager to provide to the Administrative Agent a quarterly Manager's report, no later than sixty (60) days after the end of the fiscal quarter of the Borrower in the form attached as Exhibit M (*Form of Manager's Report* ), which shall include reporting on an aggregate basis across all Funds and Projects of actual production data against budgeted production data . The Borrower shall cause the Manager to include in each such Manager's report (A) the zip code for each Eligible Project and (B) the estimated first-year energy

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generation data for each Eligible Project for the year commencing on the date such Eligible Project was granted permission to operate. The Borrower shall cause the Manager and its employees and officers to make themselves available at the request of the Administrative Agent, a Lender or the Independent Engineer to discuss any information disclosed in a Manager's report, including with respect to (a) Collections, (b) Operating Expenses, (c) the deployment schedule, (d) the fair market value of the class B equity interests in each Fund and (e) portfolio production performance.

(iv) Provider Reporting. The Borrower shall cause the Fund Provider to provide to the Administrative Agent each monthly, quarterly and annual report required pursuant to Services Agreements at such time and in such manner as provided therein. The Borrower shall cause each Fund Provider and its employees and officers to make themselves available at the request of the Administrative Agent or a Lender to discuss any information disclosed in such reports, including with respect to inverter failure rates.

(v) Scheduled Payment Date Report. The Borrower shall provide to the Administrative Agent, the Collateral Agent, and the Depository Agent a Scheduled Payment Date Report in accordance with Section 4.01(a) (*Scheduled Payment Date Report*). The calculations of the Historical Debt Service Coverage Ratio and the Projected Debt Service Coverage Ratio and other information provided in respect of the Scheduled Payment Date Report hereunder shall be used in determining deposits to and releases from the Collections Account or the Distribution Suspense Account, as applicable, for the purposes of making any Restricted Payments by the Borrower. If the Borrower fails to produce the information and calculations relating to the Historical Debt Service Coverage Ratio or the Projected Debt Service Coverage Ratio required to be produced pursuant to this Agreement, then, until such time as such information and calculations are provided, no funds shall be released for the purposes of making any Restricted Payments by the Borrower (but such failure shall not otherwise constitute a Default or an Event of Default hereunder).

(vi) Certifications of Financial Statements and Other Documents. Together with the Financial Statements provided to the Administrative Agent pursuant to Section 8.01(a)(i) (*Annual Reporting*) and Section 8.01(a)(ii) (*Quarterly Reporting*), the Borrower shall also furnish to the Administrative Agent certifications upon which the Administrative Agent may conclusively rely in the form of Exhibit J (*Form of Financial Statement Certificate*), executed by the respective chief executive officer, chief financial officer or controller (or other officer with similar duties) of the Relevant Party (as applicable) certifying that such Financial Statements fairly present the financial condition and results of operations of the Relevant Party (as applicable) on a consolidated basis for the period(s) covered thereby in accordance with GAAP (subject, in the case of any such unaudited Financial Statements, to changes resulting from audit and normal year-end adjustments, including the absence of footnotes and subject to validation of individual Relevant Party capital accounts in calculating net loss attributable to noncontrolling interests in conformity with GAAP).

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(vii) SREC Seller Party Reporting. The Borrower shall cause SREC Guarantor to provide to the Administrative Agent each quarterly report and all financial statements and other reports delivered to SREC Guarantor by the SREC Seller Parties pursuant to the Master SREC Purchase and Sale Agreements at such time and in such manner as provided therein.

(b) Material Notices. The Borrower shall promptly, but in no event later than three (3) Business Days after the earlier of its or any Subsidiary's receipt or Knowledge thereof, deliver, or cause to be delivered, to the Administrative Agent:

(i) copies of any and all notices of a default, breach or termination by any party under (A) any Transaction Document (other than a Project Document) or (B) any Project Document, which default, breach or termination under any Project Document (itself or when coupled with other breaches under any Project Document) could reasonably be expected to have a Material Adverse Effect;

(ii) notice of the occurrence of any event or circumstance that has, or could reasonably be expected to have, a Material Adverse Effect;

(iii) notice of any (A) fact, circumstance, condition or occurrence at, on, or arising from, any Project that results or could reasonably be expected to result in noncompliance with or a liability or material obligation under any Environmental Law that could reasonably be expected, in the aggregate across all such facts, circumstances, conditions and occurrences for all Projects, to have a Material Adverse Effect, (B) Release of Hazardous Materials on, from or related to any Project that has resulted in or could reasonably be expected to result in personal injury or material Property damage or in any material liability or material obligation for any Relevant Party, or (C) pending or, to the Borrower's Knowledge, threatened action, charge, claim, demand, suit, proceeding, petition, governmental investigation or arbitration in respect of any Environmental Laws against it or arising in connection with occupying or conducting operations on or at any Project therefor which could reasonably be expected, in the aggregate across all such actions, charges, claims, demands, suits, proceedings, petitions, governmental investigations and arbitrations, to have a Material Adverse Effect;

(iv) copies of all material notices, documents or reports received or sent by the Borrower, the Sponsor or any other Relevant Party pursuant to any Tax Equity Document, which shall include (without limitation) any material capital contribution notice and notices, documents or reports in relation to (A) any call option, buy-out right, withdrawal right or put option, (B) the achievement of any flip or cash reversion dates under a Limited Liability Company Agreement, (C) true-up requirements (including, without limitation, any true-up report), (D) the transfer of membership interests, (E) material claims against the Sponsor or any Relevant Party under any Sponsor Guaranty, (F) the removal or pending removal of any Guarantor as a managing member of any Fund or any Lessor Default or Lessee Default, (G) any updates to financial models prepared by or in respect of a Fund, (H) the end of or any extension to the Lease Term, (I) the material adjustment to any ordinary distribution percentages

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(including curative or compensatory adjustments in favor of the Tax Equity Member) and ( J) dispute resolution or independent review under the terms of any Tax Equity Document (including, in each case referenced in this clause (J), without limitation, in relation to the loss, recapture or disallowance of any ITC claimed with respect to any Project, any Eligible Projects being Placed in Service, any appraisal procedure and any material dispute in relation to Tax matters or ITCs);

(v) notice of any event which would require a mandatory prepayment under Section 3.04(a)( *Incurrence of Indebtedness* );

(vi) notice that any insurance required to be maintained pursuant to the Tax Equity Documents or Loan Documents has been, or is threatened to be, cancelled;

(vii) any proposed amendment, supplement, modification or waiver to, or assignment or transfer in respect of, a Portfolio Document (other than any Customer Agreement) or the organizational documents of a Relevant Party at least five ( 5 ) Business Days prior to entry thereto; and

(viii) copies of any amendment, supplement, waiver or other modification to a Portfolio Document or the organizational documents of a Relevant Party (provided that such documents in respect of the Customer Agreements may be provided on a quarterly basis but no later than sixty (60) days after the end of March, June, September and December).

(c) Tracking Models and Fund Purchase Options .

(i) At all times prior to (x) the date when the Flip Point for Fund XVIII is finally determined to have occurred pursuant to its Limited Liability Company Agreement, in respect of Fund XVIII, or (y) the end of the Lease Term, in the case of the Lessor: the Borrower shall deliver to the Administrative Agent at the same time delivered to the Tax Equity Members of the Tax Equity Fund, but in no event later than as required under the applicable Limited Liability Company Agreement or Master Lease Agreement, whether delivered to the applicable Tax Equity Member or not and without any extension or waiver unless consented to by the Administrative Agent (at the written instructions of the Majority Lenders), copies of the applicable Tracking Model or updates thereto, together with such associated reports, exhibits or supplemental information as are delivered to the Tax Equity Member and are otherwise reasonably requested to demonstrate the basis of the calculation of Return Performance and a certification executed by the applicable Guarantor's Authorized Officer that the Tracking Model has been prepared in good faith in accordance with calculation rules and conventions under the applicable Limited Liability Company Agreement. The Borrower shall cause representatives of the applicable Guarantor and of the Manager to make themselves available at the request of the Majority Lenders to discuss the basis for such calculations, including the interpretation and application of the calculation rules, conventions and procedures under any Limited Liability Company Agreement. At any time (A) during the occurrence of any Default or Event of Default or (B) when a Tax Equity Member is

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exercising its rights under the Tax Equity Documents to dispute a Tracking Model or calculation of each applicable realized internal rate of return (unless (i) an audit of such Tracking Model has occurred or is ongoing by the applicable Tax Equity Member, or by an independent public accounting firm upon the request of such Tax Equity Member under the applicable Limited Liability Company Agreement or Master Lease Agreement, as the case may be, and (ii) the applicable Tax Equity Member or independent public accounting firm has agreed to share the results of such audit with the Administrative Agent and the Lenders) or (C) where (i) the aggregate Performance Deficit for Fund XVIII and the Lessee shown under the Tracking Models is at least equal to \$1,000,000 and (ii) there has been a delay in excess of three (3) months in the achievement of the Flip Point from the Flip Point projected in the immediately prior Tracking Model, the Majority Lenders may submit any Tracking Model or Tax Equity Fund Model, together with the exhibits or supplemental information thereto, to the Model Auditor for its review at the sole cost and expense of the Borrower.

(ii) No later than sixty (60) days prior to the date that any Fund Purchase Option is reasonably expected to be exercisable, the Borrower shall cause the applicable Guarantor to notify the Administrative Agent and each Lender (on a non-binding basis) whether it considers the exercise of a Fund Purchase Option to be in the best interests of such Guarantor and the other Relevant Parties as determined in accordance with the Purchase Standard (together with a reasonable explanation supporting such conclusion).

(d) Major Decisions. The Borrower shall promptly, but in no event later than five (5) Business Days prior to any vote or approval in respect of a Major Decision, deliver, or cause to be delivered, to the Administrative Agent written notice describing the issue to be decided by vote or approved together with copies of all correspondence received and sent with respect to that Major Decision.

(e) Operating Budgets.

(i) The Borrower shall prepare, or cause to be prepared, for each fiscal year of the Borrower and each Fund an operating and capital expense budget setting forth the anticipated revenues, and Operating Expenses (including expenses for Non-Covered Services) of each Relevant Party for such fiscal year. The initial Operating Budget for 2017 is attached as Exhibit K (Initial Budget) hereto. For each succeeding fiscal year (commencing with 2018), the Borrower shall, not later than forty-five (45) days prior to beginning of such fiscal year, submit a proposed Operating Budget to the Administrative Agent for its approval (acting on the written instructions of the Majority Lenders); provided that the approval of the Administrative Agent (acting on the written instructions of the Majority Lenders) shall be deemed to be given (and shall not be required) if the Operating Expenses set forth in the proposed Operating Budget do not exceed 20% in the aggregate over the amount budgeted for such Operating Expenses of the Borrower and the Funds for the applicable year in the Base Case Model as of the Closing Date; provided, that such Operating Expenses may exceed 20% in the aggregate over the

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amount budgeted for Operating Expenses to the extent Sponsor or a Qualified Purchaser, in its sole discretion, makes a capital contribution for such excess amount.

(ii) The Borrower shall, and shall cause each Guarantor to, deliver to the Administrative Agent (A) each operating budget submitted to the Tax Equity Members in respect of a Tax Equity Fund, at the same time as delivered to such Tax Equity Member but in no event later than as required under the applicable Limited Liability Company Agreement and (B) when available, any amendments to such operating budget, together with all notices or correspondence regarding the approval of such operating budget (if applicable) by the Tax Equity Member; provided that the approval of the Administrative Agent (acting on the written instructions of the Majority Lenders) shall be deemed to be given if such operating budgets do not collectively exceed 20% in the aggregate over the amount budgeted for Operating Expenses in respect of the Tax Equity Funds for the applicable year in the Base Case Model as of the Closing Date; provided, that such operating budgets may exceed 20% in the aggregate over the amount budgeted for Operating Expenses to the extent Sponsor or a Qualified Purchaser, in its sole discretion, makes a capital contribution for such excess amount.

(f) Other Information. As soon as practicable upon request, the Borrower shall deliver, or cause to be delivered, such other information in relation to the business, operations, Property, Assets or condition (financial or otherwise) of the Borrower and any Relevant Party and the SREC Seller Parties as any Lender may from time to time reasonably request.

(g) Data Site. Notwithstanding anything contained to the contrary herein, all reporting and notice obligations of Borrower to the Administrative Agent and Lenders under this Section 8.01 ( *Financial Statements and Other Reports* ) shall be deemed to be satisfied by posting any applicable reports, notices or other materials to the Platform. To the extent a Lender does not have access to the Platform, the Administrative Agent agrees to deliver such reports, notices and other materials (the “Communications”) to any such Lender promptly after receipt by the Administrative Agent from the Borrower. The Platform is provided “as-is” and “as available”. Neither the Administrative Agent nor any of its related parties warrants the accuracy or completeness of the Communications or the adequacy of the Platform and each expressly disclaims liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects is made by the Administrative Agent or any of its related parties in connection with the Communications or the Platform. In no event shall the Administrative Agent or any of its related parties have any liability to the Borrower, any Lender or any other Person for damages of any kind, whether or not based on strict liability and including direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of the Borrower’s or the Administrative Agent’s transmission of Communications through the Platform, any other electronic platform or electronic messaging service or through the internet, except to the extent the liability of any such Person is found in a final ruling by a court of competent jurisdiction to have resulted primarily from such Person’s gross negligence or willful misconduct.

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(h) Credit Rating. As soon as practicable upon request, the Borrower shall, deliver or cause to be delivered, such other information as the Administrative Agent may from time to time reasonably request for the purpose of monitoring the Borrower's Credit Rating.

(i) Updated Projections.

(i) All projections of Net Cash Flow shall be prepared by the Borrower on a reasonable, good faith basis taking into account the Eligible Projects that are then in service. Until the second anniversary of the Closing Date, all projections of Net Cash Flow shall be based on the P50 Production estimates in the Base Case Model as of the Closing Date and, thereafter, they may be updated by the Borrower on a Scheduled Payment Date no more than once annually to reflect (A) actual average production and payment history (taking into account actual default rates) over the prior two year period, (B) the projected Flip Point (for Fund XVIII) and end of the Lease Term in the case of the Lessor as shown on the applicable Tracking Models or Tax Equity Fund Models (as each are updated in accordance with the Tax Equity Documents) and (C) Operating Expenses as projected under the then-applicable Operating Budget.

(ii) Prior to updating any projections, the Borrower shall, on the Scheduled Payment Date immediately prior to the Scheduled Payment Date on which such projections are proposed to be updated, provide reasonably detailed calculations of such updated projections and a description of the methodology applied in a Scheduled Payment Date Report. The Borrower shall, upon request by a Lender, reasonably consult with such Lender regarding such initially updated projections and, within thirty (30) days of the applicable Scheduled Payment Date Report, any Lender may notify the Borrower in writing of any suggested corrections to the calculations, assumptions or methodology applied to determine such projections. The Borrower shall promptly make any corrections that are consistent with the terms of this Agreement and deliver the proposed updated projections with any revisions in the submitted Scheduled Payment Date Report. If the Majority Lenders do not object within thirty (30) days of receipt of such Scheduled Payment Date Report, then the updated projections shall be deemed approved. If the Majority Lenders object within such thirty (30) day period and the Borrower and the Majority Lenders (acting in good faith) are unable to agree to the updated projections, then the existing projections shall continue to apply.

Section 8.02 Notice of Events of Default. The Borrower shall give the Administrative Agent prompt written notice in accordance with Section 12.02 ( *Notices* ) of (a) each Default and each Event of Default hereunder of which it obtains Knowledge and (b) each default of which it obtains Knowledge on the part of any party to the other Transaction Documents (other than the Customer Agreements where such breach (itself or when coupled with other breaches under such agreements) could not reasonably be expected to have a Material Adverse Effect) .

Section 8.03 Maintenance of Books and Records. The Borrower shall, and shall cause the Subsidiaries to, maintain and implement, administrative and operating procedures reasonably necessary in the performance of their obligations hereunder and the Borrower shall,

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and shall cause the Subsidiaries to, keep and maintain at all times, or cause to be kept and maintained at all times, all documents, books, records, accounts and other information reasonably necessary or advisable for the performance of their obligations hereunder to the extent required under applicable Law.

Section 8.04 Litigation. The Borrower shall promptly notify the Administrative Agent upon the Borrower, Pledgor, any Relevant Party or the Provider receiving or obtaining:

(a) Written notice of any pending or threatened (in writing) litigation, investigation, action or proceeding of or before any court arbitrator or Governmental Authority affecting the Borrower or any Relevant Party that, if adversely determined, could reasonably be expected to result in:

(i) liability to the Borrower or a Relevant Party in an aggregate amount exceeding \$1,000,000, or an aggregate amount with all other such claims exceeding \$3,000,000;

(ii) injunctive, declaratory or similar relief against the Borrower or a Relevant Party relating to the transactions contemplated by the Loan Documents; or

(iii) a Material Adverse Effect.

(b) Knowledge of any material development in any action, suit, proceeding, governmental investigation or arbitration at any time which is pending against or affecting any of the Borrower, Pledgor, any Relevant Party or the Provider and could reasonably be expected, in the aggregate across all such material developments in respect of the Borrower, Pledgor, any Relevant Party or the Provider, to have a Material Adverse Effect.

Section 8.05 Existence; Qualification. The Borrower shall, and shall cause each Subsidiary to, at all times preserve and keep in full force and effect its existence as a limited liability company and all rights and franchises material to its business, including its qualification to do business in each state where it is required by Law to so qualify, except to the extent that the failure to be so qualified could not reasonably be expected to have a Material Adverse Effect.

Section 8.06 Tax Status. The Borrower shall, and shall cause each of the other Relevant Parties to, maintain its status for U.S. federal income tax purposes as represented in Section 7.11 (*Taxes and Tax Status*) and shall not recognize any transfer of an ownership interest in the Borrower at any time during the Recapture Period with respect to any Project to a Tax Exempt Person.

Section 8.07 Operation and Maintenance. In accordance with the Relevant Parties' rights under the Portfolio Documents, the Borrower shall cause, and shall cause the Loan Parties to cause, each Fund and the applicable Fund Provider to, without limitation, keep each Project in good operating condition consistent in all material respects with the applicable Portfolio Documents, including consistent with any provisions of any manufacturer, installer or other warranties and the standard of care required by the Portfolio Documents, and, to the extent

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required by the Portfolio Documents, make or cause to be made all repairs necessary to keep such Projects in such condition (ordinary wear and tear excepted).

Section 8.08 Preservation of Rights; Maintenance of Projects; Warranty Claims; Security.

(a) The Borrower shall cause each Subsidiary to (i) perform and observe its material obligations under the Portfolio Documents, and to which such Relevant Party is a party and (ii) prudently preserve, protect and defend its (or its Subsidiary's) material rights, under such Portfolio Documents, including prosecution of suits to enforce any right of such Relevant Party thereunder and enforcement of any claims with respect thereto (including, without limitation, any such rights or claims arising in connection with a Lessee Default). The Borrower and each Subsidiary shall cause the applicable Fund Provider to maintain any material Permits as may be required in connection with the maintenance, repair or removal of any Eligible Project to the extent required by the Services Agreements.

(b) Borrower and each Subsidiary shall cause the Manager or Fund Provider (as appropriate) to, on behalf of the applicable Subsidiary, use commercially reasonable efforts to pursue warranty claims related to a Project's photovoltaic panels, inverters or other material components in accordance with the Portfolio Documents and the applicable warranty.

(c) The Borrower shall, and shall cause the Lessor and the Manager under the Management Agreement to, use their commercially reasonable efforts to cause the Lessee to comply with its affirmative and negative covenants under the Tax Equity Documents.

(d) The Borrower shall, and shall cause each Loan Party and SREC Seller Party to, execute and deliver from time to time such other documents as shall be necessary or advisable, or that the Administrative Agent or Collateral Agent may reasonably request, in connection with the rights and remedies of the Secured Parties granted by or provided for in the Loan Documents and to perform the transactions contemplated therein.

(e) The Borrower shall, and shall cause each Loan Party and SREC Seller Party to (i) take all actions as may be necessary or advisable, or that the Administrative Agent may, but shall not be required to, reasonably request, to establish, maintain, protect, perfect and continue the perfection or the first-priority status (subject to Permitted Liens) of the security interests created (or purported to be created) by the Collateral Documents and (ii) furnish timely notice of the necessity of any such action together with such instruments, in execution form (if applicable), and such other information as may be required or reasonably requested to enable any appropriate Person to effect any such action. Without limiting the generality of the foregoing, the Borrower shall, at its own expense, (A) execute and deliver or cause to be executed and delivered, acknowledge or cause to be acknowledged, file or cause to be filed or record or register or cause to be recorded or registered, or take any other action or cause any other action to be taken with respect to, such notices, statements, instruments and other documents (including any memorandum of lease or other agreement, UCC financing statement or amendment or continuation statement, certificate of title or estoppel certificate, fixture filings and mortgages or deeds of trust) in all places necessary or advisable to establish, maintain, protect and perfect, and

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ensure the priority of, such security interests and in all other places that any Lender shall reasonably request, (B) discharge all other Liens (other than Permitted Liens) or other claims adversely affecting the rights of the Secured Parties in the Collateral or the pledged interests and (C) deliver or publish all notices to third parties that may be required to establish or maintain the validity, perfection or priority of any Lien created pursuant to this Agreement or the Collateral Documents.

(f) Without limiting its obligations under the foregoing clauses (d) and (e), the Borrower shall, and shall cause each Loan Party and SREC Seller Party to, do everything necessary or advisable (including filing, registering and recording all necessary instruments and documents and paying all fees, taxes, levies, imposts and periodic expenses in connection therewith), or that the Administrative Agent may, but shall not be required to, reasonably request, to (i) create security arrangements, including, as applicable, the establishment of a pledge or the perfection of any Lien or, as applicable, the enforceability of a Lien as against such Subsidiary and any subsequent lienor (including a judgment lienor), holder of a charge, or transferee for or not for value, in bulk, by operation of Law, or otherwise, in each case granted, with respect to all future Assets in accordance with the requirements of all applicable Laws, or the Law of any other jurisdiction, as applicable, (ii) maintain the security and pledges created by this Agreement and the Collateral Documents in full force and effect at all times (including, as applicable, the priority thereof) and (iii) preserve and protect the Collateral and Membership Interests and protect and enforce its rights and title, and the rights and title of the Secured Parties, to the security created by this Agreement and the Collateral Documents.

(g) The Borrower shall take all reasonable actions to maintain the filings referenced in Section 7.22(n) ( *Portfolio Documents and Eligible Projects* ) and Section 7.22(p) ( *Portfolio Documents and Eligible Projects* ) pursuant to applicable Laws. If any such filing is released to assist a Customer in a pending refinancing of such Customer's mortgage loan or sale of home, the Borrower shall cause the applicable Fund to submit such filing to be re-filed in the real property records within 30 calendar days of the closing of such mortgage loan refinancing or home sale; provided that the Borrower shall not be in default under this Section 8.08(g) to the extent of any unreasonable delay caused by a Person who is not an Affiliate of the Borrower or otherwise over whom the Borrower does not have reasonable control.

(h) Without limitation to Section 8.21 ( *Tax Equity Fund Matters* ), following the occurrence of (x) the expiry of the Lease Term or (y) the purchase or cancellation of the outstanding "class A" membership interests of a Fund or any membership interests held by a Tax Equity Member in such Fund (whether pursuant to purchase, call, put or withdrawal option), the Borrower shall, by no later than sixty (60) days following the occurrence of such event, (i) cause the applicable Fund to (A) accede to the Guarantor Collateral Agreement to provide a guaranty of, and an all Assets security interest for, the Obligations and standing instructions for the deposit of the revenues of such Fund into the Collateral Account of the applicable member of such Fund, (B) enter into an account control agreement on customary terms with the Collateral Agent in respect of each Fund Account held by such Fund, and (C) consent to the filing of a UCC-1 financing statement in the jurisdiction of the Wholly-Owned Fund's organization, naming the Collateral Agent as "secured party" and the Wholly-Owned Fund as "debtor" in respect of the all Assets security interest under the applicable Collateral Document and (ii) use

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commercially reasonable efforts to deliver, and cause the applicable Guarantor and Fund to deliver, such new and amended Collateral Documents and standing instructions and associated amendments to the Loan Documents as are reasonably requested by the Administrative Agent (acting on the written instructions of the Majority Lenders) (such delivery to include, without limitation, any amendments to reflect such Fund as a wholly owned subsidiary of the Borrower and other amendments in respect of account mechanics, contracting, budgeting and payment provisions regarding the operation and maintenance of the Fund, the treatment of any SRECs sold on behalf of the Fund, back-up servicing and transition management arrangements for the Fund and the removal of prepaid systems from the ownership of the Relevant Parties) in a form and of substance reasonably acceptable to the Administrative Agent (acting on the written instructions of the Majority Lenders) . At the expiry of the Lease Term, the Lessor shall enter into replacement Services Agreements with the applicable Fund Provider, and a replacement Back-Up Servicing Agreement with the applicable Fund Provider, Back-Up Servicer and Administrative Agent, in accordance with Section 9.10(d) . Without limitation, the Services Agreements and Back-Up Servicing Agreement to which each Wholly-Owned Fund is a party shall provide for the Wholly-Owned Fund to have a right to terminate the Services Agreements for Fund Provider default, and transition to a replacement Fund Provider under the Back-Up Servicing Agreement, upon the occurrence of a Servicer Termination Event hereunder.

Section 8.09 Compliance with Laws; Environmental Laws . Without limitation to Section 9.08 ( *Sanctions; Anti-Corruption; Anti-Money Laundering* ), the Borrower shall, and shall cause each Subsidiary, to (a) comply in all material respects with, and conduct its business and operations in compliance in all material respects with, all applicable Laws (including Environmental Laws, consumer leasing and protection Law and any federal, state or local regulatory Laws) and Permits, and (b) procure, maintain in full force and effect and comply with all Permits by the date such Permit is necessary or required to have been obtained under applicable Law which, if not so procured, maintained and complied with, could not reasonably be expected to have an adverse impact on 5% or more of the Portfolio Value.

Section 8.10 Energy Regulatory Laws . (a) If (i) a Project sells, or is reasonably expected to sell, electric energy at wholesale for resale, (ii) such Project or any Fund would become subject to, or not be exempt from, state laws or regulations respecting the rates, finances and organization of regulated electric utilities or (iii) any Fund would become subject to, or not be exempt from, regulation as a “holding company” under PUHCA due to the absence of its status as a Qualifying Facility, then Borrower shall cause the applicable Guarantor to cause the Fund to file with FERC a self-certification of Qualifying Facility status unless the Project is exempt from such filing requirement for Qualifying Facility status; and (b) if the net power production capacity of any small power production facilities controlled by the Fund or its affiliates located within one mile (i) exceed 20 MW and (ii) include one or more Projects, then Borrower shall cause the Guarantor to cause the Fund to make any FERC filings, including any applicable filing under Section 205 of the FPA, necessary to preserve and continue the affected Projects’ ability to sell power pursuant to their related Customer Agreements or to not be in violation of the FPA.

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Section 8.11 Payment of Claims.

The Borrower shall, and shall cause the Subsidiaries to, pay (i) all claims (including claims for labor, services, materials and supplies) for sums that have become due and payable and that by Law have or may become a Lien upon any of its Properties or Assets (hereinafter referred to as the “Claims”) and (ii) all Taxes, assessments and governmental charges of any kind that may at any time be lawfully due or levied against or with respect to such Person or any Project (including, in each case, all material Taxes, assessments and charges lawfully made by any Governmental Authority for public improvements that may be secured by a Lien on such Project), in each instance before any penalty or fine is incurred with respect thereto; provided that the foregoing shall not be deemed to require that a Relevant Party pay any such Tax or other liability that is imposed on a Customer or that such Customer is contractually obligated to pay, provided further, however, that the Borrower may, by appropriate proceedings, contest or cause to be contested in good faith any such claims, Taxes, assessments and other charges and, in such event, may, if permitted by applicable Laws, permit the claims, Taxes, assessments or other charges so contested to remain unpaid during any period, including appeals, when the Borrower is in good faith contesting or causing to be contested the same by appropriate proceedings, so long as (a ) appropriate segregated cash reserves have been established on the Borrower’s or the other Relevant Parties’ books in an amount sufficient to pay any such claims, Taxes, assessments or other charges, accrued interest thereon and potential penalties or other costs relating thereto, or other provision for the payment thereof reasonably satisfactory to the Administrative Agent (acting on the written instructions of the Majority Lenders) shall have been made, (b) enforcement of the contested claim, Tax, assessment or other charge is effectively stayed pursuant to applicable Laws for the entire duration of such contest and (c) any claim, Tax, assessment or other charge determined to be due, together with any interest or penalties thereon, is promptly paid after resolution of such contest.

Section 8.12 Maintenance of Insurance.

(a) Until the Debt Termination Date, the Borrower shall, at its sole cost and expense, procure and maintain, or cause to be procured and maintained with Qualified Insurers, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business as the Borrower and Guarantors, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons, which types and amounts shall be adjusted annually pursuant to Section 8.12(b) ( *Maintenance of Insurance* ). In addition, Borrower shall or shall cause each of the Funds to take all necessary action to maintain any insurance that such Fund is required to maintain pursuant to the terms and conditions of the Portfolio Documents. The following terms and conditions apply with respect to property and liability insurance maintained by or on behalf of the Borrower or Funds:

(i) Property Insurance - to provide against loss and damage by all risks of physical loss or damage covering Assets and other personal property, in amounts not less than the full insurable replacement value of all personal property from time to time, subject to usual and customary sublimits, acceptable to the Administrative Agent, including coverage on a replacement cost and/or agreed amount basis with no deduction

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for depreciation and no co-insurance provisions (or a waiver thereof). With respect to all property insurance (including any excess or difference in conditions policies, if applicable) requirement pursuant to Section 8.12(a) (*Maintenance of Insurance*):

(A) Borrower, each Guarantor and each of their members shall be included as either the “named insured” or an additional “named insured”;

(B) Borrower, each Guarantor and each of their members hereby waives any rights of subrogation against the Secured Parties and shall cause any such property insurance policies to include or be endorsed to include a waiver of subrogation in their favor;

(C) Such property insurance policies may be a combination of master insurance policies that insure more than one Fund and/or other assets and/or stand-alone policies that are separate and specific to only one Fund; and

(D) Such property insurance shall include severability of interest and/or other non-vitiating wording in accordance with Prudent Industry Practices and the Portfolio Documents that is acceptable to the Administrative Agent.

(ii) Liability Insurance:

(A) General Liability - to provide coverage on an “occurrence” basis, including coverage for premises/operations explosion, collapse and underground hazards, products/completed operations, broad form property damage, blanket contractual liability for written contracts, independent contractors and personal injury;

(B) Excess/Umbrella Liability - in excess of the Commercial General Liability insurance indicated above on a following-form basis with drop-down provisions applying;

(C) Borrower, each Guarantor and each of their members shall be included as an additional “named insured”;

(D) Secured Parties and their respective permitted successors, assigns, members, directors, officers, employees, lenders, investors, representatives shall be included on an endorsement to the policy naming (or providing via blanket endorsement as required by written contract) as additional insureds on a primary and non-contributory basis;

(E) Borrower, each Guarantor and each of their members hereby waives any rights of subrogation against the Secured Parties and shall cause any such liability insurance policies to include or be endorsed to include a waiver of subrogation in favor of the Secured Parties; and

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(F) Such liability insurance policies shall include a severability of interest or separation of insureds clause with no material exclusions for cross-liability clause (to the extent commercially available).

(iii) General Terms and Conditions (Property and Liability Insurance)

(A) To the extent commercially available, such property and liability insurance shall be endorsed to provide at least thirty (30) days' prior written notice (or ten (10) days' prior notice if such cancellation is due to failure to pay premiums) of cancellation to the Administrative Agent at the address noted below. If such endorsement for notice of cancellation shall not be commercially available, the Borrower shall be obligated to provide the required written notice of cancellation to the Administrative Agent:

\*\*\*

Attention: \*\*\*

E-mail: \*\*\*

(B) All such property and liability insurance shall have limits and sublimits in accordance with Prudent Industry Practices, the Portfolio Documents and the policies listed in Schedule 7.14 (Insurance);

(C) All such property and liability insurance shall have deductibles in accordance with Prudent Industry Practices, the Portfolio Documents and the policies listed in Schedule 7.14 (Insurance);

(D) Borrower shall be obligated to provide written notice of material change to the Administrative Agent unless such notice is otherwise provided by endorsement of the required policies. For the purposes of this Section 8.12(a)(iii) (General Terms and Conditions), "materially changed" means any reduction of more than twenty-five percent (25%) of any policy aggregate limit then maintained for earthquake (or earth movement as the case may be), flood, windstorm (if applicable) or excess liability or a change that would cause the Fund to be in non-compliance with the insurance requirements of the Portfolio Documents;

(E) Prior to Closing Date and annually thereafter within ten (10) Business Days after renewal or replacement of insurance policies required in this Section 8.12 (Maintenance of Insurance), the Borrower shall provide detailed evidence of insurance (in a form acceptable to the Administrative Agent (acting on the written instructions of the Majority Lenders)) including certificates of insurance and copies of applicable insurance binders and policies (if requested), as well as a statement from the Borrower and/or its authorized insurance representative confirming that such insurance is in compliance with the terms and conditions of this Section 8.12 (Maintenance of Insurance), is in full force and effect and all premiums then due have been paid or are not in arrears; and

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(F) No provision of this Agreement shall impose on the Administrative Agent or any Secured Party any duty or obligation to verify the existence or adequacy of the insurance coverage maintained by or on behalf of the Borrower, Guarantor or Fund, nor shall the Administrative Agent or any Secured Party be responsible for any representations or warranties made by or on behalf of the Borrower, Guarantor or Fund, or any other party to any insurance agent or broker, insurance company or underwriter.

(b) On an annual basis, not later than sixty (60 ) days before renewal of master All-Risk Property Insurance policies (including Excess Policies) maintained by or on behalf of the Borrower and each Guarantor or Fund (i.e. such master policies are not specific to a separate Fund but instead insure more than one Fund or other assets), the Borrower shall cause a nationally recognized insurance or other applicable expert to perform and deliver, with a copy to the Administrative Agent, a probable maximum loss analysis with respect to the properties of the Borrower and the Guarantors. Such probable maximum loss analysis (or analyses) shall include at a minimum the peril of earthquake and windstorm and shall be based upon not less than a 1 in 500 year event. The Administrative Agent, the Borrower and each Guarantor shall review such probable maximum loss analysis (or analyses) and, the Borrower and Guarantors shall make appropriate adjustments (in consultation with, and with the prior written approval of, the Administrative Agent (acting on the written instructions of the Majority Lenders)) to the types and amounts of insurance it maintains pursuant to Section 8.12(a) ( *Maintenance of Insurance* ) to reflect the results not less than 125% of such probable maximum loss analysis (or analyses) at all times (including the use of extrapolation methods to account for properties not yet built, as applicable).

(c) If at any time the Borrower determines in its reasonable judgment that any insurance (including the limits or deductibles thereof) required to be maintained by this Section 8.12 ( *Maintenance of Insurance* ) is not available on commercially reasonable terms due to prevailing conditions in the commercial insurance market at such time, then upon the written request of the Borrower together with a written report of the Borrower's insurance broker or another independent insurance broker of nationally-recognized standing in the insurance industry (i) certifying that such insurance is not available on commercially reasonable terms (and, in any case where the required maximum coverage is not reasonably available, certifying as to the maximum amount which is so available), (ii) explaining in detail the basis for such broker's conclusions (including but limited to the cost of obtaining the required coverage(s) as well as the proposed alternative coverage(s)), and (iii) containing such other information as the Administrative Agent (in consultation with the Insurance Consultant) may reasonably request, the Administrative Agent may (after consultation with the Insurance Consultant) temporarily waive such requirement and only to the extent that the Borrower can demonstrate that such temporary waiver will not cause the Borrower or the Guarantors to be out of compliance with the Portfolio Documents or that a similar waiver has been obtained under such Portfolio Documents; provided, however, that the Administrative Agent, may at the written instructions of the Majority Lenders, decline to waive any such insurance requirement(s). At any time after the granting of any temporary waiver pursuant to this Section 8.12 ( *Maintenance of Insurance* ) but not more than once in any year, the Administrative Agent may request, and the Borrower shall furnish to the Administrative Agent within thirty (30) days after such request, an updated insurance report

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reasonably acceptable to the Administrative Agent (acting on the written instructions of the Majority Lenders) (in consultation with the Insurance Consultant) from the Borrower's independent insurance broker. Any waiver granted pursuant to this Section 8.12 (Maintenance of Insurance) shall expire, without further action by any party, immediately upon (A) such waived insurance requirement becoming available on commercially reasonable terms, as reasonably determined by the Administrative Agent (acting on the written instructions of the Majority Lenders) (in consultation with the Insurance Consultant) or (B) failure of the Borrower to deliver an updated insurance report pursuant to clause (ii) above.

Section 8.13 Inspection.

(a) The Borrower agrees that, with ten (10) days' prior notice, it will permit, and cause each Subsidiary to permit, any representatives and consultants of the Administrative Agent, during the applicable Subsidiary's normal business hours, to examine on-site all the books of account, records, reports and other papers of such Subsidiary, to make copies and extracts therefrom (and, upon the written instructions of the Majority Lenders (or during the continuation of any Event of Default, any Lender), the Administrative Agent shall conduct such examination and make such copies and extracts available to the Lenders), and the Borrower further agrees to discuss their affairs, finances and accounts with the officers, employees, Independent certified public accountants and other consultants of such Lender Parties, all at such reasonable times and at the Borrower's expense; provided that except during the continuation of an Event of Default, such examinations may occur no more frequently than once per calendar year.

(b) The Borrower will permit, and shall cause each Subsidiary to permit, the Administrative Agent to conduct, in each case, at the sole cost and expense of the Borrower, field audits and examinations of the Projects, and appraisals of the Projects (and, upon the written instructions of the Majority Lenders, the Administrative Agent shall conduct such field audits, examinations and appraisals, and make the products of such field audits, examinations and appraisals available to the Lenders); provided , that, (i) such field audits and examinations and appraisals may be conducted not more than once per any twelve-month period (except , during the existence and continuance of an Event of Default, there shall be no limit on the number of additional field audits and examinations and appraisals that shall be permitted at the Borrower's expense) and (ii) except during the continuance of an Event of Default, the Administrative Agent (acting on the written instructions of the Majority Lenders) shall consult with the Borrower regarding the costs and expenses of such field audits and examinations and appraisals.

Section 8.14 Post Closing Deliverables. Within thirty (30) days of the Closing Date, the Borrower shall deliver to the Administrative Agent true, correct and complete copies of the Customer Agreements (which may be provided electronically on a USB flash drive). Upon written request by any Lender, the Borrower shall deliver to such Lender true, correct and complete copies of any Project Transfer Agreement within thirty (30) days of such request.

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Section 8.15 Collateral Accounts; Collections.

(a) The Borrower shall, and shall cause the Guarantors to, maintain in full force and effect each of the Collateral Accounts in accordance with the terms of the Loan Documents and with an Acceptable Bank.

(b) The Borrower shall, and shall cause each Relevant Party to, ensure that at all times each counterparty to a Project Document is directed to pay all Rents or other payments due to the applicable Fund under such Project Document in accordance with the terms of the Loan Documents.

(c) Borrower shall, and shall cause each Loan Party to, remit any amounts received by it or received by third parties (other than pursuant to the terms of the Loan Documents) on its behalf to the appropriate Collateral Account for deposit in accordance with the terms of the Loan Documents.

(d) The Borrower shall cause the Guarantors to deposit all Collections consisting of distributions in respect of the Fund Membership Interests directly into the applicable Guarantor Account.

(e) The Borrower shall cause the Guarantors to deposit all Collections consisting of distributions in respect of the Guarantor Manager Membership Interests directly into the Collections Account (other than any distributions received in respect of the proceeds of Excluded Property, as evidenced by documentation reasonably acceptable to the Administrative Agent, which shall be deposited into the Distribution Suspense Account).

Section 8.16 Performance of Agreements. The Borrower shall, and shall cause the Subsidiaries to, duly and punctually perform, observe and comply in all material respects with all of the terms, provisions, conditions, covenants and agreements on its part to be performed, observed and complied with hereunder and under the other Portfolio Documents to which it is a party. The Borrower shall, and shall cause the Subsidiaries to, prudently exercise and enforce their material rights, authorities and discretions under the Portfolio Documents to which they are a party.

Section 8.17 Customer Agreements and SREC Contracts.

(a) Each Customer Agreement entered into following the Closing Date shall be an Eligible Customer Agreement and shall not warrant or guarantee any cost savings.

(b) The Borrower shall take, and shall ensure that each applicable Subsidiary takes all such actions required pursuant to the Fund SREC Transfer Agreements to transfer all SRECs produced by the applicable Fund to SREC Guarantor.

Section 8.18 Management Agreement. The Borrower shall, and shall cause the Manager and each Subsidiary to, (a) perform and observe all of the material terms, covenants and conditions of the Management Agreement on the part of Manager and such Subsidiary to be performed and observed and (b) promptly notify the Administrative Agent of any notice to

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Borrower of any material default under the Management Agreement. If the Borrower shall default in the performance or observance of any material term, covenant or condition of the Management Agreement to be performed or observed by it, then, without limiting the Administrative Agent's other rights or remedies under this Agreement or the other Loan Documents, and without waiving or releasing Manager or any Relevant Party from any of its obligations under the Loan Documents or the Borrower under the Management Agreement, the Borrower grants the Administrative Agent on its behalf the right, upon prior written notice to the Borrower, to pay any sums and to perform any act as may be reasonably appropriate to cause such material conditions of the Management Agreement on the part of the Borrower to be performed or observed; provided, however, that the Administrative Agent will not be under any obligation to pay such sums or perform such acts.

Section 8.19 Use of Proceeds. The Borrower shall use the proceeds of the Loans exclusively as permitted by applicable Law and for the purposes permitted in Section 2.01(c) ( *Commitments* ).

Section 8.20 Project Expenditures. The Borrower shall cause the Subsidiaries, Manager and Fund Providers to, operate and maintain the Projects pursuant to the then-current operating budgets, and in material compliance with the Services Agreements, the other Portfolio Documents, and all other agreements with respect to the Project (including any provisions of any manufacturer, installer or other warranties).

Section 8.21 Tax Equity Fund Matters.

(a) Any capital contribution or loan required to be made by any Guarantor to any Tax Equity Fund pursuant to such Tax Equity Fund's Limited Liability Company Agreement or any other Tax Equity Document shall be made solely from the proceeds of Excluded Property or a contribution from the Sponsor (it being understood that such loan shall not be Excluded Property and shall be pledged to the Collateral Agent as security for the Obligations with repayments on such loan to be paid directly into the Collections Account by the applicable Guarantor).

(b) The Borrower shall, and shall cause each Guarantor to, enforce their rights under the Tax Equity Documents to ensure that each Relevant Party shall make and apply the maximum distributions to the managing members in accordance with the Tax Equity Documents and, without limitation, shall not agree to the maintenance of any cash reserve within any Fund without the consent of the Administrative Agent (acting on the written instructions of the Majority Lenders), except to the extent a cash reserve is required to be established under the terms of the Tax Equity Documents.

Section 8.22 Post-Closing Covenant. Borrower shall use commercially reasonable efforts to, within 90 days following the Closing Date, deliver to the Administrative Agent a fully executed copy of an amendment to the Limited Liability Company Agreement of each Partnership Flip Fund, that either (A) provides that (i) the members of such Partnership Flip Fund acknowledge that Subchapters C and D of Chapter 63 of the Code have been repealed, and that Chapter 63 of the Code has been amended, by Section 1101 of the Budget Act, to be

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effective with respect to taxable years beginning after December 31, 2017; (ii) the members of such Partnership Flip Fund agree to cooperate, reasonably and in good faith, to take such action on or prior to the effective date of Section 1101 of the Budget Act as reasonably necessary to preserve and retain after the effective date of Section 1101 of the Budget Act (and any Further Guidance), to the extent possible, the substantive arrangement and relative and analogous rights, duties, indemnities, responsibilities, risks, and obligations of the applicable Guarantor and Tax Equity Members reflected in such Limited Liability Company Agreement with respect to tax audits and other administrative procedures addressed by Section 1101 of the Budget Act; and (iii) no member of such Partnership Flip Fund may make or cause such Partnership Flip Fund to make any election under Section 1101(g)(4) of the Budget Act or any subsequent law or guidance to have the provisions of Section 1101 of the Budget Act apply to such Partnership Flip Fund prior to the effective date of Section 1101 of the Budget Act or (B) (i) incorporates any changes necessary to preserve and retain after the effective date of Section 1101 of the Budget Act (and any Further Guidance), to the extent possible, the substantive arrangement and relative and analogous rights, duties, indemnities, responsibilities, risks, and obligations of the applicable Partnership Flip Fund and Tax Equity Members reflected in such Limited Liability Company Agreement with respect to tax audits and other administrative procedures addressed by Section 1101 of the Budget Act ; and (ii) provides that no member of such Partnership Flip Fund may make or cause such Partnership Flip Fund to make any election under Section 1101(g)(4) of the Budget Act or any subsequent law or guidance to have the provisions of Section 1101 of the Budget Act apply to such Partnership Flip Fund prior to the effective date of Section 1101 of the Budget Act.

Section 8.23 Termination of Fund Provider.

(a) In the event that a Servicer Termination Event occurs, the Administrative Agent (acting on the written instructions of the Majority Lenders) may, in its sole discretion, direct any Wholly-Owned Fund to deliver notice to the Fund Provider under any Services Agreement to which such Fund Provider and a Wholly-Owned Fund is a party and to the Back-Up Servicer under the applicable Back-Up Servicing Agreement, triggering the transition process for the replacement of such Fund Provider. The Borrower shall, and shall cause each Subsidiary to, immediately take all such action necessary (including the delivery of notice) to terminate the Fund Provider and transition to a replacement Fund Provider acceptable to the Administrative Agent (acting on the written instructions of the Majority Lenders), which shall include the Back-Up Servicer in respect of the Administrative Services.

(b) In the event that (i) a Servicer Termination Event occurs, and (ii) a Fund or a Guarantor has the right to terminate a Services Agreement or replace a Fund Provider pursuant to the terms of such Services Agreement, the Administrative Agent (acting on the written instructions of the Majority Lenders) may deliver notice to the Borrower requiring it to cause any Guarantor to take all steps within its control (including convening any vote by the members of the Tax Equity Fund and the delivery of notice) to trigger the transition process for the replacement of such Fund Provider.

(c) Following a Servicer Termination Event, the Borrower shall, and shall cause the applicable Guarantor to, only exercise any approval or consent right held by a Fund to

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object to or veto the identity of a replacement Fund Provider (or any candidate for such role) or the terms and conditions of a replacement Services Agreement, with the prior written consent of the Administrative Agent (acting on the written instructions of the Majority Lenders).

(d) At all times until the Debt Termination Date, the Borrower shall maintain, and shall ensure that each Relevant Party maintains, a Back-Up Servicing Agreement in respect of each Services Agreement.

Section 8.24 Deposits to Collections Account.

(a) The Borrower shall cause each Fund Provider and the Manager to promptly transfer any Collections consisting of checks representing payments to a Fund into its applicable Fund Account.

(b) The Borrower shall cause each Fund Provider and the Manager to identify the payor of any non-recurring Customer ACH or credit card payments as soon as reasonably practicable and shall cause all Collections that have been identified as being payable to Fund to be deposited into its applicable Fund Account as soon as reasonably practicable.

(c) The Borrower shall cause each Fund Provider and the Manager to deposit any Collections consisting of recurring Customer ACH or debit card payments that are due to a Fund into the applicable Fund Account upon receipt of such payments.

(d) The Borrower shall cause the Guarantors to deposit all Collections consisting of distributions in respect of the Fund Manager Membership Interests directly into the respective Guarantor Account (other than any distributions received in respect of the proceeds of Excluded Property, as evidenced by documentation reasonably acceptable to the Administrative Agent (acting on the written instructions of the Majority Lenders), which shall be deposited into the Distribution Suspense Account), which such amounts shall be transferred by the Depository Agent from such Guarantor Account to the Collections Account.

(e) The Borrower shall cause SREC Guarantor to deposit all Fund SREC Property received by SREC Guarantor as proceeds pursuant to the SREC Aggregator Master PSA into the Unpledged SREC Account. The Borrower shall cause SREC Guarantor to subsequently transfer (i) the portion of all such Fund SREC Property attributable to the sale of the Aggregator SRECs into the Fund Account where such Aggregator SRECs were generated and (ii) all other such Fund SREC Property, if any, to any other Person in SREC Guarantor's sole discretion, as evidenced by documentation reasonably acceptable to the Administrative Agent (acting on the written instructions of the Majority Lenders) that demonstrates no Fund is entitled to such payment.

(f) The Borrower shall cause SREC Guarantor to deposit all Collections received by SREC Guarantor pursuant to the SREC Financing Master PSA into the Pledged SREC Account. The Borrower shall cause SREC Guarantor to subsequently transfer such Collections directly into the Collections Account.

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(g) The Borrower shall cause each Guarantor and the applicable Fund to maintain each Fund Account with an Acceptable Bank and free and clear of any Lien over such Fund Account or the amounts deposited therein. The Borrower shall cause SREC Guarantor to maintain (i) the Unpledged SREC Account with an Acceptable Bank and free and clear of any Lien over such Unpledged SREC Account or the amounts deposited therein and (ii) the Pledged SREC Account with an Acceptable Bank and free and clear of any Lien over such Pledged SREC Account or the amounts deposited therein (other than Liens created pursuant to the Guarantor Collateral Agreement).

(h) The Borrower and its Subsidiaries shall cause each Fund Provider and the Manager to hold all amounts received by it on behalf of a Fund separately allocated for such Fund, separate from its own assets and to ensure that any agents engaged to collect and hold amounts on behalf of a Fund hold such assets separate from their own assets.

Section 8.25 Tax Partnership Election. With respect to any Partnership Flip Fund that contains in the applicable Limited Liability Company Agreement an Acceptable Audit Election Provision, in the event such Partnership Flip Fund receives a notice of final partnership administrative adjustment that would, with the passing of time, result in an “imputed underpayment” imposed on such Partnership Flip Fund as that term is defined in Code Section 6225 (as amended by the Budget Act), Borrower shall, or shall cause such Partnership Flip Fund, within thirty (30) days after the date of such notice to (x) timely elect pursuant to Code Section 6226 (as amended by the Budget Act) to make inapplicable to such Partnership Flip Fund the requirement in Code Section 6225 (as amended by the Budget Act) to pay the “imputed underpayment” as that term is used in that section, (y) comply with all of the requirements and procedures required in connection with such election, and (z) provide evidence of such election to Administrative Agent.

Section 8.26 Credit Rating. The Borrower shall use commercially reasonable efforts to maintain a Credit Rating (but not any particular Credit Rating) from a Rating Agency in respect of the Loans.

Section 8.27 Separateness. The Borrower acknowledges that the Administrative Agent and the Lenders are entering into this Agreement in reliance upon each Relevant Party’s identity as a legal entity that is separate from any other Person. Therefore, from and after the Closing Date, the Borrower shall take all reasonable steps to maintain each Relevant Party’s identity as a separate legal entity from each other Person and to make it manifest to third parties that the Relevant Parties are separate legal entities. Without limiting the generality of the foregoing, the Borrower agrees that it shall, and cause each of the Relevant Parties to:

(a) hold all of its Assets in its own name;

(b) not commingle its Assets with the Assets of any of its members, Affiliates, principals or any other Person;

(c) maintain books, records and agreements as official records and separate from those of the members, principals and Affiliates or any other Person;

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(d) maintain its bank accounts separate from the members, principals and Affiliates of any other Person;

(e) not, other than pursuant to the Transaction Documents and as otherwise expressly permitted by Section 9.16( *Transactions with Affiliates* ), enter into any Affiliate Transaction;

(f) maintain separate Financial Statements from those of its general partners, members, principals, Affiliates or any other Person; provided, however, that the Relevant Parties financial position, Assets, liabilities, net worth and operating results may be included in the consolidated Financial Statements of Sponsor, provided that (i) appropriate notation shall be made on such consolidated Financial Statements to indicate the separateness of each Relevant Party and the Sponsor, to indicate that the Sponsor and each Relevant Party maintain separate books and records and to indicate that none of the Relevant Parties' Assets and credit are available to satisfy the debts and other obligations of the Sponsor or any other Person and (ii) such Assets and liabilities shall be listed on each Relevant Party's own separate balance sheet;

(g) promptly correct any known or suspected misunderstanding regarding its separate identity;

(h) not maintain its Assets in such a manner that it will be costly or difficult to segregate, ascertain or identify its individual Assets from those of any other Person;

(i) not guarantee or become obligated, or hold itself as responsible, for the debts of any other Person, except under the Collateral Documents;

(j) not hold out its credit as being available to satisfy the obligations of any other Person, except under the Collateral Documents;

(k) not make any loans or advances to any third party, including any member, principal or Affiliate of the Borrower, or any member, principal or Affiliate thereof, except as expressly permitted by the Loan Documents;

(l) not pledge its Assets for the benefit of any other Person, except as expressly permitted under the Loan Documents;

(m) not identify itself or hold itself out as a division of any other Person or conduct any business in another name;

(n) maintain adequate capital in light of its current and contemplated business operations;

(o) act solely in its own limited liability company name and not of any other Person, any of its officers or any of their respective Affiliates, and at all times use its own stationery, invoices and checks separate from those of any other Person, any of its officers or any of their respective Affiliates;

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(p) not acquire obligations or securities of its members, shareholders or other Affiliates, as applicable, except as expressly permitted under the Loan Documents;

(q) not take any action that knowingly shall cause any Relevant Party to become insolvent;

(r) keep minutes of the actions of the member of any Relevant Party and observe all limited liability company and other organizational formalities;

(s) cause its members, managers, directors, officers, agents and other representatives to act at all times with respect to each Relevant Party consistently and in furtherance of the foregoing and in the best interests of each Relevant Party;

(t) pay its own liabilities and expenses (including, as applicable, shared personnel and overhead expenses) only out of its own funds; or

(u) at all times maintain an independent member of Borrower and Pledgor (as the term "independent member" is defined in the applicable limited liability company agreement of the Borrower or Pledgor, as applicable) with such independent member's vote required for the taking of the restricted action specified under the organizational documents of such party as of the Closing Date (including any liquidation or bankruptcy action under Debtor Relief Laws) and provide under the constituent documents of each Guarantor that the affirmative vote of the independent member of the Borrower is required on behalf of such Guarantor for the taking of the restricted action specified under the organizational documents of such Guarantor as of the Closing Date (including any liquidation or bankruptcy action under Debtor Relief Laws).

Section 8.28 ITC Insurance Policy. The Borrower shall cause Fund XVIII Guarantor as named insured to obtain and maintain, for the benefit of Borrower as loss payee, the ITC Insurance Policy with respect to each Fund XVIII Project.

#### ARTICLE IX. NEGATIVE COVENANTS

Section 9.01 Indebtedness. The Borrower shall not, and shall not permit the Subsidiaries to, create, incur, assume, guarantee, or otherwise become or remain directly or indirectly liable with respect to any Indebtedness except for the following (collectively, "Permitted Indebtedness"):

(a) the Obligations;

(b) unsecured trade payables which are not evidenced by a note or are otherwise indebtedness for borrowed money and which arise out of purchases of goods or services in the ordinary course of business; provided, however, (i) such trade payables are payable not later than 90 days after the original invoice date and are not overdue by more than 30 days and (ii) the aggregate amount of such trade payables outstanding does not, at any time, exceed \$1 ,000 ,000 in the aggregate for the Borrower and the Subsidiaries;

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(c) loans made by a Guarantor to a Fund solely to the extent made with the proceeds of Excluded Property or a contribution from the Sponsor in accordance with Section 8.21(a) ( *Tax Equity Fund Matters* );

(d) Sponsor Subordinated Indebtedness;

(e) to the extent constituting Indebtedness, obligations or liabilities of a Guarantor or Fund arising under any Master SREC Purchase and Sale Agreement or Fund SREC Transfer Agreement; or

(f) any operating deficit loans required to be made by a Guarantor to a Tax Equity Fund pursuant to the Tax Equity Documents; provided that the aggregate amount of such operating deficit loans does not, after the application of the proceeds of any loan made pursuant to Section 9.01(c) ( *Indebtedness* ), at any time, exceed \$2 ,000 ,000 in the aggregate.

In no event shall any Indebtedness other than the Obligations be secured, in whole or in part, by the Collateral or other Assets or any portion thereof or interest therein and any proceeds of any of the foregoing.

Section 9.02 No Liens. The Borrower shall not, and shall not permit the Subsidiaries to, create, incur, assume or permit to exist any Lien on any Asset now owned or hereafter acquired by it except Permitted Liens.

Section 9.03 Restrictions on Fundamental Changes. The Borrower shall not, and shall not permit the Subsidiaries to, (a) merge or consolidate with another Person, (b) sell, assign, transfer or dispose of any part of the Collateral other than (x) sales, assignments, transfers or dispositions of obsolete, worn-out or replaced Property or Assets not used or useful in its business or Non-PTO Projects that have not been Placed in Service, (y) sales of Projects to Customers pursuant to the express terms of the Customer Agreements (provided that the proceeds thereof received by the Relevant Parties are applied in accordance with Section 3.04(b) ( *Revenue Termination Events* ) and Section 3.04(j) ( *Mandatory Prepayments* )) or (z) otherwise as expressly permitted by this Agreement, (c) liquidate, wind-up or dissolve any Subsidiary, (d) withdraw or resign from any Subsidiary (including in the capacity as managing member), or (e) change its fiscal year end from December 31.

Section 9.04 [Reserved].

Section 9.05 ERISA. The Borrower shall not, and shall not permit any Loan Party to, establish any Employee Benefit Plan or Multiemployer Plan, or commence making contributions to (or become obligated to make contributions to) any Employee Benefit Plan or Multiemployer Plan. The Borrower shall not, and shall not permit the Subsidiaries to, hire or maintain any employees.

Section 9.06 Restricted Payments. The Borrower shall not, and shall not permit any Subsidiary to make, directly or indirectly any Restricted Payment other than:

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(a) distributions by the Tax Equity Funds to their members in accordance with the terms of the respective Limited Liability Company Agreements;

(b) distributions by the Relevant Parties to the Borrower;

(c) distributions by the Borrower upon satisfaction of the Distribution Conditions and otherwise in accordance with the Depositary Agreement;

(d) the Borrower and Subsidiaries may distribute to their members (i) any and all proceeds from Excluded Property and (ii) proceeds from Fund SREC Property to the extent permitted by Section 8.24(e)(ii); and

(e) distributions of Loan proceeds in accordance with the express provisions of ARTICLE II and as directed in the Closing Date Funds Flow Memorandum or to the extent permitted to be paid in accordance with the Depositary Agreement.

The Borrower shall not, and shall cause its Subsidiaries not to, (i) redeem, purchase, retire or otherwise acquire for value any of their ownership or equity interests or securities or (ii) set aside or otherwise segregate any amounts for any such purpose. The Borrower shall not, directly or indirectly, make payments to or distributions from the Collateral Accounts except in accordance with the Depositary Agreement. The Borrower shall ensure that no Guarantor exercises any right of offset or set-off against its right to distributions from a Fund and the Lessor does not exercise any right of offset or set-off against its right to rent from the Lessee.

Section 9.07 Limitation on Investments. The Borrower shall not, and shall not permit any Subsidiary to, after the date hereof, form, or cause to be formed, any subsidiaries, make or suffer to exist any loans or advances to, or extend any credit to, or guarantee (directly or indirectly or by an instrument having the effect of assuring another's payment or performance on any obligation or capability of so doing or otherwise (other than pursuant to a Loan Document)), endorse or otherwise become contingently liable, directly or indirectly, in connection with the obligations, stocks or dividends of any other Person (except by the endorsement of checks in the ordinary course of business), or, except as expressly permitted under any Loan Document, make any investments (by way of transfer of Property, contributions to capital, purchase of stock or securities or evidences of indebtedness, acquisition of the business or Assets, or otherwise) in, any Affiliate or any other Person.

Section 9.08 Sanctions and Anti-Corruption. No Loan Party shall use, directly or indirectly, any part of any proceeds of the Loans or lend, contribute, or otherwise make available such proceeds: (i) in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any "government official" (including any officer or employee of a government or government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office) to improperly influence official action or secure an improper advantage; (ii) in any manner that would constitute or give rise to a violation of applicable Anti-Corruption Laws or applicable Anti-Money Laundering Laws; (iii) to fund or

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facilitate any activities or business of, with or involving any Sanctioned Person in violation of applicable Sanctions; or (iv) in any manner that would constitute or give rise to a violation of applicable Sanctions by any Loan Party, any of its Subsidiaries, the Administrative Agent or any Lender.

Section 9.09 No Other Business; Leases.

(a) The Borrower shall not, and shall not permit any Subsidiary to: (i) engage in any business other than the acquisition, ownership, leasing, construction, financing, operation and maintenance of the Projects in accordance with and as contemplated by the Transaction Documents and other activities incidental thereto, including the sale of SRECs under the Master SREC Purchase and Sale Agreements or the Fund SREC Transfer Agreements, or (ii) change its name without the consent of the Administrative Agent (acting on the written instructions of the Majority Lenders).

(b) The Borrower shall not, and shall not permit any Subsidiary to, enter into any agreement or arrangement to lease the use of any Asset or Project of any kind (including by sale-leaseback, operating leases, capital leases or otherwise), except pursuant to the terms of the Eligible Customer Agreements and the Master Lease Agreement.

Section 9.10 Portfolio Documents.

(a) The Borrower shall not, and shall not permit any Relevant Party or any Affiliate party to a Portfolio Document to, amend or modify any Portfolio Document, terminate any Portfolio Document, or waive any breach under, or breach of, any Portfolio Document, without the prior written consent of the Administrative Agent (acting on the written instructions of the Majority Lenders) to the extent that any such amendment, modification, termination or waiver could reasonably be expected:

(i) in the aggregate across all such amendments, modifications, terminations and waivers to all Portfolio Documents, to have a Material Adverse Effect;

(ii) to result in a reduction of Net Cash Flow;

(iii) to result in the Portfolio Value, calculated immediately after giving effect to such modification to be less than the Portfolio Value, calculated immediately prior to giving effect to such modification; or

(iv) to result in a contingent liability arising other than in the ordinary course of business,

provided, that the Relevant Parties shall be permitted to enter into an agreement to amend or modify (i) the electricity or lease rate, annual escalator or term of any Exempt Customer Agreement only (such agreement, a "Payment Facilitation Agreement"), so long as such amendment or modification is (A) permitted under the applicable Tax Equity Documents and (B) made in good faith for a commercially reasonable purpose and is intended to maximize the long-term economic value of the Customer Agreement as against its value if the Payment

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Facilitation Agreement had not been entered into (as reasonably determined by the Sponsor in good faith and in light of the facts and circumstances known at the time of such amendment or modification) and (ii) a Tax Equity Limited Liability Company Agreement to make the amendments contemplated by Section 8.22 ( Post-Closing Covenant ) hereof ; provided, further, that, for any Customer Agreement for which the Fund Provider reasonably determines the Customer under such Customer Agreement could reasonably be expected to stop making Rent payments due under the Customer Agreement, the Relevant Parties or Fund Provider may enter into a delayed payment plan to adjust the timing of payments under such Customer Agreement for up to twelve ( 12 ) months.

(b) Without limitation to Section 9.10(a) ( *Portfolio Documents* ), any amendment or modification to a Portfolio Document that:

(i) could change the capital commitments by a Tax Equity Member;

(ii) could change the timing of distributions to the applicable Guarantor under the Tax Equity Documents;

(iii) extends any final completion deadline or the deployment period for Projects (other than any Non-PTO Project) beyond December 31, 2016;

(iv) would materially limit the services to be provided by, or reduce the standard of care applicable to, the Fund Provider or the Manager;

(v) would include any new management fee or incentive fee or otherwise increase the Service Fees paid to the Fund Provider or the Manager;

(vi) would cause the Portfolio Document to be in violation of, or adversely affect the applicable Relevant Party's ability to comply with, any applicable Laws in any material respect (including, without limitation, any violation of, or adverse impact on compliance with, all consumer leasing and protection Laws and all Environmental Laws);

(vii) would include any preferred distribution to the Tax Equity Member or preferential payments on any indemnity, a put or withdrawal option or other contingent cash diversion provisions in a Tax Equity Document;

(viii) would permit any material new Lien or Indebtedness for borrowed money to be incurred by a Tax Equity Fund (other than any Permitted Lien (not including any Lien that would be permitted by clause (j) of the definition of "Permitted Liens"), Permitted Indebtedness or such other Indebtedness or Liens incurred for the benefit of the Secured Parties under the Collateral Documents); or

(ix) has not been consented to by the ITC Insurer or ITC Underwriting Representative, as applicable, to the extent required under the ITC Insurance Policy;

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shall require the consent of the Administrative Agent (acting on the written instructions of the Majority Lenders).

(c) The Borrower shall not, and shall not permit any Relevant Party to, enter into any new agreement or contract, other than the Transaction Documents or any contract or agreement incidental or necessary to the operation of its business that do not allocate material risk to any Relevant Party and have a term of less than one year or that has a value over its term not exceeding \$100,000, without the prior written consent of the Administrative Agent (acting on the written instructions of the Majority Lenders).

(d) The Borrower shall not, and shall not permit any Relevant Party to, replace a Fund Provider under a Services Agreement or as the Lease Manager unless (i) the applicable replacement is a Qualified Manager ( provided, that, the Back-Up Servicer is acknowledged to be an acceptable replacement in respect of the Administrative Services) , (ii) such replacement Fund Provider executes a replacement to the applicable Services Agreements and Back-Up Servicing Agreement on materially similar terms as such replaced agreements (which, in the case of any replacement to the Lease Services Agreements after the end of the Lease Term, may be on materially similar terms to the applicable Services Agreements for Fund XVIII and otherwise consistent with Section 8.08(h) and, additionally in the case of the Lease Manager, assumes the position of manager of the Lessee under its Limited Liability Company Agreement and (iii) such removal and replacement has not had, or could not otherwise be reasonably expected to have, a Material Adverse Effect.

(e) The Borrower shall not, and shall not permit any Relevant Party to, replace the Manager unless (i) the applicable replacement is a Qualified Manager, (ii) such replacement Manager executes a replacement to the applicable Management Agreement and Management Consent Agreement on materially similar terms as such replaced agreements and (iii) such removal and replacement has not had, or could not otherwise be reasonably expected to have, a Material Adverse Effect.

(f) The Borrower shall not, and shall not permit any Relevant Party to, replace the managing member of any Tax Equity Fund unless (i) the applicable replacement is a Qualified Manager, (ii) such replacement managing member assumes the position of managing member of the Tax Equity Fund under its Limited Liability Company Agreement and (iii) such removal and replacement has not had, or could not otherwise be reasonably expected to have, a Material Adverse Effect or otherwise result in the conversion of the applicable Guarantor's interest in such Tax Equity Fund into a purely economic interest.

(g) The Borrower shall not, and shall not permit any Relevant Party to, assign, novate or otherwise transfer or consent to an assignment, novation or any other transfer of a Portfolio Document other than (i) pursuant to the Collateral Documents, (ii) transfers of an interest in a Fund from a Tax Equity Member to a Guarantor which are permitted in accordance with clause (h) below and Section 8.08(h) ( *Preservation of Rights; Maintenance of Projects; Warranty Claims; Security* ), (iii) any replacement of a Fund Provider, Manager or managing member of any Tax Equity Fund in accordance with, as applicable, Section 9.10(d) ( *Portfolio Documents* ), Section 9.10(e) ( *Portfolio Documents* ) or Section 9.10(f) ( *Portfolio Documents* )

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above and (iv) assignments of a Customer Agreement to a replacement Customer in accordance with the terms of the Customer Agreement and applicable Law (including consumer leasing and protection Law).

(h) A Guarantor shall not exercise any Fund Purchase Option unless (i) the Administrative Agent is provided with thirty (30) days prior written notice of the exercise of such Fund Purchase Option, (ii) the exercise of such Fund Purchase Option is in the best interests of the Guarantor and its Affiliates as determined in accordance with the Purchase Standard and (iii) unless the Majority Lenders otherwise consent, sufficient funds are then available in the Supplemental Reserve Account to exercise such Fund Purchase Option in accordance with the terms of the Depositary Agreement.

Section 9.11 ITC Matters. The Borrower shall not, and shall not permit any Relevant Party to, take any action that would, or could reasonably be expected to result in the loss, disallowance or recapture of all or part of any ITC claimed with respect to any Project, other than as required by applicable Law or Prudent Industry Practices. The Borrower shall not, and shall not permit any Relevant Party to apply for a Grant for any Project with respect to which the ITC has been claimed. The Borrower shall not, and shall not permit any Relevant Party to, cause or permit (in each case, for the avoidance of doubt, other than as a result of a Change in Law) any Property that is part of a Project to be subject to the alternative depreciation system under Section 168(g) of the Code unless, where applicable, allowing such Property to be subject to the alternative depreciation system would not result in the relevant Flip Point being delayed beyond the Flip Point contemplated in the relevant Tax Equity Fund Model as of the Closing Date.

Section 9.12 Expenditures; Collateral Accounts; Structural Changes.

(a) The Borrower shall not, and shall not permit any Subsidiary to, incur Operating Expenses or otherwise pay the Manager, each Fund Provider and Back-Up Servicer, in the aggregate, amounts in excess of the greater of:

(i) the budgeted amounts shown for Operating Expenses in the applicable Operating Budget for such calendar year; and

(ii) 20% in the aggregate over the amount budgeted for Operating Expenses in the Base Case Model as of the Closing Date for the applicable calendar year; provided, that such Operating Expenses may exceed 20% in the aggregate over the amount budgeted for Operating Expenses to the extent Sponsor or a Qualified Purchaser, in its sole discretion, makes a capital contribution for such excess amount,

without the prior written consent of the Administrative Agent (acting on the written instructions of the Majority Lenders and with such consent in respect of the Tax Equity Funds not to be unreasonably withheld or delayed).

(b) The Borrower shall not, and shall not permit any Subsidiary to, acquire or own any material Asset other than the Projects, SRECs, Portfolio Documents, the Membership

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Interests and the proceeds thereof and, in the case of SREC Guarantor, holding Fund SREC Property for and on behalf of the Funds.

(c) The Borrower shall not maintain, or permit any Relevant Party to maintain, any bank accounts other than (i) the Collateral Accounts maintained by the Borrower and the Guarantors, (ii) the Unpledged SREC Account maintained by SREC Guarantor and (iii) the Fund Accounts.

(d) Other than pursuant to Section 9.10(a), the Borrower shall not, and shall not permit any Subsidiary to, materially amend, modify or waive, or permit any material amendment, modification or waiver of (i) its organizational documents (except (A) for non-substantive or immaterial changes to organizational documents other than a Limited Liability Company Agreement which, for the avoidance of doubt, shall not include any amendments that relate to corporate powers, corporate separateness, independent member or single-purpose entity provisions set forth herein or therein or (B) as may be required by applicable Law, provided, that, any such change required by applicable Law shall be made only with prior notice to and consultation with the Administrative Agent), (ii) its legal form or its capital structure (including the issuance of any options, warrants or other rights with respect thereto) or (iii) change its fiscal year, in each case without the consent of the Administrative Agent (acting on the written instructions of the Majority Lenders).

(e) The Borrower shall not use any proceeds of any Loan except as permitted by applicable Law and for the purposes permitted in Section 2.01(c) (Commitments).

Section 9.13 SREC Contracts and Transfer Instructions. Without limiting Section 9.10(b) (*Portfolio Documents*), the Borrower shall not, and shall not permit any Subsidiary to, enter into any SREC Contract other than a Master SREC Purchase and Sale Agreement or Fund SREC Transfer Agreement or to give any standing order or transfer instruction with respect to Eligible SRECs in a manner that is inconsistent with the Master SREC Purchase and Sale Agreements, Fund SREC Transfer Agreements and Eligible SREC Contracts.

Section 9.14 Speculative Transactions. The Borrower shall not, and shall cause each Relevant Party not to, engage in any speculative transactions or enter into any Swap Agreement other than the Master SREC Purchase and Sale Agreements and the Fund SREC Transfer Agreements.

Section 9.15 Voting on Major Decisions. The Borrower shall ensure that no Loan Party exercises its rights, authorities and discretions under any Tax Equity Document to consent to, approve, ratify, vote in favor of, or submit to the Tax Equity Member for such consent, approval, ratification or vote, any matter which requires approval as a Major Decision, other than with the prior written consent of the Administrative Agent (acting on the written instructions of the Majority Lenders); provided, that, the Borrower shall not be restricted from communicating with any Tax Equity Member in the ordinary course so long as such communications do not cause a Major Decision to be made without the Administrative Agent's consent (acting on the written instructions of the Majority Lenders).

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Section 9.16 Transactions with Affiliates. The Borrower shall not, and shall ensure each Subsidiary shall not, make or cause any payment to, or sell, lease, transfer or otherwise dispose of any of its Assets (other than Excluded Property or Fund SREC Property) to, or purchase any Assets from, or enter into or make, replace, terminate or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, the Sponsor or its Affiliates or any of the Affiliates of the Borrower and each of their respective members and principals (each, an "Affiliate Transaction"), unless the Affiliate Transaction is upon terms and conditions that are intrinsically fair, commercially reasonable and on terms no less favorable to such Relevant Party than those that would be available on an arms-length basis with an unrelated Person (other than (x) Restricted Payments permitted to be made under Section 9.06 ( *Restricted Payments* ) and (y) the Transaction Documents in existence as at the Closing Date).

Section 9.17 Tax Partnership Election. Borrower shall not cause Tax Equity Fund to make an election under Section 1101(g)(4) of the Budget Act or any subsequent law or guidance to have the provisions of Section 1101 of the Budget Act apply to such Tax Equity Fund prior to the effective date of Section 1101 of the Budget Act.

Section 9.18 ITC Insurance Policy. The Borrower shall not, and shall not permit any Subsidiary to, amend or modify the ITC Insurance Policy, terminate the ITC Insurance Policy, or waive any breach under, or breach of, the ITC Insurance Policy, without the prior written consent of the Administrative Agent (acting on the instructions of the Majority Lenders).

#### ARTICLE X. EVENTS OF DEFAULT; REMEDIES

Section 10.01 Events of Default. Any of the following shall constitute an event of default ("Event of Default") hereunder:

(a) Principal and Interest. Failure of a Loan Party to pay in accordance with the terms of this Agreement, (i) any interest on any Loan within three (3 ) Business Days after the date such sum is due and payable, (ii) any principal of or Make-Whole Amount, if any, on any Loan when such sum is due and payable, whether at maturity or at a date fixed for prepayment or by declaration or otherwise, or (iii) any other fee, cost, charge or other sum due under this Agreement or any other Loan Document within five (5) Business Days after the date such sum is due and payable;

(b) Misstatements. (i) Any representation or warranty made by the Borrower in Section 7.20 ( *Sanctions; Anti-Corruption; Anti-Money Laundering* ) shall prove to have been untrue or misleading in any respect as of the date made; or (ii) any (A) representation or warranty made by the Sponsor or the Relevant Parties in the Loan Documents, or (B) certificate or any Financial Statement made or prepared by, under the control of or on behalf of the Sponsor or the Relevant Parties and furnished to the Administrative Agent or any Lender pursuant to this Agreement or any other Loan Document (including, without limitation, in a certificate of an Authorized Officer of the Sponsor or Relevant Party delivered pursuant to the Loan Documents) shall prove to have been untrue or misleading in any material respect as of the date made,

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provided, however, with respect to this clause (ii), that if any such misstatement is capable of being remedied and has not caused a Material Adverse Effect, the Borrower may correct such misstatement by curing such misstatement (or the effect thereof) and delivering a written correction of such misstatement to the Administrative Agent, in the form and substance satisfactory to the Administrative Agent (acting on the written instructions of the Majority Lenders), within thirty ( 30 ) days of (x) obtaining Knowledge of such misstatement or (y) receipt by the Borrower of written notice from the Administrative Agent of such default; provided, further, that no Event of Default shall occur in respect of a misrepresentation regarding any Eligible Project to the extent that Borrower has made a mandatory prepayment in respect of such Project pursuant to Section 3.04(c);

(c) Automatic Defaults. Any default by any Relevant Party in the observance and performance of or compliance with Section 8.02 ( *Notice of Events of Default* ), Section 8.05 ( *Existence; Qualification* ), ARTICLE IX ( *Negative Covenants* ) or Section 12.05(a) ( *Assignments* ).

(d) Other Defaults. (x) Any default by a Fund Provider, Manager, any of the SREC Seller Parties, the Borrower or any Relevant Party in the observance and performance of or compliance with any other covenant or agreement contained in this Agreement or any other Loan Document, a Services Agreement, an Eligible SREC Contract, any Master SREC Purchase and Sale Agreement, a Back-Up Servicing Agreement or the Management Agreement (other than as provided in paragraphs (a) through (c) of this Section 10.01 ( *Events of Default* )), which default shall continue unremedied for a period of (i) 10 days with respect to a breach of Section 8.12 ( *Maintenance of Insurance* ) and (ii) 30 days for any other covenant to be performed or observed by it under this Agreement, any other Loan Document or such other document and not otherwise specifically provided for elsewhere in this ARTICLE X ( *Events of Default; Remedies* ), in each case, after the earlier of (A) receipt by the Borrower of written notice from the Administrative Agent of such default or (B) obtaining Knowledge of any such default; provided that the thirty (30) day period referred to in clause (ii) above may be extended by an additional thirty (30) days, in the event that such default has not been cured within the initial thirty (30) day period, such default remains reasonably capable of being cured within the additional thirty (30) day period, no Material Adverse Effect has resulted from such default, the Borrower continues to diligently pursue cure of such default using commercially reasonable efforts and the Borrower has delivered a certificate signed by an Authorized Officer to the Administrative Agent certifying to the above and providing a reasonably detailed summary of the Borrower's efforts as of the date of such certificate, and plan going forward to effect such cure together with other information reasonably requested by the Administrative Agent in respect thereof; (y) any default by the Borrower in the observance or performance of any covenant, condition or agreement contained in Section 8.23 ( *Termination of Fund Provider* ) and such default shall continue unremedied for a period of thirty (30) days after notice thereof from any Lender Party to the Borrower or (z) any default by the Borrower in the observance or performance of any covenant, condition or agreement contained in Section 8.24 ( *Deposits to Collections Account* ) and such default shall continue unremedied for a period of five Business Days after notice thereof from any Lender Party to the Borrower.

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(e) Involuntary Bankruptcy; Appointment of Receiver, etc. (i) A court enters a decree or order for relief with respect to any SREC Seller Party or any Relevant Party in an Involuntary Bankruptcy, which decree or order is not stayed or other similar relief is not granted under any applicable federal or state Law; (ii) the occurrence and continuation of any of the following events for sixty ( 60 ) days unless dismissed or discharged within such time: (A) an involuntary case under the Bankruptcy Code or any applicable bankruptcy, insolvency or other similar Law now or hereafter in effect, is commenced, in which any SREC Seller Party or any Relevant Party is a debtor or any portion of the Collateral or any Membership Interest is property of the estate therein, (B) a decree or order of a court for the appointment of a receiver, liquidator, sequestrator, trustee, custodian or other officer having similar powers over any SREC Seller Party or any Relevant Party, over all or a substantial part of its Property, is entered, (C) an interim receiver, trustee or other custodian is appointed without the consent of any SREC Seller Party or any Relevant Party for all or a substantial part of the Property of such Person or (D) a warrant of attachment, execution or similar process shall have been issued against any substantial part of the Property of any SREC Seller Party or any Relevant Party;

(f) Voluntary Bankruptcy; Appointment of Receiver, etc. (i) An order for relief is entered with respect to any SREC Seller Party or any Relevant Party, or any SREC Seller Party or any Relevant Party commences a voluntary case under the Bankruptcy Code or any applicable bankruptcy, insolvency or other similar Law now or hereafter in effect, or consents to the entry of an order for relief in an involuntary case or to the conversion of an involuntary case to a voluntary case under any such Law or consents to the appointment of or taking possession by a receiver, trustee or other custodian for any SREC Seller Party or any Relevant Party, for all or a substantial part of the Property of any SREC Seller Party or any Relevant Party; (ii) any SREC Seller Party or any Relevant Party makes any assignment for the benefit of creditors; (iii) any SREC Seller Party or any Relevant Party shall be unable, or shall fail generally, or shall admit in writing its inability, to pay its debts as such debts become due or (iv) the board of directors or other governing body of any SREC Seller Party or any Relevant Party adopts any resolution or otherwise authorizes action to approve any of the actions referred to in this Section 10.01(f) ( *Voluntary Bankruptcy; Appointment of Receiver, etc* );

(g) Material Judgment. Any final money judgment, writ or warrant of attachment or similar process involving, individually or in aggregate at any time, an amount in excess of \$1 ,000 ,000 (to the extent not adequately covered by insurance as to which a solvent, reputable and Independent insurance company, which at least meets the Credit Requirements, has acknowledged coverage in writing to the Borrower and such acknowledgment is provided to the Administrative Agent) shall be entered or filed against the Borrower or any of the other Relevant Parties or any of their respective Assets and shall remain undischarged, unvacated, unbonded or unstayed for a period of thirty (30 ) days (or in any event later than five (5) days prior to the date of any proposed sale thereunder).

(h) Impairment of Loan Documents. At any time after the execution and delivery thereof, (i) this Agreement or any other Loan Document ceases to be in full force and effect (other than by reason of a release of Collateral in accordance with the terms hereof or thereof or on the Debt Termination Date) or shall be declared null and void, or the Administrative Agent or any Lender shall not have or shall cease to have a valid and perfected

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first-priority Lien in any Collateral or the Membership Interests purported to be covered by the Loan Documents with the priority required by the relevant Loan Document or (ii) the Borrower, any SREC Seller Party or any Relevant Party thereto shall contest the validity or enforceability of any Loan Document in writing or deny in writing that it has any further liability, including with respect to future advances by any Lender, under any Loan Document to which it is a party.

(i) ERISA. The Borrower, any Loan Party or SREC Seller Party or, except as could not result, in the aggregate across all such Persons and all of their respective ERISA Affiliates, in a Material Adverse Effect, any of their respective ERISA Affiliates establishes any Employee Benefit Plan or Multiemployer Plan, or commences making contributions to (or becomes obligated to make contributions to) any Employee Benefit Plan or Multiemployer Plan.

(j) Change of Control. Any Change of Control shall have occurred.

(k) Removal of Managing Member. A Manager Event shall have occurred or a "Removal Notice" (as defined in a Tax Equity Consent and Notice) shall have been received by the Collateral Agent from a Tax Equity Member, and is not replaced by the appointment of a Qualified Manager as replacement "managing member" in accordance with each of the requirements in sub-clauses (i)-(iii) of Section 9.10(f) (*Portfolio Documents*) within the lesser of (i) thirty (30) days and (ii) such shorter period ending on the date when Collateral Agent's cure period commences pursuant to the applicable consent to collateral assignment with the applicable Tax Equity Member.

(l) Abandonment of Servicing. (i) The transition to a successor Fund Provider to perform the Administrative Services or Maintenance Services is not complete within the 90 days from the date such successor Fund Provider is appointed (or such shorter timeframe for the transition as specified in Section 3 of the applicable Back-Up Servicing Agreement Addendum); provided, that, if such transition is not complete within such 90 day period (or such shorter timeframe in the applicable Back-Up Servicing Agreement Addendum), such cure period may be extended for up to an additional 90 day period (180 days in total) so long as such transition is being diligently pursued, (ii) the transition to a successor Manager under the Management Agreement is not complete within thirty (30) days after termination of the Manager, (iii) a replaced Fund Provider or Manager fails to comply with its transition requirements under a Back-Up Servicing Agreement or Management Agreement and Management Consent Agreement, as applicable or (iv) a Services Agreement is not renewed on the expiry of its then-current term in accordance with its terms or otherwise in a form and substance acceptable to the Administrative Agent (acting on the written instructions of the Majority Lenders).

(m) SREC Contract Events of Default. On or prior to the sixth (6<sup>th</sup>) anniversary of the Closing Date, any "Event of Default" (or any equivalent term howsoever described) shall have occurred under an Eligible SREC Contract in respect of a SREC Seller Party; provided, that, no Event of Default shall occur hereunder if (i) Borrower causes such "Event of Default" to be cured within the lesser of (1) thirty (30) days and (2) such shorter period (if any) ending on the date when Collateral Agent's cure period commences pursuant to the applicable SREC Consent or (ii) Borrower makes a prepayment of the Loans (the making of any

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such prepayment, a “ SREC Prepayment Cure Event ”) in an amount equal to the Prepayment Amount determined in respect of each Eligible SREC Contract for which such Event of Default has occurred and is continuing (with accrued interest thereon but with out payment of any Make-Whole Amount) within the lesser of (1) thirty (30) days and (2) such shorter period (if any) ending on the date when Collateral Agent’s cure period commences pursuant to the applicable SREC Consent.

(n) Tax Equity Document Events of Default. Termination of the Limited Liability Company Agreement of any Fund or the Master Lease Agreement (other than in accordance with its terms or as a result of a “Lessee Default” as defined therein whereby the Lessee’s leasehold interest in the Projects has expired and the Projects are re-conveyed to the Lessor).

Section 10.02 Acceleration and Remedies.

(a) Upon the occurrence and during the continuance of any Event of Default and at any time thereafter during the continuance of such Event of Default, the Administrative Agent shall, at the written request of the Majority Lenders, take any or all of the following actions, at the same or different times: (i) terminate any outstanding Commitments, and thereupon any such outstanding Commitments shall terminate immediately; (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon, the Make-Whole Amount determined in respect of such principal amount and all fees and other obligations of the Borrower accrued hereunder, shall become due and payable immediately; (iii) make a demand on any Acceptable DSR Letter of Credit provided with respect to the Debt Service Reserve Account and (iv) terminate and replace the Manager under Management Agreement, in each case, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower; and in case of any Event of Default described in Section 10.01(e) ( *Involuntary Bankruptcy; Appointment of Receiver, etc* ) or Section 10.01(f) ( *Voluntary Bankruptcy; Appointment of Receiver, etc* ) in respect of any Loan Party or SREC Seller Party, any outstanding Commitments shall automatically terminate and the principal of the Loans then outstanding, together with (x) accrued interest thereon (including, but not limited to, interest accrued thereon at the applicable Post-Default Rate) and (y) the Make-Whole Amount determined in respect of such principal amount (to the full extent permitted by applicable Laws), shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrower. Upon the occurrence and during the continuance of any Event of Default, and irrespective of whether any Loans have become or have been declared immediately due and payable under this Section, each Lender shall be, subject to the terms of the Collateral Agency Agreement, entitled to exercise the rights and remedies available to such Lender under and in accordance with the provisions of the other Loan Documents to which it is a party or any applicable Law, including the right to proceed to protect and enforce the rights of such Lender by an action at law, suit in equity or other appropriate proceeding, whether for the specific performance of any agreement contained herein or in any Loan Document, or for an injunction against a violation of any of the terms

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hereof or thereof, or in aid of the exercise of any power granted hereby or thereby or by law or otherwise.

(b) At any time after the Loans have been declared due and payable pursuant to Section 10.02(a), the Majority Lenders may rescind and annul any such declaration and its consequences if (i) the Borrower has paid all overdue interest on the Loans, all principal of and Make-Whole Amount, if any, on any Loans that are due and payable and are unpaid other than by reason of such declaration, and all interest on such overdue principal and Make-Whole Amount, if any, and (to the extent permitted by applicable law) any overdue interest in respect of the Loans, at the applicable Post-Default Rate, (ii) neither the Borrower nor any other Person shall have paid any amounts which have become due solely by reason of such declaration and (iii) no judgment or decree has been entered for the payment of any monies due pursuant hereto or to the Loans. No rescission and annulment under Section 10.02(b) will extend to or affect any subsequent Event of Default or Default or impair any right consequent thereon.

(c) Upon the occurrence and during the continuation of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to the Administrative Agent against the Borrower under this Agreement or any of the other Loan Documents, or at law or in equity, may be exercised by the Administrative Agent (acting on the written instructions of the Majority Lenders) at any time and from time to time, whether or not all or any of the Obligations shall be declared due and payable, and whether or not the Administrative Agent or Collateral Agent shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Loan Documents with respect to the Collateral and the proceeds from any of the foregoing. Any such actions taken by the Administrative Agent shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as the Administrative Agent may determine, to the fullest extent permitted by Law, without impairing or otherwise affecting the other rights and remedies of the Secured Parties permitted by Law, equity or contract or as set forth herein or in the other Loan Documents. Without limiting the generality of the foregoing, if an Event of Default is continuing (i) to the fullest extent permitted by Law, no Secured Party shall be subject to any "one action" or "election of remedies" Law or rule, and (ii) all liens and other rights, remedies or privileges provided to the Secured Parties shall remain in full force and effect until each of the Secured Parties have exhausted all of its remedies against the Collateral and the proceeds from any of the foregoing or the Obligations have been paid in full. The rights and remedies set forth in this Section 10.02 ( *Acceleration and Remedies* ) are in addition to, and not in limitation of, any other right or remedy provided for in this Agreement or any other Loan Document.

(d) Anything herein to the contrary notwithstanding, if and for so long as a Lender is a Tax Exempt Person, such Lender shall not succeed to the rights of any Guarantor or the Borrower as a direct or indirect owner of any Fund, or an assignee of any such Person, until after the Recapture Period for the last Eligible Project Placed in Service with respect to the Person(s) of which the Lender would become a direct or indirect owner, regardless whether or not exists an Event of Default.

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ARTICLE XI. THE ADMINISTRATIVE AGENT

Section 11.01 Appointment, Powers and Immunities; Exculpatory Provisions.

(a) Each Lender hereby irrevocably appoints and authorizes the Collateral Agent (in accordance with the terms of the Collateral Agency Agreement), and each Lender hereby irrevocably appoints the Administrative Agent, to act as its agent under this Agreement and the other Loan Documents with such powers as are specifically delegated to the Collateral Agent or the Administrative Agent, as the case may be, by the terms of the Loan Documents, together with such other powers as are reasonably incidental to such powers. The Administrative Agent (which term as used in this sentence and in Section 12.12(b)( *No Third Party Beneficiaries; Non-Reliance on Other Lenders* ) shall include reference to each of its affiliates and its own and its affiliates' officers, directors, employees, representatives and agents): (a) shall have no duties or responsibilities except those expressly set forth in the Loan Documents, and shall not by reason of any Loan Document be a trustee for any Lender; (b) shall not be responsible to the Lenders for any recitals, statements, representations or warranties contained in any Loan Document, or in any certificate or other document referred to or provided for in, or received by any of them under, any Loan Document, or for the value, validity, effectiveness, genuineness, enforceability or sufficiency of any Loan Document or any other document referred to or provided for in any Loan Document to monitor the status of a Lien on or performance of the Collateral or for any failure by the Borrower or any other Person to perform any of its obligations under any Loan Document; (c) shall not be required to initiate or conduct any litigation or collection proceedings under any Loan Document; and (d) shall not be responsible for any action taken or omitted to be taken by it under any Loan Document or under any other document or instrument referred to or provided for in any Loan Document or in connection with any Loan Document, except for its own gross negligence or willful misconduct. Without limiting the generality of the foregoing, in any circumstance where Administrative Agent is required to exercise discretion, the Administrative Agent may, at its option, seek to obtain instructions or directions from the Majority Lenders (written or otherwise), and the Administrative Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except in accordance with Section 11.01(h) below. The Administrative Agent may employ agents and attorneys-in-fact and shall not be responsible for the negligence or misconduct of any such agents or attorneys-in-fact appointed by it with due care. The Administrative Agent may consult with legal counsel (including counsel for the Borrower), independent public accountants, market consultants, independent engineers and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by it in accordance with the advice of such counsel, accountants or experts.

(b) The Administrative Agent shall be deemed not to have knowledge of any event, default (including any Event of Default) or any information, or be required to act upon any event, default (including any Event of Default) or information (including the sending of notice) other than (i) in accordance with Section 11.03 below or (ii) unless and until notice describing such event or default (including any Event of Default) is given in writing to a Responsible Officer of the Administrative Agent in accordance with Section 12.02. Absent such written notice and subject to Section 11.03 below, the Administrative Agent shall have no duty to ascertain whether any such event or default (including any Event of Default) shall have occurred.

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(c) Delivery of any reports, information and documents to the Administrative Agent provided for herein or any other Loan Document is for informational purposes only (unless otherwise expressly stated), and the Administrative Agent's receipt of such or otherwise publicly available shall not constitute actual or constructive knowledge or notice of any information contained therein or determinable from information contained therein, including the Borrower's compliance with any of its representations, warranties or covenants hereunder (as to which the Administrative Agent is entitled to rely exclusively on officer's certificates). The Administrative Agent shall not have actual notice of any default or any other matter unless a Responsible Officer of the Administrative Agent receives actual written notice of such default or other matter.

(d) The right of the Administrative Agent to perform any permissive or discretionary act enumerated in this Agreement or any related document shall not be construed as a duty.

(e) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith. The Administrative Agent may rely and shall be protected in acting or refraining from acting upon any document believed by it to be genuine and to have been signed or presented by the proper Person. The Administrative Agent need not investigate any fact or matter stated in any document. The Administrative Agent need not investigate or re-calculate, evaluate, certify, verify or independently determine the accuracy of any numerical information, report, certificate, information, statement, representation or warranty or any fact or matter stated in any such document and may conclusively rely as to the truth of the statements and the accuracy of the information therein.

(f) Before the Administrative Agent takes any discretionary action or refrains from taking any action under this Agreement or any other Loan Document, it may require an officer's certificate or an opinion of counsel, the costs of which (including the Administrative Agent's reasonable attorney's fees and expenses) shall be paid by the party requesting that the Administrative Agent act or refrain from acting. The Administrative Agent shall not be liable for any action it takes or omits to take in good faith in reliance on such officer's certificate or opinion of counsel.

(g) No provision of this Agreement or any other Loan Document shall require the Administrative Agent to expend or risk its own funds or otherwise incur any financial or other liability in the performance of any of its duties hereunder or thereunder, or in the exercise of any of its rights or powers.

(h) The Administrative Agent shall not have any duty or obligation to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents where the Administrative Agent is directed in writing to act by the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan

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Documents); provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any bankruptcy law.

(i) The Administrative Agent shall not be personally liable with respect to any action it takes, suffers or omits to take in good faith in accordance with a direction received by it from the Majority Lenders in accordance with this Agreement or any other Loan Document or for any action taken, suffered or omitted by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Agreement or any other Loan Document, except to the extent of any loss that is a result of the Administrative Agent's gross negligence or willful misconduct.

(j) The Administrative Agent shall not be liable for any action or inaction of the Borrower, the Collateral Agent, the Depositary Agent, or any other party (or agent thereof) to this Agreement or any Loan Document and may assume compliance by such parties with their obligations under this Agreement or any other Loan Document, unless a Responsible Officer of the Administrative Agent shall have received written notice to the contrary.

(k) Notwithstanding anything to the contrary herein or otherwise, under no circumstance will the Administrative Agent be liable for special, punitive, indirect, or consequential loss or damage of any kind whatsoever (including lost profits), whether or not foreseeable, even if the Administrative Agent is actually aware of or has been advised of the likelihood of such loss or damage.

(l) The Administrative Agent shall not be responsible or liable for delays or failures in performance resulting from acts beyond its control. Such acts shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, communication line failures, computer viruses, power failures, earthquakes or other disasters.

(m) The Administrative Agent shall have no duty to see to, or be responsible for the correctness or accuracy of, any recording, filing or depositing of this Agreement or any agreement referred to herein, or any financing statement or continuation statement evidencing a security interest, or to see to the maintenance of any such recording or filing or depositing or to any rerecording, refilling or re-depositing of any thereof.

(n) Knowledge of the Administrative Agent shall not be attributed or imputed to Wells Fargo's other roles in the transaction and knowledge of the Collateral Agent and the Depositary Agent shall not be attributed or imputed to each other or to the Administrative Agent (other than those where the roles are performed by the same group or division within Wells Fargo or otherwise share the same Responsible Officers), or any affiliate, line of business, or other division of Wells Fargo (and vice versa).

Section 11.02 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely conclusively upon any certification, notice, request, consent, statement,

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instrument, opinion, report, document or other communication (including any made by telephone, telecopy, telex, telegram, electronically or cable) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by the Administrative Agent. As to any matters not expressly provided for by any Loan Document, the Administrative Agent shall in all cases be fully protected in acting, or in refraining from acting, under any Loan Document in accordance with instructions given by the Majority Lenders or, if provided in this Agreement, in accordance with the instructions given by the Majority Lenders or all Lenders as is required in such circumstance, and such instructions of such Lenders and any action taken or failure to act pursuant to such instructions shall be binding on all of the Lenders.

Section 11.03 Defaults and Events of Default. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of a Default or Event of Default (other than the nonpayment of principal of or interest on Loans) unless a Responsible Officer of the Administrative Agent has received notice from the Borrower or a Lender specifying such Default or Event of Default and stating that such notice is a "Notice of Default." In the event that a Responsible Officer of Administrative Agent receives such a notice of the occurrence of a Default or Event of Default, the Administrative Agent shall give prompt notice of such receipt to the Lenders (and shall give each Lender prompt notice of each such nonpayment). The Administrative Agent shall (subject to Section 11.06 ( *Failure to Act* )) take such action with respect to such Default or Event of Default as shall be directed in writing by the Majority Lenders; provided that, unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action or refrain from taking such action in accordance with the terms of this Agreement and the other Loan Documents, with respect to such Default or Event of Default as it shall deem advisable in the best interest of the Lenders except to the extent that this Agreement expressly requires that such action be taken, or not be taken, only with the consent or upon the authorization of the Majority Lenders or all of the Lenders.

Section 11.04 [Reserved].

Section 11.05 Non-Reliance on Agent. The Administrative Agent shall not be required to keep itself informed as to the performance or observance by the Borrower or any other Person of this Agreement or any other Transaction Document or any other document referred to or provided for in this Agreement or in any other Transaction Document or to inspect the Properties or books of the Borrower or such other Person. Except for notices, reports and other documents and information expressly required to be furnished to the Lenders by the Administrative Agent under this Agreement, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the affairs, financial condition or business of the Borrower (or any of its Affiliates) which may come into the possession of the Administrative Agent or any of its affiliates.

Section 11.06 Failure to Act. Except for action expressly required of the Administrative Agent under this Agreement and under the other Transaction Documents to which the Administrative Agent is intended to be a party, the Administrative Agent shall in all

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cases be fully justified in failing or refusing to take discretionary action under this Agreement and under the other Transaction Documents that, in its opinion or the opinion of its counsel, may reasonably expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable Law.

Section 11.07 Resignation or Removal of Administrative Agent. Subject to the appointment and acceptance of a successor Administrative Agent as provided below, the Administrative Agent may resign at any time by notice to the Lenders and the Borrower, and the Administrative Agent may be removed at any time with or without cause by the Majority Lenders, and in the case of without cause, subject to 30 days prior written notice. Upon any such resignation or removal, the Majority Lenders shall have the right to appoint a successor Administrative Agent, which successor Administrative Agent shall (so long as no Default or Event of Default has occurred and is continuing) be reasonably acceptable to the Borrower.

If no successor Administrative Agent shall have been so appointed by the Majority Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent's giving of notice of resignation or the Majority Lenders' removal of the retiring Administrative Agent (or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Administrative Agent may, petition a court of competent jurisdiction to appoint a successor Administrative Agent, which shall be an Acceptable Bank, with all reasonable out-of-pocket fees and expenses of such petition to be paid by the Borrower. Whether or not a successor has been so appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date. Any and all rights, authorities and discretions of the Administrative Agent under the Transaction Documents may be exercised by the Majority Lenders in their sole discretion from the Resignation Effective Date until a successor Administrative Agent has been appointed.

Upon the acceptance of any appointment as Administrative Agent by a successor Administrative Agent, such successor Administrative Agent shall succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations under this Agreement and the other Transaction Documents to which it is intended to be a party. After any retiring Administrative Agent's resignation or removal as Administrative Agent, the provisions of this ARTICLE XI (The Administrative Agent) shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as the Administrative Agent.

Section 11.08 Collateral Agency Agreement and Depositary Agreement. On the Closing Date, the Administrative Agent is hereby directed to enter into each of the Collateral Agency Agreement and the Depositary Agreement in its capacity as Administrative Agent on behalf of the Lenders, and the Lenders hereby authorize and direct the Administrative Agent to execute and deliver the foregoing agreement on behalf of the Lenders. Each of the Lenders hereby acknowledges that it has received and reviewed a copy of each of the Collateral Agency Agreement and the Depositary Agreement, and agrees to be bound by the terms thereof. Without limiting the generality of the foregoing, each Lender (and each Person that becomes a Lender hereunder pursuant to Section 12.05 ( *Successors and Assigns* )) hereby (a) authorizes and directs the Administrative Agent to designate and appoint Wells Fargo Bank, National Association to

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act as the initial collateral agent and the initial depositary agent of such Lender under the Loan Documents pursuant to Section 4.01 of the Collateral Agency Agreement and Section 2.01 of the Depositary Agreement, respectively and (b) authorizes and directs each Agent to execute the Collateral Agency Agreement and the Depositary Agreement and the other Loan Documents to which it is a party on behalf of such Lender and agrees that the Agents may take such actions on behalf of such Lender as are contemplated by the terms of the Collateral Agency Agreement and the Depositary Agreement.

Section 11.09 Merger. Any entity into which the Administrative Agent may be merged or converted or with which it may be consolidated or any entity resulting from any merger, conversion or consolidation to which the Administrative Agent shall be a party, or any entity succeeding to the business of the Administrative Agent or its corporate trust operations, shall be the successor of the Administrative Agent hereunder without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties hereto except where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding; provided, however, that such successor must be a U.S. Person.

Section 11.10 Wells Fargo Bank, National Association. The parties expressly acknowledge and consent to Wells Fargo Bank, National Association acting in the multiple capacities of Administrative Agent, Collateral Agent and Depositary Agent. Wells Fargo Bank, National Association may, in such multiple capacities, discharge its separate functions fully, without hindrance or regard to conflict of interest principles or other breach of duties to the extent that any such conflict or breach arises from the performance by Wells Fargo Bank, National Association of express duties set forth in the Loan Documents in any of such capacities, all of which defenses, claims or assertions are hereby expressly waived by the other parties hereto except in the case of negligence (other than errors in judgment) and willful misconduct by Wells Fargo Bank, National Association.

## ARTICLE XII. MISCELLANEOUS.

Section 12.01 No Waiver. No failure on the part of the Administrative Agent, the Collateral Agent or any Lender to exercise and no delay in exercising, and no course of dealing with respect to, any right, power or privilege under this Agreement or any other Transaction Document shall operate as a waiver of such right, remedy, power or privilege, and no single or partial exercise of any right, power or privilege under this Agreement or any other Transaction Document shall preclude any other or further exercise of such right, remedy, power or privilege, or the exercise of any other right, power or privilege. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law.

### Section 12.02 Notices.

(a) All notices, requests and other communications provided for in this Agreement and under the Loan Documents (including any modifications of, or waivers or consents under, this Agreement) shall be given or made in writing (including by telecopy) delivered to the intended recipient at the "Address for Notices" specified below its name on its

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signature page hereto, Appendix C ( *Addresses for Notices* ) or, as to any party, at such other address (and, with respect to the Administrative Agent, such other Responsible Officer(s)) as shall be designated by such party in a notice to each other party . Except with respect to the Collateral Agent and as otherwise provided in this Agreement, all such communications shall be deemed to have been duly given when transmitted by facsimile transmittal (as confirmed by the facsimile machine of the sender) or personally delivered or, in the case of a mailed notice or notice sent by courier, upon receipt during normal business hours, in each case given or addressed as set forth above. All communications to the Collateral Agent shall be deemed to have been duly given upon actual receipt by a Responsible Officer of the Collateral Agent.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and internet or intranet websites) pursuant to procedures approved by each Lender, provided that the foregoing shall not apply to notices to any Lender if such Lender has notified the Borrower that it is incapable of receiving notices by electronic communication. Each of the Administrative Agent or the Borrower, may, in its discretion, agree to accept notices and other communications to each other hereunder and under the other Loan Documents by electronic communications pursuant to procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

#### Section 12.03 Expenses; Etc.

(a) The Borrower agrees to pay or reimburse each of the Lenders, the Administrative Agent, the Depository Agent and the Collateral Agent for: (i) all reasonable out-of-pocket costs and expenses (including the reasonable fees and expenses of (x) Milbank, Tweed, Hadley & McCloy LLP, special New York counsel to the Lenders, (y) such other counsel that the Lenders, the Administrative Agent, the Depository Agent or the Collateral Agent may engage from time to time, and (z) experts (including the Independent Engineer, Model Auditor and the Insurance Consultant) engaged by the Lenders and the Administrative Agent (acting on the written instructions of the Majority Lenders) from time to time with (in the case of such other counsel or such experts, so long as the Borrower has given its prior written consent to such engagement, provided that no such consent shall be required so long as a Default or Event of Default has occurred and is continuing)), in connection with (A) the negotiation, preparation, execution and delivery of this Agreement and the other Transaction Documents and the extensions of credit under this Agreement (including with respect to the contemplated extension of credit on the Closing Date, whether or not the Closing Date in fact occurs), (B) any amendment, modification or waiver of any of the terms of this Agreement or any other Transaction Document and (C) the placement and syndication of any Commitments or Loans that are completed on or before the Closing Date, (ii) all costs and expenses of the Lenders, the Administrative Agent, the Collateral Agent and the Depository Agent (including counsels' fees and expenses and experts' reasonable fees and expenses) in connection with (A) any Default or Event of Default and any enforcement or collection proceedings resulting from such Default or Event of Default or in connection with the negotiation of any restructuring or "work-out" (whether or not consummated) of the obligations of the Borrower under this Agreement or the obligations of Sponsor or Project Party under any other Transaction Document and (B) the enforcement of this Section 12.03 ( *Expenses; Etc* ). and (iii) all costs, expenses, taxes,

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assessments and other charges incurred in connection with any filing, registration, recording or perfection of any Lien contemplated by this Agreement or any other Transaction Document to which the Lenders, the Administrative Agent, the Depositary Agent or the Collateral Agent is intended to be a party or any other document referred to in this Agreement or in any such other Transaction Document.

(b) The Borrower hereby agrees to indemnify the Collateral Agent, the Depositary Agent, the Administrative Agent and each Lender and their respective affiliates, and each of their respective officers, directors, trustees, employees, representatives, attorneys and agents (each, an “Indemnitee”) from, and shall hold each of them harmless against, any and all losses, liabilities, claims, damages, expenses, obligations, penalties, actions, judgments, suits, costs or disbursements of any kind or nature whatsoever (including the reasonable fees and expenses of counsel for each Indemnitee in connection with any investigative, administrative or judicial proceeding commenced or threatened, whether or not such Indemnitee shall be designated a party to any such proceeding) including those incurred in connection with (x) any enforcement, including any action, claim or suit brought by the Administrative Agent, the Collateral Agent or the Depositary Agent, of any indemnification or other obligation of the Borrower, any other party to the Loan Documents or any other Person, and (y) a successful defense, in whole or in part, of any claim that the Administrative Agent, the Collateral Agent or the Depositary Agent breached its standard of care (collectively, “Indemnity Claims”) that may at any time (including at any time following the Debt Termination Date) be imposed on, asserted against or incurred by any Indemnitee as a result of, or arising out of, or in any way related to or by reason of any Indemnity Claim with respect to (i) any of the transactions contemplated by this Agreement or by any other Transaction Document or the execution, delivery or performance of this Agreement or any other Transaction Document, (ii) the extensions of credit under this Agreement or the actual or proposed use by the Borrower of any of the extensions of credit under this Agreement or the grant to the Collateral Agent for the benefit of, or to any of, the Secured Parties of any Lien on the Collateral or in any other Property of the Borrower or any other person or any membership, partnership or equity interest in the Borrower or any other person and (iii) the exercise by the Collateral Agent (or the other Secured Parties) of their rights and remedies (including foreclosure) under any Collateral Document (but excluding, as to any Indemnitee, any such Indemnity Claim incurred, as finally determined by a court of competent jurisdiction, by reason of (A) the gross negligence or willful misconduct of such Indemnitee or (B) any actions or claims by the Borrower for the breach by any Indemnitee (other than the Administrative Agent, the Collateral Agent and the Depositary Agent) of any of its material obligations under the Transaction Documents to the Borrower that are substantially successful). Without limiting the generality of the foregoing, the Borrower hereby agrees to indemnify each Indemnitee from, and shall hold each Indemnitee harmless against, any Indemnity Claim described in the preceding sentence (including any Lien filed against any Project by any Governmental Authority but excluding, as provided in the preceding sentence, any such Indemnity Claim to the extent incurred, as finally determined by a court of competent jurisdiction, by reason of (x) the gross negligence or willful misconduct of such Indemnitee or (y) any actions or claims by the Borrower for the breach by any Indemnitee (other than the Administrative Agent, the Collateral Agent and the Depositary Agent) of any of its material obligations under the Transaction Documents to the Borrower that are substantially successful) arising under any Environmental Law as a result of the past, present or future operations of the

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Borrower, or the past, present or future condition of any Project, or any Release or Use or threatened Release of any Hazardous Materials with respect to any Project (including any such Release or Use or threatened Release which shall occur during any period when such Indemnitee shall be in possession of any Project following the exercise by the Collateral Agent or any other Secured Party of any of its rights and remedies under this Agreement or under any Loan Document or any other Transaction Document) except to the extent that such Release or Use is caused by such Indemnitee's gross negligence or willful misconduct, as finally determined by a court of competent jurisdiction. The Borrower's obligations under this Section 12.03(b) shall survive termination or assignment of this Agreement and resignation and removal of the Parties.

(c) Notwithstanding anything to the contrary set forth herein, the Borrower shall not, in connection with any one legal proceeding or claim, or separate but related proceedings or claims arising out of the same general allegations or circumstances in which there is no conflict of interest between the affected Indemnitees or any such conflict of interest is waived in writing by the affected Indemnitees, be liable to the Indemnitees (or any of them) for the fees and expenses of more than one separate firm of attorneys (which shall be selected by the Indemnitees ). Notwithstanding the foregoing to the contrary, in any such proceeding, any Indemnitee shall have the right to retain its own counsel, but the fees and expenses of such counsel shall be at the expense of such Indemnitee unless (i) the Borrower and the Indemnitee shall have mutually agreed to the retention of such counsel or (ii) the Borrower or the Indemnitee has been advised by counsel that representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them.

(d) Notwithstanding anything to the contrary set forth herein, so long as no Default or Event of Default has occurred and is continuing and provided that (i) in the reasonable opinion of an Indemnitee and its counsel, the Indemnity Claim does not involve the potential imposition of criminal liability upon such Indemnitee or a conflict of interest between such Indemnitee and the Borrower or between such Indemnitee and another Indemnitee (unless such conflict of interest is waived in writing by the affected Indemnitees) and (ii) in such event (other than with respect to disputes between such Indemnitee and another Indemnitee) the Borrower shall pay the reasonable expenses of such Indemnitee in such defense, no Indemnitee may compromise or settle any Indemnity Claim involving such Indemnitee, the defense of which such Indemnitee has assumed, other than at such Indemnitee's own expense, without the Borrower's prior written consent (which consent shall not be unreasonably withheld or delayed); provided that in no event shall the Borrower be required, in connection with the compromise or settlement of any Indemnity Claim by an Indemnitee, to admit any guilt, culpability or complicity, or incur any civil or criminal liability, without the prior written consent of the Borrower, which consent may be granted, conditioned or withheld in the Borrower's sole discretion; provided, further, that the Borrower may not, without the prior written consent of the Indemnitee, settle, compromise or consent to the entry of any judgment regarding such claim if such settlement, compromise or consent (i) contains any admission or statement suggesting any wrongdoing or liability on behalf of the Indemnitee, (ii) contains any equitable order, judgment or term that in any manner affects, restrains or interferes with the business of the Indemnitee or any of its Affiliates or (iii) does not contain an unconditional release of the Indemnitee, in form and substance satisfactory to such Indemnitee, from any liability related to such claim; provided, further that if any Indemnitee reasonably determines that failure to compromise or settle any

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Indemnity Claim made against an Indemnitee is reasonably likely to have an imminent material adverse effect on such Indemnitee, such Indemnitee shall be entitled to compromise or settle such Indemnity Claim.

(e) Upon payment of any Indemnity Claim by the Borrower to or on behalf of an Indemnitee, the Borrower, without any further action, shall be subrogated to any and all claims that such Indemnitee may have relating thereto, and such Indemnitee shall reasonably cooperate with the Borrower and give such further reasonable assurances as are necessary or advisable to enable the Borrower to vigorously pursue such claims.

(f) Section 12.03(b) shall not apply with respect to Taxes other than any taxes that represent losses, liabilities, claims or damages arising from any non-Tax claim.

Section 12.04 Amendments; Etc.

(a) Except as otherwise expressly provided in this Agreement, any provision of this Agreement may be amended, modified or waived only by an instrument in writing signed by the Borrower and the Administrative Agent (acting on the written instructions of the Majority Lenders) or the Borrower and the Majority Lenders (and the Administrative Agent to the extent such amendment or modification would adversely affect the rights and obligations of the Administrative Agent); provided that (i) no amendment, modification or waiver shall, unless by an instrument signed by all of the Lenders (and the Administrative Agent to the extent such amendment or modification would increase or decrease the rights or obligations of the Administrative Agent) (A) subject to the provisions of Section 10.02 ( *Acceleration and Remedies* ) relating to acceleration or rescission, (x) change the amount or time of any prepayment or payment of principal of the Loans, (y) reduce the rate or change the time of payment or method of computation of interest on the Loans or of the Make-Whole Amount in respect of the Loans or (z) change the principal amount of the Loans or change or extend the Commitments of any Lender , (B) alter the rights or obligations of the Borrower to prepay Loans under Section 3.04 ( *Mandatory Prepayments* ), (C) alter the terms of this Section 12.04 ( *Amendments; Etc* ), (D) amend the definition of the term “Majority Lenders” or modify in any other manner the number or percentage of the Lenders required to make any determinations or waive any rights under this Agreement or to modify any provision of this Agreement, (E) waive any of the conditions precedent set forth in ARTICLE VI ( *Conditions Precedent* ), (F) alter the terms of Section 9.01 ( *Indebtedness* ) or amend the definition of “Permitted Indebtedness”, (G) alter the terms of Section 8.19 ( *Use of Proceeds* ) or (H) release all or substantially all of the Collateral from the Lien of the Collateral Documents and (ii) any amendment, modification or waiver of ARTICLE XI ( *The Administrative Agent* ) shall require the consent of the Administrative Agent.

(b) The Borrower will provide each Lender (irrespective of the principal amount of Loans due to it) with sufficient information, sufficiently far in advance of the date a decision is required, to enable such Lender to make an informed and considered decision with respect to any proposed amendment, waiver or consent in respect of any of the provisions hereof or of any other Transaction Document. The Borrower will deliver executed or true and correct copies of each amendment, waiver or consent effected pursuant to the provisions of this Section

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12.04 ( Amendments; Etc ) to each Lender promptly following the date on which it is executed and delivered by, or receives the consent or approval of, the requisite Lenders and other parties hereto.

(c) The Borrower will not directly or indirectly pay or cause to be paid any remuneration, whether by way of supplemental or additional interest, fee or otherwise, or grant any security, to any Lender as consideration for or as an inducement to the entering into by any Lender of any waiver or amendment of any of the terms and provisions hereof unless such remuneration is concurrently paid or security is concurrently granted, on the same terms, ratably to each Lender even if such Lender did not consent to such waiver or amendment.

Section 12.05 Successors and Assigns.

(a) Assignments Generally

. This Agreement shall be binding upon and inure to the benefit of the parties to this Agreement and their respective successors and assigns permitted hereby, except that the Borrower may not assign its rights or obligations under this Agreement or under the Loans without the prior consent of all of the Lenders and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with Section 12.05(b) ( Assignments by Lenders ), (ii) by way of participation in accordance Section 12.05(d) ( Participations ), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 12.05(e) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 12.05(d) ( Participations )) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement upon prior written notice to the Administrative Agent; provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitments and/or the Loans at the time owing to it or contemporaneous assignments to related Approved Funds that equal at least the amount specified in clause (b)(i)(B) below in the aggregate, or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in clause (b)(i)(A) above, the aggregate amount of the Commitments (which for this purpose includes Loans outstanding thereunder) or, if the applicable Commitments are not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption

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with respect to such assignment is delivered to the Administrative Agent or, if “Trade Date” is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than \$1,000,000, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender’s rights and obligations under this Agreement with respect to the Loans or the Commitment assigned.

(iii) Required Consents. The consent of the Administrative Agent shall be required for any assignment pursuant to this Section 12.05(b) ( *Assignments by Lenders* ) other than assignments to a Lender, an Affiliate of a Lender or an Approved Fund; provided that, in each case, so long as no Default or Event of Default has occurred and is continuing, the consent of the Borrower shall be required for any assignment to a Competitor, and the Borrower’s consent shall be deemed to have been given if the Borrower has not responded within ten (10) Business Days of its receipt of a written assignment request. No other consent shall be required for any such assignment except to the extent required by clause (b)(i)(B) above.

(iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing fee in the amount of \$3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.

(v) Prohibited Assignments. No assignment of any Loans or Commitments shall be made to (A) a natural Person, (B) the Borrower or any Affiliate thereof including the Sponsor or a Qualified Purchaser (an “ Affiliated Lender ”) or (C) for which a consent under Section 12.05(b)(iii) ( *Required Consents* ) has not been obtained.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 12.05(c) ( *Register* ), from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender’s rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Section 2.03 ( *Fees* ), Section 5.01 ( *Increased Costs* ), Section 5.02 ( *Taxes* ) and Section 12.03 ( *Expenses; Etc.* ) with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this

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paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 12.05(d) ( Participations ) .

(c) Register . The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the “ Register ”). Upon its receipt of, and consent to, a duly completed Assignment and Assumption executed by an assigning Lender and an assignee lender, administrative details information with respect to such assignee lender (unless the assignee lender shall already be a Lender hereunder), the processing and recordation fee referred to in clause (b)(iv) ( Assignment and Assumption ) above, if applicable, and the written consent of the Administrative Agent to such assignment and any applicable tax forms, the Administrative Agent shall promptly record each assignment made in accordance with this Section 12.05(c) ( Register ) in the Register. No assignment shall be effective unless it has been recorded in the Register as provided in this Section 12.05(c) ( Register ) . The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by the Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(d) Participations .

(i) Any Lender may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural Person or the Borrower or any of the Borrower’s Affiliates) (each, a “ Participant ”) in all or a portion of such Lender’s rights and/or obligations under this Agreement (including all or a portion of its Commitments and/or the Loans owing to it); provided that (A) such Lender’s obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (C) the Borrower, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender’s rights and obligations under this Agreement; provided, further, that no Lender may sell participations to a Competitor without Borrower’s prior written consent.

(ii) Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver requiring the consent of all Lenders, as set forth in first proviso in Section 12.04 ( Amendments; Etc. ) that affects such Participant. The Borrower agrees that each Participant shall be entitled to the benefits of Section 5.01 ( Increased Costs ) , Section 5.02 ( Taxes ) , and Section 12.03 ( Expenses; Etc. ) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 12.05(b)

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( *Assignments by Lenders* ); provided that such Participant agrees to be subject to the provisions Section 5.03 ( *Mitigation of Obligations* ) as if it had acquired its interest by assignment pursuant to Section 12.05(b) ( *Assignments by Lenders* ). Each Lender that sells a participation shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans, Commitments or other rights or obligations under the Loan Documents (each such register, a "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of any Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans or other rights or obligations under any Loan Document) except to the extent that such disclosure is necessary to establish that such Commitment, Loan or other right or obligation is in registered form under section 5f.103-1(c) of the U.S. Treasury Regulations. The entries in a Participant Register shall be conclusive absent manifest error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

(e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 5.02 ( *Taxes* ) that the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 5.02 ( *Taxes* ) unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 5.02 ( *Taxes* ) and Section 5.03 ( *Mitigation of Obligations* ) as though it were a Lender.

(f) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 5.02 ( *Taxes* ) that the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 5.02 ( *Taxes* ) unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 5.02 ( *Taxes* ) and Section 5.03 ( *Mitigation of Obligations* ) as though it were a Lender.

(g) Sharing of Information. A Lender may furnish any information concerning the Borrower in the possession of such Lender from time to time to transferees and assignees (including prospective transferees, assignees and counterparties), subject, however, to the provisions of Section 12.07 ( *Treatment of Certain Information; Confidentiality* ).

(h) Certain Pledges. Any Lender or the Administrative Agent may at any time pledge or assign a security interest in all or any portion of its rights under the Loan Documents to secure obligations of such Lender or the Administrative Agent, including any pledge or assignment to secure obligations to a Federal Reserve Bank or central bank; provided that no such pledge or assignment shall release such Lender or the Administrative Agent from

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any of its obligations hereunder or substitute any such pledge or assignee for such Lender or the Administrative Agent as a party hereto.

Section 12.06 Marshalling. Neither the Administrative Agent nor any Lender shall be under any obligation to marshal any assets in favor of the Borrower or any other party or against or in payment of any or all of the Obligations.

Section 12.07 Treatment of Certain Information; Confidentiality. Each Lender and the Administrative Agent agrees (on behalf of itself and each of its affiliates, directors, trustees, officers, employees and representatives) to keep confidential, in accordance with their customary procedures for handling confidential information of this nature, any non-public information supplied to it by the Borrower pursuant to this Agreement (provided that such information does not include information that (i) was publicly known or otherwise known to it prior to the time of such disclosure and (ii) subsequently becomes publicly known through no act or omission by it or any person acting on its behalf); provided that nothing in this Agreement shall limit the disclosure of any such information (a) to the extent required by any Law or judicial process, (b) to counsel for any of the Lenders or the Administrative Agent, (c) to bank examiners, auditors, accountants, any federal or state regulatory authority, the National Association of Insurance Commissioners or any similar organization, or any nationally recognized rating agency that requires access to information about such Person's investment portfolio, (d) to any other Lender or the Administrative Agent (or each of their respective affiliates and their respective partners, directors, trustees, officers, employees, agents, advisors (including professional and financial advisors) and other representatives where such disclosure is required in connection with this Agreement and the transactions contemplated by this Agreement and the other Transaction Documents (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such information and instructed to keep such information confidential)), (e) after notice to the Borrower (to the extent such prior notice is legally permitted) in connection with any litigation to which any one or more of the Lenders is a party and pursuant to which such Lender or the Administrative Agent, has been compelled or required to disclose such information in the reasonable opinion of counsel thereto, (f) to the Independent Engineer, the Model Auditor, the Insurance Consultant or to other experts engaged by any Lender or the Administrative Agent in connection with this Agreement and the transactions contemplated by this Agreement and the other Loan Documents so long as such parties agree to maintain the confidentiality of the information as provided in this Section 12.07 ( *Treatment of Certain Information; Confidentiality* ) pursuant to an agreement containing confidentiality undertakings substantially similar to those in this Section, (g) to the extent that such information is required to be disclosed to a Governmental Authority in connection with a tax audit or dispute, (h) in connection with any Default or Event of Default and any enforcement or collection proceedings resulting from such Default or Event of Default or in connection with the negotiation of any restructuring or "work-out" (whether or not consummated) of the obligations of the Borrower under this Agreement or the obligations of any Project Party under any other Transaction Document, to the extent in the public domain, (i) to (x) any assignee (or prospective assignee) and its advisors, (y) any actual or prospective counterparty (and its advisors) to any direct or indirect swap or derivative transaction or credit protection relating to the Borrower or an Relevant Party and its respective obligations, (and so long as such assignee or counterparty (or prospective assignee or counterparty) agrees to maintain the confidentiality of

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such information as provided in this Section 12.07 ( *Treatment of Certain Information; Confidentiality* ) pursuant to an agreement containing confidentiality undertakings substantially similar to those in this Section or (j) to any pledgee of a Lender referred to in Section 12.05(h) ( *Certain Pledges* ). In no event shall any Lender or the Administrative Agent be obligated or required to return any materials furnished by the Borrower; provided, however, that any confidential information retained by such Lender or the Administrative Agent shall continue to be subject to the provisions of this Section 12.07 ( *Treatment of Certain Information; Confidentiality* ). The obligations of each Lender under this Section 12.07 ( *Treatment of Certain Information; Confidentiality* ) shall supersede and replace the obligations of such Lender under any confidentiality letter, or other confidentiality obligation, in respect of this financing effective prior to the date of the execution and delivery of this Agreement.

Section 12.08 Survival. The obligations of the Borrower under Section 5.01 ( *Increased Costs* ), Section 5.02 ( *Taxes* ), Section 12.03 ( *Expenses; Etc* ), Section 12.07 ( *Treatment of Certain Information; Confidentiality* ), Section 12.13 ( *Governing Law; Submission to Jurisdiction* ) and Section 12.14 ( *Waiver of Jury Trial* ) shall survive after the Debt Termination Date. In addition, each representation and warranty made, or deemed to be made by a notice of any extension of credit, in this Agreement or pursuant to this Agreement shall survive the making of such representation and warranty, and no Lender shall be deemed to have waived, by reason of making any extension of credit under this Agreement, any Default or Event of Default which may arise by reason of such representation or warranty proving to have been false or misleading, notwithstanding that such Lender may have had reason to believe that such representation or warranty was false or misleading at the time such extension of credit was made.

Section 12.09 Captions. The table of contents and captions and section headings appearing in this Agreement are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement.

Section 12.10 Counterparts; Integration; Effectiveness. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any party to this Agreement may execute this Agreement by signing any such counterpart; signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signatures are physically attached to the same counterpart. This Agreement and the other Loan Documents constitute the entire agreement and understanding among the parties to this Agreement with respect to the matters covered by this Agreement and the other Loan Documents and supersede any and all prior agreements and understandings, written or oral, with respect to such matters. This Agreement shall become effective at such time as counterparts of this Agreement have been signed and delivered by all of the intended parties to this Agreement.

Section 12.11 Reinstatement. The obligations of the Borrower under this Agreement shall be automatically reinstated if and to the extent that for any reason any payment by or on behalf of the Borrower in respect of the Obligations is rescinded or must be otherwise restored by any holder of any of the Obligations, whether as a result of any proceedings in bankruptcy or reorganization or otherwise, and the Borrower agrees that it will indemnify each Secured Party on demand for all reasonable costs and expenses (including reasonable fees of

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counsel) incurred by such Secured Party in connection with such rescission or restoration, including any such costs and expenses incurred in defending against any claim alleging that such payment constituted a preference, fraudulent transfer or similar payment under any bankruptcy, insolvency or similar law.

Section 12.12 No Third Party Beneficiaries; Non-Reliance on Other Lenders.

(a) The agreement of the Lenders to make the Loans and extend credit to the Borrower, on the terms and conditions set forth in this Agreement, is solely for the benefit of the Borrower, the Administrative Agent and the Lenders, and no other Person (including Sponsor, Qualified Purchaser, Project Party, contractor, subcontractor, supplier, workman, carrier, warehouseman or materialman furnishing labor, supplies, goods or services to or for the benefit of the Project) shall have any rights under this Agreement or under any other Transaction Document (except as provided in a Transaction Document to which such Person is a party) as against the Administrative Agent, or any Lender or with respect to any extension of credit contemplated by this Agreement.

(b) Each Lender agrees that it has, independently and without reliance on the Administrative Agent, or any other Lender, and based on such documents and information as it has deemed appropriate, made its own credit analysis of the Borrower and decision to enter into this Agreement and that it will, independently and without reliance upon the Administrative Agent, or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own analysis and decisions in taking or not taking action under this Agreement or any other Transaction Document.

Section 12.13 Governing Law; Submission to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of New York. Each of the Borrower, the Administrative Agent and the Lenders hereby submits to the nonexclusive jurisdiction of the United States District Court and the courts of the State of New York sitting in the borough of Manhattan, City of New York for the purposes of all legal proceedings arising out of or relating to this Agreement and the other Loan Documents or the transactions contemplated by this Agreement and the other Loan Documents. The Borrower irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum.

Section 12.14 WAIVER OF JURY TRIAL. EACH OF THE BORROWER, THE ADMINISTRATIVE AGENT AND THE LENDERS HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS.

Section 12.15 Patriot Act. Each Lender and the Administrative Agent hereby notifies the Borrower that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name

FIXED RATE LOAN AGREEMENT

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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and address of the Borrower and other information that will allow such Lender and the Administrative Agent to identify the Borrower in accordance with the Patriot Act.

Section 12.16 Contractual Recognition of Bail-In. Notwithstanding any other term of any Loan Documents or any other agreement, arrangement or understanding between the Parties, each Party acknowledges and accepts that any liability of any Party to any other party under or in connection with the Loan Documents may be subject to Bail-In Action by the relevant Resolution Authority and acknowledges and accepts to be bound by the effect of:

(a) any Bail-In Action in relation to any such liability, including (without limitation):

(i) a reduction, in full or in part, in the principal amount, or outstanding amount due (including any accrued but unpaid interest) in respect of any such liability;

(ii) a conversion of all, or part of, any such liability into shares or other instruments of ownership that may be issued to, or conferred on, it; and

(iii) a cancellation of any such liability; and

(b) a variation of any term of any Loan Document to the extent necessary to give effect to any Bail-In Action in relation to any such liability.

Section 12.17 Authorization. The Administrative Agent and the Collateral Agent are hereby authorized and directed by the Lenders to execute, deliver and perform each of the Use of Work Products Agreement with the Independent Engineer and the Loan Documents to which each of them, respectively, is or is intended to be a party and each Lender agrees to be bound by all of the agreements of the Administrative Agent and Collateral Agent contained in the Loan Documents and the Use of Work Products Agreement.

(Signature pages follow)

FIXED RATE LOAN AGREEMENT

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

BORROWER :

VIVINT SOLAR FINANCING III, LLC

By: /s/ Thomas Plagemann

Name: Thomas Plagemann

Title: Chief Commercial Officer

Address for Notices:

Vivint Solar Financing III, LLC

1800 W Ashton Blvd.

Lehi, UT 84043

Attention: \*\*\*

Email: \*\*\*

With a copy to:

Vivint Solar, Inc.

1800 W. Ashton Blvd.

Lehi, UT 84043

Attention: Vivint Solar Legal Department

Email: \*\*\*

Signature Page to Fixed Rate Loan Agreement

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

ADMINISTRATIVE AGENT :

WELLS FARGO BANK, NATIONAL ASSOCIATION ,  
AS ADMINISTRATIVE AGENT

By: /s/ Michael Pinzon  
Name: Michael Pinzon  
Title: Vice President

Address for Notices:

\*\*\*

Attention: \*\*\*

E-mail: \*\*\*

Signature Page to Fixed Rate Loan Agreement

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

LENDER :

NEW YORK LIFE INSURANCE COMPANY

By: /s/ Edward J. Fitzgerald

Name: Edward J. Fitzgerald

Title: Vice President

Address for Notices of Payments, Written Confirmations of Such Wire Transfers, and Any Audit Confirmation :

\*\*\*

Attention: \*\*\*

Fax #: \*\*\*

*With a copy sent electronically to:*

\*\*\*

All Other Communications :

\*\*\*

Attention: \*\*\*

Fax #: \*\*\*

*With a copy sent electronically to:*

\*\*\*

*and With a copy of any notices regarding default or Events of Default under the Operative Documents to:*

Attention: \*\*\*

Fax #: \*\*\*

Signature Page to Fixed Rate Loan Agreement

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

LENDER :

NEW YORK LIFE INSURANCE AND ANNUITY  
CORPORATION

By: NYL Investors LLC, its Investment Manager

By: /s/ Edward J. Fitzgerald

Name: Edward J. Fitzgerald

Title: Managing Director

Address for Notices of Payments, Written Confirmations of Such Wire  
Transfers, and Any Audit Confirmation :

\*\*\*

Attention: \*\*\*

Fax #: \*\*\*

*With a copy sent electronically to:*

\*\*\*

All Other Communications :

\*\*\*

Attention: \*\*\*

Fax #: \*\*\*

*With a copy sent electronically to:*

\*\*\*

*and With a copy of any notices regarding default or Events of Default  
under the Operative Documents to:*

Attention: \*\*\*

Fax #: \*\*\*

Signature Page to Fixed Rate Loan Agreement

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---

LENDER :

MACQUARIE FUNDING LLC

By: /s/ Pratap Dasgputa

Name:Pratap Dasgputa

Title:Member

By: /s/ Chris Thalhammer

Name:Chris Thalhammer

Title:Authorized Signatory

Address for Notices :

\*\*\*

Attention: \*\*\*

Email: \*\*\*

Signature Page to Fixed Rate Loan Agreement

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

LENDER:

RBS PENSION TRUSTEE LIMITED,  
as Trustee for the Royal Bank of Scotland Group  
Pension Fund

By: /s/ Tim Cable  
Name: Tim Cable  
Title: Attorney

By: /s/ Jefferson Petch  
Name: Jefferson Petch  
Title: Attorney

Address for Notices (Operations/Administration) :

\*\*\*  
Attn: \*\*\*  
\*\*\*  
Telephone: \*\*\*  
Direct Fax: \*\*\*  
Email: \*\*\*

*With a copy to:*

\*\*\*  
Attn: \*\*\*  
\*\*\*  
Telephone: \*\*\*  
Direct Fax: \*\*\*  
Email: \*\*\*

Address for Notices (Amendments, Waivers, and Compliance) :

\*\*\*  
Attn: \*\*\*  
\*\*\*  
Telephone: \*\*\*  
Direct Fax: \*\*\*  
Email: \*\*\*

Signature Page to Fixed Rate Loan Agreement

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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LENDER :

ACCORDIA LIFE AND ANNUITY COMPANY

By: /s/ Gilles Dellaery

Name: Gilles Dellaery

Title: EVP

Address for Notices :

\*\*\*

Attention: \*\*\*

Email: \*\*\*

Phone Number: \*\*\*

Fax: \*\*\*

Signature Page to Fixed Rate Loan Agreement

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

**Appendix A**  
**Lender Commitments**

<b>Lender</b>	<b>Commitment</b>
***	\$***
***	\$***
***	\$***
***	\$***
***	\$***
<b>Total</b>	\$203,750,000

Appendix A

|| [\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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## Appendix B

### Loan Amortization Schedule

<b>Quarter Ending</b>	<b>Scheduled Principal Repayment</b>
April 2017	\$153,388.72
July 2017	\$1,717,815.12
October 2017	\$2,481,199.75
January 2018	\$1,575,622.03
April 2018	\$475,895.86
July 2018	\$1,965,677.67
October 2018	\$2,617,864.18
January 2019	\$1,660,613.48
April 2019	\$483,102.38
July 2019	\$2,035,257.84
October 2019	\$2,681,814.78
January 2020	\$1,659,479.30
April 2020	\$529,788.84
July 2020	\$2,156,883.77
October 2020	\$2,380,427.92
January 2021	\$1,154,445.68
April 2021	\$194,040.92
July 2021	\$1,812,615.26
October 2021	\$2,391,411.26
January 2022	\$1,278,450.40
April 2022	\$273,649.86
July 2022	\$2,038,361.11
October 2022	\$2,179,808.98
January 2023	\$631,631.26
April 2023	\$396,289.88
July 2023	\$2,704,022.51
October 2023	\$3,441,465.27
January 2024	\$1,693,355.26
April 2024	\$835,986.81
July 2024	\$3,604,892.50
October 2024	\$4,391,586.09
January 2025	\$2,374,344.99
April 2025	\$893,989.76
July 2025	\$3,707,837.51
October 2025	\$4,507,645.37

Appendix B-1

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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<b>Quarter Ending</b>	<b>Scheduled Principal Repayment</b>
-----------------------	--------------------------------------

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January 2026	\$2,458,704.63
April 2026	\$830,317.09
July 2026	\$3,764,199.89
October 2026	\$4,751,510.96
January 2027	\$2,504,474.89
April 2027	\$607,441.14
July 2027	\$3,402,498.31
October 2027	\$4,305,438.43
January 2028	\$2,591,671.21
April 2028	\$792,181.64
July 2028	\$3,792,700.66
October 2028	\$4,777,160.24
January 2029	\$2,497,665.87
April 2029	\$1,663,601.41
July 2029	\$4,703,723.93
October 2029	\$5,741,454.11
January 2030	\$3,447,113.90
April 2030	\$1,940,179.52
July 2030	\$5,026,490.87
October 2030	\$6,085,903.93
January 2031	\$3,762,878.03
April 2031	\$1,963,619.16
July 2031	\$5,092,918.81
October 2031	\$6,170,488.90
January 2032	\$3,814,329.49
April 2032	\$1,173,157.38
July 2032	\$3,535,720.62
October 2032	\$4,295,231.65
January 2033	\$3,630,118.52
April 2033	\$2,068,607.25
July 2033	\$5,092,114.23
October 2033	\$6,119,464.06
January 2034	\$3,834,309.75
April 2034	\$3,369,977.82
July 2034	\$6,438,755.68
October 2034	\$7,497,272.05
January 2035	\$5,125,941.63
April 2035	0.00
July 2035	0.00

Appendix B-2

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

**Quarter Ending**

**Scheduled Principal Repayment**

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October 2035	0.00
January 2036	0.00

Appendix B-3

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

**Appendix C**  
**Addresses for Notices**

If to the Administrative Agent:  
\*\*\*

Attention: \*\*\*  
E-mail: \*\*\*

If to the Borrower:  
Vivint Solar Financing III, LLC, as Borrower  
1800 W Ashton Blvd.  
Lehi, UT 84043

Attention: \*\*\*  
Email: \*\*\*

With a copy to:  
Vivint Solar, Inc.  
1800 W. Ashton Blvd.  
Lehi, UT 84043

Attention: \*\*\*  
Email: \*\*\*

If to the Lenders:  
\*\*\*

Attention: \*\*\*  
Email: \*\*\*  
Phone Number: \*\*\*  
Fax: \*\*\*  
\*\*\*

Telephone: \*\*\*  
Direct Fax: \*\*\*  
Email: \*\*\*

With a copy to:  
\*\*\*

Telephone: \*\*\*  
Direct Fax: \*\*\*  
Email: \*\*\*

Address for Notices (Amendments, Waivers, and Compliance):  
\*\*\*

Attn: \*\*\*  
\*\*\*

Direct Fax: \*\*\*  
Email: \*\*\*  
\*\*\*

Attention: \*\*\*  
Email: \*\*\*  
\*\*\*

Appendix C-1

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

Address for Notices of Payments, Written Confirmations of Such Wire Transfers, and Any Audit Confirmation:

\*\*\*

Attention: \*\*\*

\*\*\*

Fax #: \*\*\*

With a copy sent electronically to: \*\*\*

All Other Communications:

\*\*\*

Attention: \*\*\*

\*\*\*

Fax \*\*\*

With a copy sent electronically to: \*\*\*

and with a copy of any notices regarding default or Events of Default under the Operative Documents to:

Attention: \*\*\*

Fax #: \*\*\*

\*\*\*

Address for Notices of Payments, Written Confirmations of Such Wire Transfers, and Any Audit Confirmation:

\*\*\*

Attention: \*\*\*

\*\*\*

Fax #: \*\*\*

With a copy sent electronically to: \*\*\*

All Other Communications:

\*\*\*

Attention: \*\*\*

\*\*\*

Fax \*\*\*

With a copy sent electronically to: \*\*\*

and with a copy of any notices regarding default or Events of Default under the Operative Documents to:

Attention: \*\*\*

Fax #: \*\*\*

Appendix C-2

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---

## Appendix D

### Projected Repayment Factor

	Net Cash Flow	Portfolio Value	Debt Outstanding	Repayment Factor
12/31/2016	-	326,073,604	203,750,000	62.49%
3/31/2017	4,571,498	326,206,759	203,596,611	62.41%
6/30/2017	6,680,342	324,253,919	201,878,796	62.26%
9/30/2017	7,675,836	321,261,964	199,397,596	62.07%
12/31/2017	6,402,643	319,415,773	197,821,974	61.93%
3/31/2018	4,885,840	319,132,560	197,346,079	61.84%
6/30/2018	6,887,328	316,865,006	195,380,401	61.66%
9/30/2018	7,727,644	313,711,155	192,762,537	61.45%
12/31/2018	6,381,902	311,776,734	191,101,923	61.29%
3/31/2019	4,844,187	311,423,999	190,618,821	61.21%
6/30/2019	6,929,732	308,999,363	188,583,563	61.03%
9/30/2019	7,761,027	305,695,260	185,901,748	60.81%
12/31/2019	6,326,115	303,749,919	184,242,269	60.66%
3/31/2020	4,767,148	303,357,890	183,712,480	60.56%
6/30/2020	6,952,909	300,790,394	181,555,596	60.36%
9/30/2020	7,210,652	297,923,354	179,175,168	60.14%
12/31/2020	5,506,971	296,648,054	178,020,723	60.01%
3/31/2021	4,186,852	296,740,889	177,826,682	59.93%
6/30/2021	6,367,966	294,669,090	176,014,066	59.73%
9/30/2021	7,112,329	291,811,262	173,622,655	59.50%
12/31/2021	5,561,002	290,392,698	172,344,205	59.35%
3/31/2022	4,207,028	290,373,526	172,070,555	59.26%
6/30/2022	6,583,801	287,988,491	170,032,194	59.04%
9/30/2022	6,733,134	285,416,626	167,852,385	58.81%
12/31/2022	4,598,585	284,881,867	167,220,754	58.70%
3/31/2023	4,421,201	284,564,745	166,824,464	58.62%
6/30/2023	7,951,382	280,705,952	164,120,441	58.47%
9/30/2023	8,884,701	275,842,939	160,678,976	58.25%
12/31/2023	6,213,947	273,574,568	158,985,621	58.11%
3/31/2024	4,668,309	272,841,259	158,149,634	57.96%
6/30/2024	8,389,262	268,364,654	154,544,741	57.59%
9/30/2024	9,377,691	262,818,764	150,153,155	57.13%
12/31/2024	6,564,745	259,962,371	147,778,810	56.85%
3/31/2025	4,737,135	258,960,036	146,884,821	56.72%
6/30/2025	8,517,575	254,147,843	143,176,983	56.34%
9/30/2025	9,521,606	248,245,565	138,669,338	55.86%
12/31/2025	6,663,496	245,078,097	136,210,633	55.58%
3/31/2026	4,806,386	243,787,691	135,380,316	55.53%
6/30/2026	8,646,942	238,619,736	131,616,116	55.16%

Appendix D-1

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9/30/2026	9,666,733	232,340,440	126,864,605	54.60%
12/31/2026	6,762,975	228,841,884	124,360,130	54.34%
3/31/2027	4,860,593	227,258,888	123,752,689	54.45%
6/30/2027	8,761,888	221,729,738	120,350,191	54.28%
9/30/2027	9,797,595	215,067,751	116,044,752	53.96%
12/31/2027	6,847,708	211,266,999	113,453,081	53.70%
3/31/2028	4,930,632	209,355,760	112,660,899	53.81%
6/30/2028	8,893,284	203,428,386	108,868,199	53.52%
9/30/2028	9,945,062	196,345,976	104,091,039	53.01%
12/31/2028	6,948,570	192,138,249	101,593,373	52.88%
3/31/2029	5,001,031	189,875,663	99,929,771	52.63%
6/30/2029	9,025,652	183,525,748	95,226,047	51.89%
9/30/2029	10,093,654	175,998,081	89,484,593	50.84%
12/31/2029	7,050,084	171,392,909	86,037,479	50.20%
3/31/2030	5,071,765	168,754,980	84,097,300	49.83%
6/30/2030	9,158,962	161,957,295	79,070,809	48.82%
9/30/2030	10,243,338	153,958,617	72,984,905	47.41%
12/31/2030	7,152,221	148,930,888	69,222,027	46.48%
3/31/2031	5,142,808	145,892,181	67,258,408	46.10%
6/30/2031	9,293,180	138,620,030	62,165,489	44.85%
9/30/2031	10,394,078	130,123,099	55,995,000	43.03%
12/31/2031	7,254,952	124,666,119	52,180,671	41.86%
3/31/2032	5,198,090	121,216,247	51,007,513	42.08%
6/30/2032	9,412,228	113,458,197	47,471,793	41.84%
9/30/2032	10,529,795	104,451,263	43,176,561	41.34%
12/31/2032	7,342,202	98,514,364	39,546,442	40.14%
3/31/2033	5,269,670	94,609,177	37,477,835	39.61%
6/30/2033	9,548,157	86,319,527	32,385,721	37.52%
9/30/2033	10,682,536	76,756,066	26,266,257	34.22%
12/31/2033	7,446,024	70,313,054	22,431,947	31.90%
3/31/2034	5,341,474	65,922,333	19,061,969	28.92%
6/30/2034	9,684,884	57,069,501	12,623,214	22.12%
9/30/2034	10,836,217	46,917,322	5,125,942	10.93%
12/31/2034	7,550,340	39,936,677	0	0.00%
3/31/2035	5,413,470	35,028,397	0	0.00%
6/30/2035	9,814,288	25,587,161	0	0.00%
9/30/2035	10,428,871	15,382,562	0	0.00%
12/31/2035	6,295,895	9,219,635	0	0.00%
3/31/2036	3,591,138	5,710,860	0	0.00%
6/30/2036	3,931,185	1,806,006	0	0.00%
9/30/2036	1,607,336	201,610	0	0.00%
12/31/2036	201,610	-	0	0.00%
3/31/2037	-	-	0	0.00%
6/30/2037	-	-	0	0.00%

Appendix D-2

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

## **Schedule A**

### **Project Information**

[Included in Folder 2.10.6 on the Platform provided to Lenders as of the Closing Date and to be provided to Lenders on a zip drive]

Schedule A

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

**Schedule 7.03(e)**

**Organizational Structure prior to the Closing Date**

(See attached)

Schedule 7.03(e)

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

**Schedule 7.03(f)**

**Organizational Structure following the Closing Date**

(See attached)

Schedule 7.03(f)

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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**Schedule 7.03(g)****Subsidiaries**

<b>Entity</b>	<b>Record Owner</b>	<b>Jurisdiction</b>	<b>Percentage of Equity Interests</b>
Vivint Solar Financing III Parent, LLC	Vivint Solar Financing Holdings, LLC	Delaware	100%
Vivint Solar Financing III, LLC	Vivint Solar Financing III Parent, LLC	Delaware	100%
Vivint Solar Fund XI Manager, LLC	Vivint Solar Financing III, LLC	Delaware	100%
Vivint Solar Fund XIII Manager, LLC	Vivint Solar Financing III, LLC	Delaware	100%
Vivint Solar Fund XVI Manager, LLC	Vivint Solar Financing III, LLC	Delaware	100%
Vivint Solar Fund XVIII Manager, LLC	Vivint Solar Financing III, LLC	Delaware	100%
Vivint Solar SREC Guarantor III, LLC	Vivint Solar Financing III, LLC	Delaware	100%
Vivint Solar Fund XI Project Company, LLC	Vivint Solar Fund XI Manager, LLC	Delaware	100% of Class B
Vivint Solar Fund XIII Project Company, LLC	Vivint Solar Fund XIII Manager, LLC	Delaware	100% of Class B
Vivint Solar Fund XVI Lessor, LLC	Vivint Solar Fund XVI Manager, LLC	Delaware	100%
Vivint Solar Fund XVIII Project Company, LLC	Vivint Solar Fund XVIII Manager, LLC	Delaware	100% of Class B

Schedule 7.03(g)

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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## Schedule 7.04

### Governmental Authorizations; Compliance with Laws

1. Management Consent and Agreement, dated as of January 5, 2017, among Vivint Solar Provider, LLC, Vivint Solar Financing III, LLC, and Wells Fargo Bank, National Association, as Collateral Agent.
2. Consent and Acknowledgment, dated as of January 5, 2017, among BP Energy Company, for the benefit of Vivint Solar SREC Financing, LLC, Vivint Solar SREC Aggregator, LLC, Wells Fargo Bank, National Association, as Collateral Agent, and acknowledged by BP Corporation North America Inc., and Vivint Solar SREC Guarantor, LLC.
3. Consent and Acknowledgment, dated as of January 5, 2017, among DTE Energy Trading, Inc., for the benefit of Vivint Solar SREC Financing, LLC, Vivint Solar SREC Aggregator, LLC, and Wells Fargo Bank, National Association, as Collateral Agent, and acknowledged by DTE Energy Company.
4. Consent Agreement (Fund XI Operating Agreement), dated as of January 5, 2017, among Vivint Solar Financing III, LLC, Vivint Solar Fund XI Manager, LLC, Wells Fargo Bank, National Association, as Collateral Agent, \*\*\* and \*\*\*.
5. Consent Agreement (Fund XIII Operating Agreement), dated as of January 5, 2017, among Vivint Solar Financing III, LLC, Vivint Solar Fund XIII Manager, LLC, Wells Fargo Bank, National Association, as Collateral Agent and \*\*\*.
6. Estoppel Certificate, dated as of January 5, 2017, among VS BC Solar Lessee I, LLC, Vivint Solar, Inc., Vivint Solar Fund XVI Lessor, LLC, and Wells Fargo Bank, National Association, as Collateral Agent.
7. Consent and Agreement, dated as of January 5, 2017, among Vivint Solar Financing III, LLC, Vivint Solar Fund XVIII Manager, LLC, Vivint Solar Fund XVIII Project Company, LLC, Wells Fargo Bank, National Association, as Collateral Agent and \*\*\*

Schedule 7.04

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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**Schedule 7.08**

**Financial Statement Exceptions**

None.

Schedule 7.08

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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**Schedule 7.10**

**Litigation; Adverse Facts**

None.

Schedule 7.10

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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**Schedule 7.14**

**Insurance**

Contained herein is description of all policies of insurance for the Relevant Parties, including those policies of the Sponsor for the benefit of the Relevant Parties which are required to be maintained pursuant to a Transaction Document, that are in effect as of the Closing Date.

<b><u>Policy Dates</u></b>	<b><u>Policy Number</u></b>	<b><u>Carrier</u></b>	<b><u>Line of Insurance</u></b>	<b><u>Coverage</u></b>
<b>Master Property Program</b>				

Schedule 7.14-1

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4/1/2016-4/1/2017	P16GR00830	GCube (40%) Travelers (60%) – Lloyds Shared Program	<p>All-Risk Property  Vivint Solar, Inc.  Vivint Solar Fund XI  Project Company, LLC  Vivint Solar Fund XI  Manager, LLC  Vivint Solar Fund XIII  Project Company, LLC  Vivint Solar Fund XIII  Manager, LLC  Named Insureds  wording from policy  includes:  Vivint Solar Inc.,  Vivint Solar Holdings,  Inc., Vivint Solar  Developer, LLC,  and/or its affiliates  subsidiaries,  companies and/or  corporations as now  exist or may hereafter  be constituted,  owned, controlled,  operated, directed,  managed or acquired  including their  interests as may appear  in partnerships, trusts,  associations, REITs,  joint ventures,  "members" of the  LLC's as defined  therein, and any other  party in interest which  the Insured is legally  obligated to insure by  contract and / or as per  Policy Wording.</p>	<p>Any One Occurrence (Business  Personal Property, Forklifts and  Combined Business  Interruption/Extra Expense)-  \$50,000,000*  Property in the Course of  Construction or Installation  \$250,000\$ per Jobsite  \$1,000,000 per Occurrence  Property in the due course of transit  \$250,000  Operations- solar panel systems  and related equipment per schedule  of locations and limits on file  \$500,000  Miscellaneous Unscheduled  Locations  \$500,000 per Occurrence  Flood-Annual Aggregate*  \$20,000,000  Earth Movement (CA)-Annual  Aggregate*  \$20,000,000  Earth Movement (All Other)-  Annual Aggregate*  \$20,000,000  <b>Deductibles</b>  All Other Perils  \$5,000  Earth Movement, Flood, and  Named Windstorm  2% of total insurable values of all  locations sustaining direct damage-  subject to minimum of \$100,000  per occurrence  Business Interruption/Extra  Expense  72 Hours  <b>Additional Coverages</b>  Debris Removal – 25% of Loss  Pollutant Clean Up - \$100,000  Fire Department Service Charges -  \$100,000  Inventory or Appraisals - \$100,000  Electronic Data Recovery Costs -  \$100,000  Fire Protection Equipment Refill  \$100,000  <b>Valuation</b>  Property-Replacement Cost  Time Element-Actual Loss  Sustained  <b>Conditions</b>  Quarterly Audit Adjustments  Mechanical &amp; Electrical  Breakdown Included  Terrorism Rejected  Series Loss Clause    *As part of the Master Property  Program the dedicated limits listed</p>
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			<p>below apply to Vivint Solar Fund XIII Project Company, LLC</p> <p>Any One Occurrence (Business Personal Property, Forklifts and Combined Business Interruption/Extra Expense) - \$50,000,000 Subject to a \$10,000,000 fund specific limit for each specified fund</p> <p>Flood-Annual Aggregate \$20,000,000 Subject to \$2,000,000 fund specific limits for each specified fund</p> <p>Earth Movement (CA)-Annual Aggregate \$20,000,000 Subject to \$2,000,000 fund specific limits for each specified fund</p> <p>Earth Movement (All Other) - Annual Aggregate \$20,000,000 Subject to \$2,000,000 fund specific limits for each specified fund</p> <p>Windstorm Included in \$50,000,000 per occurrence limit and included in \$10,000,000 fund specific limits for each specified fund</p>
<b>Fund Specific Property Policy – Fund XVI</b>			

Schedule 7.14-3

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9/19/2016-9/19/2017	IM254725-1	Colony Insurance Company	<p>Inland Marine Property</p> <p>Vivint Solar Fund XVI Lessor, LLC</p> <p>VS BC Solar Lessee I, LLC</p> <p>Vivint Solar Provider, LLC</p> <p>Vivint Solar Financing III, LLC</p> <p>Vivint SREC Guarantor III, LLC</p>	<p>Catastrophe Limit-Per Occurrence: \$10,000,000</p> <p>Covered Property/Stock: Solar Panel Systems, Inverters and related equipment, various storage and office facilities as reported by insured</p> <p>Property in the Course of Construction or Installation: \$150,000 per jobsite not to exceed \$500,000 per Occurrence</p> <p>Property in the due course of transit: \$50,000</p> <p>Operations- solar panel systems and related equipment per schedule of locations: \$150,000 per Occurrence</p> <p>Miscellaneous Unscheduled Locations: \$100,000 per Location</p> <p>Flood-Annual Aggregate: \$2,000,000 Earthquake-Annual Aggregate: \$2,000,000</p> <p>Business Interruption/Extra Expense: \$5,000,000 per occurrence, subject to a maximum amount stated in the statement of values, subject to a \$500K Max per 30 Days</p> <p><b><u>Deductibles</u></b> Per Occurrence: \$10,000 Annual Aggregate: \$100,000</p> <p>Per Occurrence Trailing Deductible once Aggregate is reached. All claims for the ground up will continue to the erosion of the aggregate: \$1,000</p> <p>Earthquake, Flood, and Named Windstorm-Do not apply to the aggregate amount: 2% of Insurable Values-Subject to minimum of \$100,000 per occurrence</p> <p>Business Interruption/Extra Expense: 72 Hour Waiting Period</p> <p><b><u>Additional Coverages</u></b> Investors Clause Endorsement: Debris Removal: 25% of loss plus \$150,000 Additional Debris Removal Expense: \$500,000</p>
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			Pollutant Clean Up: \$50,000 Newly Acquired Equipment: \$100,000 Ordinance or Law Coverage: \$500,000  <u><b>Valuation</b></u> Property –Functional Replacement Cost Time Element-Actual Loss Sustained No Coinsurance  <u><b>Conditions</b></u> Quarterly reporting of new installations Quarterly audit/adjustments per rates Minimum Earned Premium 25% Mechanical Breakdown Coverage Included
<b>Fund Specific Property Policy – Fund XVIII</b>			

Schedule 7.14-5

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8/8/2016-8/8/2017	P16GR02260	GCube (40%) Travelers (60%) – Lloyds Shared Program	<p>Inland Marine Property</p> <p>Vivint Solar Fund XVIII Project Company, LLC (BAML)</p> <p>BAL Investment &amp; Advisory, Inc.</p> <p>Vivint Solar Financing III, LLC</p> <p>Vivint SREC Guarantor III, LLC</p>	<p>Business Personal Property &amp; Combined Business Interruption/Extra Expense: \$20,000,000</p> <p>Property in the Course of Construction or Installation \$250,000 Per Jobsite not to exceed \$1,000,000 per Occurrence</p> <p>Property in the due course of transit: \$250,000</p> <p>Operational solar panel systems and related equipment per schedule of locations: \$250,000</p> <p>Miscellaneous Unscheduled Locations: \$500,000 per Occurrence</p> <p>Flood-Annual Aggregate: \$10,000,000  Earthquake (CA)-Annual Aggregate: \$10,000,000  Earthquake (All Other)-Annual Aggregate: \$10,000,000</p> <p>Business Interruption/Extra Expense: \$5,000,000  Business Interruption/Extra Expense-Earthquake &amp; Flood: \$1,000,000</p> <p><b>Deductibles</b>  All Other Perils: \$5,000</p> <p>Earth Movement, Flood, and Named Windstorm: 2% of Insurable Values- Subject to minimum of \$100,000 per occurrence</p> <p>Business Interruption/Extra Expense: 72 Hour Waiting Period</p> <p><b>Additional Coverages</b>  Investors Clause Endorsement: Included  Mechanical &amp; Electrical Breakdown: Included  Sabotage Coverage Included: \$5,000,000  Series Loss Clause 1<sup>st</sup>, 2<sup>nd</sup>, &amp; 3<sup>rd</sup>; 100%, 4<sup>th</sup>, &amp; 5<sup>th</sup>, 75%; 6<sup>th</sup>, 50%  Demolition/Increased cost of Construction: 5% of Loss  Debris Removal: 25% of Loss  Pollutant Clean Up: \$100,000  Inventory or Appraisals: \$100,000  Electronic Data Recovery Costs: \$100,000</p>
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			Expediting Expense: 5% of Loss Installation/Operational Audit Reports: Quarterly Adjustments  <u><b>Valuation</b></u> Property – Replacement Cost Time Element-Actual Loss Sustained
<b>Master Liability Program</b>			

Schedule 7.14-7

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11/01/16 To 11/01/17	BAP509601502	Zurich Insurance Company	<b>Commercial Automobile</b> Vivint Solar, Inc. Vivint Solar Developer, LLC	\$1,000,000 Bodily Injury & Property Damage Statutory Personal Injury Protection \$10,000 Medical Payments – Each Person \$1,000,000 Uninsured/Underinsured Motorists \$250,000 Deductible Hired Car Physical Damage – ACV Owned and Hired Car Phys. Damaged Deductible: \$1,000 Comprehensive \$1,000 Collision Lessor-Additional Insured and Loss Payee Where Required by Written Contract Waiver of Transfer of rights of Recovery Where Required by Written Contract Rental Reimbursement Included
11/01/16 To 11/01/17	WC509601302	American Zurich Insurance Company	<b>Worker's Compensation Deductible Policy</b>  Vivint Solar, Inc. Vivint Solar Developer, LLC	<b>States Covered: AZ, CA, CT, FL, HI, MD, NJ, NM, NV, OR, PA, SC, TX, UT</b>  Statutory - Workers' Compensation \$1,000,000 - Bodily Injury by Accident – Each Accident \$1,000,000 - Bodily Injury by Disease – Policy Limit \$1,000,000 Bodily Injury by Disease – Each Employee \$500,000 Deductible
11/01/16 To 11/01/17	WC509601401 (MA)	Zurich Insurance Company	<b>Worker's Compensation Retro Policy</b>  Vivint Solar, Inc. Vivint Solar Developer, LLC	<b>States Covered: MA</b>  Statutory - Workers' Compensation \$1,000,000 Bodily Injury by Accident – Each Accident \$1,000,000 Bodily Injury by Disease – Policy Limit \$1,000,000 Bodily Injury by Disease – Each Employee \$500,000 Deductible

Schedule 7.14-8

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1/29/16 – 1/29/17	3776500116EN	Axis Specialty Europe	<b>Commercial General Liability &amp; Excess Liability (\$25M)</b> Vivint Solar, Inc. Vivint Solar Developer, LLC	<b>General Liability :</b> \$1,000,000 Each Occurrence Limit \$50,000 Damage to Premises Rented to You \$10,000 Medical Expense Limit – Each Person \$5,000,000 Personal & Advertising Injury Limit \$1,000,000 Products/Completed Operations Limit \$2,000,000 General Aggregate \$25,000 Deductible - Bodily Injury & Property Damage Combined-Per Occurrence  <b>Excess Liability</b> \$25,000,000 Each Occurrence and in the Aggregate  <u>Additional Named Insured Schedule :</u> Vivint Solar Holdings, Inc. Vivint Solar Fund XIII Manager, LLC Vivint Solar Fund XIII Project Company, LLC Vivint Solar Fund XI Manager, LLC Vivint Solar Fund XI Project Company, LLC Vivint Solar Fund XVI Manager, LLC Vivint Solar Fund XVI Lessor, LLC VS BC Solar Lessee I, LLC Vivint Solar Fund XVIII Manager, LLC Vivint Solar Fund XVIII Project Company, LLC  Vivint Solar Financing III, LLC  Vivint SREC Guarantor III, LLC
<b>Other Misc. Liability / Corporate Policies</b>				
1/29/16 – 1/29/17	CPO 69895626	AIG Specialty Insurance Company	<b>Contractors Pollution</b> Vivint Solar, Inc. Vivint Solar Developer, LLC	<b>Contractors Pollution Liability :</b> Coverage A – Legal Liability \$5,000,000 Each Pollution Condition Limit Coverage B – Emergency Response Costs \$250,000 \$25,000 Deductible
1/29/16 – 1/29/17	CEO7446813	Indian Harbor Insurance Company	<b>Professional Liability</b> Vivint Solar, Inc. Vivint Solar Developer, LLC	<b>Professional Liability (Claims Made and Reported Coverage):</b> \$1,000,000 Each Claim Limit \$1,000,000 Aggregate Limit 06/09/2011 Retroactive Date \$100,000 SIR

Schedule 7.14-10

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

11/1/16 – 11/1/17	WS11007784	Insurance Company of the State of Pennsylvania	<b>Foreign Liability</b>  Vivint Solar, Inc. Vivint Solar Developer, LLC	<b>Foreign General Liability</b> \$4,000,000 Program Aggregate \$2,000,000 General Aggregate \$2,000,000 Product-Completed Operations Aggregate \$1,000,000 Personal and Advertising Injury \$1,000,000 Each Occurrence Limit \$1,000,000 Damage to Premises Rented to You \$25,000 Medical Expense <b>Foreign Business Automobile</b> \$1,000,000 Foreign Business Automobile – Accident \$25,000 Medical Expense – Accident \$25,000 Hired Auto – Accident Physical Damage - \$1,000 – Each Auto  <b>Foreign Voluntary  Compensation and Employers  Liability</b> \$1,000,000 Supplemental Repatriation Expense \$1,000,000 Employers Liability Injury – Accident \$1,000,000 Employers Liability Injury – Disease Limit \$1,000,000 Employers Liability Injury – Disease Each Employee <b>Foreign Travel Accident and  Sickness</b> \$100,000 Principal Sum Insured \$1,000,000 Aggregate Limit \$50,000 Medical Expense \$500 Deductible \$100,000 Emergency Medical Evacuation
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Schedule 7.14-11

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

3/30/16 To 6/30/17	485294	Underwriters at Lloyds	<b>Media Security Privacy</b>  Vivint Solar, Inc. Vivint Solar Developer, LLC	<b>Multimedia Liability</b> \$5,000,000 Each Claim \$5,000,000 Aggregate \$25,000 Retention Each Claim <b>Security and Privacy Liability</b> \$5,000,000 Each Claim \$5,000,000 Aggregate \$25,000 Retention Each Claim <b>Privacy Regulatory Defense &amp; Penalties</b> \$5,000,000 Each Claim \$5,000,000 Aggregate \$25,000 Retention Each Claim <b>Privacy Breach Response Costs, Notification Expenses, and Breach Support &amp; Credit Monitoring Expenses (Outside the Limits)</b> \$5,000,000 Each Claim \$5,000,000 Aggregate \$25,000 Retention <b>Proactive Privacy Breach Response Costs Sublimit</b> \$25,000 Each Claim \$25,000 Aggregate <b>Voluntary Notification Expenses Sublimit</b> \$5,000,000 Each Claim \$5,000,000 Aggregate <b>Network Asset Protection</b> \$5,000,000 Each Claim \$5,000,000 Aggregate \$25,000 Retention Each Claim 10% Co-insurance each and every loss Non-physical Business Interruption & Extra Expense – 8 hour waiting period <b>Cyber Extortion</b> \$5,000,000 Each Claim \$5,000,000 Aggregate \$25,000 Retention Each Claim <b>Cyber Terrorism</b> \$5,000,000 Each Claim \$5,000,000 Aggregate <b>\$5,000,000 Maximum Policy Aggregate Limit</b>
6/30/16 To 6/30/17	01-542-49-60	National Union Fire Insurance Company of Pittsburgh, PA	<b>Directors &amp; Officers Liability</b>  Vivint Solar, Inc. Vivint Solar Developer, LLC	\$10,000,000 Limit of Liability \$2,500,000 Retention
6/30/16 To 6/30/17	DOX G23676321 002	ACE American Insurance Company	<b>Excess Directors &amp; Officers Liability</b>  Vivint Solar, Inc. Vivint Solar Developer, LLC	\$10,000,000 Aggregate \$10MM xs \$10MM

Schedule 7.14-12

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

6/30/16 To 6/30/17	ELU145082-16	XL Specialty Insurance Company	<b>Excess Directors &amp; Officers Liability</b>  Vivint Solar, Inc. Vivint Solar Developer, LLC	\$20,000,000 Aggregate \$10MM xs \$20MM
6/30/16 To 6/30/17	DOX10005655901	Endurance American Insurance Company	<b>Excess Directors &amp; Officers Liability</b>  Vivint Solar, Inc. Vivint Solar Developer, LLC	\$30,000,000 Aggregate \$10MM xs \$30MM
6/30/16 To 6/30/17	MC002KP16	Aspen American Insurance Company	<b>Excess Directors &amp; Officers Liability</b>  Vivint Solar, Inc. Vivint Solar Developer, LLC	\$40,000,000 Aggregate \$10MM xs \$40MM
6/30/16 To 6/30/17	18016327	Berkley Insurance Company	<b>Excess Directors &amp; Officers Liability</b>  Vivint Solar, Inc. Vivint Solar Developer, LLC	\$50,000,000 Aggregate \$10MM xs \$50MM
6/30/16 To 6/30/17	MLX7601103-01	Argonaut Insurance Company	<b>Excess Directors &amp; Officers Liability</b>  Vivint Solar, Inc. Vivint Solar Developer, LLC	\$60,000,000 Aggregate \$10MM xs \$60MM

Schedule 7.14-13

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6/30/16 To 6/30/17	0309-2282	Allied World National Assurance Company	<b>Excess Side A Directors &amp; Officers Liability</b>  Vivint Solar, Inc. Vivint Solar Developer, LLC	\$70,000,000 Aggregate \$10MM xs \$70MM
6/30/16 To 6/30/17	ELU145085-16	XL Specialty Insurance Company	<b>Excess Side A Directors &amp; Officers Liability</b>  Vivint Solar, Inc. Vivint Solar Developer, LLC	\$80,000,000 Aggregate \$10MM xs \$80MM
6/30/16 To 6/30/17	01-542-50-06	Illinois National Insurance Company	<b>Excess Side A Directors &amp; Officers Liability</b>  Vivint Solar, Inc. Vivint Solar Developer, LLC	\$90,000,000 Aggregate \$20MM xs \$90MM
6/30/16 To 6/30/17	01-542-49-62	Illinois National Insurance Company	<b>Fiduciary Liability</b>  Vivint Solar, Inc. Vivint Solar Developer, LLC	\$5,000,000 Aggregate
6/30/16 To 6/30/17	DON G23690068 002	Ace American Insurance Company	<b>Crime</b>  Vivint Solar, Inc. Vivint Solar Developer, LLC	\$5,000,000 Employee Theft \$5,000,000 Forgery or Alteration \$5,000,000 Theft of Money/Securities Inside Premises \$5,000,000 Robbery of Safe Burglary Inside Premises \$5,000,000 Theft Outside Premises \$5,000,000 Computer and Funds Transfer Fraud \$5,000,000 Money Orders and Counterfeit Money \$25,000 Deductible

Schedule 7.14-14

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6/30/16 To 6/30/17	01-542-50-04	National Union Fire Insurance Company of Pittsburgh, PA	<b>Employment Practices Liability</b>  Vivint Solar, Inc. Vivint Solar Developer, LLC	\$5,000,000 Aggregate \$250,000 Retention
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Schedule 7.14-15

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**Schedule 7.19**

**Brokers**

None.

Schedule 7.19

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## Schedule 7.22(a)

### Portfolio Documents

#### **A. Administrative Services Agreements**

1. Administrative Services Agreement, dated as of February 13, 2015, between Vivint Solar Provider, LLC and Vivint Solar Fund XI Project Company, LLC.
2. Administrative Services Agreement, dated as of March 26, 2015, between Vivint Solar Provider, LLC and Vivint Solar Fund XIII Project Company, LLC.
3. Administrative Services Agreement, dated as of June 1, 2015, among Vivint Solar Provider, LLC, Vivint Solar Fund XVI Lessor, LLC, and VS BC Solar Lessee I, LLC.
4. Administrative Services Agreement, dated as of May 11, 2015, between Vivint Solar Provider, LLC and Vivint Solar Fund XVIII Project Company, LLC, as amended by the Amendment to Administrative Services Agreement, dated as of August 4, 2016.

#### **B. Back-Up Servicing Agreement and Back-Up Servicing Agreement Addenda**

1. Master Backup Services Agreement, dated as of June 15, 2016, between Vivint Solar Provider, LLC and Wells Fargo Bank, National Association, as amended by that certain Amendment and Joinder Agreement, dated as of November 7, 2016, among Vivint Solar Provider, LLC, Wells Fargo Bank, National Association, and Vivint Solar Servicer, LLC.
2. Covered Agreement Addendum No. 17, dated as of October 26, 2016, among Vivint Solar Fund XI Project Company, LLC, Vivint Solar Provider, LLC, and Wells Fargo Bank, National Association.
3. Covered Agreement Addendum No. 14, dated as of August 4, 2016, among Vivint Solar Fund XIII Project Company, LLC, Vivint Solar Provider, LLC, and Wells Fargo Bank, National Association.
4. Covered Agreement Addendum No. 16, dated as of January 5, 2017, among Vivint Solar Fund XVI Lessor, LLC, VS BC Solar Lessee I, LLC, Vivint Solar Provider, LLC, and Wells Fargo Bank, National Association.
5. Covered Agreement Addendum No. 13, dated as of August 4, 2016, among Vivint Solar Fund XVIII Project Company, LLC, Vivint Solar Provider, LLC, and Wells Fargo Bank, National Association.

Schedule 7.22(a)-1

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### **C. Eligible SREC Contracts**

1. Master Renewable Energy Certificate Purchase and Sale Agreement, dated as of July 20, 2016, between DTE Energy Trading, Inc. and Vivint Solar SREC Financing, LLC.
2. Transaction Confirmation, dated as of October 18, 2016, between DTE Energy Trading, Inc. and Vivint Solar SREC Financing, LLC, with a Trade Date of October 7, 2016, and Transaction Reference numbers 5975456, 5975457, 5975458, 5975463, 5975461, 5975462, 5975464, 5975468, 5975473, 5975475, 5975477, and 5975479.
3. Guaranty Agreement, dated as of August 11, 2016, by DTE Energy Company in favor of Vivint Solar SREC Financing, LLC, as amended by Amendment No. 1 to Guaranty Agreement, dated as of October 14, 2016.
4. Confirmation, dated as of July 19, 2016, between BP Energy Company and Vivint Solar SREC Financing, LLC (NJ: BP Ref. No. 167990 / Trade Id. – 5060636).
5. Guaranty Agreement, dated as of July 20, 2016, made by BP Corporation North America Inc. in favor of Vivint Solar SREC Financing, LLC.
6. Master Renewable Energy Certificate Purchase and Sale Agreement, dated as of December 17, 2015, between DTE Energy Trading, Inc. and Vivint Solar SREC Aggregator, LLC (as successor-in-interest to Vivint Solar Developer, LLC pursuant to the Assignment, Assumption, and Amendment Agreement (“DTE Amendment”), dated as of July 20, 2016, among Vivint Solar Developer, LLC, Vivint Solar SREC Aggregator, LLC, and DTE Energy Trading, Inc.).
7. Transaction Confirmation, dated as of October 18, 2016, between DTE Energy Trading, Inc. and Vivint Solar SREC Aggregator, LLC, with a Trade Date of October 7, 2016 and Transaction Reference numbers 5975459, 5975460, 5975465, 5975466, 5975467, 5975469, 5975470, 5975471, 5975476, 5975478, 5975480, and 5975481.
8. Guaranty Agreement, dated as of August 11, 2016, by DTE Energy Company in favor of Vivint Solar SREC Aggregator, LLC, as amended by Amendment No. 1 to Guaranty Agreement, dated as of October 14, 2016.
9. Confirmation, dated as of July 19, 2016, between BP Energy Company and Vivint Solar SREC Aggregator, LLC (NJ: BP Ref. No. – 167989 / Trade Id. – 5060637).
10. Guaranty Agreement, dated as of July 20, 2016, made by BP Corporation North America Inc. in favor of Vivint Solar SREC Aggregator, LLC.

### **D. Fund SREC Transfer Agreements**

1. REC Purchase Agreement, dated as of February 13, 2015, between Vivint Solar Fund XI Project Company, LLC and Vivint Solar SREC Guarantor III, LLC (as successor-in-interest to Vivint Solar Developer, LLC pursuant to the Assignment and

Schedule 7.22(a)-2

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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Assumption Agreement, dated as of January 5, 2017, between Vivint Solar Developer, LLC and Vivint Solar SREC Guarantor III, LLC, and acknowledged by Vivint Solar Fund XI Project Company, LLC, Firststar Development, LLC, \*\*\*, Vivint Solar Fund XI Manager, LLC and the Collateral Agent ) (collectively, the “ Fund XI SREC Transfer Agreement ”).

2. REC Purchase Agreement, dated as of March 26, 2015, between Vivint Solar Fund XIII Project Company, LLC and Vivint Solar SREC Guarantor III, LLC (as successor-in-interest to Vivint Solar Developer, LLC pursuant to the Assignment and Assumption Agreement, dated as of January 5, 2017, between Vivint Solar Developer, LLC and Vivint Solar SREC Guarantor III, LLC, and acknowledged by Vivint Solar Fund XIII Project Company, LLC, \*\*\*, Vivint Solar Fund XIII Manager, LLC and the Collateral Agent) (collectively, the “ Fund XIII SREC Transfer Agreement ”).
3. REC Purchase Agreement, dated as of January 5, 2017, between Vivint Solar Fund XVI Lessor, LLC and Vivint Solar SREC Guarantor III, LLC, and acknowledged and agreed by the Collateral Agent (the “ Fund XVI SREC Transfer Agreement ”).
4. SREC Transfer Agreement, dated as of August 4, 2016, among Vivint Solar Fund XVIII Project Company, LLC and Vivint Solar SREC Guarantor III, LLC (as successor-in-interest to Vivint Solar Aggregator, LLC pursuant to the Assignment and Assumption Agreement, dated as of January 5, 2017, between Vivint Solar Aggregator, LLC and Vivint Solar SREC Guarantor III, LLC, and acknowledged by Vivint Solar Fund XVIII Project Company, LLC, \*\*\*, and Vivint Solar Fund XVIII Manager, LLC), and acknowledged and agreed by \*\*\*, Vivint Solar Fund XVIII Manager, LLC and the Collateral Agent (collectively, the “ Fund XVIII SREC Transfer Agreement ”).

#### **E. Maintenance Services Agreements**

1. Maintenance Services Agreement, dated as of February 13, 2015, between Vivint Solar Provider, LLC and Vivint Solar Fund XI Project Company, LLC.
2. Maintenance Services Agreement, dated as of March 26, 2015, between Vivint Solar Provider, LLC and Vivint Solar Fund XIII Project Company, LLC.
3. Maintenance Services Agreement, dated as of June 1, 2015, among Vivint Solar Provider, LLC, Vivint Solar Fund XVI Lessor, LLC and VS BC Solar Lessee I, LLC.
4. Maintenance Services Agreement, dated as of May 11, 2015, between Vivint Solar Provider, LLC and Vivint Solar Fund XVIII Project Company, LLC.

#### **F. Management Agreement**

1. Management Agreement, dated as of January 5, 2017, between Vivint Solar Financing III, LLC and Vivint Solar Provider, LLC.

Schedule 7.22(a)-3

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

### **G. Master Purchase Agreements**

1. Master Engineer, Procurement and Construction Agreement, dated as of February 13, 2015, between Vivint Solar Developer, LLC and Vivint Solar Fund XI Project Company, LLC.
2. Master Engineer, Procurement and Construction Agreement, dated as of March 26, 2015, between Vivint Solar Developer, LLC and Vivint Solar Fund XIII Project Company, LLC, as amended by the First Amendment to Master Engineer, Procurement and Construction Agreement, dated as of June 24, 2015.
3. Assignment, Assumption and Transfer Agreement, dated as of June 1, 2015, between Vivint Solar Developer, LLC and Vivint Solar Fund XVI Lessor, LLC.
4. Master Solar Asset Sale Agreement, dated as of June 1, 2015, between Vivint Solar Developer, LLC and Vivint Solar Fund XVI Lessor, LLC.
5. Master Engineering, Procurement and Construction Agreement, dated as of May 11, 2015, between Vivint Solar Developer, LLC and Vivint Solar Fund XVIII Project Company, LLC, as amended by Amendment No. 1, dated as of December 23, 2015, as further amended by Amendment No. 2, dated as of March 29, 2016, and as further amended by Amendment No. 3, dated as of October 14, 2016.

### **H. Sponsor Guaranties**

1. Guaranty, dated as of February 13, 2015, made by Vivint Solar, Inc. in favor of Firststar Development, LLC and \*\*\*.
2. Guaranty, dated as of March 26, 2015, made by Vivint Solar, Inc. in favor of \*\*\*.
3. Guaranty, dated as of June 1, 2015, made by Vivint Solar, Inc. in favor of VS BC Solar Lessee I, LLC.
4. Tax Indemnity Agreement, dated as of June 1, 2015, among Vivint Solar, Inc., Barclays Capital Holdings Inc., Citicorp North America Inc. and VS BC Solar Lessee I, LLC.
5. Guaranty, dated as of May 11, 2015, made by Vivint Solar, Inc. in favor of \*\*\*

### **I. SREC Aggregator Master PSA**

1. Master SREC Purchase and Sale Agreement, dated as of January 5, 2017, between Vivint Solar SREC Guarantor III, LLC and Vivint Solar SREC Aggregator, LLC.

### **J. SREC Financing Master PSA**

1. Master SREC Purchase and Sale Agreement, dated as of January 5, 2017, between Vivint Solar SREC Guarantor III, LLC and Vivint Solar SREC Financing, LLC.

Schedule 7.22(a)-4

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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## **K. Tax Equity Documents**

For Administrative Services Agreements in respect of each Fund, please refer to Part A of this Schedule 7.22(a); for Back-up Servicing Agreements in respect of each Fund, please refer to Part B of this Schedule 7.22(a); for Fund SREC Transfer Agreements in respect of each Fund, please refer to Part D of this Schedule 7.22(a); for Maintenance Services Agreements in respect of each Fund, please refer to Part E of this Schedule 7.22(a); for Master Purchase Agreements and Project Transfer Agreements in respect of each Fund, please refer to Part G of this Schedule 7.22(a); and for Sponsor Guaranties in respect of each Fund, please refer to Part H of this Schedule 7.22(a).

### **a. Fund XI**

1. Limited Liability Company Agreement of Vivint Solar Fund XI Project Company, LLC, dated as of February 13, 2015, between Vivint Solar Fund XI Manager, LLC, \*\*\* and \*\*\*, as amended by the First Amendment to Limited Liability Company Agreement, dated as of May 7, 2015, and as further amended by the Second Amendment to Limited Liability Company Agreement, dated as of April 8, 2016, and as further amended by the Third Amendment to Limited Liability Company Agreement, dated as of May 13, 2016, and as further amended by Amendment No. 4 to Vivint Solar Fund XI Project Company LLC Limited Liability Company Agreement, dated as of October 26, 2016.

### **b. Fund XIII**

1. Limited Liability Company Agreement of Vivint Solar Fund XIII Project Company, LLC, dated as of March 26, 2015, between Vivint Solar Fund XIII Manager, LLC and \*\*\*, as amended by the First Amendment to Limited Liability Company Agreement, dated as of March 31, 2015, and as further amended by the Second Amendment to Limited Liability Company Agreement, dated as of June 24, 2015.
2. Consent Agreement, dated as of July 13, 2016, among Vivint Solar Fund III Manager, LLC, Vivint Solar Fund XIII Manager, LLC, Vivint Solar Liberty Manager, LLC, Vivint Solar Margaux Manager, LLC, Vivint Solar Nicole Manager, LLC, Vivint Solar Developer, LLC and \*\*\*.

### **c. Fund XVI**

1. Limited Liability Company Agreement of Vivint Solar Fund XVI Lessor, LLC, dated as of June 1, 2015, among Vivint Solar Fund XVI Manager, LLC, Michelle A. Dreyer and James L. Grier.
2. Limited Liability Company Agreement of VS BC Solar Lessee I, LLC, dated as of June 1, 2015, among Barclays Capital Holdings Inc. and Citicorp North America, Inc.
3. Master Lease Agreement, dated as of June 1, 2015, between Vivint Solar Fund XVI Lessor, LLC and VS BC Solar Lessee I, LLC.

Schedule 7.22(a)-5

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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4. Security Agreement, dated as of June 1, 2015, between VS BC Solar Lessee I, LLC, and Vivint Solar Fund XVI Lessor, LLC.
5. Depository Agreement, dated as of June 1, 2015, between VS BC Solar Lessee I, LLC and Vivint Solar Fund XVI Lessor, LLC, as amended by Amendment to Depository Agreement, dated as of March 10, 2016.
6. Deposit Account Control Agreement, dated as of June 1, 2015, among VS BC Solar Lessee I, LLC, Vivint Solar Fund XVI Lessor, LLC, and Zions First National Bank.
7. Letter regarding Vivint Solar Fund XVI Master Lease Agreement, dated as of June 1, 2015, by Vivint Solar, Inc. to VS BC Solar Lessee I, LLC, Citicorp North America Inc., and Barclays Capital Holdings, Inc., concerning fees and expenses.

**d. Fund XVIII**

1. Limited Liability Company Agreement of Vivint Solar Fund XVIII Project Company, LLC, dated as of May 11, 2015, between Vivint Solar Fund XVIII Manager, LLC and \*\*\*, as amended by Amendment No. 1 to Vivint Solar Fund XVIII Project Company LLC Limited Liability Company Agreement, dated as of December 9, 2015, as further amended by Amendment No. 2 to Vivint Solar Fund XVIII Project Company LLC Limited Liability Company Agreement, dated as of March 29, 2016, as further amended by Amendment No. 3, dated as of May 24, 2016, as further amended by Amendment No. 4 to Vivint Solar Fund XVIII Project Company LLC Limited Liability Company Agreement, dated as of August 4, 2016, and as further amended by Amendment No. 5 to Vivint Solar Fund XVIII Project Company LLC Limited Liability Company Agreement, dated as of October 17, 2016.

**L. Tax Equity Consents and Notices**

1. Consent Agreement (Fund XI Operating Agreement), dated as of January 5, 2017, among Vivint Solar Financing III, LLC, Vivint Solar Fund XI Manager, LLC, Wells Fargo Bank, National Association, as Collateral Agent, \*\*\* and \*\*\*.
2. Consent Agreement (Fund XIII Operating Agreement), dated as of January 5, 2017, among Vivint Solar Financing III, LLC, Vivint Solar Fund XIII Manager, LLC, Wells Fargo Bank, National Association, as Collateral Agent and \*\*\*.
3. Estoppel Certificate, dated as of January 5, 2017, among Vivint Solar, Inc. to VS BC Solar Lessee I, LLC, Vivint Solar, Inc., Vivint Solar Fund XVI Lessor, LLC, and Wells Fargo Bank, N.A., as Collateral Agent.
4. Consent and Agreement, dated as of January 5, 2017, among Vivint Solar Financing III, LLC, Vivint Solar Fund XVIII Manager, LLC, Vivint Solar Fund XVIII Project Company, LLC, Wells Fargo Bank, National Association, as Collateral Agent and \*\*\*

Schedule 7.22(a)-6

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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**Schedule 7.22(e)**

**Portfolio Document Exceptions**

None.

Schedule 7.22(e)

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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## **Schedule 7.22(q)**

### **Project States**

1. Arizona
2. California
3. Connecticut
4. Hawaii
5. Maryland
6. Massachusetts
7. New Jersey
8. New Mexico
9. New York
10. Pennsylvania
11. South Carolina
12. Utah

Schedule 7.22(q)

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

**Exhibit A**

**Form of Note**

FORM OF NOTE

No. [\_\_\_\_\_]

New York, New York  
[\_\_\_\_\_], 20[\_\_\_]

For value received, the undersigned, VIVINT SOLAR FINANCING III, LLC, a Delaware limited liability company (“Borrower”), unconditionally promises to pay to [\_\_\_\_\_], or its permitted assigns (the “Lender”), the principal amount of [\_\_\_\_\_] DOLLARS (\$ \_\_\_\_\_), or if less, the aggregate unpaid and outstanding principal amount of this Note advanced by the Lender to Borrower pursuant to that certain Fixed Rate Loan Agreement, dated as of January 5, 2017 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Loan Agreement”), among Borrower, the financial institutions as Lenders from time to time party thereto and Wells Fargo Bank, National Association, as administrative agent (the “Administrative Agent”), and all other amounts owed by Borrower to the Lender hereunder.

Payments of principal of, and interest on, this Note and any Make Whole Amount are to be made to the Administrative Agent, for the account of the Lender, in lawful money of the United States of America.

This is one of the Notes referred to in Section 2.02 ( *Notes* ) of the Loan Agreement and is entitled to the benefits thereof and is subject to all terms, provisions and conditions thereof. Capitalized terms used and not defined herein shall have the meanings set forth in Section 1.01 ( *Definitions* ) of the Loan Agreement.

This Note is made in connection with and is secured by, among other instruments, the provisions of the Collateral Documents. Reference is hereby made to the Loan Agreement and the Collateral Documents for the provisions, among others, with respect to the custody and application of the Collateral, the nature and extent of the security provided thereunder, the rights, duties and obligations of Borrower and the rights of the holder of this Note.

The principal amount hereof is payable in accordance with the Loan Agreement, and such principal amount may be prepaid along with any Make Whole Amount, where applicable, solely in accordance with the Loan Agreement.

Borrower authorizes the Lender to record on the schedule annexed to this Note the date and amount of each Loan made by the Lender and each payment or prepayment of principal thereunder and agrees that all such notations shall constitute *prima facie* evidence of the accuracy of the matters noted. Borrower further authorizes the Lender to attach to and make a part of this Note continuations of the schedule attached thereto as necessary. No failure to make any such notations, nor any errors in making any such notations, shall affect the validity of Borrower’s obligations to repay the full unpaid principal amount of the Loans.

Borrower further agrees to pay, in lawful money of the United States of America and in immediately available funds, interest from the date hereof on the unpaid and outstanding principal amount hereof until such unpaid and outstanding principal amount shall become due and payable (whether at stated maturity, by acceleration or otherwise) at the rates of interest and at the times set forth in the Loan Agreement, and Borrower agrees to pay any Make Whole

Exhibit A-1

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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Amount, other fees and costs as stated in the Loan Agreement at the times specified in, and otherwise in accordance with, the Loan Agreement.

If any payment due on this Note becomes due and payable on a date which is not a Business Day, such payment shall be made on the next succeeding Business Day, in accordance with the Loan Agreement.

Upon the occurrence of any one or more Events of Default, all amounts then remaining unpaid on this Note, along with any Make-Whole Amount determined in respect of such amounts, may become or be declared to be immediately due and payable as provided in the Loan Agreement and other Loan Documents, without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or notices or demands of any kind, all of which are expressly waived by Borrower.

Borrower agrees to pay all costs and expenses, including without limitation reasonable attorneys' fees, incurred in connection with the interpretation or enforcement of this Note, at the times specified in, and otherwise in accordance with, the Loan Agreement.

Except as permitted by the Loan Agreement, this Note or the indebtedness evidenced hereby may not be assigned by Lender to any other Person. Transfer of this Note may be effected only by a surrender of the Note by Lender and either reissuance of the Note or issuance of a new Note by the Borrower to the new lender.

THIS NOTE SHALL BE CONSTRUED AND INTERPRETED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT REFERENCE TO CONFLICTS OF LAWS (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE NEW YORK GENERAL OBLIGATIONS LAW).

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Exhibit A-2

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

**VIVINT SOLAR FINANCING III, LLC ,**  
a Delaware limited liability company

By: \_\_\_\_\_

Name:

Title:

Exhibit A-3

[\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---



**Exhibit B**

**Form of Notice of Borrowing**

[LETTERHEAD OF BORROWER]

NOTICE OF BORROWING

January [ ], 2017

\*\*\*

Attention: \*\*\*

E-mail: \*\*\*

Re: Vivint Solar Financing III, LLC

Ladies and Gentlemen:

This Notice of Borrowing (this “Notice of Borrowing”) is delivered to you pursuant to Section 2.01(b) ( *Conditions and Funding* ) of that certain Fixed Rate Loan Agreement, dated as of January 5, 2017 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Loan Agreement”), among Vivint Solar Financing III, LLC, a Delaware limited liability company (the “Borrower”), the financial institutions as Lenders from time to time party thereto (each individually a “Lender” and, collectively, the “Lenders”) and Wells Fargo Bank, National Association, as administrative agent for the Lenders (in such capacity, and together with its successors and permitted assigns, the “Administrative Agent”). Capitalized terms used herein and not otherwise defined herein have the meanings given to them in the Loan Agreement.

The Borrower hereby gives irrevocable notice to the Administrative Agent, pursuant to Section 2.01(b) ( *Conditions and Funding* ) of the Loan Agreement, that the undersigned Authorized Officer hereby requests a Loan under the Loan Agreement on behalf of the Borrower. In connection with such request, the undersigned Authorized Officer certifies that such person is an Authorized Officer and sets forth below the following information as required by Section 2.01 ( *Conditions and Funding* ) of the Loan Agreement:

- (1) The aggregate amount of the requested Loans is \$ \_\_\_\_\_, which, when taken together with all other Loans made under Section 2.01(b) ( *Conditions and Funding* ) of the Loan Agreement, does not exceed the total aggregate Commitments of all Lenders on the Closing Date.
- (2) The proposed Closing Date is \_\_\_\_\_, which day is a Business Day not earlier than three (3) Business Days following the date hereof.
- (3) The proceeds of the Loans shall be disbursed in accordance with the Closing Date Funds Flow Memorandum attached hereto as Annex 1.

The undersigned certifies as of the date hereof on behalf of the Borrower and not in such person’s individual capacity that, contemporaneously with the borrowing of the Loans, all of the conditions precedent set forth in Section 6.01 ( *Conditions of Borrowing* ) of the Loan Agreement will be satisfied or waived in accordance with the terms of the Loan Agreement.

Delivery of an executed counterpart of this Notice of Borrowing by telephonic, facsimile or other electronic means will be effective as delivery of any original executed counterpart of this Notice of Borrowing.

*[remainder of page intentionally blank]*

Exhibit B-1

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

IN WITNESS WHEREOF, the Borrower has caused this Notice of Borrowing to be duly executed and delivered as of the date first written above.

**BORROWER**

**VIVINT SOLAR FINANCING III, LLC**

By:  
Name:  
Title:

Exhibit B-2

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

**Annex 1 to Notice of Borrowing**  
Closing Date Funds Flow Memorandum

[To be attached.]

Exhibit B-3

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

**Exhibit C**

**Form of Collateral Agency Agreement**

[To be attached.]

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

COLLATERAL AGENCY AGREEMENT

among

WELLS FARGO BANK, NATIONAL ASSOCIATION ,  
in its capacity as Collateral Agent,

WELLS FARGO BANK, NATIONAL ASSOCIATION ,  
in its capacity as Administrative Agent,

and

VIVINT SOLAR FINANCING III, LLC,  
as the Borrower

Dated as of January 5 , 2017

---

Exhibit C

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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Exhibit C-i

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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Exhibit C-ii

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

COLLATERAL AGENCY AGREEMENT (this “Agreement”), dated as of January 5 , 2017, is among VIVINT SOLAR FINANCING III , LLC , a limited liability company organized under the laws of the State of Delaware (the “Borrower”), Wells Fargo Bank, National Association, in its capacity as Administrative Agent (together with its successors in such capacity, the “Administrative Agent”), and Wells Fargo Bank, National Association in its capacity as Collateral Agent (together with its successors in such capacity, the “Collateral Agent”).

## RECITALS

**WHEREAS** , the Borrower, the financial institutions as lenders from time to time party thereto (each individually a “Lender” and, collectively, the “Lenders”) and the Administrative Agent have entered into a Fixed Rate Loan Agreement dated as of the date hereof (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “Loan Agreement”), providing for extensions of credit to the Borrower as contemplated therein;

**WHEREAS** , in order to secure their obligations under the Loan Documents, the Borrower has entered into a Borrower Collateral Agreement with the Collateral Agent, and the other Loan Parties have entered into Collateral Documents with the Collateral Agent, pursuant to which, among other things, the Loan Parties have granted a Lien to the Collateral Agent for the benefit of the Secured Parties in the Collateral, including the Collateral Accounts; and

**WHEREAS** , the parties hereto desire to set forth in this Agreement, among other things, certain provisions with respect to the appointment of the Collateral Agent, including the method of voting and decision making for the Secured Parties and the application of proceeds upon enforcement following an Event of Default;

**NOW , THEREFORE** , in consideration of the foregoing and other good and valid consideration, the receipt and adequacy of which are hereby expressly acknowledged, each of the parties signatory hereto hereby agree as follows:

## ARTICLE I

### DEFINITIONS AND OTHER MATTERS

#### Definitions

. Unless otherwise defined herein, terms defined in Section 1.01 ( *Definitions* ) of the Loan Agreement are used herein (including the introductory paragraph and recitals of this Agreement) as defined therein. In addition, for purposes of this Agreement, the following terms shall have the following meanings:

“ Administrative Agent ” has the meaning assigned to such term in the introductory paragraph hereof.

“ Administrative Costs ” means all of the Borrower’s obligations to pay administrative fees, costs and expenses, including Agency Fees and Agency Expenses, indemnity payments and attorney costs and disbursements, to any Agent as provided under the Loan Documents.

“ Agents ” means the “Agents” as defined pursuant to the Loan Agreement.

“ Agreement ” has the meaning assigned to such term in the introductory paragraph hereof.

“ Bankruptcy Code ” means the United States Bankruptcy Reform Act of 1978, as amended.

“ Borrower ” has the meaning assigned to such term in the introductory paragraph hereof.

“ Collateral Accounts ” has the meaning set out in Section 2.02(a) of the Depositary Agreement.

“ Collateral Agent ” has the meaning assigned to such term in the introductory paragraph hereof.

Exhibit C-1

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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“Collateral Documents” has the meaning set out in the Loan Agreement.

“Debt Termination Date” means the date on which the Collateral Agent notifies the Depository Agent in writing that that the “Debt Termination Date” (as defined in the Loan Agreement) has occurred.

“Default” means the occurrence and continuation of a “Default” (or equivalent) under, and as defined in, any Loan Document.

“Depository Agent” means Wells Fargo Bank, National Association, in its capacity as Depository Agent under the Depository Agreement.

“Depository Agreement” means that certain Depository Agreement, dated as of the date hereof, by and among the Administrative Agent, the Collateral Agent, the Borrower, the Guarantors and the Depository Agent.

“DIP Financing” has the meaning given to such term in Section 3.06.

“Event of Default” means the occurrence and continuation of an “Event of Default” (or equivalent) under, and as defined in, any Loan Document.

“Foreclosure Action” means the commencement of any action by the Collateral Agent or any assignee or designee of the Collateral Agent, acting pursuant to a Remedies Direction, to (i) foreclose upon the assets and properties of any Loan Parties and/or SREC Seller Parties or (ii) otherwise exercise remedies to acquire or transfer (or to cause any assignee or designee to acquire or transfer) ownership of any of the Membership Interests or any other Collateral owned by any Loan Party and/or SREC Seller Party, by assignment in lieu of foreclosure or otherwise, in each case following an Event of Default of which the Collateral Agent has been notified in writing by the Administrative Agent or the Majority Lenders.

“Loan Agreement” has the meaning assigned to such term in the recitals hereto.

“Loan Documents” means, collectively, any agreement, certificate, document or instrument constituting a “Loan Document” under the Loan Agreement.

“Majority Lenders” has the meaning set out in the Loan Agreement.

“Modification” and “Modify” mean, with respect to any Loan Document, any amendment, supplement, Waiver or other modification of the terms and provisions thereof.

“Notice of Default” has the meaning assigned to such term in Section 3.01.

“Notice of SREC Pledge Trigger Event” has the meaning assigned to such term in Section 3.07.

“Obligations” shall have the meaning given to such term in the Loan Agreement.

“Remedies Direction” has the meaning assigned to such term in Section 3.02(a).

“Secured Obligation” means the “Obligations” under and as defined in the Loan Agreement.

“Secured Parties” means, collectively, the Lenders and the Agents.

“SREC Foreclosure Action” means the commencement of any action by the Collateral Agent (at the written instruction of the Majority Lenders) or any assignee or designee of the Collateral Agent, acting pursuant to a SREC Pledge Remedies Direction, to (i) foreclose upon the assets and properties of any SREC Seller Parties or (ii) otherwise exercise remedies to acquire or transfer (or to cause any assignee or designee to acquire or transfer) ownership of any of Collateral owned by any SREC Seller Party, by assignment in lieu of foreclosure or otherwise, in each case following a SREC Pledge Trigger Event of which the Collateral Agent has been notified in writing by the Administrative Agent or the Majority Lenders.

“SREC Pledge Remedies Direction” has the meaning assigned to such term in Section 3.08(a).

Exhibit C-2

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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“ SREC Pledge Trigger Event ” has the meaning given to the term “ Pledge Trigger Event ” in the SREC Security Agreement.

“ UCC ” means the Uniform Commercial Code as in effect from time to time in the State of New York.

“ Waiver ” means, with respect to any particular conduct, event or other circumstance, any change to an obligation of any Person under any Loan Document requiring the consent of one or more Secured Parties, which consent has the effect of excusing performance of or compliance with such obligation, or any Default or Event of Default with respect thereto to the extent relating to such conduct, event or circumstance; provided, however, that any Waiver shall be limited in time and substance solely to the particular conduct, event or circumstance and shall not purport, directly or indirectly, to alter or otherwise modify the relevant obligation with respect to future occurrences of the same conduct, event or circumstance.

#### 1.02 Interpretation.

Principles of Construction. The principles of construction and interpretation set forth in Sections 1.02 ( *Accounting Terms and Determinations* ), 1.03 ( *Time of Day* ) and 1.04 ( *Rules of Construction* ) of the Loan Agreement shall apply to this Agreement as if set forth herein, *mutatis mutandis* .

#### 1.03 Uniform Commercial Code

. All terms defined in the UCC shall have the respective meanings given to those terms in the UCC, except where the context otherwise requires.

### **ARTICLE II PROVISIONS APPLICABLE TO COLLATERAL ACCOUNTS**

#### 2.01 Event of Default, Etc.

Notwithstanding any provision of this Agreement to the contrary, (a) upon the occurrence and during the continuation of any Event of Default, the Collateral Agent shall, if instructed in writing to do so by the Majority Lenders, instruct the Depository Agent not to release, withdraw, distribute, transfer or otherwise make available any funds in or from any of the Accounts, and to take such action or refrain from taking such action as the Collateral Agent shall determine and, upon receipt thereof, the Depository Agent shall comply with such instructions until the Depository Agent has received written notice from the Borrower (countersigned by the Collateral Agent (at the written instruction of the Majority Lenders)) that such Event of Default no longer exists due to it having been waived, cured or no longer existing, or having been deemed waived, in accordance with the terms of the relevant Loan Documents, (b) upon the occurrence and during the continuation of any Event of Default, and at the written direction of the Majority Lenders pursuant to a Remedies Direction, the Collateral Agent shall have the right to exercise such remedies as are then available to it, including the transfer of all or any part of the funds in the Collateral Accounts to any of the other Collateral Accounts or, pursuant to Section 2.02, to the payment of the Obligations then due and payable as provided in such Remedies Direction (c) upon the occurrence and during the continuation of any SREC Pledge Trigger Event, and at the written direction of the Majority Lenders pursuant to a SREC Pledge Remedies Direction, the Collateral Agent shall have the right to exercise such

Exhibit C-3

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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remedies as are then available to it pursuant to the SREC Security Agreement, including as contemplated under Section 3.08 .

**2.02 Distribution of Collateral Proceeds**

- (a) Priority of Payments. Following receipt of a Remedies Direction by the Collateral Agent from the Majority Lenders pursuant to Section 3.02(a) in connection with the sale, disposition or other realization, collection or recovery of any amounts in the Collateral Accounts or any other Collateral (or any portion thereof) for the payment of the Obligations, the Collateral Agent shall apply the proceeds of such sale, disposition, or other realization, collection or recovery toward the payment of the Obligations in the following order of priority (and without duplication):
- (i) *first* , to any Administrative Costs then due and payable to the Agents under any Loan Document *pro rata* based on such respective amounts then due to such Persons;
  - (ii) *second* , to the Administrative Agent, for the account of the Lenders entitled thereto, the amount of all accrued but unpaid interest (other than any interest on any overdue amount which has accrued at the Post-Default Rate) owed to the relevant Lenders on the Obligations (or to the applicable Agent on their behalf), *pro rata* based on such respective amounts then due to such Lenders;
  - (iii) *third* , to the Administrative Agent, for the account of the Lenders entitled thereto, the amount of all unpaid principal of the Loans then due and payable to the relevant Lenders, *pro rata* based on such respective amounts then due to such Lenders;
  - (iv) *fourth* , to the Administrative Agent, for the account of the Lenders entitled thereto, an amount equal to any other accrued but unpaid Obligations (including any unpaid Make-Whole Amount, fees, costs, charges and expenses) then due and payable to the Lenders under any Loan Document *pro rata* based on such respective amounts then due to such Lenders (in each case, other than any interest on any overdue amount which has accrued at the Post-Default Rate);
  - (v) *fifth* , to the Administrative Agent, for the account of the Lenders entitled thereto, the amount of all accrued but unpaid interest on any overdue amount which has accrued at the Post-Default Rate then due and payable to the Lenders under any Loan Document *pro rata* based on such respective amounts then due to such Lenders; and
  - (vi) *sixth* , after final payment in full of all Obligations and upon the Debt Termination Date, in accordance with Section 2.03.
- (b) Borrower Remains Liable for Deficiency. It is understood that the Borrower and each Guarantor shall remain liable to the extent of any deficiency between the amount of

Exhibit C-4

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the proceeds of the amounts in Collateral Accounts and any other Collateral and the aggregate of the sums referred to in clauses (i) through (iv) of clause (a) above.

### 2.03 **Termination of Collateral Accounts**

. The Borrower irrevocably directs the Collateral Agent that, on the Debt Termination Date, all remaining funds in each Collateral Account shall be remitted at the direction of the Borrower or as otherwise required to be applied by law and the Collateral Accounts shall be closed.

## **ARTICLE III DEFAULTS AND REMEDIES**

### 3.01 **Notice of Defaults**

. Promptly after (a) any Secured Party (other than any Agent) obtains knowledge of or (b) a Responsible Officer of an Agent receives written notice or has actual knowledge of, in each case, the occurrence of any Default or Event of Default under any Loan Document to which it is a party, such Secured Party shall notify the Agents in writing thereof (a “ Notice of Default ”). Each such Notice of Default shall specifically refer to this Section 3.01 and shall describe such Default or Event of Default in reasonable detail (including the date of occurrence). Upon receipt by the Agents of any such notice, the Agents shall promptly send copies thereof to each Secured Party and the Borrower. Notwithstanding the above, the failure by any Secured Party to provide any notice contemplated by this Section 3.01 shall not in any way affect the right of such Secured Party to enforce its rights in connection with any Event of Default.

### 3.02 **Exercise of Remedies**

- (a) If an Event of Default shall have occurred and be continuing, the Collateral Agent (at the written direction of the Majority Lenders, on behalf of the Secured Parties) shall be permitted and authorized to take such actions as are specified by such Majority Lenders, including any and all actions (and the exercise of any and all rights, remedies and options) which any Secured Party or any Agent may have under the Loan Documents or under Law, either through itself or a special purpose entity, including the ability to cure any Event of Default, to exercise the right to credit bid the Loans at any sale of the Collateral, whether under any bankruptcy law or in foreclosure of the Liens granted to Collateral Agent for the benefit of the Secured Parties, or, so long as some or all of the Obligations are then due and payable, to foreclose on the Liens granted under the Collateral Documents and exercise the right of such Agent to sell the Collateral or any part thereof (or accept a deed in lieu of foreclosure) and sell, lease or otherwise realize upon the other property mortgaged, pledged and assigned to the Collateral Agent under the Collateral Documents (any such written request from the Majority Lenders, a “ Remedies Direction ”). No Secured Party shall have any right to direct any Agent to take any action in respect of the Collateral other than in accordance with the terms hereof. The Collateral is vested in and held by the Collateral Agent or its agent (for the benefit of the Secured Parties) and only the Collateral Agent, acting on the written instructions of the Majority Lenders, has the right to take actions (and exercise rights, remedies and options) with respect to the Collateral.

Exhibit C-5

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Notwithstanding the foregoing or anything to the contrary contained in this Agreement, nothing herein shall preclude any Secured Party from enforcing (or refraining to enforce) the provisions of its Loan Document in respect of the property, assets or other rights described in Section 4.03, and no such action (or inaction) shall require the consent or approval of (or notification to) any Person other than such Secured Party.

If the Collateral Agent receives a Remedies Direction directing the Collateral Agent to commence a Foreclosure Action, the Collateral Agent shall notify each other Secured Party of such Remedies Direction.

- (b) Any action (including any Foreclosure Action) which has been requested pursuant to a Remedies Direction may be modified, supplemented, terminated and/or countermanded if the Collateral Agent shall have received either (i) a written revocation notice from the Majority Lenders or (ii) a written notice from the Majority Lenders which contains different or supplemental directions with respect to such action.
- (c) At the direction of the Majority Lenders pursuant to a Remedies Direction, the Collateral Agent shall seek to enforce the Collateral Documents and to realize upon the Collateral and, in the case of any Event of Default under Section 10.01(e) (*Involuntary Bankruptcy; Appointment of Receiver, etc.*) or Section 10.01(f) (*Voluntary Bankruptcy; Appointment of Receiver, etc.*) of the Loan Agreement in respect of any Loan Party of which the Collateral Agent has been notified in writing by the Administrative Agent (to the extent a Responsible Officer of the Administrative Agent has actual knowledge or written notice thereof), to seek to enforce the claims of the Secured Parties under the Loan Documents in respect thereof; provided, however, that the Collateral Agent shall not be obligated to follow any Remedies Direction as to which the Collateral Agent has received a written opinion of counsel to the effect that such Remedies Direction is in conflict with any provisions of Law, this Agreement or any other Loan Document or any order of any court or Governmental Authority. The Collateral Agent shall not, under any circumstances, be liable to any other Secured Party or any other Person for following the written directions of the Majority Lenders.

### 3.03 **Bankruptcy Default**

. Notwithstanding any provision to the contrary in this Agreement, upon the occurrence of an Event of Default under Section 10.01(e) (*Involuntary Bankruptcy; Appointment of Receiver, etc.*) or Section 10.01(f) (*Voluntary Bankruptcy; Appointment of Receiver, etc.*) of the Loan Agreement in respect of any Loan Party, (a) the unutilized Commitments shall forthwith terminate immediately and (b) all principal of and accrued interest in respect of the Obligations of each Secured Party shall be immediately due and payable without presentment, demand, protest or notice of any kind whatsoever, in each case as provided in Section 10.02(a) (*Acceleration and Remedies*) of the Loan Agreement.

### 3.04 **Allocation of Collateral Proceeds**

Exhibit C-6

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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. Upon the acceleration of the Obligations and the instruction to the Collateral Agent in accordance with Section 2.02, the proceeds of any collection, recovery, receipt, appropriation, realization or sale of any or all of the Collateral or the enforcement of any Collateral Document shall be applied in accordance with Section 2.02.

### 3.05 **Restrictions on Enforcement of Liens**

. Until the Debt Termination Date, except to the extent directed or consented to in writing by the Majority Lenders, no Secured Party will:

- (a) oppose or otherwise contest (or support any other Person in contesting) any motion for relief from the automatic stay or for any injunction against foreclosure or enforcement of Liens granted to the Collateral Agent, for the benefit of the Secured Parties, made by the Collateral Agent, acting at the written direction of, or as consented to in writing by, the Majority Lenders, in any insolvency or liquidation proceeding of the Borrower; or
- (b) oppose or otherwise contest (or support any other Person in contesting) any lawful exercise by the Collateral Agent, acting at the written direction of, or as consented to in writing by, the Majority Lenders, of the right to credit bid the Obligations at any sale in foreclosure of the Liens granted to the Collateral Agent, for the benefit of the Secured Parties, and the Administrative Agent (on behalf of the applicable Secured Parties);

provided, however, that notwithstanding anything to the contrary stated in this Agreement, during the occurrence of an Event of Default under Section 10.01(e) (*Involuntary Bankruptcy; Appointment of Receiver, etc.*) or Section 10.01(f) (*Voluntary Bankruptcy; Appointment of Receiver, etc.*) of the Loan Agreement in respect of any Loan Party of which it has been notified in writing by the Administrative Agent: (A) the Collateral Agent may but shall not be obligated to take such actions as it deems desirable to create, prove, preserve or protect the Liens upon any Collateral; (B) nothing in this Agreement shall be construed to prevent or impair the rights of any Secured Party to enforce this Agreement, and (C) except for actions that are expressly prohibited by the terms of this Agreement, any holder of Obligations and any Secured Party may take any actions and exercise any and all rights that would be available to a holder of unsecured claims (including (I) the commencement of an insolvency or liquidation proceeding against the Borrower in accordance with Law, (II) the acceleration of the Obligations under and in accordance with (to the extent not automatically accelerated under) the relevant Loan Document, and (III) the termination of any agreement by the holder of any Obligation in accordance with the terms thereof).

### 3.06 **Insolvency or Liquidation Proceedings**

. Prior to the Debt Termination Date, if the Borrower shall be subject to any insolvency or liquidation proceeding and the Collateral Agent (acting at the written direction of the Majority Lenders) shall desire to consent to the use of "Cash Collateral" (as such term is defined in Section 363(a) of the Bankruptcy Code), with respect to any Collateral, or to the Borrower obtaining financing, whether from the Secured Parties or any other Person under Section 364 of the Bankruptcy Code or any similar bankruptcy law ("DIP Financing"), then each Secured Party agrees that it will raise no objection to such Cash Collateral use or DIP Financing and will not request

Exhibit C-7

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additional protection or any other relief in connection therewith ; provided that each Secured Party retains the right to object to any ancillary agreements or arrangements regarding the DIP Financing that are materially prejudicial to its interests (unless such ancillary agreements or arrangements, including any adequate protection orders, are equally materially prejudicial to all Secured Parties, in which case there shall be no independent right of a Secured Party to object). Each Secured Party further agrees that it will raise no objection or oppose a motion to sell or otherwise dispose of any Collateral free and clear of its Liens or other claims under Section 363 of the Bankruptcy Code if Collateral Agent (acting at the written direction of the Majority Lenders) has consented to such sale or disposition of such assets, and such motion does not impair the rights of any Secured Party under Section 363(k) of the Bankruptcy Code.

### **3.07 Notice of SREC Pledge Trigger Event**

. Promptly after (i) any Secured Party (other than any Agent) obtains knowledge of or (ii) a Responsible Officer of an Agent receives written notice or has actual knowledge of, in each case, the occurrence of any SREC Pledge Trigger Event, such Secured Party shall notify the Agents in writing thereof (a “ Notice of SREC Pledge Trigger Event ”). Each such Notice of SREC Pledge Trigger Event shall specifically refer to this Section 3.07 and shall describe such SREC Pledge Trigger Event in reasonable detail (including the date of occurrence). Upon receipt by the Agents of any such notice, the Agents shall promptly send copies thereof to each Secured Party and the Borrower. Notwithstanding the above, the failure by any Secured Party to provide any notice contemplated by this Section 3.07 shall not in any way affect the right of such Secured Party to enforce its rights in connection with any SREC Pledge Trigger Event. Notwithstanding any other provision in the Loan Documents, if a SREC Pledge Trigger Event is also an Event of Default, no Person shall be required to provide any additional notification of a SREC Pledge Trigger Event and the provisions that apply in respect of Events of Default shall prevail over the provisions applying in respect of SREC Pledge Trigger Events to the extent of any inconsistency.

### **3.08 Exercise of SREC Pledge Remedies**

- (a) If a SREC Pledge Trigger Event shall have occurred and be continuing, the Collateral Agent (at the written direction of the Majority Lenders, on behalf of the Secured Parties) shall be permitted and authorized to take such actions as are specified by such Majority Lenders, including any and all actions (and the exercise of any and all rights, remedies and options) which any Secured Party or any Agent may have under the SREC Security Agreement, the other Loan Documents or under Law, either through itself or a special purpose entity, including the ability to cure any SREC Pledge Trigger Event, to commence and prosecute any claim, suit, action or proceeding at law or in equity in any court of competent jurisdiction against any Eligible SREC Counterparty, to apply the proceeds of any enforcement of the Collateral under the SREC Security Agreement to the mandatory prepayment contemplated under Section 3.04(f) ( *Eligible REC Contract Claim Proceeds* ) of the Loan Agreement, or, so long as some or all of the Obligations are then due and payable, to foreclose on the Liens granted under the SREC Security Agreement and exercise the right of such Agent to sell the Collateral or any part thereof (or accept a deed in lieu of foreclosure) and sell, lease or otherwise realize upon the other property mortgaged, pledged and assigned to

Exhibit C-8

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the Collateral Agent under the SREC Security Agreement (any such written request from the Majority Lenders, a “SREC Pledge Remedies Direction”).

If the Collateral Agent receives a SREC Pledge Remedies Direction directing the Collateral Agent to commence a SREC Foreclosure Action, the Collateral Agent shall notify each other Secured Party of such SREC Pledge Remedies Direction.

- (b) Any action (including any SREC Foreclosure Action) which has been requested pursuant to a Remedies Direction may be modified, supplemented, terminated and/or countermanded if the Collateral Agent shall have received either (i) a written revocation notice from the Majority Lenders or (ii) a written notice from the Majority Lenders which contains different or supplemental directions with respect to such action.
- (c) At the direction of the Majority Lenders pursuant to a SREC Pledge Remedies Direction, the Collateral Agent shall seek to enforce the SREC Security Agreement and to realize upon the applicable Collateral and, in the case of any Event of Default under Section 10.01(e) ( *Involuntary Bankruptcy; Appointment of Receiver, etc.* ) or Section 10.01(f) ( *Voluntary Bankruptcy; Appointment of Receiver, etc.* ) of the Loan Agreement in respect of any SREC Seller Party of which the Collateral Agent has been notified in writing by the Administrative Agent (to the extent a Responsible Officer of the Administrative Agent has actual knowledge or written notice thereof), to seek to enforce the claims of the Secured Parties under the Loan Documents in respect thereof; provided, however, that the Collateral Agent shall not be obligated to follow any SREC Remedies Direction as to which the Collateral Agent has received a written opinion of counsel to the effect that such SREC Remedies Direction is in conflict with any provisions of Law, this Agreement or any other Loan Document or any order of any court or Governmental Authority. The Collateral Agent shall not, under any circumstances, be liable to any other Secured Party or any other Person for following the written directions of the Majority Lenders.

### 3.09 Notice of Amounts Owed

. If the Majority Lenders pursuant to a Remedies Direction instruct in writing the Collateral Agent or any other Person holding any Collateral on behalf of the Secured Parties to proceed to foreclose upon, collect, sell or otherwise dispose of or take any other action with respect to any or all of the Collateral or to enforce any remedy under any other Loan Document, then upon the request of the Collateral Agent, each Secured Party shall promptly notify the Collateral Agent in writing (with a copy to the Administrative Agent), as of any time that the Collateral Agent may reasonably specify in such request, of (a) the aggregate amount of the respective Obligations owing to the Secured Party and (b) such other information as the Collateral Agent may reasonably request.

## ARTICLE IV COLLATERAL AGENT

### 4.01 Appointment

Exhibit C-9

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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. Wells Fargo Bank, National Association is hereby appointed by the Administrative Agent (on behalf of itself and the Lenders, which also made such appointment in Section 11.01 ( *Appointment, Powers and Immunities* ) of the Loan Agreement) to act as Collateral Agent and the Collateral Agent is authorized to exercise such rights, powers, authorities and discretions as are specifically delegated to the Collateral Agent, by the terms of this Agreement and the other Loan Documents, together with all such rights, powers, authorities and discretions as are reasonably incidental thereto; *provided, however*, the Administrative Agent shall have no liability with respect to such appointment. By its signature below Wells Fargo Bank, National Association (or any successor thereto pursuant to this Article VIII) accepts such appointment. As directed by the Majority Lenders, the Collateral Agent shall execute additional Collateral Documents delivered to it after the date of this Agreement; provided, however, that such additional Collateral Documents do not adversely affect the rights, privileges, benefits and immunities of the Collateral Agent. The Collateral Agent will not otherwise be bound by, or be held obligated by, the provisions of any Loan Agreement, indenture, cash management agreement or other agreement governing Obligations (other than this Agreement and the other Loan Documents to which it is a party). The Borrower hereby consents to such appointment of the Collateral Agent and agrees to pay to the Collateral Agent the amounts set forth in the Agency Fee Letter.

#### 4.02 **Duties and Responsibilities**

. The Collateral Agent shall not have any fiduciary duties or responsibilities except those expressly set forth in this Agreement or in the other Transaction Documents to which it is a party, and no implied covenants or obligations shall be read into this Agreement or the other Transaction Documents against the Collateral Agent. The Collateral Agent shall not be liable or responsible except for the performance of such expressed duties as are specifically set forth herein or in the other Transaction Documents to which it is a party. The Collateral Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Collateral Agent is required to exercise in writing by the Majority Lenders. As to any matter not expressly provided for by this Agreement or the other Loan Documents, the Collateral Agent will act or refrain from acting as directed by the Majority Lenders and will be fully protected if it does so, and any action taken, suffered or omitted pursuant to hereto or thereto shall be binding on the holders of Obligations. Except as expressly set forth herein and in the other Loan Documents, the Collateral Agent shall not have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Loan Party, the Sponsor or any of its Subsidiaries that is communicated to or obtained by the bank serving as Collateral Agent or any of its Affiliates in any capacity. The relationship between the Secured Parties, on the one hand, and the Borrower, on the other, in connection herewith or therewith is solely that of a debtor and a creditor. Neither this Agreement nor the other Transaction Documents creates a joint venture between the parties. The Collateral Agent acknowledges its notice obligations set forth in Section 1(c) of each of the BP SREC Consent and the DTE SREC Consent and Section 2(b) of the Consent Agreement (Fund XI Operating Agreement) dated as of January 5, 2017 among the Borrower, Vivint Solar Fund XI Manager, LLC, the Collateral Agent, and the Investors (as defined therein), and Section 2.12 of the Consent and Agreement dated as of January 5, 2017 among the Borrower, Vivint Solar Fund XVIII Manager, LLC, Vivint Solar Fund XVIII Project Company, LLC, the Collateral Agent and the Class A Member (as defined therein).

#### 4.03 **Rights and Obligations**

Exhibit C-10

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- (a) The Collateral Agent may:
- (i) assume, absent actual knowledge or written notice from a Responsible Officer of the Administrative Agent (to the extent a Responsible Officer of the Administrative Agent has actual knowledge or written notice thereof) received by it to the contrary, that (A) any representation made by any Person in connection with any Transaction Document is true, (B) no Default, Event of Default or SREC Pledge Trigger Event exists, (C) no Person is in breach of or in default under its obligations under any Transaction Document, (D) any right, power, authority or discretion vested herein upon any other Agent has not been exercised and (E) all conditions precedent to any obligations of any Secured Party have been fully satisfied;
  - (ii) assume, absent actual knowledge or written notice from a Responsible Officer of the Administrative Agent (to the extent a Responsible Officer of the Administrative Agent has actual knowledge or written notice thereof) received by it to the contrary, that any notice or certificate given by any Person has been validly given by a Person authorized to do so and act upon such notice or certificate unless the same is revoked or superseded by a further such notice or certificate;
  - (iii) assume, absent written notice from the Administrative Agent (to the extent a Responsible Officer of the Administrative Agent has actual knowledge or written notice thereof) or any such other relevant Person received by it to the contrary, that the address, telecopy and telephone numbers for the giving of any written notice to any Person hereunder is that identified in Section 7.03 ( *Notices* ) of the Depositary Agreement to which such Person is a party, as applicable, until a Responsible Officer of the Collateral Agent has received from such Person a written notice designating some other office of such Person to replace any such address, telecopy or telephone number, and act upon any such notice until the same is superseded by a further such written notice;
  - (iv) employ, at the expense of the Borrower in accordance with, and to the extent permissible under, Section 12.03 ( *Expenses; Etc.* ) of the Loan Agreement, attorneys, accountants or other experts whose advice or services the Collateral Agent may reasonably determine is necessary or desirable, and may rely upon any reasonable advice so obtained; provided that the Collateral Agent shall be under no obligation to act upon such advice if it does not deem such action to be appropriate;
  - (v) rely on any matters of fact upon a certificate signed by or on behalf of any Person;
  - (vi) conclusively rely upon any communication, instruction, certificate, notice or document purportedly signed by an Authorized Officer or other representative

Exhibit C-11

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of Borrower or the Administrative Agent believed by the Collateral Agent in good faith to be genuine and have been signed or sent by or on behalf of the proper Person or Persons, and the Collateral Agent shall have no liability for its actions taken, suffered or omitted to be taken upon any such communication, instruction, certificate, notice or other document, except to the extent caused by the Collateral Agent's willful misconduct or gross negligence as finally determined by a court of competent jurisdiction. The Collateral Agent shall have no duty whatsoever to investigate or verify whether any such signature is genuine or authorized or whether the information in any such communication, instruction, certificate, notice or other document is genuine or accurate;

- (vii) refrain from acting or continuing to act in accordance with any instructions given under this Agreement to begin any legal action or proceeding arising out of or in connection with any Transaction Document until it shall have received such indemnity or security from the Secured Parties as it may reasonably require (whether by payment in advance or otherwise) for all reasonable fees, costs, claims, losses, expenses (including reasonable legal fees and expenses) and liabilities which it will or may expend or incur in complying or continuing to comply with such instructions; provided that nothing in this subclause (vii) shall be deemed to obligate any Secured Party to provide any such indemnity or security; and
- (viii) seek instructions, in the form of direction from the Majority Lenders and/or the Administrative Agent (at the written instruction of the Majority Lenders), an Officer's Certificate or an order of a court of competent jurisdiction, as applicable, as to the exercise of any of its rights, powers, authorities or discretions hereunder or under the other Loan Documents (including any consents, notices, requests, amendments, waivers, modifications, acceptances or remedies), may await receipt of the respective confirmatory instructions before taking the respective such action, and in the event that it does seek instructions, it shall be fully protected from any and all liability when acting in accordance with such written instructions or, in the absence of any (or any clear) written instructions, when refraining from taking any action or exercising any right, power or discretion hereunder or thereunder.

(b) The Collateral Agent shall:

- (i) promptly, upon written request, deliver to the Administrative Agent the notices, certificates, reports, opinions, agreements and other documents which it receives under this Agreement and the other Transaction Documents in its capacity as Collateral Agent;
- (ii) except as otherwise expressly provided in any Loan Document (including subject to Section 4.03(a)(vii) and Section 4.04(d)), perform its duties in

Exhibit C-12

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accordance with any written instructions given to it by the Majority Lenders which instructions shall be binding on all Secured Parties; and

- (iii) if so instructed in writing by the Majority Lenders, refrain from exercising any right, power, authority or discretion vested in it hereunder or under the other Loan Documents (other than rights arising under this Section 4.03.) without any liability for such failure to act.
- (c) Without limiting the generality of Section 4.03(b), the parties hereto acknowledge and agree that the Collateral Agent shall, in exercising its rights and performing its obligations under the other Loan Documents, act in accordance with the terms and conditions of this Agreement.
- (d) For so long as Wells Fargo Bank, National Association (or any other Person designated by the Majority Lenders) is acting as the Collateral Agent and except as otherwise expressly set forth herein, the Collateral Agent shall be entitled to the same benefits, protections, benefits and indemnities afforded to the Administrative Agent under the Loan Documents.

#### 4.04 No Responsibility for Certain Conduct.

- (a) Notwithstanding anything to the contrary expressed or implied herein, the Collateral Agent shall not:
  - (i) be bound to inquire as to (w) whether or not any representation made by any other Person in connection with any Transaction Document is true, (x) the occurrence or otherwise of any Default, Event of Default or SREC Pledge Trigger Event, (y) the performance by any other Person of its obligations under any of the Transaction Documents or the satisfaction of any condition precedent to any obligation of any Secured Party, or (z) any breach of or default by any Person of its obligations under any of the Transaction Documents or otherwise;
  - (ii) be bound to disclose to any Person any information relating to the Project or to any Person if such disclosure would constitute a breach of any Law or be otherwise actionable at the suit of any Person;
  - (iii) be bound to take any action (and will incur no liability for doing so) in the event there is any bona fide, good faith disagreement between the other parties to this Agreement or any of the other Loan Documents resulting in adverse claims being made in connection with Collateral held by the Collateral Agent and the terms of this Agreement or any of the other Loan Documents do not unambiguously mandate the action the Collateral Agent is to take or not to take in connection therewith under the circumstances then existing, or the Collateral Agent is in doubt as to what action it is required to take or not to take hereunder or under the other Loan Documents, until the Collateral Agent

Exhibit C-13

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is directed otherwise in writing by a request signed jointly by the parties hereto entitled to give such direction or by order of a court of competent jurisdiction, provided that the parties hereto acknowledge that the terms of this Agreement are not intended to negate any specific rights of the Borrower or the other Loan Parties.

- (b) The Collateral Agent shall have no responsibility for the accuracy or completeness of any information supplied by any Person (other than itself) in connection with the Project or for the legality, validity, effectiveness, adequacy or enforceability of any Transaction Document or any other document referred to herein or provided for herein or therein or for any recitals, statements, representations or warranties made by the Borrower or any other Person contained in this Agreement or any other Transaction Document or in any certificate or other document referred to or provided for, or received by the Collateral Agent, hereunder or thereunder. The Collateral Agent shall not be liable as a result of any failure by the Borrower or its Affiliates or any Person (except itself to the extent of the Collateral Agent's gross negligence or willful misconduct) party hereto or to any other Transaction Document to perform their respective obligations hereunder or under any other Transaction Document or any document referred to or provided for herein or therein or as a result of taking or omitting to take any action hereunder or in relation to any Transaction Document.
- (c) It is understood and agreed by each Secured Party that is not an Agent (for itself and any other Person claiming through it) that, except as expressly set forth herein, it has itself been, and will continue to be, solely responsible for making its own independent appraisal of, and investigations into, the financial condition, creditworthiness, condition, affairs, status and nature of each Person and, accordingly, each such Secured Party warrants to the Collateral Agent that it has not relied on and will not hereafter rely on the Collateral Agent:
  - (i) to check or inquire on its behalf into the adequacy, accuracy or completeness of any information provided by any Person in connection with any of the Transaction Documents or the transactions therein contemplated (whether or not such information has been or is hereafter circulated to such Person by the Collateral Agent); or
  - (ii) to assess or keep under review on its behalf the financial condition, creditworthiness, condition, affairs, status or nature of any Person.
- (d) In the event the Collateral Agent is instructed in writing to take any action under this Agreement or any other Loan Document, the Collateral Agent may refuse to take such action in the event that, in the Collateral Agent's sole discretion, the Collateral Agent determines that taking such action either would be contrary to Law or would cause the Collateral Agent to incur liability for which the Collateral Agent has not been indemnified or secured against to its satisfaction.

Exhibit C-14

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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- (e) Notwithstanding anything herein to the contrary, the Collateral Agent will not be responsible for the existence, genuineness or value of any of the Collateral or for the validity, perfection, priority, maintenance, continuation or enforceability of the Liens in any of the Collateral, whether impaired by operation of law or by reason of any action or omission to act on its part hereunder, for the validity or sufficiency of the Collateral or any agreement or assignment contained therein, for the validity of the title of any Loan Party to the Collateral, for insuring the Collateral or for the payment of taxes, charges, assessments or Liens upon the Collateral or otherwise as to the maintenance of the Collateral. The Collateral Agent hereby disclaims any representation or warranty to the present and future Secured Parties concerning the perfection of the Liens granted hereunder or in the value of any of the Collateral. The Collateral Agent will not be responsible for determining whether any given Obligations are in fact secured pursuant to the various Collateral Documents, it being understood that each other Secured Party shall be responsible for ascertaining whether its Obligations are in fact secured pursuant to the Collateral Documents.
- (f) Notwithstanding anything to the contrary contained herein:
- (i) each of the parties thereto will remain liable under each of the Collateral Documents (other than this Agreement) to the extent set forth therein to perform all of their respective duties and obligations thereunder to the same extent as if this Agreement had not been executed;
  - (ii) the exercise by the Collateral Agent of any of its rights, remedies or powers hereunder will not release such parties from any of their respective duties or obligations under the other Collateral Documents; and
  - (iii) the Collateral Agent will not be obligated to perform any of the obligations or duties of any of the parties thereunder other than the Collateral Agent.
- (g) In the event that the Collateral Agent is required to acquire title to an asset for any reason, or take any managerial action of any kind in regard thereto, in order to carry out any fiduciary or trust obligation for the benefit of another, which in the Collateral Agent's sole discretion may cause the Collateral Agent to be considered an "owner or operator" under any environmental laws or otherwise cause the Collateral Agent to incur, or be exposed to, any environmental liability or any liability under any other federal, state or local law, the Collateral Agent reserves the right, instead of taking such action, either to resign as Collateral Agent or to arrange for the transfer of the title or control of the asset to a court appointed receiver. The Collateral Agent will not be liable to any Person for any environmental liability or any environmental claims or contribution actions under any federal, state or local law, rule or regulation by reason of the Collateral Agent's actions and conduct as authorized, empowered and directed hereunder or relating to any kind of discharge or release or threatened discharge or release of any hazardous materials into the environment.

Exhibit C-15

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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- (h) The Collateral Agent's sole duty with respect to the custody, safekeeping and physical preservation of the Collateral in its possession, under Section 9-207 of the NY UCC or otherwise, shall be to exercise reasonable care as it would for others. Neither the Collateral Agent, any other Secured Party nor any of their respective officers, directors, employees or agents shall be liable for failure to demand, collect or realize upon any of the Collateral or for any delay in doing so or shall be under any obligation to sell or otherwise dispose of any Collateral upon the request of any Loan Party or any other Person or to take any other action whatsoever with regard to the Collateral or any part thereof. The powers conferred on the Collateral Agent and the other Secured Parties hereunder are solely to protect the Collateral Agent's and the other Secured Parties' interests in the Collateral and shall not impose any duty upon the Collateral Agent or any other Secured Party to exercise any such powers. The Collateral Agent and the other Secured Parties shall be accountable only for amounts that they actually receive as a result of the exercise of such powers, and neither they nor any of their officers, directors, employees or agents shall be responsible to any Loan Party for any act or failure to act hereunder, except for their own bad faith, gross negligence or willful misconduct (in each case as determined by a final, non-appealable order by a court of competent jurisdiction).
- (i) The Collateral Agent is authorized to obey and comply, in any manner it or its counsel deems appropriate, with all writs, order, judgments, awards, decrees issued or process entered by any court or arbitral tribunal with respect to this Agreement and if the Collateral Agent so complies, it shall not be liable to any party hereto or to any other party or person notwithstanding that any such writ, order, judgment, award, decree or process may be subsequently reversed, modified, annulled, set aside, vacated or found to have been entered without competent jurisdiction.

#### 4.05 **Defaults**

. The Collateral Agent shall not be deemed to have knowledge or notice of the occurrence of any event or default (including any Default, Event of Default, SREC Pledge Trigger Event or any other default in connection with any Loan Documents) or any information or be required to act upon any event, default (including any Default, Event of Default, SREC Pledge Trigger Event or any other default in connection with any Loan Documents) or information (including the sending of any notice) unless a Responsible Officer of the Collateral Agent has received written notice of such event or default (including any Default, Event of Default or SREC Pledge Trigger Event) referring to this Agreement, describing such event or default (including any Default, Event of Default or SREC Pledge Trigger Event) and stating that such notice is a "Notice of Default" (or, in the case of a SREC Pledge Trigger Event only, a "Notice of SREC Pledge Trigger Event"). Absent such written notice, the Collateral Agent shall have no duty to ascertain whether any such event or default (including any Default, Event of Default, SREC Pledge Trigger Event or any other default in connection with any Loan Documents) shall have occurred. If a Responsible Officer of the Collateral Agent has actual knowledge of a Default, Event of Default or SREC Pledge Trigger Event or receives such a written Notice of Default or Notice of SREC Pledge Trigger Event, the Collateral Agent shall give prompt notice thereof to the Administrative Agent and the Lenders. The Collateral Agent shall take such

Exhibit C-16

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action with respect to such Default, Event of Default or SREC Pledge Trigger Event as is provided in this Agreement and Article X ( *Events of Default; Remedies* ) of the Loan Agreement and, notwithstanding any other provision of this Agreement to the contrary, unless and until (i) the Collateral Agent shall have received a Remedies Direction, it shall refrain from taking any such action with respect to such Default or Event of Default or (ii) the Collateral Agent shall have received a Remedies Direction or SREC Remedies Direction , it shall refrain from taking any such action with respect to such SREC Pledge Trigger Event, as applicable .

#### 4.06 **Liability**.

- (a) Neither the Collateral Agent nor any of its officers, directors, employees or agents shall be liable to any Person for any action taken or omitted under this Agreement or under the other Loan Documents, or in connection therewith, except to the extent caused by the gross negligence or willful misconduct of the Collateral Agent, as determined by a court of competent jurisdiction in a final judgment from which no appeal may be taken. The Secured Parties party hereto each (for itself and any Person claiming through it) hereby releases, waives, discharges and exculpates the Collateral Agent for any action taken or omitted under this Agreement or under the other Loan Documents, or in connection therewith, except to the extent caused by the gross negligence or willful misconduct of the Collateral Agent (as the case may be), as determined by a court of competent jurisdiction in a final judgment from which no appeal may be taken.
- (b) The Collateral Agent shall not incur any liability for not performing any act or not fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Collateral Agent (including any act or provision of any present or future law or regulation or governmental authority, any act of God or war, civil unrest, local or national disturbance or disaster, any act of terrorism, or the unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility).

#### 4.07 **Indemnification**

. Borrower shall indemnify, defend and hold harmless the Collateral Agent, and in its capacity as such, Collateral Agent's respective officers, directors, shareholders, controlling persons, employees, agents and servants (collectively, the "Collateral Agent Indemnitees"), with respect to its performance under the Collateral Agency Agreement pursuant to the terms of, and subject to the terms and limitations of, Section 12.03 ( *Expenses; Etc.* ) of the Loan Agreement as in effect on the date of this Collateral Agency Agreement (and each Collateral Agent Indemnitee shall be an "Indemnitee" as defined in the Loan Agreement).

#### 4.08 **Resignation and Removal.**

- (a) Subject to Section 4.09, the Collateral Agent may resign from its appointment hereunder at any time without providing any reason therefor by giving 30 days prior written notice to that effect to each of the other parties hereto.

Exhibit C-17

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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- (b) Subject to Section 4.09, the Majority Lenders, unless an Event of Default has occurred and is continuing, with the consent of the Borrower, may remove the Collateral Agent from its appointment hereunder with or without cause by giving 30 days' prior written notice to that effect to each of the other parties hereto.

#### 4.09 Successor Collateral Agents.

- (a) No resignation or removal pursuant to Section 4.08 shall be effective until:
- (i) a successor to the Collateral Agent is appointed in accordance with (and subject to) the provisions of this Section 4.09;
  - (ii) the resigning Collateral Agent has transferred to its successor (A) all of its rights and obligations in its capacity as the Collateral Agent under this Agreement and the other Loan Documents and (B) all documentation held by it and relating to the Loan Documents (other than such documentation that the Collateral Agent, is required to retain pursuant to Law); and
  - (iii) the successor Collateral Agent has executed and delivered an agreement to be bound by the terms of this Agreement and the other Loan Documents and to perform all duties required of Collateral Agent hereunder and under the other Loan Documents;

provided that, for the avoidance of doubt, a removal of the Collateral Agent shall be effective notwithstanding the non-satisfaction of clause (a)(ii) above.

- (b) If the Collateral Agent has given notice of its resignation pursuant to Section 4.08(a) or if the Majority Lenders give the Collateral Agent notice of removal thereof pursuant to Section 4.08(b), then a successor to the Collateral Agent, may be appointed by the Majority Lenders (and, unless an Event of Default has occurred and is continuing, with the written consent of the Borrower, which consent shall not unreasonably be withheld or delayed) during a 30 day period beginning on the date of such notice but, if no such successor is so appointed within 30 days after the above notice, the resigning or removed Collateral Agent may at the expense of the Borrower appoint such a successor or petition to a court of competent jurisdiction to appoint such a successor. If a resigning or removed Collateral Agent, or a court of competent jurisdiction appoints a successor, such successor shall (i) be authorized under all Laws to exercise corporate trust powers, (ii) have a combined capital and surplus of at least \$100,000,000 and (iii) be acceptable to the Majority Lenders (and, unless an Event of Default has occurred and is continuing, the Borrower, approval by which shall not unreasonably be withheld or delayed).
- (c) If a successor to the Collateral Agent is appointed under the provisions of this Section 4.09, then:
- (i) the predecessor Collateral Agent shall be discharged from any further obligation hereunder (but without prejudice to any accrued liabilities);

Exhibit C-18

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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- (ii) the resignation pursuant to Section 4.08(a) or removal pursuant to Section 4.08(b) of the predecessor Collateral Agent, notwithstanding, the provisions of this Agreement shall inure to the predecessor Collateral Agent's benefit, as to any actions taken or omitted to be taken by it under this Agreement and the other Loan Documents while it was Collateral Agent; and
  - (iii) the successor Collateral Agent, and each of the other parties hereto shall have the same rights and obligations amongst themselves as they would have had if such successor Collateral Agent had been a party hereto beginning on the date of this Agreement.
- (d) Any Person into which the Collateral Agent may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Collateral Agent shall be a party, or any Person succeeding to the business of the Collateral Agent shall be the successor of the Collateral Agent pursuant to Section 4.09(b), without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties hereto, except where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding; provided that (i) such Person satisfies the eligibility requirements in Section 4.09(b) and (ii) promptly following any such merger, conversion or consolidation, the Collateral Agent shall have notified the Borrower thereof in writing; *provided*, however, that the Collateral Agent shall have no liability for failure to so notify the Borrower.

#### 4.10 **Authorization**

. The Collateral Agent has been authorized to execute, deliver and perform each of the Loan Documents to which the Collateral Agent is a party pursuant to Section 11.01 ( *Appointment, Powers and Immunities* ) of the Loan Agreement.

#### 4.11 **Collateral Agent as Lender**

. With respect to any Commitment and the Loans any Lender serving as Collateral Agent hereunder shall have the same rights and powers under the Transaction Documents as any other Lender, and may exercise the same as though it were not the Collateral Agent. The term "Lender" or "Secured Party", when used with respect to the Collateral Agent, shall, unless otherwise expressly indicated, include the Collateral Agent in its individual capacity. The Collateral Agent and each of its respective Affiliates may accept deposits from, lend money to, act as trustee under indentures of and generally engage in any kind of business with any Person, without any duty to account therefor to the Secured Parties.

#### 4.12 **Co-Collateral Agent; Separate Collateral Agent.**

- (a) If at any time or times it shall be necessary or prudent in order to conform to any law of any jurisdiction in which any of the Collateral shall be located, or to avoid any violation of law or imposition on the Collateral Agent of taxes by such jurisdiction not otherwise imposed on the Collateral Agent, or the Collateral Agent shall be advised by counsel, satisfactory to it, that it is necessary or prudent in the interests of

Exhibit C-19

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the Secured Parties, or the Collateral Agent shall deem it desirable for its own protection in the performance of its duties hereunder or under any Loan Document, the Collateral Agent and the Borrower and the Loan Parties shall execute and deliver all instruments and agreements necessary or proper to constitute another bank, trust company or one or more persons in each case approved by the Collateral Agent and the Borrower, either to act as co-collateral agent or co-collateral agents of all or any of the Collateral under this Agreement or under any of the Loan Documents, jointly with the Collateral Agent originally named herein or therein or any successor Collateral Agent, or to act as separate agent or agents of any of the Collateral. Each of the Borrower and each Loan Party hereby appoints the Collateral Agent as its agent and attorney to act for it under the foregoing provisions of this Section 4.12 in either of such contingencies.

- (b) Every separate Collateral Agent and every co-Collateral Agent, other than any successor Collateral Agent appointed pursuant to Section 4.09(d), shall, to the extent permitted by law, be appointed and act and be such, subject to the following provisions and conditions:
- (i) all rights, powers, duties and obligations conferred upon the Collateral Agent in respect of the custody, control and management of moneys, papers or securities shall be exercised solely by the Collateral Agent or any agent appointed by the Collateral Agent;
  - (ii) all rights, protections, indemnities, powers, duties and obligations conferred or imposed upon the Collateral Agent hereunder and under the relevant Loan Documents shall be conferred or imposed and exercised or performed by the Collateral Agent and such separate Collateral Agent or separate Collateral Agents or co-Collateral Agent or co-Collateral Agents, jointly, as shall be provided in the instrument appointing such separate Collateral Agent or separate Collateral Agents or co-Collateral Agent or co-Collateral Agents, except to the extent that under any law of any jurisdiction in which any particular act or acts are to be performed the Collateral Agent shall be incompetent or unqualified to perform such act or acts, or unless the performance of such act or acts would result in the imposition of any tax on the Collateral Agent which would not be imposed absent such joint act or acts, in which event such rights, powers, duties and obligations shall be exercised and performed by such separate Collateral Agent or co-Collateral Agent;
  - (iii) no power given hereby or by the relevant Loan Documents to, or which it is provided herein or therein may be exercised by, any such co-Collateral Agent or separate Collateral Agent shall be exercised hereunder or thereunder by such co-Collateral Agent or separate Collateral Agent except jointly with, or with the consent in writing of, the Collateral Agent, anything contained herein to the contrary notwithstanding;

Exhibit C-20

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- (iv) no Collateral Agent hereunder shall be personally liable by reason of any act or omission of any other Collateral Agent or co-Collateral Agent hereunder;
- (v) the Borrower and the Loan Parties and the Collateral Agent, at any time by an instrument in writing executed by them jointly, may accept the resignation of or remove any such separate Collateral Agent or co-Collateral Agent and, in that case by an instrument in writing executed by them jointly, may appoint a successor to such separate Collateral Agent or co-Collateral Agent, as the case may be, anything contained herein to the contrary notwithstanding. If the Collateral Agent shall have appointed a separate Collateral Agent or separate Collateral Agents or co-Collateral Agent or co-Collateral Agents as above provided, the Collateral Agent may at any time, by an instrument in writing, accept the resignation of or remove any such separate Collateral Agent or co-Collateral Agent and the successor to any such separate Collateral Agent or co-Collateral Agent shall be appointed by the Borrower and the Loan Parties and the Collateral Agent, or by the Collateral Agent alone pursuant to this Section; and
- (vi) the Collateral Agent shall have no responsibility or liability relating to any appointment of a separate Collateral Agent or co-Collateral Agents or any action or inaction of such separate Collateral Agent or co-Collateral Agent. Any separate Collateral Agent or co-Collateral Agent shall not be deemed an agent of the Collateral Agent.

## **ARTICLE V MISCELLANEOUS**

### **5.01 No Waiver; Remedies Cumulative**

. No failure or delay on the part of any party hereto or any Secured Party in exercising any right, power or privilege hereunder and no course of dealing between parties hereto shall impair any such right, power or privilege or operate as a waiver thereof. No single or partial exercise by any party hereto or any Secured Party of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder. The rights, powers and remedies provided herein are cumulative and not exclusive of any rights, powers or remedies which any party hereto would otherwise have. No notice to or demand by any party hereto or any Secured Party on the Borrower in any case shall entitle the Borrower to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of any party hereto or any Secured Party to any other or further action in any circumstances without notice or demand.

### **5.02 Notices**

. All notices, payment instructions, Remedies Directions and other communications required or permitted to be given hereunder shall be (a) in writing and be considered as properly given and be deemed effective in accordance with Section 7.03 of the Depositary Agreement; and (b) sent to a party hereto at its address and contact number specified in Section 7.03 of the Depositary Agreement

Exhibit C-21

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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to which it is a party, as applicable, or at such other address and contact number as is designated by any party in a written notice to the other parties hereto; provided that, with respect to determining whether any notice, payment instruction, Remedies Direction or other communication to the Agents has been given hereunder, unless otherwise expressly provided herein, such notice shall be deemed effectively given and received on the actual day of receipt by a Responsible Officer of the Agents of such notice, payment instruction, Remedies Direction or other communication at its designated office for delivery of notices.

#### **5.03 Amendments to a Loan Document**

. Except to the extent specified in Section 5.03(b) below of this Agreement and Section 12.04 ( *Amendments; Etc.* ) of the Loan Agreement, this Agreement and any other Loan Document may be amended or modified only by an instrument in writing signed by the Borrower and any Agent (acting at the direction of the Majority Lenders). Any such amendment or modification shall be binding upon the Borrower and the Secured Parties.

#### **5.04 Benefit of Agreement; Successors and Assigns**

. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto; provided, however, that the Borrower may not assign or transfer any of its rights or obligations hereunder without the prior written consent of each Lender.

#### **5.05 Third-Party Beneficiaries**

. The covenants contained herein are made solely for the benefit of the parties hereto and the other Secured Parties from time to time bound hereby, and their successors and assigns, and shall not be construed as having been intended to benefit any other third-party not a party to this Agreement.

#### **5.06 Counterparts**

. This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which, when executed and delivered, shall be effective for purposes of binding the parties hereto, but all of which shall together constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by telecopy or other electronic delivery shall be effective as delivery of a manually executed counterpart of this Agreement.

#### **5.07 Effectiveness**

. This Agreement shall be effective on the date first above written.

#### **Entire Agreement**

. This Agreement and the other Loan Documents, including the documents referred to herein, constitute the entire agreement and understanding of the parties hereto, and supersede any and all prior agreements and understandings, written or oral, of the parties hereto relating to the subject matter hereof.

#### **5.09 Severability**

. If any provision of this Agreement is invalid or unenforceable in any jurisdiction, then, to the fullest extent permitted by law (a) the other provisions of this Agreement shall remain in full force and effect in such jurisdiction and shall be liberally construed in order to carry out the intentions of the parties hereto as nearly as may be possible; and (b) the invalidity, illegality or unenforceability of

any provision of this Agreement in any jurisdiction shall not affect the validity, legality or enforceability of such provision in any other jurisdiction.

**5.10 Conflict with Other Agreements**

. Except as otherwise expressly provided herein, the parties agree that in the event of any conflict between the provisions of this Agreement (or any portion thereof) and the provisions of any other Loan Document or any other agreement now existing or hereafter entered into, the provisions of this Agreement shall control.

**5.11 Governing Law; Submission to Jurisdiction; Venue; Waiver of Jury Trial**

. This Agreement shall be governed by, and construed in accordance with, the law of the State of New York, and the provisions of Sections 12.13 ( *Governing Law; Submission to Jurisdiction* ) and 12.14 ( *Waiver of Jury Trial* ) of the Loan Agreement are hereby incorporated herein by reference, *mutatis mutandis* , as if fully set out in this Agreement and each reference in any such Section of the Loan Agreement to the “Agreement”, “herein”, “hereunder” and like terms shall be deemed to refer to this Agreement.

**5.12 Termination**

. Upon the Debt Termination Date, this Agreement shall (except as otherwise expressly set out herein and subject to Section 5.13) terminate and be of no further force and effect; provided that the obligations under Section 4.07 shall survive the Debt Termination Date, the assignment of this Agreement and the resignation or removal of the parties hereto.

**5.13 Reinstatement**

. This Agreement and the obligations of the Borrower hereunder shall continue to be effective or be automatically reinstated, as the case may be, if (and to the extent that) at any time payment and performance of the Borrower’s obligations hereunder, or any part thereof, is rescinded or reduced in amount, or must otherwise be restored or returned by any Agent or any other Secured Party. In the event that any payment or any part thereof is so rescinded, reduced, restored or returned, such obligations shall be reinstated on the same terms and conditions applicable thereto prior to the payment of the rescinded, reduced, restored or returned amount, and shall be deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

**5.14 Attorney-In-Fact**

. For the purposes of allowing the Collateral Agent to exercise its rights and remedies upon the occurrence and continuance of an Event of Default or SREC Pledge Trigger Event, and to the extent permitted by Law, the Borrower irrevocably constitutes and appoints the Collateral Agent and any officer or agent thereof, with full power of substitution as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Borrower and in the name of the Borrower or in its own name, for the purpose of carrying out the terms of this Agreement, to take any appropriate action and to execute any document or instrument that may be necessary or desirable to accomplish the purposes of this Agreement. The Borrower hereby acknowledges and agrees that the Collateral Agent shall have no fiduciary duties to the Borrower in acting pursuant to this power of attorney and the Borrower hereby waives any claims or rights of a beneficiary of a fiduciary relationship. Without limiting the generality of this Section 5.14, any action or inaction by the

Exhibit C-23

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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Collateral Agent pursuant to this Section 5.14 shall be taken at the written instruction of the Majority Lenders.

**5.15 Filing Fees, Excise Taxes, Etc**

. Without duplication of amounts paid under Section 5.01 of the Depositary Agreement, the Borrower agrees to pay or to reimburse each Agent promptly on demand for any and all documented amounts, if any, in respect of all search, filing and recording fees, taxes, excise taxes, sales taxes and other similar imposts which may be payable or determined to be payable in respect of the execution, delivery, performance and enforcement of this Agreement and each other Loan Document to which such Person is a party and agrees to hold each such Person harmless from and against any and all liabilities, costs, claims, expenses, penalties and interest with respect to or resulting from any delay in paying or omission to pay such taxes and fees (except to the extent that such liabilities, costs, claims, expenses, penalties and interest result from the gross negligence or willful misconduct of any such Person as finally determined by a non-appealable order from a court of competent jurisdiction).

**5.16 USA Patriot Act**

. In order to comply with the laws, rules, regulations and executive orders in effect from time to time applicable to banking institutions, including, without limitation, those relating to the funding of terrorist activities and money laundering, including Section 326 of the USA PATRIOT Act of the United States, the each of the Collateral Agent and the Administrative Agent is required to obtain, verify, record and update certain information relating to individuals and entities which maintain a business relationship with each of the Collateral Agent and the Administrative Agent. Accordingly, each of the parties agree to provide to each of the Collateral Agent and the Administrative Agent, upon its request from time to time such identifying information and documentation as may be available for such party in order to enable each of the Collateral Agent and the Administrative Agent to comply with Applicable Law.

[ SIGNATURES TO FOLLOW ]

Exhibit C-24

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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**IN WITNESS WHEREOF** , the parties hereto have caused this Agreement to be duly executed as of the date first above written.

**BORROWER**

VIVINT SOLAR FINANCING III, LLC,  
a Delaware limited liability company

By:  
Name:  
Title:

Signature Page to Collateral Agency Agreement

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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COLLATERAL AGENT

WELLS FARGO BANK, NATIONAL ASSOCIATION  
not in its individual capacity but solely as Collateral Agent

By:  
Name:  
Title:

Signature Page to Collateral Agency Agreement

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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ADMINISTRATIVE AGENT

WELLS FARGO BANK, NATIONAL ASSOCIATION  
not in its individual capacity but solely as Administrative  
Agent

By:  
Name:  
Title:

Signature Page to Collateral Agency Agreement

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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**Exhibit D**  
**Form of Depositary Agreement**

[To be attached.]

Exhibit D

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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**DEPOSITARY AGREEMENT**

among

**WELLS FARGO BANK, NATIONAL ASSOCIATION,**  
as Administrative Agent

**WELLS FARGO BANK, NATIONAL ASSOCIATION,**  
as Collateral Agent

**VIVINT SOLAR FINANCING III, LLC,**  
as Borrower

**VIVINT SOLAR FUND XI MANAGER, LLC,**  
**VIVINT SOLAR FUND XIII MANAGER, LLC,**  
**VIVINT SOLAR FUND XVI MANAGER, LLC,**  
**VIVINT SOLAR FUND XVIII MANAGER, LLC,**

**VIVINT SOLAR SREC GUARANTOR III, LLC,**  
as Guarantors and

**Wells Fargo BANK, NATIONAL ASSOCIATION ,**  
as Depositary Agent

Dated as of January 5, 2017

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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DEPOSITARY AGREEMENT (VIVINT SOLAR)

Exhibit D- i

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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DEPOSITARY AGREEMENT (VIVINT SOLAR)

Exhibit D- ii

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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## DEPOSITARY AGREEMENT

DEPOSITARY AGREEMENT (this “Depository Agreement” or “Agreement”), dated as of January 5, 2017, among Vivint Solar Fund XI Manager, LLC, a Delaware limited liability company (“Fund XI Guarantor”), Vivint Solar Fund XIII Manager, LLC, a Delaware limited liability company (“Fund XIII Guarantor”), Vivint Solar Fund XVI Manager, LLC, a Delaware limited liability company (“Lessor Manager Guarantor”), and Vivint Solar Fund XVIII Manager, LLC, a Delaware limited liability company (“Fund XVIII Guarantor”), and Vivint Solar SREC Guarantor III, LLC, a Delaware limited liability company (“SREC Guarantor” and, together with Fund XI Guarantor, Fund XIII Guarantor, Lessor Manager Guarantor and Fund XVIII Guarantor, each individually a “Guarantor” and, collectively, the “Guarantors”), Vivint Solar Financing III, LLC, a Delaware limited liability company (“Borrower”), Wells Fargo Bank, National Association, in its capacity as Administrative Agent as defined in the hereinafter defined Loan Agreement (the “Administrative Agent”), Wells Fargo Bank, National Association, in its capacity as Collateral Agent as defined in the hereinafter defined Collateral Agency Agreement (the “Collateral Agent”), and Wells Fargo Bank, National Association, as depositary agent (“Depository Agent”).

### RECITALS

**WHEREAS**, Borrower, the financial institutions as lenders from time to time party thereto (each individually a “Lender” and, collectively, the “Lenders”), and the Administrative Agent have entered into a Fixed Rate Loan Agreement dated as of the date hereof (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “Loan Agreement”), providing for extensions of credit to Borrower as contemplated therein;

**WHEREAS**, in order to secure its obligations under the Loan Documents, Borrower has entered into a Borrower Collateral Agreement with the Collateral Agent, pursuant to which, among other things, Borrower has granted a Lien to the Collateral Agent for the benefit of the Secured Parties in the Collateral, including the Collateral Accounts opened in their name; and

**WHEREAS**, in order to secure their obligations under the Loan Documents, Guarantors have entered into a Guarantor Collateral Agreement with the Collateral Agent, pursuant to which, among other things, Guarantors have granted a Lien to the Collateral Agent for the benefit of the Secured Parties in the Collateral, including the Collateral Accounts opened in their name; and

**WHEREAS**, the parties hereto desire to set forth in this Depository Agreement, among other things, certain provisions with respect to the Collateral Accounts, including establishment thereof and distributions and withdrawals therefrom.

### AGREEMENT

**NOW, THEREFORE**, in consideration of the foregoing and other good and valid consideration, the receipt and adequacy of which is hereby expressly acknowledged, the parties hereby agree as follows:

#### ARTICLE I

##### DEFINITIONS AND OTHER MATTERS

###### 1.01 Definitions

DEPOSITARY AGREEMENT (VIVINT SOLAR)

Exhibit D-1

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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Unless otherwise defined herein, terms defined in Section 1.01 ( *Definitions* ) of the Collateral Agency Agreement (or, if not defined therein, Section 1.01 ( *Definitions* ) of the Loan Agreement) are used herein (including the introductory paragraph and recitals of this Depositary Agreement) as defined therein. In addition, for purposes of this Depositary Agreement, the following terms shall have the following meanings:

“ **Acceptable DSR Letter of Credit** ” means an Acceptable Letter of Credit provided to satisfy the Debt Service Reserve Required Amount.

“ **Acceptable LC Bank** ” means any United States commercial bank or financial institution or a United States branch or subsidiary of a foreign commercial bank or financial institution whose long-term unsecured debt (non-credit enhanced) is rated at least A2 by Moody’s or at least A by S&P and that is not then subject to a credit watch with negative outlook or other downgrade notice from either Moody’s or S&P.

“ **Acceptable Letter of Credit** ” means an irrevocable letter of credit issued by an Acceptable LC Bank in favor of the Collateral Agent (for the benefit of the Secured Parties) that (i) is for the account of a Person other than, and without recourse to, Pledgor, Borrower or another Relevant Party, (ii) has a stated maturity date that is not earlier than 12 months after the date of issuance of such letter of credit and (iii) together with all related documentation, is satisfactory to the Administrative Agent (acting reasonably and at the written instruction of the Majority Lenders); provided, that any such letter of credit must be drawable if (x) it is not renewed or replaced at least 10 days prior to its stated maturity date or (y) a Negative Credit Event occurs with respect to the issuer and a replacement letter of credit has not been obtained from an Acceptable LC Bank within the earlier of (A) 30 days after the downgrade giving rise to such Negative Credit Event and (B) 10 days prior to the stated maturity date.

“ **Administrative Agent** ” has the meaning assigned to such term in the introductory paragraph hereof.

“ **Borrower** ” has the meaning assigned to such term in the introductory paragraph hereof.

“ **Cash Equivalents** ” means any of the following:

(a) marketable direct obligations of the government of the United States of America or any agency or instrumentality thereof, or obligations unconditionally guaranteed by the full faith and credit of the government of the United States of America, in each case maturing within one (1) year from the date of acquisition thereof;

(b) securities issued by any state of the United States of America or any political subdivision of any such state or any public instrumentality thereof having maturities of not more than one (1) year from the date of acquisition thereof and, at the time of acquisition, having a rating of AA- or higher from S&P or Aa3 or higher from Moody’s (or, at any time that neither S&P nor Moody’s rates such obligations, an equivalent rating from another nationally recognized rating service);

(c) investments in commercial paper maturing within six (6) months from the date of acquisition thereof and having, at such date of acquisition, a rating of at least A-1 or P-1 from either S&P or Moody's (or, at any time that neither S&P nor Moody's rates such obligations, an equivalent rating from another nationally recognized rating service);

(d) investments in certificates of deposit, bank deposit products, banker's acceptances and time deposits maturing within six (6) months from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, the Administrative Agent or any domestic office of any commercial bank organized under the laws of the United States of America, any State thereof, any country that is a member of the Organization for Economic Cooperation and Development or any political subdivision thereof, that has a combined capital and surplus and undivided profits of not less than \$500,000,000;

(e) fully collateralized repurchase agreements with a term of not more than thirty (30) days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria of clause (d) above;

(f) investments in "money market funds" within the meaning of Rule 2a-7 of the Investment Company Act of 1940, as amended, substantially all of whose assets are invested in investments of the type described in clauses (a) through (e) above; and

(g) cash.

" **Closing Date Funds Flow Memorandum** " means that certain funds flow memorandum to be delivered in respect of the Closing Date pursuant to the Loan Agreement in a form and substance acceptable to the Lenders, the Administrative Agent and the Depositary Agent.

" **Collateral Accounts** " has the meaning set out in Section 2.02 ( *The Collateral Accounts* ).

" **Collateral Agency Agreement** " means the Collateral Agency Agreement, dated as of the Closing Date, among Borrower, the Administrative Agent, and the Collateral Agent.

" **Collateral Agent** " has the meaning assigned to such term in the introductory paragraph hereof.

" **Collections Account** " has the meaning set out in Section 2.02(a)(i) ( *Establishment of Collateral Accounts* ).

" **Debt Payment Deficiency** " has the meaning assigned to such term in Section 4.02(b)(ii) ( *Debt Service Reserve Account* ).

" **Debt Service Reserve Account** " has the meaning assigned to such term in Section 2.02(a)(ii) ( *Establishment of Collateral Accounts* ).

“ **Debt Service Reserve Required Amount** ” means, as of the Closing Date or any Scheduled Payment Date, an amount no less than the highest consecutive six (6) months of scheduled Debt Service projected to be payable under the Loan Documents over the immediately succeeding five year period or until the Final Maturity Date, whichever is shorter.

“ **Debt Termination Date** ” has the meaning given to it in the Collateral Agency Agreement.

“ **Depository Agent** ” has the meaning assigned to such term in the introductory paragraph hereof.

“ **Depository Agreement** ” has the meaning assigned to such term in the introductory paragraph hereof.

“ **Depository Collateral** ” has the meaning assigned to such term in Section 2.03 ( *Grant of Lien on Collateral Accounts* ).

“ **Depository Indemnitee** ” has the meaning assigned to such term in Section 6.05(f) ( *Exculpatory Provisions* ).

“ **Distribution Conditions** ” has the meaning assigned to such term in the Loan Agreement.

“ **Distribution Suspense Account** ” has the meaning assigned to such term in Section 2.02(a)(v) ( *Establishment of Collateral Accounts* ).

“ **Excess DSR Reserve Amount** ” has the meaning assigned to such term in Section 4.02(b)(iii) ( *Debt Service Reserve Account* ).

“ **Executed Withdrawal/Transfer Certificate** ” has the meaning assigned to such term in Section 3.02(b) ( *Withdrawal/Transfer Certificate* ).

“ **Fund XI** ” shall mean Vivint Solar Fund XI Project Company, LLC, a Delaware limited liability company.

“ **Fund XI Guarantor** ” has the meaning assigned to such term in the introductory paragraph hereof.

“ **Fund XI Guarantor Account** ” has the meaning assigned to such term in Section 2.02(a)(vii) ( *Establishment of Collateral Accounts* ).

“ **Fund XI Withdrawal Option Reserve** ” shall mean \$\*\*\*; provided, that, upon Fund XI becoming a Wholly-Owned Fund, the Fund XI Withdrawal Option Reserve shall be equal to zero.

DEPOSITARY AGREEMENT (VIVINT SOLAR)

Exhibit D-4

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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“ **Fund XIII** ” shall mean Vivint Solar Fund XIII Project Company, LLC, a Delaware limited liability company.

“ **Fund XIII Guarantor** ” has the meaning assigned to such term in the introductory paragraph hereof.

“ **Fund XIII Guarantor Account** ” has the meaning assigned to such term in Section 2.02(a)(viii) ( *Establishment of Collateral Accounts* )

“ **Fund XIII Withdrawal Option Reserve** ” shall mean \$\*\*\*; provided, that, upon Fund XIII becoming a Wholly-Owned Fund, the Fund XIII Withdrawal Option Reserve shall be equal to zero.

“ **Fund XVIII Guarantor** ” has the meaning assigned to such term in the introductory paragraph hereof.

“ **Fund XVIII Guarantor Account** ” has the meaning assigned to such term in Section 2.02(a)(x) ( *Establishment of Collateral Accounts* )

“ **Fund XVIII True-Up Liabilities** ” means, collectively (i) all of the obligations of Fund XVIII Guarantor under Section 3.3(c)(viii) of the Fund XVIII Limited Liability Company Agreement and (ii) any capital contribution required, or other obligation owed, by Fund XVIII Guarantor in respect of liabilities of Fund XVIII under Section 2.2(i) of the Fund XVIII Master Purchase Agreement.

“ **Funding Account** ” has the meaning assigned to such term in Section 2.02(a)(vi) ( *Establishment of Collateral Accounts* ).

“ **Guarantor** ” has the meaning assigned to such term in the introductory paragraph hereof.

“ **Guarantor Account** ” shall mean each of the Fund XI Guarantor Account, the Fund XIII Guarantor Account, the Lessor Manager Guarantor Account and the Fund XVIII Guarantor Account.

“ **Guarantor Collections** ” means, with respect to any Guarantor (other than the SREC Guarantor), all amounts of distributions with respect to the Fund Membership Interests, repayments of any loan made by a Guarantor to the applicable Fund or any other amounts received by such Guarantor (but shall not include any Excluded Property or distributions received in respect of the proceeds of Excluded Property).

“ **Inverter** ” means, with respect to a Project, the device required to convert the variable direct electrical current (DC) output from a solar photovoltaic panel into a utility frequency alternating electrical current (AC) that can be used by a Customer’s home or property, or that can be fed back into a utility electrical grid pursuant to an interconnection agreement.

“ **Inverter Replacement Costs** ” means costs and expenses (inclusive of labor costs) incurred for the replacement of Inverters used in respect of the Projects owned by the Funds.

“ **Inverter Replacement Reserve Account** ” has the meaning assigned to such term in Section 2.02(a)(iii) ( *Establishment of Collateral Accounts* ).

“ **Inverter Replacement Reserve Required Amount** ” means, as of any Scheduled Payment Date, the amount set forth for such Scheduled Payment Date on Annex II ( *Inverter Replacement Reserve Required Amount* ).

“ **ITC Insurance Loss** ” has the meaning assigned to the term “Loss” under the ITC Insurance Policy.

“ **ITC Insurance Policy** ” has the meaning assigned to such term in the Loan Agreement.

“ **ITC Insurance Policy Account** ” has the meaning assigned to such term in Section 2.02(a)(xii).

“ **ITC Insurance Policy Retention Reserve Amount** ” means \$\*\*\*; provided that upon the expiration of the ITC Insurance Policy the ITC Insurance Policy Retention Reserve Amount shall be equal to zero.

“ **ITC Insurer** ” has the meaning assigned to such term in the Loan Agreement.

“ **ITC Contest Costs** ” has the meaning assigned to the term “Contest Costs” under the ITC Insurance Policy.

“ **ITC Retention** ” has the meaning assigned to the term “Retention” under the ITC Insurance Policy.

“ **Lenders** ” has the meaning assigned to such term in the recitals hereto.

“ **Lessor Manager Guarantor** ” has the meaning assigned to such term in the introductory paragraph hereof.

“ **Lessor Manager Guarantor Account** ” has the meaning assigned to such term in Section 2.02(a)(ix) ( *Establishment of Collateral Accounts* )

“ **Loan Agreement** ” has the meaning assigned to such term in the recitals hereto.

“ **Loan Documents** ” means, collectively, any agreement, certificate, document or instrument constituting a “Loan Document” under the Loan Agreement.

“ **Manufacturer Warranty** ” means any warranty given by a manufacturer of an Inverter relating to such Inverter or any part or component thereof.

DEPOSITARY AGREEMENT (VIVINT SOLAR)

Exhibit D-6

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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“ **Moody’s** ” means Moody’s Investors Service, Inc.

“ **Negative Credit Event** ” means, with respect to a bank or financial institution that has issued a letter of credit, a downgrade in (including the withdrawal of) the bank or financial institution’s long-term unsecured debt (non-credit enhanced) rating by S&P or Moody’s such that such bank or financial institution is no longer an Acceptable LC Bank.

“ **Permitted Investments** ” means, collectively, (a) demand deposits or time deposits (including certificates of deposit) with the Depository Agent or any branch thereof, to the extent constituting Cash Equivalents and (b) any other similar instrument offered from time to time by the Depository Agent, to the extent constituting Cash Equivalents. Each of the Permitted Investments may be purchased by the Depository Agent or through an Affiliate of the Depository Agent.

“ **Permitted Management Fee** ” means the quarterly administration fee payable to the Manager under Section 4 of the Management Agreement and in accordance with the Management Consent Agreement.

“ **Permitted Tax Distribution** ” means for any taxable year (or portion thereof) ending after the Closing Date, the payment of dividends or other distributions to the Borrower’s direct owner(s) to fund the income tax liability of such owner(s) (or, if a direct owner is a disregarded entity, partnership or other flow through entity for federal, state and/or local income tax purposes, of the indirect owner(s)) for such taxable year (or portion thereof) attributable to the operations and activities of the Borrower and its direct and indirect subsidiaries, in an aggregate amount not to exceed the product of (x) the highest combined marginal federal and applicable state and/or local statutory tax rate (after taking into account the character of the income and the deductibility of U.S. state and local income tax for U.S. federal income tax purposes) applicable to any such direct or indirect owner and (y) the net taxable income of the Borrower (for avoidance of doubt, taking into account any income of its direct or indirect subsidiaries allocable to the Borrower) for such taxable year (or portion thereof), as if the Borrower was a separate taxable entity.

“ **Pledged SREC Account** ” has the meaning assigned to such term in Section 2.02(a)(xi) (*Establishment of Collateral Accounts*).

“ **Reserve Account** ” means each of the Debt Service Reserve Account, the Supplemental Reserve Account and the Inverter Replacement Reserve Account.

“ **S&P** ” means Standard & Poor’s Rating Service.

“ **Scheduled Payment Date** ” means (i) each January 31, April 30, July 31 and October 31 of each year falling after the date hereof, or if any such day is not a Business Day, the immediately preceding Business Day and (ii) the Final Maturity Date; provided, that, for the avoidance of doubt, the first Scheduled Payment Date shall occur on April 30, 2017.

“ **Seasonality Reserve Amount** ” shall mean \$2,000,000.

“ **Secured Obligation Documents** ” means the Loan Documents.

“**SREC Guarantor**” has the meaning assigned to such term in the introductory paragraph hereof.

“ **Supplemental Reserve Account** ” has the meaning assigned to such term in Section 2.02(a)(iv) ( *Establishment of Collateral Accounts* ).

“ **Supplemental Reserve Available Amount** ” means the difference of (a) the aggregate amount of funds then on deposit in or credited to the Supplemental Reserve Account *minus* (b) the Supplemental Reserve Required Amount.

“ **Supplemental Reserve Funding Amount** ” means the sum of (a) the Withdrawal Option Required Amount plus (b) the True-Up Reserve Amount plus (c) the Seasonality Reserve Amount.

“ **Supplemental Reserve Required Amount** ” means the sum of (a) the Withdrawal Option Required Amount plus (b) the True-Up Reserve Amount.

“ **Tax Equity Option Amount** ” has the meaning (a) in respect of Fund XI and Fund XIII, assigned to the term “Purchase Option Price” (in respect of the exercise of purchase option by the applicable Guarantor) or “Withdrawal Amount” (in respect of the exercise of a right of withdrawal by the applicable Tax Equity Member), as applicable, in the Limited Liability Company Agreement of such Fund and (b) in respect of Fund XVIII, assigned to the term “Purchase Option Price” in the Limited Liability Company Agreement of Fund XVIII.

“ **Tax Equity Option Contribution Amount** ” means the amount of any equity contribution from the Sponsor, any Qualified Purchaser and their Affiliates, and the proceeds of Sponsor Subordinated Indebtedness, that have contributed or extended to the Borrower for the purposes of exercising a Fund Purchase Option.

“ **Trigger Event** ” means any “Event of Default”, as defined in the Collateral Agency Agreement, has occurred and is continuing.

“ **Trigger Event Date** ” has the meaning assigned to such term in Section 3.04(a) ( *The Trigger Event Date* ).

“ **Trigger Event Notice** ” has the meaning assigned to such term in Section 3.04(a) ( *The Trigger Event Date* ).

“ **True-Up Reserve Amount** ” means an amount equal to \$1,000,000; provided, that once all Fund XVIII True-Up Liabilities have been satisfied in full (as shown under the final true-up report under the Tax Equity Documents for Fund XVIII), the True-Up Reserve Amount shall be equal to zero.

“ **UCC** ” means the Uniform Commercial Code as in effect from time to time in the State of New York.

“ **Unpledged SREC Account** ” has the meaning assigned to such term in Section 2.02( *The Collateral Accounts* ).

“ **Wholly-Owned Collections** ” means (without duplication) with respect to the Wholly-Owned Funds, the related (A) Rents, including all scheduled payments and prepayments under any Customer Agreement, (B) all proceeds of SRECs and SREC Contracts, (C) pending assumption of a Customer Agreement relating to a Project, payments of Rent relating to such Project by lenders with respect to, or subsequent owners of, the property where such Project has been installed, (D) proceeds of the sale, assignment or other disposition of any Collateral, (E) insurance proceeds and proceeds of any warranty claims arising from manufacturer, installer and other warranties, in each case, with respect to any Projects, (F) all recoveries including all amounts received in respect of litigation settlements and work-outs, (G) all purchase and lease prepayments received from a Customer with respect to any Project, and (H) all other revenues, receipts and other payments to such Wholly-Owned Funds of every kind arising from their ownership, operation or management of the Projects; provided, that any Excluded Property (and any amounts received in respect of the proceeds of Excluded Property) shall be excluded from (B) and (H) above.

“ **Withdrawal Date** ” means any date pursuant to which funds are expressly required or permitted to be withdrawn from a Collateral Account in accordance herewith.

“ **Withdrawal Option Required Amount** ” means the sum of the Fund XI Withdrawal Option Reserve and the Fund XIII Withdrawal Option Reserve.

“ **Withdrawal/Transfer Certificate** ” means a certificate substantially in the form of Exhibit A hereto and delivered by Borrower pursuant to Section 3.02 ( *Withdrawal and Transfer Procedure* ).

## 1.02 Interpretation

- (a) Principles of Construction. The principles of construction and interpretation set forth in Sections 1.02 ( *Accounting Terms and Determinations* ), 1.03 ( *Time of Day* ) and 1.04 ( *Rules of Construction* ) of the Loan Agreement shall apply to this Depository Agreement as if set forth herein, *mutatis mutandis* .
- (b) Withdrawals to Occur on a Business Day. In the event that any withdrawal, transfer or payment to or from any Collateral Account contemplated under this Depository Agreement shall be required to be made on a day that is not a Business Day, such withdrawal, transfer or payment shall be made on the next succeeding Business Day.

## 1.03 Uniform Commercial Code

All terms defined in the UCC shall have the respective meanings given to those terms in the UCC, except where the context otherwise requires.

### ARTICLE II

#### THE DEPOSITARY AGENT AND THE ESTABLISHMENT OF THE COLLATERAL ACCOUNTS

##### 2.01 Depository Agent

- (a) Acceptance of Appointment of Depository Agent. Wells Fargo Bank, National Association is hereby appointed to act as Depository Agent, and Wells Fargo Bank, National Association hereby agrees to act as Depository Agent under the express terms of this Depository Agreement. Each of Administrative Agent, Collateral Agent, Borrower and the Guarantors hereby acknowledges that Depository Agent shall act solely as Depository Agent under the express terms of this Depository Agreement.
- (b) Collateral Accounts Established. Depository Agent acknowledges, confirms and agrees that it has established the Collateral Accounts as set out in Section 2.02(a) (*Establishment of Collateral Accounts*), which shall be maintained in the name of Borrower or the applicable Guarantor, as specified in Section 2.02(a) (*Establishment of Collateral Accounts*) (and the parties hereto agree that the Borrower or applicable Guarantor is the “entitlement holder” (as referred to in UCC Section 8-102(a)(7)) with respect to the financial assets (within the meaning of UCC Section 8-102(a)(9) and including cash, the “Financial Assets”) credited to the Collateral Accounts, and as such shall be entitled to all the rights that entitlement holders have under applicable law with respect to securities accounts, including the right to withdraw funds from, or close, the Collateral Accounts but, in each case, in compliance with the requirements of this Depository Agreement).
- (c) Confirmation and Agreement. Borrower, each Guarantor and Depository Agent, as applicable, acknowledge, confirm and agree that, as of the Closing Date and as of each date on which any Collateral Account is established pursuant to this Depository Agreement:
  - (i) The Depository Agent, Borrower and each Guarantor agree that (i) each such Account established by Depository Agent is and will be maintained as a “securities account” (within the meaning of Section 8-501(a) of the UCC).
  - (ii) Borrower or applicable Guarantor is the “entitlement holder” (as referred to in UCC Section 8-102(a)(7)) with respect to the Financial Assets Credited to Collateral Accounts and as such shall be entitled to all the rights that customers of securities intermediaries have under applicable law with respect to securities accounts, including the right to withdraw funds from, or close, the Collateral Accounts, but, in each case, in compliance with the

DEPOSITARY AGREEMENT (VIVINT SOLAR)

Exhibit D-10

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requirements of this Depositary Agreement. The Depositary Agent hereby agrees to treat all property credited to each Collateral Account as a “financial asset” as defined in UCC Section 8-102(a)(9).

- (iii) All property delivered or transferred to the Depositary Agent pursuant to this Depositary Agreement for credit to a particular Collateral Account will be promptly, and in any event not later than the second Business Day following receipt, credited by Depositary Agent to the applicable Collateral Account.
- (iv) All property credited to any Collateral Account shall be registered in the name of, payable to or to the order of, or specially endorsed to, Depositary Agent (or its nominee) or in blank or be accompanied by duly executed instruments of transfer or assignment, and in no case whatsoever shall any property credited to any Collateral Account be registered in the name of Borrower or a Guarantor, as applicable, be payable to, or to the order of, Borrower or a Guarantor, as applicable, or be specially endorsed to, Borrower or such Guarantor, as applicable, except to the extent the foregoing have been subsequently endorsed to Depositary Agent or in blank.
- (v) Each Collateral Account shall be deemed to be a “securities account” (as defined in Section 8-501(a) of the UCC) in respect of any Financial Asset credited thereto. Depositary Agent will comply with written instructions (including entitlement orders within the meaning of UCC Section 8-102(a)(8)) originated by the Collateral Agent directing disposition of the funds or Financial Assets in or credited to the Collateral Account without further consent by Borrower, any Guarantor or any other Person.
- (vi) The “securities intermediary’s jurisdiction” (within the meaning of Section 8-110(e) of the UCC) of the Depositary Agent shall be the State of New York.
- (vii) Depositary Agent represents and warrants to the Collateral Agent that it has not entered into any currently effective agreement with any person under which Depositary Agent may be obligated to comply with directions with respect to the Collateral Account originated by a Person other than Borrower, the Guarantors or Collateral Agent in accordance with the terms herein. Depositary Agent hereby represents that it has not entered into, and agrees that, until the termination of this Depositary Agreement, it will not enter into, any agreement with any other Person in respect of any of the Collateral Accounts pursuant to which it would agree to comply with entitlement orders, other orders or instructions made by such Person.
- (viii) In the event that the Depositary Agent has or subsequently obtains by agreement, operation of law or otherwise a Lien over any Collateral Accounts credited thereto or any other Collateral Account, the Depositary Agent hereby agrees that such security interest shall (except as provided in the last sentence of this clause (viii)) be subordinate to the Liens of the Collateral Agent. The property standing to the credit of the Collateral Accounts will not be subject to deduction, set-off, banker’s lien, or any other right in favor of any Person

other than the Collateral Agent on behalf of the Secured Parties (except to the extent of the Depository Agent's usual and customary fees and charges pursuant to its agreement with Borrower and the Guarantors and with respect to returned items and chargebacks either for uncollected checks or other items of payment and transfers previously credited to one or more of the Collateral Accounts, and Borrower, the Guarantors and the Collateral Agent hereby authorizes the Depository Agent to debit the relevant Collateral Account(s) for such amounts).

- (ix) Depository Agent shall not change the name or account number of any Collateral Account without the prior written consent of the Collateral Agent and Borrower, except for changes due to internal system modifications or other internal reorganization of account numbers or names by the Depository Agent, within two days after which the Depository Agent shall provide written notice to the Collateral Agent and Borrower.
- (d) Standing Instructions. Borrower, each Guarantor and the Collateral Agent hereby irrevocably instruct and authorize Depository Agent to deposit funds (promptly upon receipt thereof) into, and transfer funds among and withdraw funds from, the Collateral Accounts in accordance with the terms of this Depository Agreement.
- (e) No Other Agreements. None of Collateral Agent, Administrative Agent, Borrower or any Guarantor have entered or will enter into, or otherwise become bound by, any agreement (including under which it agrees with any Person other than each Agent to comply with entitlement orders, including instructions directing the disposition of funds, originated by such Person) with respect to any Collateral Account or any cash or property carried in or credited to any Collateral Account, other than this Depository Agreement and the other Secured Obligation Documents.
- (f) Rights and Powers of Collateral Agent. The rights and powers granted to Collateral Agent by the Secured Parties have been granted in order to perfect the lien of the Secured Parties in the Collateral Accounts and the cash and property carried therein or credited thereto.

## 2.02 The Collateral Accounts

- (a) Establishment of Collateral Accounts. As of the Closing Date, Depository Agent has established the following separate collateral accounts bearing the names and account numbers identified in Annex I ( *Account Names and Numbers* ) (such accounts, collectively, the “ Collateral Accounts ”) each of which shall be maintained at all times by Depository Agent until the termination of this Depository Agreement in accordance with Section 7.16 ( *Termination* ):
  - (i) the Collections Account (the “ Collections Account ”), in the name of Borrower;
  - (ii) the Debt Service Reserve Account (the “ Debt Service Reserve Account ”), in the name of Borrower;

- (iii) the Inverter Replacement Reserve Account (the “ Inverter Replacement Reserve Account ”) in the name of Borrower;
- (iv) the Supplemental Reserve Account (the “ Supplemental Reserve Account ”), in the name of Borrower;
- (v) the Distribution Suspense Account (the “ Distribution Suspense Account ”), in the name of Borrower;
- (vi) the Funding Account (the “ Funding Account ”), in the name of Borrower;
- (vii) with respect to Fund XI Guarantor, the Fund XI Guarantor Account (the “ Fund XI Guarantor Account ”), in the name of Fund XI Guarantor;
- (viii) with respect to Fund XIII Guarantor, the Fund XIII Guarantor Account (the “ Fund XIII Guarantor Account ”), in the name of Fund XIII Guarantor;
- (ix) with respect to Lessor Manager Guarantor, the Lessor Manager Guarantor Account (the “ Lessor Manager Guarantor Account ”), in the name of Lessor Manager Guarantor;
- (x) with respect to Fund XVIII Guarantor, the Fund XVIII Guarantor Account (the “ Fund XVIII Guarantor Account ”), in the name of Fund XVIII Guarantor;
- (xi) the Pledged SREC Account (the “ Pledged SREC Account ”), in the name of SREC Guarantor; and
- (xii) the ITC Insurance Policy Account (the “ ITC Insurance Policy Account ”), in the name of Borrower.

In addition, as of the Closing Date, Depository Agent has established the Unpledged SREC Account (the “ Unpledged SREC Account ”) bearing the name and account number identified in Annex I ( *Account Names and Numbers* ), which such account shall be maintained at all times by Depository Agent until the termination of this Depository Agreement in accordance with Section 7.16 ( *Termination* ).

In addition, for administrative purposes, the Depository Agent may open from time to time any additional accounts (which may be deemed “sub-accounts” of existing Collateral Accounts), as directed in writing by the Collateral Agent (at the written instruction of the Administrative Agent) and, so long as the Depository Agent has not received a Trigger Event Notice (and until Depository Agent has had a reasonable time to comply with such notice (but in any event no more than two Business Days after Depository Agent’s receipt thereof)) Borrower.

DEPOSITARY AGREEMENT (VIVINT SOLAR)

Exhibit D-13

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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- (b) Account Names and Numbers. The names and account numbers of the Collateral Accounts and the Unpledged SREC Account established hereunder on or prior to the Closing Date are set out on Annex I (*Account Names and Numbers*). Depository Agent shall advise the Agents and Borrower in writing of the account name and number of any Collateral Account established hereunder by Collateral Agent, any Guarantor and Borrower, if any, after the Closing Date.
- (c) No Other Accounts. Borrower and each Guarantor shall not open or maintain or cause to be opened or maintained with any bank or other financial institution any deposit, savings, securities or other account other than the Collateral Accounts, with respect to SREC Guarantor, the Unpledged SREC Account; provided that Borrower or a Guarantor may from time to time with the prior written consent of the Collateral Agent and the Administrative Agent, in each case, at the written instruction of the Majority Lenders, establish additional accounts that will be subject to the terms hereof, which shall constitute “Collateral Accounts” for all purposes hereunder unless otherwise consented to in writing by the Collateral Agent and Administrative Agent.
- (d) Collateral Account Property: Collateral Accounts Constitute Collateral.
- (i) Each Collateral Account and all amounts from time to time held in or credited to such Collateral Account shall be subject to the Lien of Collateral Agent intended to be created by the Collateral Documents for the benefit of the Secured Parties, as set forth in the Collateral Agency Agreement.
- (ii) All items of property (whether cash or other property whatsoever) from time to time held in each Collateral Account shall constitute the property of Borrower or the applicable Guarantor. Each Collateral Account and all such amounts from time to time held in such Collateral Account shall be held and maintained by Depository Agent for and on behalf of Borrower, the Guarantors and the Agents for the purposes and on the express terms set out in this Depository Agreement. All such amounts shall constitute a part of the Depository Collateral (as defined below) and shall not constitute payment of any Obligations or any other obligations of Borrower or any Guarantor until expressly applied thereto in accordance with the provisions of this Depository Agreement or the Collateral Agency Agreement, as applicable.
- (e) Jurisdiction of the Depository Agent. Borrower, the Guarantors, the Collateral Agent, and the Depository Agent agree that, for purposes of the UCC, notwithstanding anything to the contrary contained in any other agreement relating to the establishment and operation of the Collateral Accounts, the “bank’s jurisdiction” (for the purposes of Article 9 of the UCC) is the State of New York.

### 2.03 Grant of Lien on Collateral Accounts

As collateral security for the prompt and complete payment and performance when due of the Obligations, Borrower has pursuant to the Borrower Collateral Agreement, and each Guarantor has pursuant to the Guarantor Collateral Agreement, assigned, granted and pledged to Collateral Agent (on behalf of and for the benefit of the Secured Parties),

a security interest in (a) each Collateral Account; and (b) all cash, financial assets or other property at any time on deposit in or credited to any Collateral Account, including all income or gain earned thereon and any proceeds thereof held in such Collateral Account (subject, in each such case, solely to Permitted Liens that, pursuant to applicable law, are entitled to a higher priority than the Lien of the Collateral Agent) (the “Depository Collateral”).

## 2.04 Bank Statements

Depository Agent shall, upon written request, furnish Borrower, the Guarantors and the Collateral Agent (with copies to be provided by Borrower to the Administrative Agent and the Lenders) with periodic cash transaction statements which include detail for all investment transactions effected by the Depository Agent. The requirements of the preceding sentence shall be performed by the Depository Agent by granting Borrower, the Guarantors and the Collateral Agent (and any Lender who so requests) online read-only access to the Collateral Accounts, which shall enable Borrower, the Guarantors and the Collateral Agent to obtain the current account balances for the Collateral Accounts and reasonable detail with respect to deposits, withdrawals and transfers for the Collateral Accounts. Borrower, the Guarantors and the Collateral Agent shall provide any reasonable information to the Depository Agent which is needed to establish such person with access to the Depository Agent’s on-line system. The Borrower acknowledges that, upon its written request and at no additional cost, it has the right to receive notification after the completion of each purchase and sale of Permitted Investments (as permitted pursuant to this Depository Agreement) or Depository Agent’s receipt of a broker’s confirmation. The Depository Agent shall make available, upon request and in lieu of notifications, periodic account statements that reflect such investment activity. No statement need be made available for any fund/account if no activity has occurred in such fund/account during such period.

## ARTICLE III

### PROVISIONS APPLICABLE TO COLLATERAL ACCOUNTS

#### 3.01 Permitted Investments.

- (a) Permitted Investments.
  - (i) Pending the application of funds in accordance with Articles III and IV, funds held in any Collateral Account shall be invested and reinvested by Depository Agent upon written direction of Borrower (which may be in the form of a standing instruction with a written copy of such direction to be delivered to the Administrative Agent; provided, however, that in the absence of such instructions, the funds shall remain uninvested) only in Permitted Investments, and with respect to those amounts next anticipated to be transferred or withdrawn, having a scheduled maturity no later than one Business Day prior to such next anticipated cash withdrawal or transfer from such Collateral Account; provided, however, that: (1) upon the receipt by

Depository Agent of a Trigger Event Notice (and until Depository Agent has had a reasonable time to comply with such notice (but in any event no more than two Business Days after Depository Agent's receipt thereof)) or (2) in the event of any failure by Borrower to so direct Depository Agent in writing on or prior to the day on which any funds are (x) received by Depository Agent or (y) transferred between Collateral Accounts in accordance with this Depository Agreement as to the investment of such funds, such investments and reinvestments shall be made by Depository Agent in any Permitted Investment. All funds in a Collateral Account that are invested pursuant to this Section 3.01(a) shall be deemed to be held in such Collateral Account for purposes of this Depository Agreement and shall constitute part of the Collateral. Borrower shall bear all risk of loss of capital from investments in Permitted Investments. The Depository Agent shall not be liable for any loss, including without limitation, any loss of principal or interest or for any breakage fees or penalties in connection with the purchase or liquidation of any investment made in accordance with the written instructions of the Borrower or any Guarantor, other than resulting from the gross negligence or willful misconduct of the Depository Agent (as determined by a final non-appealable order of a court of competent jurisdiction).

- (ii) The Depository Agent shall have no obligation to invest or reinvest the funds held in any Collateral Account if deposited with the Depository Agent after 11:00 a.m. (New York time) on such day of deposit. Instructions received after 11:00 a.m. (New York time) will be treated as if received on the following day. Any interest or income received on such investment of funds shall become part of the relevant Collateral Account and any losses incurred on such investment or reinvestment of funds shall be debited against the relevant Collateral Account. The Depository Agent shall have no responsibility for any investment losses resulting from the investment, reinvestment or liquidation of the funds. It is agreed and understood that the entity serving as Depository Agent may earn fees associated with the investments outlined above in accordance with the terms of such investments. In no event shall the Depository Agent be deemed an investment manager or adviser in respect of any selection of investments hereunder. It is understood and agreed that the Depository Agent or its affiliates are permitted to receive additional compensation that could be deemed to be in the Depository Agent's economic self-interest for (1) serving as investment adviser, administrator, shareholder servicing agent, custodian or sub-custodian with respect to certain of the investments, (2) using affiliates to effect transactions in certain investments and (3) effecting transactions in investments.

(b) Liability of Agent and Depository Agent.

- (i) Neither Depository Agent nor any Agent shall have any duty to determine whether any investment or reinvestment of monies in any Collateral Account satisfies the criteria set out in the definition of "Permitted Investment".

- (ii) Neither Depositary Agent nor any Agent shall be liable for any loss, tax, penalties or other charges resulting from any investment in any Permitted Investment or the sale, disposition, redemption or liquidation of such investment or by reason of the fact that the proceeds realized in respect of such sale, disposition, redemption or liquidation were less than that which might otherwise have been obtained, except to the extent of the gross negligence or willful misconduct of any Agent (as determined by a final non-appealable order of a court of competent jurisdiction).
- (c) Liquidation to Make Disbursements. If and when cash is required for the making of any transfer, disbursement or withdrawal in accordance with Articles III and IV, Borrower or, if the Depositary Agent has received a Trigger Event Notice (and until Depositary Agent has had a reasonable time to comply with such notice (but in any event no more than two Business Days after Depositary Agent's receipt thereof)), the Depositary Agent, shall cause Permitted Investments held in the applicable Collateral Account to be sold or otherwise liquidated into cash (without regard to maturity) as and to the extent necessary in order to make such transfers, disbursements or withdrawals required pursuant to Articles III and IV. Depositary Agent shall comply with any written instruction from the Borrower with respect to any such liquidation of Permitted Investments unless Depositary Agent has received a Trigger Event Notice (and until Depositary Agent has had a reasonable time to comply with such notice (but in any event no more than two Business Days after Depositary Agent's receipt thereof)), upon which the Depositary Agent shall comply with written instructions from the Collateral Agent with respect to any such liquidation of Permitted Investments. In the event any such investments are redeemed prior to the maturity thereof, no Agent shall be liable for any loss or penalties relating thereto, except to the extent of the gross negligence or willful misconduct of any Agent (as determined by a final non-appealable order of a court of competent jurisdiction).
- (d) Income from Investments. The proceeds earned from the investment of monies in any Collateral Account in Permitted Investments shall be deposited by Depositary Agent into the Collections Account on or before the second (2nd) Business Day following the month in which such interest, gain or other amount is earned and received; provided that for the avoidance of doubt, such proceeds shall consist of interest, gain and other amounts received in respect of an investment of principal and not the principal itself. Any interest, gain or other amount of income earned on Permitted Investments shall be for the account of Borrower for income tax purposes.
- (e) Taxes, Etc. The Depositary Agent does not have any interest in the funds held in any Collateral Account. Borrower shall pay or reimburse the Depositary Agent upon request for any transfer taxes or other taxes relating to the funds held in the Collateral Account incurred in connection herewith and shall indemnify and hold harmless the Depositary Agent any amounts that it is obligated to pay in the way of such taxes. Any payments of income from a Collateral Account shall be subject to withholding regulations then in force with respect to United States taxes. Borrower will provide the Depositary Agent with appropriate W-9 forms for tax identification number certifications, or W-8 forms for non-resident alien certifications. It is understood that

the Depository Agent shall only be responsible for income reporting with respect to income earned on the Collateral Account and will not be responsible for any other reporting.

### 3.02 Withdrawal and Transfer Procedure

- (a) Maintenance of Funds in Accounts; Withdrawals. Until withdrawn or transferred pursuant to and in accordance with this Depository Agreement, including to make Permitted Investments, any amounts deposited into a Collateral Account shall be held in such Collateral Account. All withdrawals and transfers from any Collateral Account or Unpledged SREC Account shall be made in accordance with the provisions of ARTICLE III ( *Provisions Applicable to Collateral Accounts* ) and ARTICLE IV ( *The Collateral Accounts* ).
- (b) Withdrawal/Transfer Certificate. Except as otherwise expressly provided herein, Borrower and Guarantors shall not be entitled to request withdrawals or transfers of monies from any Collateral Account without Borrower having provided a Withdrawal/Transfer Certificate authorizing such withdrawal and/or transfer. Withdrawals or transfers from any Collateral Account (except as otherwise expressly provided herein) shall be made by Depository Agent following receipt of (and in accordance with) a Withdrawal/Transfer Certificate signed by Borrower and acknowledged by the Administrative Agent or the Collateral Agent, as applicable (an “Executed Withdrawal/Transfer Certificate”). Each Withdrawal/Transfer Certificate shall request withdrawals and transfers to and from Collateral Accounts in the amounts, at the times and in order of priority set out in ARTICLE IV ( *The Collateral Accounts* ). Depository Agent may conclusively rely on any such certificate that purports to be so signed and so acknowledged, and shall have no duty whatsoever to investigate whether any such signature is genuine or authorized. Each Guarantor grants an irrevocable and continuing authorization to the Borrower, Depository Agent and Collateral Agent for transfers from the Guarantor Accounts and the Pledged SREC Account to the Collections Account in accordance with this Depository Agreement.
- (c) Delivery to Agents and Form of Withdrawal/Transfer Certificate. No later than 11:00 a.m. (New York time), at least five (5) Business Days (but no more than ten (10) Business Days) prior to the date of each withdrawal expressly required or permitted under this Depository Agreement, Borrower shall deliver to the Administrative Agent (with a copy to the Collateral Agent) for purposes of any withdrawal or transfer to occur at least five (5) Business Days after the receipt of such notice and otherwise on the next succeeding Withdrawal Date (unless no withdrawal or transfer is anticipated in respect of such Withdrawal Date) a Withdrawal/Transfer Certificate signed by an authorized representative of Borrower specifying:
- (i) each Collateral Account from which a withdrawal or transfer is requested and, in the case of any transfer, the relevant Collateral Account(s) to which, and/or other Person(s) to whom, such transfer is to be made;

- (ii) the amount requested to be withdrawn or transferred from each such Collateral Account (and the calculation thereof, if required, in accordance with the relevant provisions of ARTICLE IV ( *The Collateral Accounts* ));
  - (iii) the relevant Withdrawal Date on which such withdrawal or transfer is to be made;
  - (iv) the purpose for which the amount so withdrawn or transferred is to be applied (if not evident from the nature of the payment or identity of the intended payee) and (x) for each withdrawal or transfer on a Scheduled Payment Date, attaching a copy of the applicable Scheduled Payment Date Report as of the date of the requested withdrawal or transfer or (y) for each mandatory prepayment pursuant to Sections 3.04(a) ( *Incurrence of Indebtedness* ) or 3.04(f) ( *Eligible SREC Contract Claim Proceeds* ) of the Loan Agreement, the calculations included pursuant to Section 3.04(h) of the Loan Agreement; and
  - (v) all other information required to be provided in such Withdrawal/Transfer Certificate under, or to evidence compliance with, the relevant provisions of ARTICLE III ( *Provisions Applicable to Collateral Accounts* ) and ARTICLE IV ( *The Collateral Accounts* ).
- (d) Implementation of Withdrawal/Transfer Certificate. Except as otherwise provided in this Depositary Agreement, following receipt of an Executed Withdrawal/Transfer Certificate, Depositary Agent shall receive, pay or transfer the amount(s) specified in such Withdrawal/Transfer Certificate, by initiating such payment or transfer not later than 3:00 p.m. New York time on the Withdrawal Date set out in such Withdrawal/Transfer Certificate, for such payment or transfer to the extent that there are sufficient funds in the relevant Collateral Accounts by 12:00 noon New York time (or if such Withdrawal/Transfer Certificate is not received by Depositary Agent by 12:30 p.m. New York time of the Business Day that is at least two (2) Business Days prior to such Withdrawal Date, by 12:00 noon New York time on the second Business Day following delivery of such Withdrawal/Transfer Certificate to Depositary Agent).
- (e) Failure of Borrower to Submit Withdrawal/Transfer Certificate. Notwithstanding any other provision of this Depositary Agreement to the contrary, if at any time Borrower fails to timely submit or cause to be timely submitted an Executed Withdrawal/Transfer Certificate to Depositary Agent for the withdrawal, transfer or payment of amounts to any Collateral Account or Person, the Collateral Agent hereby agrees that Administrative Agent shall notify Borrower of such failure. If Borrower fails to submit or cause to be submitted an Executed Withdrawal/Transfer Certificate to Depositary Agent for such withdrawal, transfer or payment within one (1) Business Day after such notice, the Collateral Agent hereby agrees that Administrative Agent (upon written instruction from the Majority Lenders) shall direct Depositary Agent in writing (with a copy to Borrower) to effect such withdrawal, transfer or payment, as the case may be. If Administrative Agent so directs Depositary Agent in writing, Depositary Agent shall comply with such direction as promptly as possible without any further consent, or notice to, Borrower.

### 3.03 Transfer of Amounts

Amounts improperly or inadvertently deposited into any Collateral Account shall be transferred by Depository Agent upon written instructions of Borrower (acknowledged by the Administrative Agent) into the correct Collateral Accounts. Borrower shall, as soon as reasonably practicable but within three (3) Business Days of becoming aware of an improper or inadvertent deposit, provide a copy of such instructions to Administrative Agent. Any withdrawals and transfers hereunder shall only be made to the extent that sufficient funds are then available (including as Permitted Investments) in the Collateral Account from which such withdrawal is to be made.

### 3.04 Trigger Event

- (a) The Trigger Event Date. Notwithstanding anything in this Depository Agreement to the contrary, on and after receipt by Depository Agent of written notice, in the form attached hereto as Exhibit B (such notice, the “Trigger Event Notice”) from the Collateral Agent (pursuant to the Collateral Agency Agreement) (with a copy of such notice to be delivered by the Collateral Agent to the Administrative Agent and Borrower simultaneously with the delivery thereof to Depository Agent) certifying to Depository Agent that a Trigger Event has occurred and is continuing (the date of Depository Agent’s receipt of such notice and until Depository Agent has had a reasonable time to comply with such notice, but in any event no more than one Business Day after Depository Agent’s receipt thereof, the “Trigger Event Date”): (i) no transfer or withdrawal of funds from any Collateral Account shall be requested by Borrower or Guarantors or implemented by Depository Agent pursuant to any Withdrawal/Transfer Certificate or otherwise, and (ii) such funds shall be retained in the applicable Collateral Account for application by Depository Agent in accordance with a Remedies Direction, in the form attached hereto as Exhibit C (*Form of Remedies Direction*). The Collateral Agent, acting in accordance with the Collateral Agency Agreement, shall have the right to rescind any Trigger Event Notice by providing written notice to Depository Agent to rescind the Trigger Event Notice, and upon and after receipt of such notice, (and until Depository Agent has had a reasonable time to comply with such notice (but in any event no more than two Business Days after Depository Agent’s receipt thereof)) the Trigger Event (including the Trigger Event Date and all Remedies Directions delivered in connection with such Trigger Event) shall, for all purposes of this Depository Agreement, be deemed to not have occurred or been given. The Collateral Agent shall, as soon as reasonably practicable, provide a copy of such rescission notice to Borrower.
- (b) Accounting. Promptly upon receipt of a Trigger Event Notice (but no later than two (2) Business Days after such receipt), Depository Agent shall render an accounting to the Administrative Agent, the Collateral Agent and Borrower of all monies in the Collateral Accounts as of the Trigger Event Date. Such accounting may be satisfied by making available to the Agents and Borrower the most recently available bank statement for such Collateral Account (including any electronically available statement) and a transaction or activity report for each Collateral Account covering

the period from the closing date of the last statement through the delivery date thereof.

### 3.05 Distribution of Collateral Proceeds

- (a) Priority of Payments. Upon the occurrence and during the continuation of a Trigger Event and following delivery of a Remedies Direction to Depository Agent in connection with the liquidation, withdrawal or transfer of the proceeds of any amounts in the Collateral Accounts, the Collateral Agent, pursuant to the terms of the Collateral Agency Agreement, shall instruct Depository Agent in writing to apply the proceeds of such liquidation, withdrawal or transfer toward the payment of the Obligations in the order of priority set forth in Section 2.02 of the Collateral Agency Agreement.
- (b) Borrower and Guarantors Remain Liable for Deficiency. It is understood that Borrower and the Guarantors shall remain liable to the extent of any deficiency between the amount of the proceeds of the Depository Collateral and any other Collateral and the aggregate of the sums referred to in clauses *first* through *fifth* of Section 2.02 ( *Distribution of Collateral Proceeds* ) of the Collateral Agency Agreement.

### 3.06 Disposition of Collateral Accounts upon the Debt Termination Date

Upon the Collateral Agent providing notice pursuant to the Collateral Agency Agreement that the Debt Termination Date has occurred, the Collateral Agent shall direct Depository Agent in writing to, and Depository Agent shall, disburse or cause to be disbursed any amounts on deposit in the Collateral Accounts at the direction of Borrower and the Guarantors or as otherwise required to be applied by law.

## ARTICLE IV

### THE COLLATERAL ACCOUNTS

#### 4.01 Deposits into the Collateral Accounts

- (a) Revenue Accounts.
  - (i) Collections Account. On and following the Closing Date, Borrower and Guarantors shall deposit, and shall cause third parties that would otherwise make payments directly to Borrower to deposit, into the Collections Account (without duplication): (A) all amounts deposited into any Guarantor Account in accordance with Section 4.02(g)(i) ( *Guarantor Accounts* ); (B) all amounts deposited into the Pledged SREC Account in accordance with 4.02(h) ( *Pledged SREC Account* ); (C) any other amounts transferred from a Collateral Account in accordance with this Depository Agreement and (D) any and all other amounts received by or payable to the Loan Parties other than amounts expressly required to be paid into another Collateral Account by the terms of this Depository Agreement.

DEPOSITARY AGREEMENT (VIVINT SOLAR)

Exhibit D-21

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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- (ii) Guarantor Accounts. On and following the Closing Date, (A) each Guarantor (other than SREC Guarantor) shall, and Borrower shall cause each Guarantor (other than SREC Guarantor) to, deposit the proceeds of all Guarantor Collections into the Guarantor Account held by such Guarantor and (B) the Borrower may deposit equity contributions and the proceeds of Sponsor Subordinated Indebtedness in accordance with Section 4.01(j) ( *Equity Contributions and Sponsor Subordinated Indebtedness* ).
  - (iii) Wholly-Owned Fund Accounts. Pursuant to Section 8.08(h) of the Loan Agreement, the Borrower and the applicable Guarantor shall cause each Wholly-Owned Fund to agree to deposit the proceeds of all of the Wholly-Owned Collections of such Fund into the Guarantor Account held by such Guarantor on a monthly basis after payment of, or a reasonable reserve for, all Operating Expenses due, or expected to fall due, within the next month and which are permitted to be incurred in accordance with the Loan Agreement.
  - (iv) Pledged SREC Account. On and following the Closing Date, SREC Guarantor shall, and Borrower shall cause SREC Guarantor to, deposit all Collections received by SREC Guarantor pursuant to the SREC Financing Master PSA into the Pledged SREC Account.
  - (v) Unpledged SREC Account. On and following the Closing Date, SREC Guarantor shall, and Borrower shall cause SREC Guarantor to, deposit all Fund SREC Property received by SREC Guarantor as proceeds pursuant to the SREC Aggregator Master PSA into the Unpledged SREC Account.
- (b) Debt Service Reserve Account.
- (i) Borrower shall deposit, or cause to be deposited, in the Debt Service Reserve Account, (A) an amount equal to the Debt Service Reserve Required Amount as of the Closing Date from the Funding Account in accordance with the Closing Date Funds Flow Memorandum and pursuant to Section 4.02(f) ( *Funding Account* ), (B) all amounts transferred from the Collections Account pursuant to Section 4.02(a)(vi) ( *Collections Account* ), and (C) all proceeds from any Acceptable DSR Letter of Credit paid or drawn pursuant to Section 4.02(b) ( *Debt Service Reserve Account* ) hereof or Section 10.02 ( *Acceleration and Remedies* ) of the Loan Agreement.
  - (ii) Amounts on deposit in the Debt Service Reserve Account may be funded, after the Closing Date, by either or a combination of (A) cash or (B) funds available under any Acceptable DSR Letters of Credit. For the purposes of this Depository Agreement, at any time, the then-current aggregate amount available to be drawn under any Acceptable DSR Letters of Credit shall be deemed on deposit in cash in the Debt Service Reserve Account.
- (c) Inverter Replacement Reserve Account. Borrower shall deposit, or cause to be deposited, in the Inverter Replacement Reserve Account (i) an amount equal to the Inverter Replacement Reserve Required Amount as of the Closing Date from the

Funding Account in accordance with the Closing Date Funds Flow Memorandum and pursuant to Section 4.02(f) (*Funding Account*), (ii) all amounts transferred from the Collections Account pursuant to Section 4.02(a)(v) (*Collections Account*), (iii) all amounts distributed to Fund XVIII Guarantor Agreement from the “Inverter Replacement Reserve” (under and as defined in the Fund XVIII Limited Liability Company Agreement) pursuant to Section 5.1(h) of the Fund XVIII Limited Liability Company Agreement and (iv) all amounts of reimbursements of Inverter Replacement Costs, or proceeds of a Manufacturer Warranty received by a Fund Provider or Relevant Party, in respect of any Inverter replaced using the proceeds of amounts standing to the credit of the Inverter Replacement Reserve Account.

- (d) Supplemental Reserve Account. Borrower shall deposit, or cause to be deposited, in the Supplemental Reserve Account, (i) an amount equal to the Supplemental Reserve Funding Amount from the Funding Account in accordance with the Closing Date Funds Flow Memorandum and pursuant to Section 4.02(f) (*Funding Account*), (ii) all amounts transferred from the Collections Account pursuant to Section 4.02(a)(vii) (*Collections Account*) and (iii) all Tax Equity Option Contribution Amounts.
- (e) Distribution Suspense Account. On each Scheduled Payment Date, Borrower shall deposit, or cause to be deposited, in the Distribution Suspense Account, all amounts transferred from the Collections Account pursuant to Section 4.02(a)(xi)(A) (*Collections Account*). Borrower shall deposit Excluded Property or distributions received in respect of the proceeds of Excluded Property, as evidenced by documentation reasonably acceptable to the Administrative Agent, directly into the Distribution Suspense Account.
- (f) Funding Account. On the Closing Date, the Funding Account may be funded with Loan proceeds funded under the Loan Agreement in the amount shown in the Closing Date Funds Flow Memorandum.
- (g) ITC Insurance Policy Account. Borrower shall deposit, or cause to be deposited, in the ITC Insurance Policy Account, (i) on the Closing Date, an amount equal to the ITC Insurance Policy Retention Reserve Amount as of the Closing Date from the Funding Account in accordance with the Closing Date Funds Flow Memorandum and pursuant to Section 4.02(f) (*Funding Account*) and (ii) all proceeds received by the Borrower or any Subsidiary under the ITC Insurance Policy in respect of any ITC Loss.
- (h) Receipt by Borrower or Guarantors. In the event that, notwithstanding the foregoing, any such payments, proceeds or other amounts are received by Borrower or Guarantors, Borrower or the applicable Guarantor shall promptly pay, endorse, transfer and deliver such payments or other amounts to the Depository Agent for deposit in the relevant Collateral Account along with written instructions to the Depository Agent identifying the applicable Collateral Account for such deposit, and, until such delivery, Borrower or the applicable Guarantor shall hold such payments and other amounts in the same form as received in trust for the Collateral Agent.

- (i) Unidentified Funds. In the event the Collateral Agent or the Depositary Agent receives monies without adequate written instruction (including the account name and number) with respect to the proper Collateral Account into which such monies are to be deposited, the Depositary Agent shall deposit such monies into the Collections Account and notify Borrower and each Agent of the receipt of such monies. Upon receipt of written instructions from Borrower, the Depositary Agent shall transfer such monies from the Collections Account to the Collateral Account specified in such instructions.
- (j) Equity Contributions and Sponsor Subordinated Indebtedness. Notwithstanding the foregoing, any equity contributions from the Sponsor, any Qualified Purchaser and their Affiliates, and any proceeds of Sponsor Subordinated Indebtedness, received by Borrower shall be deposited into the Collections Account; provided, that (i) Borrower may receive equity contributions and the proceeds of Sponsor Subordinated Indebtedness from the Sponsor for deposit into the Guarantor Accounts for the purpose of making capital contributions or satisfying other obligations under the Tax Equity Documents and (ii) the Borrower may deposit Tax Equity Option Contribution Amounts directly into the Supplemental Reserve Account. For the avoidance of doubt, the proceeds of equity contributions from the Sponsor, any Qualified Purchaser and their Affiliates, and any proceeds of Sponsor Subordinated Indebtedness, shall not be considered to be Operating Revenues under the Loan Documents.

#### 4.02 Withdrawals and Transfers

Subject in all cases to Section 2.01 ( *Event of Default, Etc* ) of the Collateral Agency Agreement, pursuant to an Executed Withdrawal/Transfer Certificate, the Depositary Agent shall make the transfers of funds in accordance with the following provisions:

- (a) From the Collections Account. In the amounts and to the Persons set forth in such Executed Withdrawal/Transfer Certificate and in the order of priority set forth below:
  - (i) *first* , on each Scheduled Payment Date, ratably to each Agent entitled thereto, (A) all Agency Fees and (B) Agency Expenses; provided that, so long as no Event of Default has occurred and is continuing, the amounts paid to the Agents pursuant to clause (i)(B) shall be no greater than the Agency Expense Cap and shall not include any interest on any overdue amount which has accrued at the Post-Default Rate;
  - (ii) *second* , on each Scheduled Payment Date, to the Manager in the amount set forth in the Executed Withdrawal/Transfer Certificate and certified by an Authorized Officer therein to be the amount pursuant to the Management Agreement then due and payable on such Scheduled Payment Date to the Manager; provided, that the amounts paid to the Manager in any calendar year shall be no greater than the Permitted Management Fee and shall be as permitted to be paid pursuant to Section 9.12(a) ( *Expenditures; Collateral Accounts; Structural Changes* ) of the Loan Agreement as certified by an Authorized Officer in the Executed Withdrawal/Transfer Certificate;

- (iii) *third* , on each Scheduled Payment Date, to the Administrative Agent, for the account of the Lenders entitled thereto, the amount of all accrued but unpaid interest on the Loans (other than any interest on any overdue amount which has accrued at the Post-Default Rate);
- (iv) *fourth* , on each Scheduled Payment Date, to the Administrative Agent, for the account of the Lenders an amount equal to the scheduled amount of principal of the Loans due and payable on such Scheduled Payment Date;
- (v) *fifth* , on each Scheduled Payment Date, to the Inverter Replacement Reserve Account, in an amount such that the amount of funds then on deposit in the Inverter Replacement Reserve Account is at least equal to the then-applicable Inverter Replacement Reserve Required Amount;
- (vi) *sixth* , on each Scheduled Payment Date, to the Debt Service Reserve Account, an amount such that the amount of funds then on deposit in the Debt Service Reserve Account (when added to the available undrawn amount of any Acceptable DSR Letter of Credit outstanding on such date) is at least equal to the then-applicable Debt Service Reserve Required Amount;
- (vii) *seventh* , on each Scheduled Payment Date until the first Scheduled Payment Date to occur after the third anniversary of the Closing Date, to the Supplemental Reserve Account, an amount such that the Supplemental Reserve Available Amount is at least equal to \$2,000,000;
- (viii) *eighth* , on each Scheduled Payment Date (or, in the case of the mandatory prepayments required under Sections 3.04(a) ( *Incurrence of Indebtedness* ) or 3.04(f) ( *Eligible REC Contract Claim Proceeds* ) of the Loan Agreement, the date of the receipt of any applicable proceeds into the Collections Account), ratably to (A) the Administrative Agent, for the account of each Lender entitled thereto, to the prepayment of the Loans and any applicable Make-Whole Amount, in each case, to the extent and in the manner set forth in Section 3.04 ( *Mandatory Prepayments* ) (other than Section 3.04(d) ( *Payment Facilitation Events* ) and Section 3.04(e) ( *Distribution Trap Cash Sweep* )) and 3.05(b) ( *Application of Prepayments* ) of the Loan Agreement, (B) to each Agent entitled thereto, all Excess Agency Expenses, and (C) to the Administrative Agent, for the account of each Lender entitled thereto, an amount equal to any other accrued but unpaid Obligations (including any unpaid Make-Whole Amount), in each case, other than any interest on any overdue amount which has accrued at the Post-Default Rate;
- (ix) *ninth* , on each Scheduled Payment Date, ratably to each Agent entitled thereto and the Administrative Agent, for the account of the Lenders entitled thereto, the amount of all accrued but unpaid interest on any overdue amount which has accrued at the Post-Default Rate;
- (x) *tenth* , on each Scheduled Payment Date at the election of Borrower, to the Administrative Agent, for the account of each Lender entitled thereto, to the

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Exhibit D-25

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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prepayment of the Loans and any applicable Make-Whole Amount, in each case, to the extent and in the manner set forth in Sections 3.03 ( *Optional Prepayments* ) and 3.05(b) ( *Application of Prepayments* ) of the Loan Agreement; and

(xi) *eleventh* , on each Scheduled Payment Date:

- (A) to the extent that the Distribution Conditions have not been satisfied, to the Distribution Suspense Account, as notified to the Collateral Agent by Borrower in such Executed Withdrawal/Transfer Certificate; or
- (B) to the extent the Distribution Conditions have been satisfied, to the Persons notified to the Collateral Agent by Borrower in such Executed Withdrawal/Transfer Certificate.

Subject to Section 4.02(d)(ii) ( *Supplemental Reserve Account* ) and Section 4.02(e)(iii) ( *Distribution Suspense Account* ), if on any date the funds on deposit in the Collections Account are insufficient to pay in full all of the payments required under any particular clause of this Section 4.02(a) ( *Collections Account* ), the required payments under such clause shall be made on a *pro rata* basis in accordance therewith and confirmed to the Collateral Agent to the extent of funds available therefor.

(b) From the Debt Service Reserve Account.

- (i) If (A) the Collateral Agent receives written notice from Borrower, the Administrative Agent or the Majority Lenders that any issuer of an Acceptable DSR Letter of Credit has suffered a Negative Credit Event and the Acceptable DSR Letter of Credit issued by such Acceptable LC Bank has not been replaced on or before the end of the 30 day period following such notice with a new Acceptable DSR Letter of Credit issued by an Acceptable LC Bank or (B) the Collateral Agent has not received evidence from Borrower or the applicable issuer of an Acceptable DSR Letter of Credit that such Acceptable DSR Letter of Credit will be extended or replaced at least 10 days prior to its stated expiration date, then in each such case the Collateral Agent, upon written instruction from the Majority Lenders, shall make a drawing on such Acceptable DSR Letter of Credit in an amount equal to the lesser of (1) the Debt Service Reserve Required Amount at such time minus the aggregate monies on deposit in the Debt Service Reserve Account at such time minus the aggregate available amount of any other Acceptable DSR Letters of Credit that are issued by an Acceptable LC Bank and (2) the remaining amount available to be drawn under such Acceptable DSR Letters of Credit. The Collateral Agent shall deposit the amounts drawn on such Acceptable DSR Letter of Credit into the Debt Service Reserve Account to be applied in accordance with this Section 4.02(b) ( *Debt Service Reserve Account* ).

- (ii) If on any Scheduled Payment Date, the monies on deposit in the Collections Account are not adequate to pay the amounts required to be paid to the Lenders pursuant to Section 4.02(a)(iii) ( *Collections Account* ) and (iv) ( *Collections Account* ) on such Scheduled Payment Date as evidenced on the Executed Withdrawal/Transfer Certificate (such insufficiency, the “ Debt Payment Deficiency ”) and, after giving effect to any transfer pursuant to Sections 4.02(e)(iii) ( *Distribution Suspense Account* ) and 4.02(d)(ii) ( *Supplemental Reserve Account* ), a Debt Payment Deficiency remains, (A) the Depository Agent (at the written direction of Borrower pursuant to the Executed Withdrawal/Transfer Certificate or, if Borrower has not so delivered an Executed Withdrawal/Transfer Certificate by 1:00 p.m., New York City time on the Business Day prior to the date on which such amounts become due and payable, the Collateral Agent, at the written instruction of the Majority Lenders, by 5:00 p.m., New York City time at least one (1) Business Day prior to the requested withdrawal or transfer) shall withdraw from the Debt Service Reserve Account and immediately transfer to the Administrative Agent, for the account of the Lenders, an amount equal to the Debt Payment Deficiency (or, if less, the aggregate amount of funds then on deposit in or credited to the Debt Service Reserve Account) for application, first, to that portion of the Debt Payment Deficiency that relates to amounts due to the Lenders pursuant to Section 4.02(a)(iii) ( *Collections Account* ) and second, to that portion of the Debt Payment Deficiency that relates to amounts due to the Lenders pursuant to Section 4.02(a)(iv) ( *Collections Account* ), in each case in accordance with the Loan Documents and (B) if one or more Acceptable DSR Letters of Credit are then in effect and, after giving effect to any transfer pursuant to the immediately preceding subclause (A) a Debt Payment Deficiency remains, the Collateral Agent shall at the written direction of the Administrative Agent or the Majority Lenders make a drawing on any Acceptable DSR Letters of Credit in an amount equal to such remaining Debt Payment Deficiency (or, if less, the then undrawn amount of such Acceptable DSR Letters of Credit), and in each case, deposit such drawn amount or demanded amount into the Debt Service Reserve Account and instruct the Depository Agent in writing by 5:00 p.m., New York City time at least one (1) Business Day prior to the requested withdrawal or transfer to transfer such drawn or demanded amount to the Administrative Agent, for the account of the Lenders, to pay the remaining Debt Payment Deficiency in accordance with the priorities set forth in subclause (A) of this clause (ii).
- (iii) If on any Scheduled Payment Date the sum of the aggregate available amount to be drawn under all Acceptable DSR Letters of Credit credited to the Debt Service Reserve Account plus the funds then on deposit in the Debt Service Reserve Account is greater than the Debt Service Reserve Required Amount at such time as evidenced on an Executed Withdrawal/Transfer Certificate (an “ Excess DSR Reserve Amount ”), (A) the Depository Agent shall transfer an amount of funds up to the Excess DSR Reserve Amount from the Debt Service Reserve Account to the Distribution Suspense Account as specified in a certificate signed by an Authorized Officer of Borrower (and acknowledged

by the Collateral Agent), certifying as to the amount of such Excess DSR Reserve Amount and (B) if any Excess DSR Reserve Amount remains after giving effect to subclause (A), then Borrower shall be entitled to request and deliver to the Collateral Agent, and the Collateral Agent shall, at the written direction of the Administrative Agent or the Majority Lenders, thereafter sign or countersign, as applicable, and deliver to the relevant issuing bank a reduction certificate in the form attached to the Acceptable DSR Letter of Credit or otherwise in a form satisfactory to the relevant issuing bank in the amount of such remaining Excess DSR Reserve Amount, and the face amount of such Acceptable DSR Letter of Credit may be reduced as provided in such certificate.

(iv) At the written request of an Authorized Officer of the Borrower to the Collateral Agent and the Depository Agent, with a copy to the Administrative Agent, so long as the Borrower has provided Acceptable DSR Letters of Credit in an aggregate stated and available amount equal to the aggregate amount of funds to be released from the Debt Service Reserve Account, and so long as no Default or Event of Default has occurred and is continuing, the Depository Agent shall release funds from the Debt Service Reserve Account pursuant to such written request. Any amounts so released shall be transferred to the Distribution Suspense Account. The Collateral Agent (acting at the written instruction of the Administrative Agent or the Majority Lenders) shall credit any Acceptable DSR Letters of Credit to the Debt Service Reserve Account and Acceptable DSR Letters of Credit shall be subject to all the terms of this Section 4.02(b).

(c) From the Inverter Replacement Reserve Account .

(i) Borrower may request a withdrawal from the Inverter Replacement Reserve Account for the payment of Inverter Replacement Costs by submitting an Executed Withdrawal/Transfer Certificate to the Collateral Agent stating such request, which Executed Withdrawal/Transfer Certificate shall set forth in detail the amount of the applicable Inverter Replacement Costs, applicable Fund(s) to which the Inverter Replacement Costs relate and the applicable Fund Provider(s) or their contractor to be paid directly from the Inverter Replacement Reserve Account. Upon receipt of such Executed Withdrawal/Transfer Certificate, the Depository Agent shall withdraw from the Inverter Replacement Reserve Account and transfer to the applicable Fund Provider(s) or their contractor an amount equal to the Inverter Replacement Costs (or, if less, the aggregate amount of funds then on deposit in or credited to the Inverter Replacement Reserve Account).

(ii) Prior to the withdrawal of any amounts from the Inverter Replacement Reserve Account for payment of any Inverter Replacement Costs, the Borrower shall, and shall cause the applicable Fund and Fund Provider to, use commercially reasonable efforts to claim under any applicable Manufacturer Warranty, and to apply amounts held in any reserve maintained by a Fund, in order to satisfy such Inverter Replacement Costs.

(d) From the Supplemental Reserve Account.

- (i) If (x) a Guarantor has exercised a Fund Purchase Option in accordance with Section 9.10(h) of the Loan Agreement or (y) a Tax Equity Member has exercised its right of withdrawal under a Limited Liability Company Agreement for a Partnership Flip Fund and a withdrawal amount is payable to such Tax Equity Member, then Borrower shall request a withdrawal from the Supplemental Reserve Account for the purpose of paying the applicable Tax Equity Option Amount by no later than the first date for payment under the Tax Equity Documents by submitting an Executed Withdrawal/Transfer Certificate stating such request, which Executed Withdrawal/Transfer Certificate shall set forth reasonable details of the calculation of the applicable Tax Equity Option Amount and the Tax Equity Member to be paid directly from the Supplemental Reserve Account. For the purposes of paying a Tax Equity Option Amount, the Borrower shall only be permitted to withdraw from the Supplemental Reserve Account an amount up to:
- (A) in respect of Fund XI and the withdrawal of a Tax Equity Member or the exercise of a Fund Purchase Option, an amount equal to the Fund XI Withdrawal Option Reserve plus the Supplemental Reserve Available Amount;
  - (B) in respect of Fund XIII and the withdrawal of a Tax Equity Member or the exercise of a Fund Purchase Option, an amount equal to the Fund XIII Withdrawal Option Reserve plus the Supplemental Reserve Available Amount; and
  - (C) in respect of Fund XVIII and the exercise of a Fund Purchase Option, an amount equal to the Supplemental Reserve Available Amount,

and the Borrower shall certify to its compliance with this Section 4.02(d)(i) in such Executed Withdrawal/Transfer Certificate. Upon receipt of such Executed Withdrawal/Transfer Certificate, the Depository Agent shall withdraw the amount of such Tax Equity Option Amount (or, if less, such lesser amount available in accordance with Sections 4.02(d)(i)(A) through (C) above) from the Supplemental Reserve Account and transfer the amount withdrawn to the Tax Equity Member specified in the Executed Withdrawal/Transfer Certificate, as acknowledged by the Administrative Agent.

- (ii) If a Debt Payment Deficiency exists on any Scheduled Payment Date, and, after giving effect to any transfer pursuant to Section 4.02(e)(iii) ( *Distribution Suspense Account* ), such Debt Payment Deficiency remains, the Depository Agent (at the written direction of Borrower pursuant to the Executed Withdrawal/Transfer Certificate or, if Borrower has not so delivered an Executed Withdrawal/Transfer Certificate by 1:00 p.m., New York City time on the Business Day prior to the date on which such amounts become due and

DEPOSITARY AGREEMENT (VIVINT SOLAR)

Exhibit D-29

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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payable, the Collateral Agent, at the written instruction of the Majority Lenders, by 5:00 p.m., New York City time at least one (1) Business Day prior to the requested withdrawal or transfer) shall withdraw from the Supplemental Reserve Account and immediately transfer to the Administrative Agent, for the account of the Lenders an amount equal to the lesser of (x) the Debt Payment Deficiency then remaining and (y) the Supplemental Reserve Available Amount, for application, first, to that portion of the Debt Payment Deficiency that relates to amounts due pursuant to Section 4.02(a)(iii) ( *Collections Account* ) and second, to that portion of the Debt Payment Deficiency that relates to amounts due pursuant to Section 4.02(a)(iv)( *Collections Account* ), in each case in accordance with the Loan Documents.

- (iii) Borrower may request withdrawals from the Supplemental Reserve Account, in an amount not to exceed the Supplemental Reserve Available Amount, for the payment of Non-Covered Services (including, to the extent amounts are not then-available in the Inverter Replacement Reserve Account or any inverter replacement reserve held by a Fund, Inverter Replacement Costs) by submitting an Executed Withdrawal/Transfer Certificate stating such request, which Executed Withdrawal/Transfer Certificate shall set forth in detail the amount of the applicable payment for Non-Covered Services, applicable Fund(s) to which the payments relate and the applicable Fund Provider(s) or their contractor to be paid directly from the Supplemental Reserve Account. Upon receipt of such Executed Withdrawal/Transfer Certificate, the Depositary Agent shall withdraw from the Supplemental Reserve Account and transfer to the applicable Fund Provider(s) or their contractor an amount equal to the applicable payment for Non-Covered Services (or, if less, the Supplemental Reserve Available Amount). Prior to any such withdrawal of any amounts from the Supplemental Reserve Account for payment of any Inverter Replacement Costs or Non-Covered Services, the Borrower shall, and shall cause the applicable Fund and Fund Provider to, use commercially reasonable efforts to claim under any applicable Manufacturer Warranty, and to apply amounts held in any reserve maintained by a Fund, in order to satisfy such Inverter Replacement Costs or amounts due for Non-Covered Services.
- (iv) If any Fund XVIII True-Up Liabilities are payable by Fund XVIII Guarantor and not otherwise satisfied by a capital contribution, the Borrower shall request a withdrawal from the Supplemental Reserve Account for payment to the applicable Tax Equity Member of the amount of the Fund XVIII True-Up Liabilities by submitting an Executed Withdrawal/Transfer Certificate stating such request, which Executed Withdrawal/Transfer Certificate shall set forth reasonable details of the calculation of the Fund XVIII True-Up Liabilities and the Person to be paid directly from the Supplemental Reserve Account. For the purposes of paying the Fund XVIII True-Up Liabilities, the Borrower shall only be permitted to withdraw from the Supplemental Reserve Account an amount equal to the True-Up Reserve Amount and the Borrower shall certify to the compliance with this Section 4.02(d)(iv). Upon receipt of such

Executed Withdrawal/Transfer Certificate, the Depository Agent shall withdraw from the Supplemental Reserve Account and transfer to the applicable Person an amount equal to the Fund XVIII True-Up Liabilities then permitted to be paid from the Supplemental Reserve Account.

- (v) On any Scheduled Payment Date to occur after the third anniversary of the Closing Date, if a Supplemental Reserve Available Amount is on deposit in or credited to the Supplemental Reserve Account, the Depository Agent shall transfer such Supplemental Reserve Available Amount from the Supplemental Reserve Account to the Collections Account as specified in a certificate signed by an Authorized Officer of Borrower (and acknowledged by the Collateral Agent), certifying as to the amount of such Supplemental Reserve Available Amount.

(e) From the Distribution Suspense Account .

- (i) So long as no Default or Event of Default has occurred and is continuing, funds on deposit in the Distribution Suspense Account may be transferred to the Persons notified by Borrower to the Collateral Agent pursuant to an Executed Withdrawal/Transfer Certificate submitted by Borrower to the Collateral Agent and countersigned by the Administrative Agent for payment of Permitted Tax Distributions. Upon receipt of such Executed Withdrawal/Transfer Certificate, pursuant to which the Borrower certifies as to the amount of such Permitted Tax Distributions, the Depository Agent shall withdraw such amount from the Distribution Suspense Account and transfer such amount to the applicable Persons as directed in such Executed Withdrawal/Transfer Certificate.
- (ii) On each Scheduled Payment Date (A) during an Early Amortization Period, all funds on deposit in the Distribution Suspense Account (after the occurrence of the transfers contemplated by Section 4.02(a)(xi)(A) on such Scheduled Payment Date) shall be transferred, pursuant to a written direction by the Collateral Agent to the Depository Agent, to the Administrative Agent, for the account of each Lender entitled thereto, for the prepayment of the Loans, in each case, to the extent and in the manner set forth in Section 3.04(e) ( *Distribution Trap Cash Sweep* ) and Section 3.05(b) ( *Application of Prepayments* ) of the Loan Agreement and (B) on which a Payment Facilitation Amount remains unpaid, funds on deposit in the Distribution Suspense Account shall be transferred, pursuant to a written direction by the Collateral Agent to the Depository Agent, to the Administrative Agent, for the account of each Lender entitled thereto, for the prepayment of the Loans, in each case, to the extent and in the manner set forth in Section 3.04(d) ( *Payment Facilitation Events* ) and Section 3.05(b) ( *Application of Prepayments* ) of the Loan Agreement.
- (iii) If a Debt Payment Deficiency exists on any Scheduled Payment Date, the Depository Agent (at the written direction of Borrower pursuant to the Executed Withdrawal/Transfer Certificate or, if Borrower has not so

delivered an Executed Withdrawal/Transfer Certificate by 1:00 p.m., New York City time on the Business Day prior to the date on which such amounts become due and payable, the Collateral Agent, at the written instruction of the Majority Lenders, by 5:00 p.m., New York City time at least one (1) Business Day prior to the requested withdrawal or transfer) shall withdraw from the Distribution Suspense Account and immediately transfer to the Administrative Agent, for the account of the Lenders an amount equal to the Debt Payment Deficiency (or, if less, the aggregate amount of funds then on deposit in or credited to the Distribution Suspense Account) for application, first, to that portion of the Debt Payment Deficiency that relates to amounts due pursuant to Section 4.02(a)(iii) ( *Collections Account* ) and second, to that portion of the Debt Payment Deficiency that relates to amounts due pursuant to Section 4.02(a)(iv) ( *Collections Account* ), in each case in accordance with the Loan Documents.

- (iv) If the Distribution Conditions are satisfied on a Scheduled Payment Date, funds on deposit in the Distribution Suspense Account as of such Scheduled Payment Date may be transferred within the forty-five (45) day period immediately following such Scheduled Payment Date to the Persons notified by Borrower to the Collateral Agent pursuant to an Executed Withdrawal/Transfer Certificate submitted by Borrower to the Collateral Agent and countersigned by the Administrative Agent. Upon receipt of such Executed Withdrawal/Transfer Certificate, the Depository Agent shall withdraw funds from the Distribution Suspense Account and transfer such funds to the applicable Persons as directed in such Executed Withdrawal/Transfer Certificate.
- (f) From the Funding Account. On the Closing Date, as notified to the Depository Agent by Borrower in the Closing Date Funds Flow Memorandum or an Executed Withdrawal/Transfer Certificate acknowledged by the Administrative Agent, the Depository Agent shall transfer on such date the amounts specified therein from the Funding Account to the Persons and Reserve Accounts identified in the applicable Closing Date Funds Flow Memorandum.
- (g) From the Guarantor Accounts. The Depository Agent shall (i) with regard to all amounts deposited into the Guarantor Accounts consisting of Guarantor Collections, immediately and without further direction transfer such amounts to the Collections Account and (ii) with regard to all amounts deposited into the Guarantor Accounts by Borrower or Sponsor in accordance with Section 4.01(j) ( *Equity Contributions* ), transfer all such amounts to the respective Fund Account specified in writing by the applicable Guarantor. Each Guarantor grants an irrevocable and continuing authorization to the Borrower, the Depository Agent and Collateral Agent for such withdrawal and transfers.
- (h) From the Pledged SREC Account. Five (5) Business Days prior to each Scheduled Payment Date in a written transfer instruction acknowledged by the Administrative Agent (and without need for delivery of a Withdrawal/Transfer Certificate), the

SREC Guarantor shall request the Depository Agent to transfer all amounts standing to the credit of the Pledged SREC Account to the Collections Account.

- (i) From the Unpledged SREC Account. From time to time upon the written request of SREC Guarantor (and without need for delivery of a Withdrawal/Transfer Certificate), the Depository Agent shall make transfers from the Unpledged SREC Account at the direction of SREC Guarantor to the applicable Fund Accounts notified by the SREC Guarantor or otherwise in accordance with Section 8.24(e) ( *Deposits to Collections Account* ) of the Loan Agreement.
- (j) From the ITC Insurance Policy Account.
  - (i) If (x) any ITC Contest Costs are incurred by Fund XVIII Guarantor or Fund XVIII and (y) the ITC Insurer or its applicable authorized representative has consented to the incurrence of such costs to the extent required under the ITC Insurance Policy (including where aggregate ITC Contest Costs exceed \$150,000), Borrower may request a withdrawal from the ITC Insurance Policy Account for the payment or reimbursement of such ITC Contest Costs by submitting an Executed Withdrawal/Transfer Certificate stating such request, which Executed Withdrawal/Transfer Certificate shall set forth reasonable details of the calculation of the applicable ITC Contest Costs and the Persons to be paid directly from the ITC Insurance Policy Account. The Borrower shall certify to the compliance with this Section 4.02(j)(i). Upon receipt of such Executed Withdrawal/Transfer Certificate, the Depository Agent shall withdraw from the ITC Insurance Policy Account and transfer to the Persons identified in such Executed Withdrawal/Transfer Certificate an amount equal to the ITC Contest Costs then permitted to be paid from the ITC Insurance Policy Account.
  - (ii) If an ITC Insurance Loss occurs, upon the deposit of proceeds for any ITC Insurance Loss into the ITC Insurance Account pursuant to Section 4.01(g)(ii), the Borrower shall request a withdrawal from the ITC Insurance Policy Account for payment to the Tax Equity Member of Fund XVIII of an amount equal to the lesser of (A) the amount on deposit and standing to the balance of the ITC Insurance Policy Account and (B) the amount of such ITC Insurance Loss by submitting an Executed Withdrawal/Transfer Certificate stating such request, which Executed Withdrawal/Transfer Certificate shall set forth reasonable details of the calculation of such amount and the Tax Equity Member of Fund XVIII to be paid directly from the ITC Insurance Policy Account. The Borrower shall certify to the compliance with this Section 4.02(j)(ii). Upon receipt of such Executed Withdrawal/Transfer Certificate, the Depository Agent shall withdraw from the ITC Insurance Policy Account and transfer to the Tax Equity Member of Fund XVIII such amount then permitted to be paid from the ITC Insurance Policy Account.
  - (iii) On the Scheduled Payment Date immediately following any ITC Insurance Loss, ratably to the Administrative Agent, for the account of each Lender entitled thereto, to the prepayment of the Loans, in each case, to the extent

and in the manner set forth in Section 3.04(h) ( *Cash Sweep for Excess ITC Insurance Policy Proceeds* ) and 3.05(b) ( *Application of Prepayments* ) of the Loan Agreement.

## ARTICLE V

### AGREEMENTS WITH AGENTS

#### 5.01 Filing Fees, Excise Taxes, Etc

Borrower and Guarantors agree to pay or to reimburse each Agent and Depository Agent on demand for any and all documented amounts in respect of all search, filing and recording fees, taxes, excise taxes, sales taxes and other similar imposts which may be payable or determined to be payable in respect of the execution, delivery, performance and enforcement of this Depository Agreement and agrees to hold each such Person harmless from and against any and all losses, liabilities, reasonable costs, claims, expenses, penalties and interest with respect to or resulting from any delay in paying or omission to pay such taxes and fees (except to the extent that such losses, liabilities, costs, claims, expenses, penalties and interest result from the gross negligence or willful misconduct of any such Person as finally determined by a non-appealable order from a court of competent jurisdiction).

## ARTICLE VI

### THE DEPOSITARY AGENT

#### 6.01 General

Except as set forth in Section 6.04 ( *Resignation or Removal* ), the provisions of this ARTICLE VI ( *The Depository Agent* ) are solely for the benefit of each Agent and the other Secured Parties and, except to the extent expressly provided in this ARTICLE VI ( *The Depository Agent* ), and without prejudice to or derogating from Borrower's and Guarantors' rights and remedies under this Depository Agreement and each other Secured Obligation Document, Borrower shall have no rights or obligations under this ARTICLE VI ( *The Depository Agent* ) against any Agent or any other Secured Party except as set forth in Section 6.04 ( *Resignation or Removal* ); provided that Depository Agent shall be liable to Borrower for its gross negligence or willful misconduct as finally determined by a non-appealable order from a court of competent jurisdiction. Whether or not therein expressly so provided, every provision of this Depository Agreement relating to the conduct or affecting the eligibility of or affording protection to Depository Agent shall be subject to the provision of this ARTICLE VI ( *The Depository Agent* ). The duties, responsibilities and obligations of Depository Agent shall be limited to those expressly set forth herein and no duties, responsibilities or obligations shall be inferred or implied against the Depository Agent.

#### 6.02 Reliance by Depository Agent

DEPOSITARY AGREEMENT (VIVINT SOLAR)

Exhibit D-34

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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Depository Agent shall be entitled to conclusively rely upon any certificate, direction, instruction, notice or other communication of or from an authorized officer or representative of Borrower, a Guarantor, the Administrative Agent or the Collateral Agent or any other relevant certificate, direction, instruction, notice, communication or document (including any telecopy) believed by it in good faith to be genuine and to have been signed or sent by or on behalf of the proper Person or Persons, and shall have no liability for its actions taken thereupon, except to the extent of Depository Agent's willful misconduct or gross negligence as finally determined by a non-appealable order from a court of competent jurisdiction. Depository Agent shall have no duty or obligation to verify, investigate, ascertain or determine whether any certificate, direction, instruction, notice, communication or document provided to Depository Agent contains accurate information or whether any individual signing such certificate, direction, instruction, notice, communication or document has the authority such individual purports to have. Depository Agent shall be fully justified in failing or refusing to take any action under this Depository Agreement (a) if such action would, in the opinion of Depository Agent, be contrary to applicable law or the terms of this Depository Agreement, (b) if such action is not specifically provided for in this Depository Agreement and it shall not have received any such advice or concurrence of any Agent, Borrower or a Guarantor as it deems appropriate or (c) if, in connection with the taking of any such action that would constitute an exercise of remedies under this Depository Agreement, it shall not first be indemnified to its satisfaction or as required by this Depository Agreement against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Depository Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Depository Agreement in accordance with any Executed Withdrawal/Transfer Certificate, any Remedies Direction or other instruction of Borrower, Guarantor, the Administrative Agent or the Collateral Agent (in each case to the extent such Person is expressly authorized hereunder to direct Depository Agent to take or refrain from taking such action), and such action taken or failure to act pursuant thereto shall be binding upon Borrower, the Guarantors, the Agents and the Secured Parties. In the event that Depository Agent is required to perform any action on a particular date only following the delivery of an officer's or representative's certificate or other document, Depository Agent shall be fully justified in failing to perform such action if it has not first received such officer's or representative's certificate or other document and shall be fully justified in continuing to fail to perform such action until such time as it has received such officer's or representative's certificate or other document.

### 6.03 Court Orders

Depository Agent is hereby authorized to obey and comply with all writs, orders, judgments or decrees issued by any court or administrative agency affecting any money, documents or things held by Depository Agent. Depository Agent shall not be liable to any of the parties hereto or any other Secured Party, their successors, heirs or personal representatives by reason of Depository Agent's compliance with such writs, orders, judgments or decrees, notwithstanding such writ, order, judgment or decree is later reversed, modified, set aside or vacated.

Exhibit D-35

DEPOSITARY AGREEMENT (VIVINT SOLAR)

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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## 6.04 Resignation or Removal

Subject to the appointment and acceptance of a successor Depositary Agent as provided below, Depositary Agent may resign at any time by giving written notice thereof to the parties hereto, and Depositary Agent may be removed at any time with or without cause (and in the case of without cause, subject to 30 days prior written notice) by the Majority Lenders, and, except upon the occurrence and continuation of a Trigger Event and from and after the Trigger Event Date, Borrower. Upon any such resignation or removal, the Majority Lenders shall have the right to appoint, with the consent of Borrower (unless a Trigger Event has occurred and is continuing and from and after the Trigger Event Date), such consent not to be unreasonably withheld or delayed, a successor Depositary Agent. Upon the acceptance of any appointment as Depositary Agent hereunder by a successor Depositary Agent, such successor Depositary Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Depositary Agent, and the retiring Depositary Agent shall be discharged from its duties and obligations hereunder. If no successor Depositary Agent shall have been so appointed by the Majority Lenders and shall have accepted such appointment within thirty (30) days following the delivery by Depositary Agent of a notice of resignation or removal of the Depositary Agent, then the retiring Depositary Agent, in its discretion, may petition a court of competent jurisdiction to appoint a successor Depositary Agent with all costs and expenses associated with such petition to be paid by the Borrower. After the retiring Depositary Agent's resignation or removal hereunder as Depositary Agent, the provisions of this ARTICLE VI (*The Depositary Agent*) shall continue in effect for its benefit in respect of any actions taken, suffered or omitted while it was acting as Depositary Agent. Any corporation into which the Depositary Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Depositary Agent shall be a party, or any corporation succeeding to all or substantially all the corporate trust or agency business of the Depositary Agent, shall be the successor of the Depositary Agent hereunder; provided that such corporation shall be otherwise eligible under this Article to act as a successor Depositary Agent, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

## 6.05 Exculpatory Provisions

- (a) Recitals; Value of Collateral; Etc. Neither Depositary Agent nor any of its affiliates shall be responsible to Borrower, Guarantors, any Agent or any other Secured Party for: (i) any recitals, statements, representations or warranties made by Borrower or Guarantors contained in this Depositary Agreement or any other Secured Obligation Document or in any certificates or other document referred to or provided for in, or received by any Secured Party under, this Depositary Agreement or any other Secured Obligation Document; (ii) the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Depositary Agreement or any other Secured Obligation Document or any other document referred to or provided for herein or therein or the perfection, priority or validity of any of the Liens created by the Collateral Documents; (iii) monitoring the status of a Lien on or the performance of

the Collateral; or (iv) any failure by Borrower or Guarantors to perform its obligations hereunder or thereunder.

- (b) Performance by Borrower, Etc. Depository Agent shall not be required to ascertain or inquire as to the performance by Borrower, Guarantors or any other Person of any of its obligations under any Secured Obligation Document or any other document or agreement contemplated hereby or thereby.
- (c) Initiation of Litigation, Etc. Depository Agent shall not be required to initiate or conduct any litigation or collection proceeding hereunder or under any other Secured Obligation Document.
- (d) Insurance and Taxes on Depository Collateral. Depository Agent shall not be liable or responsible for insuring the Depository Collateral or for the payment of taxes, charges, assessments or liens upon the Depository Collateral.
- (e) Personal Liability of Depository Agent. Depository Agent shall not be liable for any action taken, suffered or omitted to be taken by it in connection with this Depository Agreement or any other Secured Obligation Document or pursuant to any instruction or direction given to it in accordance with the terms or in furtherance of this Depository Agreement or any other Secured Obligation Document unless arising out of its own gross negligence or willful misconduct as finally determined by a non-appealable order from a court of competent jurisdiction. The Depository Agent may consult with legal counsel of its own choosing as to any matter relating to this Depository Agreement, and the Depository Agent shall not incur any liability in acting in good faith in accordance with any advice from such counsel.
- (f) Indemnification and Limitation of Liability. Borrower and Guarantors shall indemnify, defend and hold harmless the Depository Agent, and in its capacity as such, Depository Agent's respective officers, directors, shareholders, controlling persons, employees, agents and servants (collectively, the "Depository Indemnitees"), with respect to its performance under the Depository Agreement pursuant to the terms of, and subject to the terms and limitations of, Section 12.03 (*Expenses; Etc.*) of the Loan Agreement as in effect on the date of this Depository Agreement (and each Depository Indemnitee shall be an "Indemnitee" as defined in the Loan Agreement). No provision of this Depository Agreement shall be construed to relieve Depository Agent from liability for its own grossly negligent action, its own grossly negligent failure to act, or its own willful misconduct as finally determined by a non-appealable order from a court of competent jurisdiction. Depository Agent shall be under no liability to pay interest on any money received by it hereunder except as otherwise agreed with Administrative Agent or Borrower and except to the extent of income or other gain on investments that are deposits in or certificates of deposits or other obligations of Depository Agent in its commercial capacity and income or other gain actually received by Depository Agent on Permitted Investments. In no event shall the Depository Agent be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit), irrespective of whether such Depository Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

- (g) Agents. The Depository Agent may employ a custodian, agent, nominee or delegate to transact or concur in transacting any business and to do or concur in doing any acts required to be done by the Depository Agent (including the receipt and payment of money) and shall not be responsible for the misconduct or negligence (except for gross negligence, willful misconduct or unlawful acts as determined by a non-appealable order from a court of competent jurisdiction) of any such agent appointed with due care.
- (h) Force Majeure. The Depository Agent shall not incur any liability for not performing any act or fulfilling any duty, obligation or responsibility hereunder by reason of any occurrence beyond the control of the Depository Agent (including but not limited to any act or provision of any present or future law or regulation or governmental authority, any act of God or war, civil unrest, local or national disturbance or disaster, any act of terrorism, or the unavailability of the Federal Reserve Bank wire or facsimile or other wire or communication facility); provided that the Depository Agent undertakes to use commercially reasonable efforts, consistent with generally accepted practices in the banking industry, to notify the other parties hereto of such circumstances, to take any steps necessary or required to mitigate the effects thereof, and to resume performance as soon as feasible.
- (i) Agent. For so long as Wells Fargo Bank, National Association (or any other Person designated by the Majority Lenders) is acting as the Depository Agent and except as otherwise expressly set forth herein, the Depository Agent shall be entitled to the benefits, privileges, protections and indemnities afforded to the Administrative Agent under the Loan Documents.

#### 6.06 Fees; Expenses

Depository Agent shall be compensated for its services hereunder in accordance with the Agency Fee Letter. Borrower and the Guarantors agree to pay or reimburse all reasonable and documented out-of-pocket third party expenses of Depository Agent (including reasonable and documented fees and expenses for third party legal services) in respect of, or incident to, the administration or enforcement of any of the provisions of this Depository Agreement or in connection with any amendment, waiver or consent relating to this Depository Agreement. Each Agent agrees that, notwithstanding anything to the contrary in the Agency Fee Letter, all Agency Fees and Agency Expenses shall not be due and payable until the first Scheduled Payment Date to occur after the date they would otherwise be due and payable in accordance with the Agency Fee Letter.

### ARTICLE VII

#### MISCELLANEOUS

#### 7.01 Collateral Agent

##### **; Collateral Agency Agreement .**

The actions of, and remedies available to, the Collateral Agent shall be governed by the Collateral Agency Agreement. Each of the parties hereto hereby acknowledges that it has

received and reviewed a copy of the Collateral Agency Agreement and agrees to be bound by the terms thereof.

### 7.02 No Waiver; Remedies Cumulative

No failure or delay on the part of any party hereto or any Secured Party in exercising any right, power or privilege hereunder and no course of dealing between parties hereto shall impair any such right, power or privilege or operate as a waiver thereof. No single or partial exercise by any party hereto or any Secured Party of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder. The rights, powers and remedies provided herein are cumulative and not exclusive of any rights, powers or remedies which any party hereto would otherwise have. No notice to or demand by any party hereto or any Secured Party on Borrower or Guarantors in any case shall entitle Borrower or Guarantors to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of any party hereto or any Secured Party to any other or further action in any circumstances without notice or demand.

### 7.03 Notices

Any communications between the parties hereto may be given to the addresses set forth below. All notices, payment instructions, Remedies Directions and other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person; (b) if sent by a nationally recognized overnight delivery service; (c) in the event overnight delivery services are not readily available, if mailed by first class mail, postage prepaid, registered or certified with return receipt requested; (d) if sent by telecopy with confirmation of receipt; or (e) if sent by electronic mail. Notice so given shall be effective upon receipt by the addressee, except that communication or notice so transmitted by telecopy or other direct written electronic means shall be deemed to have been validly and effectively given on the day (if a Business Day and, if not, on the next following Business Day) on which it is transmitted if transmitted before 4:00 p.m., recipient's time, and if transmitted after that time, on the next following Business Day; provided, however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder to any other location by giving thirty (30) days' prior written notice of the change to the other parties in the manner set forth hereinabove.

To Depositary Agent:

\*\*\*  
Attention: \*\*\*  
E-mail: \*\*\*

If to Administrative Agent:

Exhibit D-39

DEPOSITARY AGREEMENT (VIVINT SOLAR)

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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\*\*\*  
Attention: \*\*\*  
E-mail: \*\*\*

If to Collateral Agent:

\*\*\*  
Attention: \*\*\*  
E-mail: \*\*\*

If to Borrower or any Guarantor:

Vivint Solar Financing III, LLC  
c/o Vivint Solar, Inc.  
1800 W. Ashton Blvd.  
Lehi, UT 84043  
Attn: \*\*\*  
Facsimile: \*\*\*  
Email: \*\*\*

With a copy to:

Vivint Solar, Inc.  
1800 W. Ashton Blvd.  
Lehi, UT 84043  
Attn: \*\*\*  
Facsimile: \*\*\*  
Email: \*\*\*

With a copy to:

Vivint Solar, Inc.  
1800 W. Ashton Blvd.  
Lehi, UT 84043  
Attn: \*\*\*  
Facsimile: \*\*\*  
Email: \*\*\*

Notices and other communications may be given to Depository Agent by email, provided that any such notice or other communication is contained in a scanned or imaged attachment (such as .pdf or similar widely used format) that otherwise complies with the requirements hereof. Depository Agent shall have the right, but shall not be required, to rely upon and comply with notices, instructions, directions or other communications sent by e-mail, facsimile and other similar unsecured electronic methods by persons believed by Depository Agent to be authorized to give instructions and directions on behalf of Borrower, Guarantors, the Administrative Agent and the Collateral Agent, as applicable. Depository Agent shall have no duty or obligation to verify or confirm that the person

who sent such instructions or directions is, in fact, a person authorized to give instructions or directions on behalf of Borrower, Guarantors, the Administrative Agent or the Collateral Agent, as applicable; and Depository Agent shall have no liability for any losses, liabilities, costs or expenses incurred or sustained by Borrower, Guarantors, the Administrative Agent or the Collateral Agent, as applicable, as a result of such reliance upon or compliance with such notices, instructions, directions or other communications. Each of Borrower, Guarantors, the Administrative Agent and the Collateral Agent agrees to assume all risks arising out of the use of such electronic methods to submit notices, instructions, directions or other communications to Depository Agent, including without limitation the risk of Depository Agent acting on unauthorized instructions, and the risk of interception and misuse by third parties. Any such notices, instructions, directions or other communications shall be conclusively deemed to be valid instructions from Borrower, Guarantors, the Administrative Agent or the Collateral Agent, as applicable, to Depository Agent for the purposes of this Depository Agreement.

#### 7.04 Amendments

This Depository Agreement may be amended or modified only by an instrument in writing signed by each of the parties hereto or otherwise in accordance with Section 5.03 (*Amendments to a Loan Document*) of the Collateral Agency Agreement.

#### 7.05 Benefit of Agreement; Successors and Assigns

This Depository Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and permitted assigns of the parties hereto and for the benefit of the Secured Parties; provided, however, that Borrower and Guarantors may not assign or transfer any of their rights or obligations hereunder without the prior written consent of the Lenders (and any assignment in violation thereof shall be void) and the other Secured Parties, and Depository Agent may not assign this Depository Agreement except in accordance with its resignation or removal under Section 6.04 (*Resignation or Removal*).

#### 7.06 Third-Party Beneficiaries

The covenants contained herein are made solely for the benefit of the parties hereto and the other Secured Parties from time to time bound hereby, and their successors and assigns, and shall not be construed as having been intended to benefit any other third-party not a party to this Depository Agreement.

#### 7.07 Counterparts

This Depository Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which, when executed and delivered, shall be effective for purposes of binding the parties hereto, but all of which shall together constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Depository Agreement by telecopy or other

DEPOSITARY AGREEMENT (VIVINT SOLAR)

Exhibit D-41

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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electronic delivery (i.e., “pdf”, “tif”, “jpeg” or “jpg”) shall be effective as delivery of a manually executed counterpart of this Depositary Agreement.

#### **7.08 Effectiveness**

This Depositary Agreement shall be effective on the date first above written.

#### **7.09 Entire Agreement**

This Depositary Agreement and the other Secured Obligation Documents, including the documents referred to herein and therein, constitute the entire agreement and understanding of the parties hereto (it being understood that Depositary Agent is not a party to and has no obligations under the Secured Obligation Documents other than this Depositary Agreement and Depositary Agent shall not be charged with knowledge of the terms of any other transaction document, including the Loan Agreement), and supersede any and all prior agreements and understandings, written or oral, of the parties hereto relating to the subject matter hereof.

#### **7.10 Severability**

If any provision of this Depositary Agreement is invalid and unenforceable in any jurisdiction, then, to the fullest extent permitted by law: (a) the other provisions of this Depositary Agreement shall remain in full force and effect in such jurisdiction and shall be liberally construed in order to carry out the intentions of the parties hereto as nearly as may be possible; and (b) the invalidity, illegality or unenforceability of any provision of this Depositary Agreement in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

#### **7.11 Conflict with Other Agreements**

Except as otherwise expressly provided herein, the parties agree that in the event of any conflict between the provisions of this Depositary Agreement (or any portion thereof) and the provisions of any other Secured Obligation Document or any other agreement (other than the Loan Agreement) now existing or hereafter entered into, the provisions of this Depositary Agreement shall control with respect to the rights and obligations of the Depositary Agent. Except as otherwise expressly provided herein, and in any event except with respect to the duties, obligations, rights, benefits, privileges and protections of the Depositary Agent, in the event of any conflict between the provisions of this Depositary Agreement and the provisions of the Loan Agreement, the provisions of the Loan Agreement shall control. In the event that in connection with the establishment of any of the Collateral Accounts with Depositary Agent, Borrower and Guarantors shall enter into any agreement, instrument or other document with Depositary Agent which has terms that are in conflict with or inconsistent with the terms of this Depositary Agreement, the terms of this Depositary Agreement shall control.

## 7.12 Governing Law

THIS DEPOSITARY AGREEMENT AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS DEPOSITARY AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK.

## 7.13 Consent to Jurisdiction

- (a) Borrower and Guarantors irrevocably and unconditionally agree that they will not commence any action, litigation or proceeding of any kind or description, whether in law or equity, whether in contract or in tort or otherwise, in any way relating to this Depositary Agreement or the transactions relating hereto, in any forum other than the courts of the State of New York sitting in New York County, and of the United States District Court of the Southern District of New York, and any appellate court from any thereof, and each of the parties hereto irrevocably and unconditionally submits to the nonexclusive jurisdiction of such courts and agrees that all claims in respect of any such action, litigation or proceeding may be heard and determined in such New York State court or, to the fullest extent permitted by applicable law, in such federal court. Each of the parties hereto agrees that a final judgment in any such action, litigation or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Depositary Agreement shall affect any right that the Agents may otherwise have to bring any action or proceeding relating to this Depositary Agreement against Borrower or Guarantors or their property in the courts of any jurisdiction.
- (b) Nothing herein shall in any way be deemed to limit the ability of the Agents to serve any such process or summonses in any other manner permitted by applicable law.
- (c) Borrower and Guarantors irrevocably and unconditionally waive, to the fullest extent permitted by applicable law, any objection that they may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Depositary Agreement in any court referred to in clause (a) of this Section 7.13 (*Consent to Jurisdiction*). Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

## 7.14 WAIVER OF JURY TRIAL

EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS DEPOSITARY AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO

(A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS DEPOSITARY AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

#### 7.15 Service of Process

Each party to this Depositary Agreement irrevocably consents to service of process in the manner provided for notices in Section 7.03( *Notices* ). Nothing in this Depositary Agreement will affect the right of any party to this Depositary Agreement to serve process in any other manner permitted by law.

#### 7.16 Termination

This Depositary Agreement shall (except as otherwise expressly set out herein) terminate and be of no further force and effect on the Debt Termination Date. The Collateral Agent shall execute and deliver to Borrower, at Borrower's expense, upon such termination such Uniform Commercial Code termination statements and other documentation as shall be reasonably requested by Borrower to effect the termination and release of the Liens created under the Borrower Collateral Agreement and the Guarantor Collateral Agreement. The security interest created hereby shall also be released with respect to any portion of the Collateral Accounts or other Collateral that is transferred or otherwise disposed of in compliance with the terms and conditions of the Secured Obligation Documents. This Section 7.16( *Termination* ) shall survive the termination of this Depositary Agreement.

#### 7.17 Reinstatement

This Depositary Agreement and the obligations of Borrower and Guarantors hereunder shall continue to be effective or be automatically reinstated, as the case may be, if (and to the extent that) at any time payment and performance of Borrower's or Guarantors' obligations hereunder, or any part thereof, is rescinded or reduced in amount, or must otherwise be restored or returned by any Secured Party. In the event that any payment or any part thereof is so rescinded, reduced, restored or returned, such obligations shall be reinstated on the same terms and conditions applicable thereto prior to the payment of the rescinded, reduced, restored or returned amount, and shall be deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned. This Section 7.17( *Reinstatement* ) shall impose no duty or obligation on Depositary Agent, and is intended solely to govern the relationship among and between the Secured Parties, Borrower and Guarantors.

## 7.18 Attorney-In-Fact

For the purposes of allowing the Agents to exercise their rights and remedies upon the occurrence and during the continuance of a Trigger Event, Borrower and the Guarantors irrevocably constitute and appoint, upon the occurrence and during the continuance of a Trigger Event, each Agent and any officer or agent thereof, with full power of substitution as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Borrower and Guarantors and in the name of Borrower and Guarantors or in its own name, for the purpose of carrying out the terms of this Depositary Agreement, to take any appropriate action and to execute any document or instrument that may be necessary or desirable to accomplish the purposes of this Depositary Agreement. Upon the occurrence and continuance of a Trigger Event, the Collateral Agent (to the extent the Collateral Agent has actual knowledge or has received written notice thereof) shall promptly inform Depositary Agent, Borrower and Guarantors in writing that a Trigger Event has occurred and is continuing and that each such Agent is exercising remedies under this Section 7.18 (*Attorney-In-Fact*). This power of attorney is coupled with an interest. Without limiting the generality of this Section 7.18, any action or inaction by the Agents pursuant to this Section 7.18 shall be taken at the written instruction of the Majority Lenders (other than the notification obligation in the preceding sentence).

## 7.19 Patriot Act Compliance

The parties hereto acknowledge that in order to help the United States government fight the funding of terrorism and money laundering activities, pursuant to Federal regulations that became effective on October 1, 2003 (Section 326 of the Patriot Act) requires all financial institutions to obtain, verify, record and update information that identifies each person establishing a relationship or opening an account. Each party hereto agrees that it will provide to the Agents such information as it may request, from time to time, in order for the Agents to satisfy the requirements of the USA PATRIOT Act, including the name, address, tax identification number and other information that will allow it to identify the individual or entity who is establishing the relationship or opening the account, and formation documents such as articles of incorporation or other identifying documents.

[SIGNATURES TO FOLLOW]

Exhibit D-45

DEPOSITARY AGREEMENT (VIVINT SOLAR)

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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**IN WITNESS WHEREOF** , each of the parties hereto has caused this Depositary Agreement to be duly executed by its duly authorized officers or representatives as of the date first above written.

BORROWER

VIVINT SOLAR FINANCING III, LLC ,  
as Borrower

By:  
Name:  
Title:

Signature Page to Depositary Agreement

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GUARANTORS

VIVINT SOLAR FUND XI MANAGER, LLC

By:  
Name:  
Title:

VIVINT SOLAR FUND XIII MANAGER, LLC

By:  
Name:  
Title:

VIVINT SOLAR FUND XVI MANAGER, LLC

By:  
Name:  
Title:

VIVINT SOLAR FUND XVIII MANAGER, LLC

By:  
Name:  
Title:

Signature Page to Depositary Agreement

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Vivint SOLAR SREC GUARANTOR III, LLC

By:  
Name:  
Title:

Signature Page to Depositary Agreement

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DEPOSITARY AGENT

WELLS FARGO BANK, NATIONAL ASSOCIATION ,  
not in its individual capacity but solely as Depositary Agent

By:

Name:

Title:

Signature Page to Depositary Agreement

[\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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COLLATERAL AGENT

WELLS FARGO BANK, NATIONAL ASSOCIATION ,  
not in its individual capacity but solely as Collateral Agent

By:

Name:

Title:

Signature Page to Depositary Agreement

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---

ADMINISTRATIVE AGENT

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
not in its individual capacity but solely as Administrative  
Agent

By:

Name:

Title:

Signature Page to Depositary Agreement

\*\*\* DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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ACCOUNT NAMES AND NUMBERS

COLLATERAL ACCOUNTS

<u>ACCOUNT NAME</u>	<u>ACCOUNT NO.</u>
Vivint Solar Financing III, LLC Collections Account	***
Vivint Solar Financing III, LLC Debt Service Reserve Account	***
Vivint Solar Financing III, LLC Inverter Replacement Reserve Account	***
Vivint Solar Financing III, LLC Supplemental Reserve Account	***
Vivint Solar Financing III, LLC Distribution Suspense Account	***
Vivint Solar Financing III, LLC Funding Account	***
Vivint Solar Fund XI Manager, LLC	***
Vivint Solar Fund XIII Manager, LLC	***
Vivint Solar Fund XVI Manager, LLC	***
Vivint Solar Fund XVIII Manager, LLC	***
Vivint Solar SREC Guarantor III, LLC Financing	***
Vivint Solar ITC Insurance Policy Account	***

UNPLEDGED SREC ACCOUNT

<u>ACCOUNT NAME</u>	<u>ACCOUNT NO.</u>
Vivint Solar SREC Guarantor III, LLC  Aggregator	***

Wire Instructions:

Pay To: Vivint Solar Financing III, LLC fbo Wells Fargo Bank, National  
Association as Collateral Agent

ABA No.: \*\*\*  
DDA: \*\*\*  
A/C Name.: CDO Clearing Account  
FFC A/C Number: [see above]  
FFC Account Name: [see above]

INVERTER REPLACEMENT RESERVE REQUIRED AMOUNT

**Scheduled Payment Inverter Replacement Reserve**

<b>Date</b>	<b>Required Amount</b>
4/30/2017	\$47,685
7/31/2017	\$47,685
10/31/2017	\$47,685
1/31/2018	\$47,685
4/30/2018	\$47,685
7/31/2018	\$47,685
10/31/2018	\$47,685
1/31/2019	\$47,685
4/30/2019	\$133,518
7/31/2019	\$133,518
10/31/2019	\$133,518
1/31/2020	\$133,518
4/30/2020	\$133,518
7/31/2020	\$133,518
10/31/2020	\$133,518
1/31/2021	\$133,518
4/30/2021	\$133,518
7/31/2021	\$133,518
10/31/2021	\$133,518
1/31/2022	\$133,518
4/30/2022	\$162,129
7/31/2022	\$162,129
10/31/2022	\$162,129
1/31/2023	\$162,129
4/30/2023	\$162,129
7/31/2023	\$162,129
10/31/2023	\$162,129
1/31/2024	\$162,129
4/30/2024	\$162,129
7/31/2024	\$162,129
10/31/2024	\$162,129
1/31/2025	\$162,129
4/30/2025	\$381,480
7/31/2025	\$381,480
10/31/2025	\$381,480
1/31/2026	\$381,480
4/30/2026	\$1,058,607
7/31/2026	\$1,058,607
10/31/2026	\$1,058,607

1/31/2027	\$1,058,607
4/30/2027	\$1,058,607
7/31/2027	\$1,058,607
10/31/2027	\$1,058,607
1/31/2028	\$1,058,607
4/30/2028	\$1,411,476
7/31/2028	\$1,411,476
10/31/2028	\$1,411,476
1/31/2029	\$1,411,476
4/30/2029	\$715,275
7/31/2029	\$715,275
10/31/2029	\$715,275
1/31/2030	\$715,275
4/30/2030	\$715,275
7/31/2030	\$715,275
10/31/2030	\$715,275
1/31/2031	\$715,275
4/30/2031	\$1,001,385
7/31/2031	\$1,001,385
10/31/2031	\$1,001,385
1/31/2032	\$1,001,385
4/30/2032	\$1,001,385
7/31/2032	\$1,001,385
10/31/2032	\$1,001,385
1/31/2033	\$1,001,385
4/30/2033	\$1,077,681
7/31/2033	\$1,077,681
10/31/2033	\$1,077,681
1/31/2034	\$1,077,68

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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**FORM OF WITHDRAWAL/TRANSFER CERTIFICATE**

Date of this Withdrawal/Transfer Certificate: [\_\_\_\_\_] <sup>1 2</sup>

Withdrawal Date: [\_\_\_\_\_] <sup>3</sup>

Via electronic mail: ctsbankdebtadministrationteam@wellsfargo.com

\*\*\*

Attention: \*\*\*

**Re: Vivint Solar Financing III, LLC**

Ladies and Gentlemen:

This Withdrawal/Transfer Certificate is delivered to you pursuant to Section 3.02 of the Depositary Agreement (the “**Depositary Agreement**”), dated as of January 5, 2017, among Vivint Solar Financing III, LLC, a Delaware limited liability company (“**Borrower**”), the Guarantors party thereto, Wells Fargo Bank, National Association, as administrative agent (“**Administrative Agent**”), Wells Fargo Bank, National Association, as collateral agent (“**Collateral Agent**”) and Wells Fargo Bank, National Association, as Depositary agent (“**Depositary Agent**”). Reference is also made to the Collateral Agency (the “**Collateral Agency Agreement**”), dated as of January 5, 2017, among Borrower, the Administrative Agent, and the Collateral Agent. Capitalized terms used but not defined herein shall have the respective meanings assigned thereto in the Depositary Agreement (or, if not defined therein, in Section 1.01 ( *Definitions* ) of the Collateral Agency Agreement).

Borrower hereby requests the sums indicated in [Annex 1][Annexes 1 through [\_\_\_]] hereto (the “**Withdrawal**”) be paid or transferred from the Collateral Accounts as set forth in each respective Annex hereto.

Borrower hereby represents and warrants that Borrower is entitled, pursuant to the Depositary Agreement and the Loan Agreement, to request the Withdrawal in the manner, at the times and in the amounts set forth in this Withdrawal/Transfer Certificate.

[Borrower hereby represents and warrants that the Distribution Conditions are satisfied on the date hereof and will be satisfied on the Withdrawal Date set forth in this Withdrawal/Transfer Certificate.] <sup>4</sup>

<sup>1</sup> Certificate should be completed by Borrower and delivered to Administrative Agent for review no later than 11:00 a.m. (New York time) at least five Business Days (but no more than ten Business Days) prior to the requested withdrawal date pursuant to Section 3.02(c) of the Depositary Agreement.

<sup>2</sup> Certificate should be signed by Borrower, acknowledged by Administrative Agent and delivered to Depositary Agent no later than 12:00 p.m. (New York time) two Business Days prior to the Withdrawal Date to which this certificate relates pursuant to Section 3.02(d) of the Depositary Agreement.

<sup>3</sup> Insert the Withdrawal Date to which this Withdrawal/Transfer Certificate relates.

<sup>4</sup> Include in respect of any withdrawals to make payment of a Restricted Payment from the Distribution Suspense Account or from the Collections Account.

[Borrower hereby represents and warrants that the amounts paid to the Manager are no greater than the Permitted Management Fee and are as permitted to be paid pursuant to Section 9.12(a) ( *Expenditures; Collateral Accounts; Structural Changes* ) of the Loan Agreement.]<sup>5</sup>

[Add any certifications required pursuant to the Depositary Agreement regarding Excess DSR Reserve Amount, Debt Service Reserve Required Amount, Supplemental Reserve Required Amount, Inverter Replacement Reserve Required Amount, ITC Insurance Policy Retention Reserve Amount, ITC Insurance Policy Account, True-Up Reserve Amount and/or Distribution Suspense Account, as applicable.]

Borrower certifies that all attachments to this Withdrawal/Transfer Certificate that are required to be annexed hereto pursuant Section 3.03 ( *Transfer of Amounts* ) of the Depositary Agreement are attached hereto.

Faithfully yours,

**VIVINT SOLAR FINANCING III, LLC** ,  
a Delaware limited liability company,  
as the Borrower

By:  
Name:  
Title:

Acknowledged:

**WELLS FARGO BANK, NATIONAL ASSOCIATION** ,  
as Administrative Agent

By:  
Name:  
Title:

---

<sup>5</sup> Include in respect of any withdrawals to make payment to the Manager.

**Withdrawals/Transfers from Collections Account**

Withdrawal Date	Amount to be Withdrawn / Transferred	Name of Payee	Account to which Payment is to be Made	Purpose/Description
			Pay To: ABA No.: Account No.: Credit To: Reference:	
			Pay To: ABA No.: Account No.: Credit To: Reference:	

Exhibit D - Ex. A - 3 DEPOSITARY AGREEMENT (VIVINT SOLAR)

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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**Withdrawals/Transfers from Debt Service Reserve Account**

Withdrawal Date	Amount to be Withdrawn /Transferred	Name of Payee	Account to which Payment is to be Made	Purpose/Description
			Pay To: ABA No.: Account No.: Credit To: Reference:	
			Pay To: ABA No.: Account No.: Credit To: Reference:	

Exhibit D - Ex. A - 4 DEPOSITARY AGREEMENT (VIVINT SOLAR)

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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**Withdrawals/Transfers from Inverter Replacement Reserve Account**

Withdrawal Date	Amount to be Withdrawn /Transferred	Name of Payee	Account to which Payment is to be Made	Purpose/Description
			Pay To: ABA No.: Account No.: Credit To: Reference:	
			Pay To: ABA No.: Account No.: Credit To: Reference:	

Exhibit D - Ex. A - 5 DEPOSITARY AGREEMENT (VIVINT SOLAR)

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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**Withdrawals/Transfers from Supplemental Reserve Account**

Withdrawal Date	Amount to be Withdrawn /Transferred	Name of Payee	Account to which Payment is to be Made	Purpose/Description
			Pay To: ABA No.: Account No.: Credit To: Reference:	
			Pay To: ABA No.: Account No.: Credit To: Reference:	

Exhibit D - Ex. A - 6 DEPOSITARY AGREEMENT (VIVINT SOLAR)

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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**Withdrawals/Transfers from Distribution Suspense Account**

Withdrawal Date	Amount to be Withdrawn /Transferred	Name of Payee	Account to which Payment is to be Made	Purpose/Description
			Pay To: ABA No.: Account No.: Credit To: Reference:	
			Pay To: ABA No.: Account No.: Credit To: Reference:	

Exhibit D - Ex. A - 7 DEPOSITARY AGREEMENT (VIVINT SOLAR)

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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**Withdrawals/Transfers from Funding Account**

Withdrawal Date	Amount to be Withdrawn /Transferred	Name of Payee	Account to which Payment is to be Made	Purpose/Description
			Pay To: ABA No.: Account No.: Credit To: Reference:	
			Pay To: ABA No.: Account No.: Credit To: Reference:	

Exhibit D - Ex. A - 8 DEPOSITARY AGREEMENT (VIVINT SOLAR)

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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**Withdrawals/Transfers from Guarantor Accounts**

Withdrawal Date	Amount to be Withdrawn /Transferred	Name of Payee	Account to which Payment is to be Made	Purpose/Description
			Pay To: ABA No.: Account No.: Credit To: Reference:	
			Pay To: ABA No.: Account No.: Credit To: Reference:	

Exhibit D - Ex. A - 9 DEPOSITARY AGREEMENT (VIVINT SOLAR)

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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**Withdrawals/Transfers from the ITC Insurance Policy Account**

Withdrawal Date	Amount to be Withdrawn /Transferred	Name of Payee	Account to which Payment is to be Made	Purpose/Description
			Pay To: ABA No.: Account No.: Credit To: Reference:	
			Pay To: ABA No.: Account No.: Credit To: Reference:	

Exhibit D - Ex. A - 10 DEPOSITARY AGREEMENT (VIVINT SOLAR)

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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**FORM OF TRIGGER EVENT NOTICE**

[ **Date** ]

Via electronic mail: ctsbankdebtadministrationteam@wellsfargo.com

\*\*\*

Attention: \*\*\*

**Re: Vivint Solar Financing III, LLC**

Ladies and Gentlemen:

Reference is made to the Depositary Agreement (the “**Depositary Agreement**”), dated as of January 5, 2017, among Vivint Solar Financing III, LLC, a Delaware limited liability company (“**Borrower**”), the guarantors party thereto, Wells Fargo Bank, National Association, as administrative agent (“**Administrative Agent**”), Wells Fargo Bank, National Association, as Collateral Agent (“**Collateral Agent**”) and Wells Fargo Bank, National Association, as Depositary agent (“**Depositary Agent**”). Capitalized terms used but not defined herein shall have the respective meanings assigned thereto in the Depositary Agreement (or, if not defined therein, in Section 1.01 (*Definitions*) of the Collateral Agency Agreement).

The undersigned hereby gives you notice that a Trigger Event has occurred and is continuing under the Collateral Agency Agreement and the undersigned is exercising exclusive control over the Collateral Accounts. You are hereby instructed not to accept any directions, instructions or orders with respect to any of the Collateral Accounts from any Person other than the undersigned, unless this notice is revoked in writing by the undersigned.

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Collateral Agent

By:  
Name:  
Title:

Exhibit D - Ex. B DEPOSITARY AGREEMENT (VIVINT SOLAR)

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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**FORM OF REMEDIES DIRECTION**

[ **Date** ]

Via electronic mail: ctsbankdebtadministrationteam@wellsfargo.com

\*\*\*

Attention: \*\*\*

**Re: Vivint Solar Financing III, LLC**

Ladies and Gentlemen:

Reference is made to the Depositary Agreement (the “ **Depositary Agreement** ”), dated as of January 5, 2017, among Vivint Solar Financing III, LLC, a Delaware limited liability company (“ **Borrower** ”), the guarantors party thereto, Wells Fargo Bank, National Association, as administrative agent (“ **Administrative Agent** ”), Wells Fargo Bank, National Association, as Collateral Agent (“ **Collateral Agent** ”) and Wells Fargo Bank, National Association, as Depositary agent (“ **Depositary Agent** ”). Capitalized terms used but not defined herein shall have the respective meanings assigned thereto in the Depositary Agreement (or, if not defined therein, in Section 1.01 ( *Definitions* ) of the Collateral Agency Agreement).

In accordance with Section 3.04(a) ( *The Trigger Event Date* ) of the Depositary Agreement, you are hereby instructed to transfer within two (2) Business Days \$[\_\_\_\_\_], [AMOUNT] from [\_\_\_\_\_] [ACCOUNT NAME] to [WIRE INSTRUCTIONS].

WELLS FARGO BANK, NATIONAL ASSOCIATION,  
as Collateral Agent

By:  
Name:  
Title:

Exhibit D - Ex. C DEPOSITARY AGREEMENT (VIVINT SOLAR)

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

**Exhibit E**

**[Reserved]**

Exhibit E

[\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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**Exhibit F**

**Form of Assignment and Assumption Agreement of Loans/Commitments**

**ASSIGNMENT AND ASSUMPTION**

This Assignment and Assumption (this “ Assignment and Assumption ”) is dated as of the Effective Date set forth below and is entered into by and between the Assignor identified in item 1 below (the “ Assignor ”) and the Assignee identified in item 2 below (the “ Assignee ”). Capitalized terms used but not defined herein shall have the meanings given to them in the Loan Agreement identified below, receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Loan Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor’s rights and obligations in its capacity as a Lender under the Loan Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Loan Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned by the Assignor to the Assignee pursuant to clauses (i) and (ii) above being referred to herein collectively as the “ Assigned Interest ”). Each such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1. Assignor : \_\_\_\_\_
2. Assignee : \_\_\_\_\_  
[as [Lender] or [Affiliate][Approved Fund] of [ *identify Lender* ]] <sup>6</sup>
3. Borrower : Vivint Solar Financing III, LLC
4. Administrative Agent : Wells Fargo Bank, National Association, as administrative agent on behalf of the Lenders under the Loan Agreement
5. Loan Agreement : Fixed Rate Loan Agreement, dated as of January 5, 2017 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “ Loan Agreement ”), among Vivint Solar Financing III, LLC (the “ Borrower ”), the financial institutions as Lenders from time to time party thereto (each individually a “ Lender ” and, collectively, the “ Lenders ”) and Wells Fargo Bank, National

<sup>6</sup> Indicate the appropriate option only if the Assignee is a Lender, an Affiliate of a Lender or an Approved Fund of a Lender.

Association, as administrative agent for the Lenders (in such capacity, and together with its successors and permitted assigns, the “ Administrative Agent ”).

6. Assigned Interest :

Assignor	Assignee	Aggregate Amount of Commitment / Loans for Lender <sup>7</sup>	Amount of Commitment / Loans Assigned	Percentage <sup>8</sup> Assigned of Commitment / Loans
		\$ _____	\$ _____	_____ %

[7. Trade Date : \_\_\_\_\_ ] <sup>9</sup>

8. Effective Date: \_\_\_\_\_, 20\_\_ [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

9. [The Assignee agrees to deliver to the Administrative Agent a completed administrative questionnaire in which the Assignee designates one or more credit contacts to whom all information (which may contain material non-public information about the Borrower, the Lenders and their Affiliates or their respective securities) will be made available and who may receive such information in accordance with the Assignee’s compliance procedures and applicable Laws, including Federal and state securities laws.] <sup>10</sup>

<sup>7</sup> Amounts in this column and in the column immediately to the right to be adjusted by the counterparty to take into account any payments or prepayments made between the Trade Date and the Effective Date.

<sup>8</sup> Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

<sup>9</sup> To be completed if the Assignor and the Assignee intend that the minimum assignment amount is to be determined as of the Trade Date.

<sup>10</sup> Insert if Assignee is not already a Lender.

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR 11  
[NAME OF ASSIGNOR]

By: \_\_\_\_\_  
Name:  
Title:

ASSIGNEE 12  
[NAME OF ASSIGNEE]

By: \_\_\_\_\_  
Name:  
Title:

[Consented to and] <sup>13</sup> Accepted:  
WELLS FARGO BANK, NATIONAL ASSOCIATION, as  
Administrative Agent

By:  
Name:  
Title:

- 
- 11                    Include both Approved Fund and manager making the trade (if applicable).  
12                    Include both Approved Fund and manager making the trade (if applicable).  
13                    To be added only if the consent of the Administrative Agent is required by the terms of the Loan Agreement.

Exhibit F-3

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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[Consented to:] <sup>14</sup>  
VIVINT SOLAR FINANCING III, LLC, as Borrower

By:  
Name:  
Title:

---

<sup>14</sup> To be added only if the consent of the Borrower is required by the terms of the Loan Agreement.

Exhibit F-4

[\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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## ANNEX 1 TO ASSIGNMENT AND ASSUMPTION

### STANDARD TERMS AND CONDITIONS FOR

#### ASSIGNMENT AND ASSUMPTION

##### 1. Representations and Warranties.

1.1. Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Loan Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates, any other Loan Party or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates, any other Loan Party or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Loan Agreement, (ii) it meets all the requirements to be an assignee under Section 12.05 ( *Successors and Assigns* ) of the Loan Agreement, (iii) from and after the Effective Date, it shall be bound by the provisions of the Loan Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it is sophisticated with respect to decisions to acquire assets of the type represented by the Assigned Interest and either it, or the Person exercising discretion in making its decision to acquire the Assigned Interest, is experienced in acquiring assets of such type, (v) it has received a copy of the Loan Agreement, and has received or has been accorded the opportunity to receive copies of the most recent financial statements delivered pursuant to Section 8.01(a)(i) ( *Annual Reporting* ) or (ii) ( *Quarterly Reporting* ) thereof, as applicable, and such other documents and information as it deems appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest, (vi) it has, independently and without reliance upon the Administrative Agent or any Lender and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest, (vii) attached hereto is any documentation required to be delivered by it pursuant to the terms of the Loan Agreement, duly completed and executed by the Assignee, and (viii) the representations and warranties set forth in Section 5.04 ( *Source of Funds Representations of the Lenders* ) of the Loan Agreement are true and correct with respect to Assignee as if the Assignee was a Lender on the Effective Date; and (b) agrees that (i) it will, independently and without reliance upon the Administrative Agent, the Assignor or any Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of

Exhibit F-5

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date. Notwithstanding the foregoing, the Administrative Agent shall make all payments of interest, fees or other amounts paid or payable in kind from and after the Effective Date to the Assignee.

3. General Provisions. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York without reference to its conflict of laws other than Section 5-1401 of the New York General Obligations Law.

Exhibit F-6

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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## Exhibit G

### Terms of Subordination

Section 1 Definitions. Except as provided herein, all terms used but not defined herein shall have the meanings given in the Fixed Rate Loan Agreement dated as of January 5, 2017 (the “Loan Agreement”) among Vivint Solar Financing III, LLC (the “Borrower”), the financial institutions as Lenders from time to time party thereto (each individually a “Lender” and, collectively, the “Lenders”), Wells Fargo Bank, National Association, as administrative agent for the Lenders (in such capacity, and together with its successors and permitted assigns, the “Administrative Agent”). The principles of interpretation set forth in Sections 1.02 ( *Accounting Terms and Determinations* ), 1.03 ( *Time of Day* ) and 1.04 ( *Rules of Construction* ) of the Loan Agreement shall apply to, and are hereby incorporated by reference in, these Terms of Subordination. In addition, the following terms shall have the following respective meanings set out below:

“Proceeding” shall mean any: (a) insolvency, bankruptcy, receivership, liquidation, reorganization, readjustment, composition or other similar proceeding, whether voluntary or involuntary, of or against the Borrower, its Property or its creditors as such; (b) proceeding for any liquidation, dissolution or other winding-up of the Borrower, whether voluntary or involuntary, and whether or not involving insolvency, receivership or bankruptcy proceedings; (c) general assignment for the benefit of creditors of the Borrower; or (d) other marshalling of the assets of the Borrower.

“Reorganization Debt Securities” shall mean, with respect to the Borrower, debt or equity securities of the Borrower as reorganized or readjusted, or debt or equity securities of the Borrower (or any other company, trust or organization provided for by a plan of reorganization or readjustment succeeding to the assets and liabilities of the Borrower), that are subordinated, to at least the same extent as the Subordinated Obligations, to the payment of all Senior Obligations that will be outstanding after giving effect to such plan of reorganization or readjustment, so long as (a) the rate of interest on such debt securities shall not exceed the effective rate of interest on the Subordinated Obligations immediately prior to giving effect to such plan of reorganization or readjustment, (b) such debt securities shall not be entitled to the benefits of covenants or defaults materially more beneficial to the holders of such debt securities than those in effect with respect to the Subordinated Obligations immediately prior to giving effect to such plan of reorganization or readjustment (or the Senior Obligations, after giving effect to such plan of reorganization or readjustment) and (c) such debt securities shall not provide for scheduled amortization (including sinking fund and mandatory prepayment provisions) commencing prior to the date six months following the final scheduled maturity date of the Senior Obligations (as modified by such plan of reorganization or readjustment).

“Senior Obligations” means any and all Indebtedness, liabilities and other obligations of the Borrower to the Secured Parties (of whatsoever nature and howsoever evidenced, and whether for principal, interest, premium, any Make Whole Amount, fees, costs, expenses, reimbursements, indemnities or other amounts (including any amounts owing in respect of a breach of the representations, warranties or covenants thereunder)) under or pursuant to the Loan Documents (other than any Subordinated Obligations), together with interest

Exhibit G-1

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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on each thereof accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, reorganization, insolvency or similar Proceedings with respect to the Borrower, and together with each renewal, deferral, amendment, modification, restatement, supplement, extension, refinancing or refunding of any of the obligations described above, and any evidence of indebtedness issued in exchange for any thereof.

“ Senior Parties ” shall mean the holders from time to time of the Senior Obligations, including any transferee or assignee of any such holder.

“ Subordinated Obligations ” shall mean any and all Indebtedness, liabilities and other obligations, whether for principal, interest, premium, fees, costs, expenses, reimbursements, indemnities or other amounts (including any amounts owing in respect of a breach of the representations, warranties or covenants thereunder) in respect of any obligations (including Sponsor Subordinated Indebtedness and rights of subrogation against the Borrower obtained under any Transaction Document), now or hereafter owing by the Borrower to any of its Affiliates, including interest on any amount thereof accruing after the date of any filing by the Borrower of any petition in bankruptcy or the commencement of any bankruptcy, reorganization, insolvency or similar proceedings with respect to the Borrower. For purposes of these Terms of Subordination, all Indebtedness of the Borrower to the Sponsor or any Affiliated Lender shall be deemed to be Subordinated Obligations except as provided above.

“ Subordinated Parties ” shall mean the holders from time to time of the Subordinated Obligations, including any transferee or assignee of any such holder.

“ Termination Date ” means the date upon which all of the Senior Obligations shall have been indefeasibly paid in full in cash.

“ Terms of Subordination ” shall mean the terms of subordination set out in this Exhibit.

Section 2 Subordinated Obligations; Preclusion of Remedies. To the extent and in the manner set out hereunder, prior to the Termination Date, the payment of any and all Subordinated Obligations is expressly and irrevocably made subordinate and subject in right of payment to the full and final prior payment in cash of all Senior Obligations. Notwithstanding anything to the contrary contained in any Loan Document or other agreement, document or instrument, each Subordinated Party hereby expressly agrees that it will not (nor will it allow or direct any other Person on its behalf to), until the occurrence of the Termination Date, ask, demand, make any claim for, institute any action or proceeding for, otherwise exercise any remedy for, take, receive or accept from the Borrower, by set-off or in any other manner, payment (in whole or in part) of the Subordinated Obligations, nor shall it receive or accept any security therefor, whether or not any default shall have occurred under the Senior Obligations and whether or not any amount in respect of the Senior Obligations shall then be due and payable; provided, that nothing herein shall be deemed to prohibit payment of any of the Subordinated Obligations from and to the extent of the proceeds of Restricted Payments permitted to be paid in accordance with the terms of the Loan Documents. A payment on the Subordinated Obligations shall be deemed to include any purchase, redemption or other acquisition by or on behalf of the Borrower of all or any portion of the Subordinated Obligations.

These Terms of Subordination shall constitute a continuing offer and inducement to all Senior Parties, and are made for the benefit of the Senior Parties, which are obligees hereunder and entitled to enforce their rights hereunder, without any act or notice of acceptance

Exhibit G-2

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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hereof or reliance hereon. These Terms of Subordination shall apply notwithstanding anything to the contrary contained in the Transaction Documents or otherwise.

No Subordinated Party shall take any action prejudicial to or inconsistent with the Senior Parties' priority position over the Subordinated Parties created hereby and under the Collateral Documents, including any action which will hinder, delay or otherwise prevent any Senior Party from taking any action it deems necessary to enforce rights with respect to the Senior Obligations or the Lien of any Collateral Document. Additionally, no Subordinated Party shall take any action or otherwise act to contest or otherwise challenge on account of the Subordinated Obligations or otherwise: (a) the validity or priority of any Liens granted to, or for the benefit of, any Senior Party; (b) the relevant rights and duties of any Senior Party with respect to the Subordinated Parties on account of any Subordinated Obligations as established hereunder; or (c) any Senior Party's exercise of remedies in accordance with the Loan Documents.

Section 3 Payment of Proceeds Upon a Proceeding. During the pendency of any Proceeding:

(a) the Senior Parties shall be entitled to receive full and final payment in cash of all Senior Obligations, whether or not then otherwise due and payable, before any Subordinated Party shall be entitled to receive any payment or distribution on account of any Subordinated Obligation; and

(b) any payment or distribution of assets of the Borrower (or of the estate created by the commencement of the Proceeding) of any kind or character, by set-off or otherwise (whether in cash, property, securities or other assets) to which any Subordinated Party would be entitled but for the provisions of these Terms of Subordination, including any such payment or distribution which may be payable or deliverable by reason of the payment of any other Indebtedness of the Borrower being subordinated to the payment of the Subordinated Obligations (other than Reorganization Debt Securities), shall be paid by the liquidating trustee, receiver, trustee in bankruptcy, or other Person making such payment or distribution directly to the Senior Parties (or to such agent(s) of the Senior Parties as they may from time to time designate in writing to the Subordinated Parties), to the extent necessary to make full and final payment in cash of all Senior Obligations, whether or not then otherwise due and payable, after giving effect to any concurrent payment or distribution to the Senior Parties, before any Subordinated Party shall be entitled to receive any payment or distribution on account of any Subordinated Obligation.

Section 4 Payment to Senior Parties of Certain Amounts Received by Subordinated Party. In the event that, notwithstanding the provisions of these Terms of Subordination, any Subordinated Party on account or in respect of the Subordinated Obligations receives, before the Termination Date, any payment or distribution of assets of the Borrower or by or on behalf of the Borrower of any kind or character, whether in cash, property, securities (other than Reorganization Debt Securities) or other assets (other than any such payment or distribution made in accordance with the proviso to the first paragraph of Section 2 above), including without limitation any such payment or distribution arising out of the exercise by any Subordinated Party of a right of set-off or counterclaim and any such payment or distribution received by reason of

Exhibit G-3

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any other Indebtedness of the Borrower being subordinated to the Subordinated Obligations, then, and in such event, such payment or distribution shall be held by the recipient thereof in trust (as property of the Senior Parties) for the benefit of, and shall immediately upon receipt be paid over or delivered to, the Collateral Agent, in precisely the form received, for application to the Senior Obligations in accordance with the terms of the Loan Documents.

Section 5 Authorizations to the Senior Parties.

Each Subordinated Party:

(a) irrevocably authorizes and empowers (but without imposing any obligation on) the Senior Parties (or such agent(s) thereof as they may from time to time designate) to demand, sue for, collect, receive and provide a receipt for all payments and distributions on or in respect of its Subordinated Obligations (including all payments and distributions which may be payable or deliverable pursuant to the terms of any Indebtedness subordinated to the Subordinated Obligations (other than Reorganization Debt Securities)) that are required to be paid or delivered to the Senior Parties (or any such agent(s) thereof) as provided herein, and to file proofs of claim and otherwise prove all claims therefor and take all such other action, in the name of such Subordinated Party or otherwise, as the Senior Parties (or such agent(s) thereof as they may from time to time designate) may determine to be necessary or appropriate for the enforcement of these Terms of Subordination; provided that no Senior Party or representative thereof shall file claims or proofs of claim with respect to the Subordinated Obligations (and any such Indebtedness subordinated to the Subordinated Obligations (other than Reorganization Debt Securities)) in any Proceeding unless the Subordinated Party shall have failed to file such claims or proofs of claim, in form and substance satisfactory to the Senior Parties, at least 30 days prior to the deadline for any such filing; and

(b) irrevocably authorizes and empowers (but without imposing any obligation on) the Senior Parties (or such agent(s) thereof as they may from time to time designate) to vote the Subordinated Obligations (and any such Indebtedness subordinated to the Subordinated Obligations (other than Reorganization Debt Securities)), including to vote the same in connection with any resolution, arrangement, plan of reorganization, compromise, settlement or extension or any other matter which may come before any meeting of creditors of the Borrower generally or in connection with, or in anticipation of, any insolvency or bankruptcy case or Proceeding, or any proceeding under any laws relating to the relief of debtors, in such manner as the Senior Parties (or any such agent(s) thereof) shall determine appropriate in their sole discretion; and

(c) agrees to execute and deliver to the Senior Parties (or such agent(s) thereof as they may from time to time designate in writing) all such further instruments confirming the above authorizations, and all such powers of attorney, proofs of claim, assignments of claim and other instruments, and to take all such other action as may be requested by the Senior Parties (or any such agent(s) thereof) in order to enable the Senior Parties (or any such agent(s) thereof) to enforce all claims upon or in respect of the Subordinated Obligations; and

Exhibit G-4

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(d) irrevocably waives (in its capacity as a holder of Subordinated Obligations) all rights in a Proceeding to object to, vote against, oppose or otherwise interfere with: (i) any plan of reorganization filed in such case with the support of the Senior Parties or (ii) any motion, stipulation, or complaint filed in such case with the support of the Senior Parties;

(e) irrevocably authorizes and empowers the Senior Parties (or such agent(s) thereof as they may designate from time to time) on its behalf to take such action as may be necessary or appropriate to effectuate these Terms of Subordination; and

(f) agrees to, if requested by the Collateral Agent or the Senior Parties, pledge its interest in the Subordinated Obligations owed to it pursuant to a pledge agreement with substantially similar pledge terms to those provided by the Pledgor in the Pledge Agreement (but excluding the limited purpose covenant obligations of the Pledgor).

Section 6 No Payment. Each Subordinated Party hereby agrees that, until the Termination Date: (a) no payment whatsoever on account of any of the Subordinated Obligations or any judgment with respect thereto (and no payment on account of the purchase or redemption or other acquisition of the Subordinated Obligations) shall be made by or on behalf of the Borrower; and (b) no Subordinated Party shall: (i) ask, demand, sue for, take or receive from the Borrower, by set-off or in any other manner, payment of any of the Subordinated Obligations; or (ii) commence or join with any other creditor or creditors of the Borrower in commencing any Proceedings against the Borrower, any Relevant Party or any shareholder thereof or seek any other remedy allowed at law or in equity against the Borrower for breach of the Borrower's obligations under the instruments evidencing or representing any Subordinated Obligations; provided, that nothing herein shall be deemed to prohibit any payment of any of the Subordinated Obligations made in accordance with the proviso to the first paragraph of Section 2 hereof.

In the event that, notwithstanding the provisions of this Section 6, any Subordinated Party shall have received any payment or security prohibited by the provisions of this Section 6, including any such payment arising out of the exercise by any Subordinated Party of a right of set-off or counterclaim or any such payment received by reason of other Indebtedness of the Borrower being subordinated to the Subordinated Obligations, then, and in any such event, the provisions of Section 4 above shall apply.

The provisions of this Section 6 shall not alter the rights of the Senior Parties under the provisions of Section 3 hereof or otherwise.

Section 7 Provisions Solely to Define Relative Rights. The provisions of these Terms of Subordination are intended solely for the purpose of defining the relative rights of the Subordinated Parties, on the one hand, and the Senior Parties, on the other hand. Nothing contained in these Terms of Subordination relating to the Subordinated Obligations is intended to or shall:

(a) impair, as among the Borrower, its creditors other than the Senior Parties, and the Subordinated Parties, the obligation of the Borrower, which is absolute and

Exhibit G-5

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unconditional, to pay to the Subordinated Parties (subject to the rights of the Senior Parties) the Subordinated Obligations as and when the same shall become due and payable in accordance with their terms; or

(b) affect the relative rights of the Subordinated Parties and creditors of the Borrower other than the Senior Parties; or

(c) vitiate or otherwise affect the occurrence of a default in respect of the Subordinated Obligations to the extent that any failure to make a payment of any Subordinated Obligation by reason of these Terms of Subordination would otherwise constitute such a default; or

(d) prevent any of the Subordinated Parties from exercising all remedies otherwise permitted by applicable law upon default in respect of the Subordinated Obligations, subject to the rights, if any, of the Senior Parties under these Terms of Subordination to receive the cash, property, securities or other assets of the Borrower received upon the exercise of any such remedy.

Section 8 Waivers; No Waiver of Subordination Provisions.

(a) Specific Performance. The Senior Parties are hereby authorized to demand specific performance of the undertakings set out in these Terms of Subordination, whether or not the Borrower shall have complied with the provisions hereof applicable to it, at any time when any of the Subordinated Parties shall have failed to comply with any provision hereof applicable to it.

(b) Waiver by Subordinated Party. Each Subordinated Party hereby irrevocably waives any defense based on the adequacy of a remedy at law which might be asserted as a bar to the remedy of specific performance hereof in any action brought therefor by the Senior Parties. Each Subordinated Party further waives presentment, notice and protest in connection with all negotiable instruments evidencing Senior Obligations or Subordinated Obligations to which the Subordinated Parties may be a party, notice of the acceptance of these Terms of Subordination by any Senior Party, notice of any loan made, extension granted or other action taken in reliance hereon, all demands and notices of every kind in connection with these Terms of Subordination, the Senior Obligations or the time of payment of Senior Obligations or Subordinated Obligations and any requirement that any Senior Party protect, secure, perfect or insure any Lien or any property subject thereto or exhaust any right or take any action against the Borrower or any other Person or any collateral.

(c) No impairment of Rights of Senior Parties.

- (i) No right of any Senior Party to enforce subordination as herein provided shall at any time in any way be prejudiced, impaired or waived by any act or failure to act on the part of the Borrower or any Subordinated Party or by any act or failure to act or any delay in exercising any right, remedy or power hereunder by any Senior

Exhibit G-6

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Party, or by any non-compliance by the Borrower or any Subordinated Party with the terms, provisions and covenants of these Terms of Subordination, regardless of any knowledge thereof any Senior Party may have or otherwise be charged with. Each and every right, remedy and power hereby granted to the Senior Parties or allowed to the Senior Parties by law or other agreements shall be cumulative and not exclusive of any other rights, remedies or powers that the Senior Parties might otherwise have, and may be exercised by the Senior Parties from time to time.

- (ii) Without in any way limiting the generality of the foregoing paragraph, the occurrence of any one or more of the following (with or without the consent of or notice to any Subordinated Party), shall not cause any Senior Party to incur any obligation to any Subordinated Party and shall not impair or release the subordination provided in these Terms of Subordination or the obligations hereunder of any Subordinated Party to the Senior Parties, even if any right of reimbursement or subrogation or other right or remedy of the Subordinated Parties is extinguished, affected or impaired thereby:
- (A) at any time or from time to time, the time for any performance of or compliance with any Subordinated Obligation or any Senior Obligation shall be extended, or such performance or compliance shall be waived;
  - (B) the terms, covenants or obligations relating to any Senior Obligation are in any way amended, modified or supplemented (including pursuant to any amendment, modification or supplement to any Loan Document or any document or instrument relating to any of the foregoing);
  - (C) the maturity of any Subordinated Obligation or any Senior Obligation shall be accelerated, or any Subordinated Obligation shall be modified, supplemented or amended in any respect (regardless of whether the consent of the Senior Parties shall be given pursuant to Section 9 below);
  - (D) any Lien or guarantee shall be granted to, or in favor of, any Senior Party as security for any Senior Obligation (regardless of whether any such Lien shall be perfected or whether any such guarantee shall be valid or shall at any time be released); any Lien shall be granted to, or in favor of, any Subordinated Party as security for any Subordinated Obligation (regardless of whether any such Lien shall be perfected);

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- (E) the assignment or transfer of any Senior Party ' s rights under or interest in any Senior Obligation; or any other circumstance which might otherwise constitute a defense available to, or a discharge of, the Borrower or any Subordinated Party.
- (iii) Without in any way limiting the generality of the foregoing paragraph (ii), any Senior Party may, at any time and from time to time, without the consent of or notice to the Subordinated Parties, without incurring any obligation to the Subordinated Parties, and without impairing or releasing the subordination provided herein or the obligations hereunder of the Subordinated Parties, do any one or more of the following, even if any right of reimbursement or subrogation or other right or remedy of the Subordinated Parties is extinguished, affected or impaired thereby:
  - (A) change the manner, place or terms of payment of or extend the time of payment of, or renew or alter, Senior Obligations owed to it or any collateral security or guarantee therefor, or otherwise amend or supplement in any manner, or enter into any compromise or settlement in respect of, the Senior Obligations owed to it or any instrument evidencing the same or any agreement under which any Senior Obligations owed to them are outstanding;
  - (B) sell, exchange, release, enforce, delay in enforcing, or otherwise deal with any property pledged, mortgaged or otherwise securing any Senior Obligations owed to it;
  - (C) release any Person liable in any manner for any Senior Obligations owed to it (including any guarantor thereof); and
  - (D) exercise or refrain from exercising any rights against the Borrower and any other Person.

(d) Waiver of Notice. Each Subordinated Party unconditionally waives notice of the incurring of any Senior Obligations or any part thereof.

Section 9 Certain Agreements Relating to Subordinated Obligations. Each Subordinated Party hereby agrees that it will not, without the prior written consent of the Senior Parties, amend, modify, supplement or otherwise alter any Subordinated Obligation or any document or instrument relating thereto.

Section 10 Reinstatement. The obligations of the Subordinated Parties under these Terms of Subordination shall continue to be effective, or be reinstated, as the case may be, if at

Exhibit G-8

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any time any payment in respect of any Senior Obligations, or any other payment to any Senior Party in its capacity as such, is rescinded or must otherwise be restored or returned by the holder of such Senior Obligations upon the occurrence of any Proceeding, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any substantial part of its property, or otherwise, all as though such payment had not been made.

Section 11 Bankruptcy. These Terms of Subordination shall remain in full force and effect as between the Subordinated Parties and Senior Parties notwithstanding the occurrence of any Proceeding affecting the Borrower.

Section 12 Rights Acquired by Virtue of Subrogation. Subject to, and only after, the occurrence of the Termination Date and subject to the final sentence of this paragraph, the Subordinated Parties shall be subrogated (equally and ratably with the holders of all Indebtedness of the Borrower that by its express terms is subordinated to the Senior Obligations to the same extent as the Subordinated Obligations are subordinated thereto and that is entitled to like rights of subrogation) to the rights of the Senior Parties to receive payments and distributions of cash, property and securities applicable to the Senior Obligations until the principal of, and interest and premium (if any) on, the Subordinated Obligations shall be paid in full in cash. No payment or distribution to the Senior Parties pursuant to these Terms of Subordination shall entitle the Subordinated Parties to exercise any rights acquired directly or indirectly by virtue of assignment, subrogation or otherwise in respect of the Subordinated Obligations prior to the Termination Date.

Section 13 Amendments. Notwithstanding anything to the contrary in these Terms of Subordination or any agreement into which they are incorporated, these Terms of Subordination may be waived, modified, amended or otherwise changed only by a written agreement signed by the parties hereto and all of the Senior Parties.

Section 14 Submission to Jurisdiction; Waivers. Each Subordinated Party and each Senior Party hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to the Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the courts of the State of New York, the courts of the United States for the Southern District of New York, and appellate courts from any thereof; and

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient court and agrees not to plead or claim the same.

Section 15 WAIVERS OF JURY TRIAL. EACH SUBORDINATED PARTY AND EACH SENIOR PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO

Exhibit G-9

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THESE TERMS OF SUBORDINATION OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH SUBORDINATED PARTY AND EACH SENIOR PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THESE TERMS OF SUBORDINATION BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 16 Notices. All notices, requests, consents and demands hereunder shall be in writing and telecopied or delivered to the intended recipient as specified in Section 12.02 ( *Notices* ) of the Loan Agreement or, if such recipient is not party to the Loan Agreement, at the "Address for Notices" specified beneath its name on the signature pages to the agreement containing these Terms of Subordination or, as to any party, at such other address as shall be designated by such party in a notice to each other party. Except as otherwise provided in these Terms of Subordination, all such communications shall be deemed to have been duly given when transmitted by telecopier or personally delivered or, in the case of a mailed notice, upon receipt, in each case given or addressed as aforesaid.

Section 17 Governing Law. These Terms of Subordination, and the rights and obligations of the parties under these Terms of Subordination, shall be governed by, and construed and interpreted in accordance with, the law of the State of New York without regard to the conflicts of law rules thereof that would require the application of the law of another jurisdiction.

Exhibit G-10

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Exhibit H

Form of Officer's Certificate

OFFICER'S CERTIFICATE

January 5, 2017

The undersigned Authorized Officer of Vivint Solar Financing II, LLC, a Delaware limited liability company ("Borrower"), hereby delivers this Officer's Certificate pursuant to Sections 6.01(a)(iii), 6.01(a)(v), and 6.01(a)(x) of that certain Fixed Rate Loan Agreement, dated as of the date hereof ("Loan Agreement"), among the Borrower, the financial institutions as lenders from time to time party thereto (each individually a "Lender" and, collectively, the "Lenders"), and Wells Fargo Bank, National Association, as administrative agent for the Lenders (in such capacity, and together with its successors and permitted assigns, the "Administrative Agent"). Capitalized terms used herein which are not otherwise defined herein shall have the meanings assigned to such terms in the Loan Agreement.

The undersigned hereby certifies as of the date hereof as an Authorized Officer on behalf of the Borrower and not in such person's individual capacity that:

1. Attached hereto as Annex A are true, correct and complete copies of all consents, licenses and approvals required from any third party (including a Tax Equity Member) or Governmental Authority in connection with the Loans and the guarantees given by the Loan Parties, the granting of the Liens under the Collateral Documents, the consummation of the Closing Date Assignments and the execution, delivery and performance of this Agreement and the other Transaction Documents and the validity against each Relevant Party of the Loan Documents to which it is a party. Such consents, licenses and approvals are in full force and effect and not subject to appeal.
2. The conditions specified in Sections 6.01(j) (*Representations and Warranties*), 6.01(k) (*No Action by Governmental Authority*), 6.01(l) (*No Default or Event of Default*), 6.01(o) (*Closing Date Assignments*), and 6.01(p) (*SREC Transactions*) of the Loan Agreement have been satisfied.
3. (a) After giving effect to the issuance of the Loans (and the use of proceeds thereof), the fair saleable value of the Assets of the Borrower and the Subsidiaries, taken as a whole, exceeds and will, immediately following the making of any Loans, exceed such Persons' total liabilities, including, without limitation, subordinated, unliquidated, disputed and contingent obligations; (b) the fair saleable value of Assets of the Borrower and the Subsidiaries, taken as a whole, is and will, immediately following the making of any Loans (and the use of proceeds thereof), be greater than such Persons' probable liabilities, including the maximum amount of its contingent obligations on its debts as such debts become absolute and matured; (c) the Assets of the Borrower and the Subsidiaries, taken as a whole, do not and, immediately following the making of any Loans (and the use of proceeds thereof) will not, constitute unreasonably small capital to carry out the business of such Persons as conducted or as proposed to be conducted; and (d) the Borrower does not intend for it or any

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Subsidiary to, and does not believe that any such Person will, incur Indebtedness and liabilities beyond its ability to pay such Indebtedness and liabilities as they mature (taking into account the timing and amounts of cash to be received by the Borrower and the amounts to be payable on or in respect of obligations of the Borrower).

4. No Provider Event, Manager Event or Lessor Default has occurred and is continuing;
5. There has been no event or circumstances since December 31, 2015 that has had or could reasonably be expected to have a Material Adverse Effect;
6. (a) Each copy of each Portfolio Document provided to the Administrative Agent and Lenders is a true, correct and complete copy of such document (and includes all schedules, exhibits, attachments, supplements and amendments thereto and any related protocols or side letters); (b) each such Portfolio Document (i) has been duly executed and delivered by the Sponsor and each Relevant Party party thereto and, to the knowledge of the Borrower, the other parties thereto, (ii) is in full force and effect and is enforceable against the Sponsor and each Relevant Party party thereto and, to the knowledge of the Borrower, each other party thereto as of such date; (c) neither the Sponsor nor any Relevant Party party thereto nor, to the knowledge of the Borrower, any other party to such Portfolio Document is or, but for the passage of time or giving of notice or both, will be in breach of any material obligation under a Portfolio Document, except that a could not reasonably be expected, in the aggregate across all Portfolio Documents, to have a Material Adverse Effect; (d) no Portfolio Document has an event of force majeure existing that hereunder except solely with respect to the Project Documents, where such event of force majeure (itself or when coupled with other events of force majeure under such Project Documents) could not reasonably be expected to have a Material Adverse Effect; (e) to the knowledge of the Borrower, the warranties for all equipment comprising, and used in the installation of, the Projects are in full force and effect, except as could not reasonably be expected, in the aggregate across all Portfolio Documents, to have a Material Adverse Effect; (f) to the knowledge of the Borrower, no condemnation is pending or threatened, and no unpaired casualty exists, with respect to any of the Projects in the Project Pool, except as could not reasonably be expected, in the aggregate across all such Projects, to have a Material Adverse Effect; and (g) all conditions precedent to the effectiveness of such Portfolio Documents have been satisfied or waived in writing;
7. Attached hereto as Annex B are the true, correct and complete copies of the (a) audited Financial Statements of Sponsor for the fiscal year 2015 and (b) audited Financial Statement of each Fund for the fiscal year 2015, and in each case such Financial Statements have been prepared in accordance with GAAP.
8. Each Customer Agreement in respect of each Project in the Project Pool is in the form of one of the customer agreements attached hereto as Annex C (subject, in respect of Exempt Customer Agreements, to Payment Facilitation Agreements).
9. No action or proceeding has been instituted or threatened in writing by any Governmental Authority against any Relevant Party that seeks to impair, restrain prohibit or invalidate the transactions contemplated by the Loan Agreement and

Exhibit H-2

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- the other Loan Documents or regarding the effectiveness or validity of any required Permits.
10. No Default or Event of Default exists, or would result from the borrowing of the Loans or from the application of the proceeds thereof.
  11. All warranties relating to the Projects in the Project Pool inure to the benefit of, and (other than with respect to those manufacturer warranties that are no longer being honored by the relevant manufacturer with respect to all customers generally) are enforceable by, the relevant Subsidiary or the Lessee, subject to bankruptcy, insolvency, moratorium, reorganization and other similar Laws affecting creditor's rights.

*[remainder of page intentionally blank]*

Exhibit H-3

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IN WITNESS WHEREOF, the undersigned Authorized Officer has executed and delivered this Officer ' s Certificate and caused it to be delivered as of the date first written above.

**VIVINT SOLAR FINANCING III, LLC**

By:  
Name: Thomas Plagemann  
Title:

Exhibit H-4

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

Annex A

Consents, Licenses and Approvals

[To be attached.]

Exhibit H-5

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

Annex B

Financial Statements

[To be attached]

Exhibit H-6

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

Annex C

Form of Customer Agreements

[Forms of Customer Agreements that were previously diligenced by Milbank to be attached]

Exhibit H-7

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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## Exhibit I

### Form of Scheduled Payment Date Report

#### SCHEDULED PAYMENT DATE REPORT

[\_\_\_\_], 20[\_\_\_] 15

[\_\_\_\_]

Re: Vivint Solar Financing III, LLC

Ladies and Gentlemen:

This Scheduled Payment Date Report (this “Scheduled Payment Date Report”) is delivered to you pursuant to Section 8.01(a)(v) ( *Scheduled Payment Date Report* ) of that certain Fixed Rate Loan Agreement, dated as of January 5, 2017 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Loan Agreement”), among Vivint Solar Financing III, LLC, a Delaware limited liability company (the “Borrower”), the financial institutions as Lenders from time to time party thereto (each individually a “Lender” and, collectively, the “Lenders”) and Wells Fargo Bank National Association, as administrative agent for the Lenders (in such capacity, and together with its successors and permitted assigns, the “Administrative Agent”). Capitalized terms used herein and not otherwise defined herein have the meanings given to them in the Loan Agreement.

This Scheduled Payment Date Report is delivered in respect of the Scheduled Payment Date to occur on [\_\_\_\_], 20[\_\_\_] (the “Scheduled Payment Date”).

The Borrower hereby certifies to the Administrative Agent as follows:

1. attached hereto as Appendix A is a report in reasonable detail on the principal and interest payable on the Scheduled Payment Date and each other withdrawal and payment made, or to be made, from the Collateral Accounts during the quarter ending on the Scheduled Payment Date;
2. attached hereto as Appendix B are the Borrower’s good faith, reasonable and detailed calculation calculations showing (i) the Historical Debt Service Coverage Ratio for the Rolling Period ending on the Scheduled Payment Date and (ii) the Projected Debt Service Coverage Ratio for the subsequent Rolling Period commencing on the day following the Scheduled Payment Date;
3. [attached hereto as Appendix C is a report on net cash proceeds or other amounts required to be shown pursuant to Section 3.04(h) ( *Mandatory Prepayments* ) of the Loan Agreement;] and
4. attached hereto as Appendix D are (i) a comprehensive report of each Eligible Project that became the subject of an Ineligibility Event, Payment Facilitation Event or a Revenue Termination Event occurring during the quarterly period ending on the Scheduled Payment Date and (ii) the Borrower’s good faith, detailed calculation of (x) the aggregate Ineligibility Amount, Payment Facilitation Amount and Revenue Termination Amount accrued during the applicable calendar quarter and all prior calendar quarters, (y) whether a Cumulative Loss Event will have occurred on the Scheduled Payment Date (including tracking of the reduction in Portfolio Value resulting from or attributable to each Ineligibility Event occurring since the Closing Date against

To be delivered at least 3 Business Days before the applicable Scheduled Payment Date.

Exhibit I-1

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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the amount of such reduction in Portfolio Value projected to occur under the Base Case Model from each Ineligibility Event) and (z) any Ineligible Project Prepayment, Payment Facilitation Prepayment or Revenue Termination Amount due and payable on the Scheduled Payment Date.

*[remainder of page intentionally blank]*

Exhibit I-2

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

IN WITNESS WHEREOF, the Borrower has caused this Scheduled Payment Date Report to be duly executed and delivered as of the date first written above.

**BORROWER:**

**VIVINT SOLAR FINANCING III, LLC**

By:  
Name:  
Title:

Exhibit I-3

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

**Appendix A to Scheduled Payment Date Report**

Report on Principal and Interest

[To be attached]

Exhibit I-4

[\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

**Appendix B to Scheduled Payment Date Report**

Debt Service Coverage Ratio Calculations

[To be attached]

Exhibit I-5

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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**[Appendix C to Scheduled Payment Date Report**

Report on Net Cash Proceeds or Other Amounts]

[To be attached]

Exhibit I-6

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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**Appendix D to Scheduled Payment Date Report**

Report of Eligible Project and Calculations of the Ineligibility Amount, Payment Facilitation Amount and Revenue Termination Amount

[To be attached]

Exhibit I-7

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

**Exhibit J**

**Forms of Financial Statement Certificate**

OFFICER'S CERTIFICATE

[ ], 20[ ]

The undersigned officer of Vivint Solar Financing III, LLC, a Delaware limited liability company (“Borrower”), hereby delivers this Officer’s Certificate pursuant to that certain Fixed Rate Loan Agreement, dated as of January 5, 2017 (“Loan Agreement”), among the Borrower, the financial institutions as Lenders from time to time party thereto (each individually a “Lender” and, collectively, the “Lenders”) and Wells Fargo Bank, National Association, as Administrative Agent for the Lenders (in such capacity, and together with its successors and permitted assigns, the “Administrative Agent”). Capitalized terms used herein which are not otherwise defined herein shall have the meanings assigned to such terms in the Loan Agreement.

The undersigned hereby certifies as of the date hereof on behalf of the Borrower and each Fund and not in such person’s individual capacity that the [audited Financial Statements of Sponsor, the Borrower and each Fund for the fiscal year ended [ ],] [unaudited Financial Statements of each of the Borrower and each Fund for the fiscal quarter ended [ ]], provided to the Administrative Agent pursuant to Section 8.01(a)[(i) ( *Annual Reporting* )] [(ii) ( *Quarterly Reporting* )] of the Loan Agreement, fairly present the financial condition and results of operations of the [Sponsor and] the applicable Relevant Party on a consolidated basis for the period covered thereby in accordance with GAAP (subject, in the case of any such unaudited Financial Statements, to changes resulting from audit and normal year-end adjustments, including the absence of footnotes and subject to validation of individual Subsidiary capital accounts in calculating net loss attributable to noncontrolling interests in conformity with GAAP).

*[remainder of page intentionally blank]*

Exhibit J-1

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

IN WITNESS WHEREOF, the undersigned has executed and delivered this Officer ' s Certificate and caused it to be delivered as of the date first written above.

**VIVINT SOLAR FINANCING III, LLC**

By:  
Name:  
Title:

Exhibit J-2

[\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

**Exhibit K**  
**Initial Budget**

(See attached)

Exhibit K

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

**Exhibit L**

**Form of Base Case Model**

(See attached)

Exhibit L

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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**Exhibit M**  
**Form of Manager's Report**

(See attached)

Exhibit M

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

**Exhibit N**  
**Form of ITC Insurance Policy**

[To be attached]

Exhibit N

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

**Exhibit O-1**

**Form of U.S. Tax Compliance Certificate**

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Not Partnerships for U.S. Federal Income Tax Purposes)

Reference is made to that certain Fixed Rate Loan Agreement, dated as of January 5, 2017 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Loan Agreement”), among Vivint Solar Financing III, LLC (the “Borrower”), the financial institutions as Lenders from time to time party thereto (each individually a “Lender” and, collectively, the “Lenders”) and Wells Fargo Bank, National Association, as administrative agent for the Lenders (in such capacity, and together with its successors and permitted assigns, the “Administrative Agent”). Capitalized terms used herein and not otherwise defined herein have the meanings given to them in the Loan Agreement.

Pursuant to the provisions of Section 5.02(e) ( *Status of Lenders; Tax Documentation* ) of the Loan Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower (or any Person from whom the Borrower is disregarded for U.S. federal income tax purposes) within the meaning of Section 881(c)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to the Borrower (or any Person from whom the Borrower is disregarded for U.S. federal income tax purposes) as described in Section 881(c)(3)(C) of the Code. The undersigned has furnished the Administrative Agent and the Borrower with a withholding certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E (whichever is applicable). By executing this withholding certificate, the undersigned agrees that (1) if the information provided on this withholding certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent and shall provide them with a new withholding certificate with the correct information, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective IRS Form W-8BEN or IRS Form W-8BEN-E (whichever is applicable) in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]

By:

Name:

Title:

Date: \_\_\_\_\_, 20\_\_

Exhibit O-1-1

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

**Exhibit O-2**

**Form of U.S. Tax Compliance Certificate**

U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Not Partnerships for U.S. Federal Income Tax Purposes)

Reference is made to that certain Fixed Rate Loan Agreement, dated as of January 5, 2017 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Loan Agreement”), among Vivint Solar Financing III, LLC (the “Borrower”), the financial institutions as Lenders from time to time party thereto (each individually a “Lender” and, collectively, the “Lenders”) and Wells Fargo Bank, National Association, as administrative agent for the Lenders (in such capacity, and together with its successors and permitted assigns, the “Administrative Agent”). Capitalized terms used herein and not otherwise defined herein have the meanings given to them in the Loan Agreement.

Pursuant to the provisions of Section 5.02(e) ( *Status of Lenders; Tax Documentation* ) of the Loan Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower (or any Person from whom the Borrower is disregarded for U.S. federal income tax purposes) within the meaning of Section 881(c)(3)(B) of the Code, and (iv) it is not a controlled foreign corporation related to the Borrower (or any Person from whom the Borrower is disregarded for U.S. federal income tax purposes) as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a withholding certificate of its non-U.S. Person status on IRS Form W-8BEN or IRS Form W-8BEN-E (whichever is applicable). By executing this withholding certificate, the undersigned agrees that (1) if the information provided on this withholding certificate changes, the undersigned shall promptly so inform such Lender in writing and shall provide it with a new withholding certificate with the correct information, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective IRS Form W-8BEN or IRS Form W-8BEN-E (whichever is applicable) in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF PARTICIPANTS]

By:

Name:

Title:

Date: \_\_\_\_\_, 20\_\_

Exhibit O-2-1

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

### Exhibit O-3

## Form of U.S. Tax Compliance Certificate

### U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Participants That Are Partnerships for U.S. Federal Income Tax Purposes)

Reference is made to that certain Fixed Rate Loan Agreement, dated as of January 5, 2017 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Loan Agreement”), among Vivint Solar Financing III, LLC (the “Borrower”), the financial institutions as Lenders from time to time party thereto (each individually a “Lender” and, collectively, the “Lenders”) and Wells Fargo Bank, National Association, as administrative agent for the Lenders (in such capacity, and together with its successors and permitted assigns, the “Administrative Agent”). Capitalized terms used herein and not otherwise defined herein have the meanings given to them in the Loan Agreement.

Pursuant to the provisions of Section 5.02(e) ( *Status of Lenders; Tax Documentation* ) of the Loan Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect to such participation, neither the undersigned nor any of its direct or indirect partners/members that are claiming the portfolio interest exemption is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower (or any Person from whom the Borrower is disregarded for U.S. federal income tax purposes) within the meaning of Section 881(c)(3)(B) of the Code, and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower (or any Person from whom the Borrower is disregarded for U.S. federal income tax purposes) as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following withholding certificates from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-8BEN-E (whichever is applicable) or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-8BEN-E (whichever is applicable) from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing its withholding certificate, the undersigned agrees that (1) if the information provided on its withholding certificate changes, the undersigned shall promptly so inform such Lender and shall provide it with a new withholding certificate with such correct information and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective withholding certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF PARTICIPANTS]

By:

Exhibit O-3-1

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

Name:

Title:

Date: \_\_\_\_\_, 20\_\_

Exhibit O-3-2

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

## Exhibit O-4

### Form of U.S. Tax Compliance Certificate

#### U.S. TAX COMPLIANCE CERTIFICATE

(For Foreign Lenders That Are Partnerships for U.S. Federal Income Tax Purposes)

Reference is made to that certain Fixed Rate Loan Agreement, dated as of January 5, 2017 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Loan Agreement”), among Vivint Solar Financing III, LLC (the “Borrower”), the financial institutions as Lenders from time to time party thereto (each individually a “Lender” and, collectively, the “Lenders”) and Wells Fargo Bank, National Association, as administrative agent for the Lenders (in such capacity, and together with its successors and permitted assigns, the “Administrative Agent”). Capitalized terms used herein and not otherwise defined herein have the meanings given to them in the Loan Agreement.

Pursuant to the provisions of Section 5.02(e) ( *Status of Lenders; Tax Documentation* ) of the Loan Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any Note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any Note(s) evidencing such Loan(s)) and (iii) with respect to the extension of credit pursuant to this Loan Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members that are claiming the portfolio interest exemption is (x) a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (y) a ten percent shareholder of the Borrower (or any Person from whom the Borrower is disregarded for U.S. federal income tax purposes) within the meaning of Section 881(c)(3)(B) of the Code or (z) a controlled foreign corporation related to the Borrower (or any Person from whom the Borrower is disregarded for U.S. federal income tax purposes) as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or IRS Form W-BEN-E (whichever is applicable) or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN or IRS Form W-BEN-E (whichever is applicable) from each of such partner’s/member’s beneficial owners that is claiming the portfolio interest exemption. By executing its withholding certificate, the undersigned agrees that (1) if the information provided on its withholding certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent and shall provide them with a new withholding certificate with the correct information, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective withholding certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

[NAME OF LENDER]

Exhibit O-4-1

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

---

By:

Name:

Title:

Date: \_\_\_\_\_, 20\_\_

Exhibit O-4-2

\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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## Annex A

### Fund Representations

With respect to each Fund, the Borrower makes the following Fund Representations as of the Closing Date:

- (a) Each Fund is duly organized, validly existing and in good standing under the Laws of its state of formation. Each Fund has all requisite power and authority to own and operate its Properties, to carry on its businesses as now conducted and proposed to be conducted. Each Fund has all requisite power and authority to enter into each Transaction Document to which it is a party and to perform the terms thereof.
- (b) All of the Tax Equity Documents for each Fund are set forth on Schedule 7.22(a) ( *Portfolio Documents* ), and true, complete and correct copies of all such Tax Equity Documents have been delivered to the Administrative Agent. The Tax Equity Documents for each Fund are in full force and effect. No Fund, Guarantor, Sponsor, Seller, Provider or any other Affiliate of the Borrower and, to the Knowledge of the Borrower, no other party to any Tax Equity Document is in breach of any material obligation thereunder. With respect to each Fund, each Guarantor, Sponsor, Seller, Provider and any other Affiliate of the Borrower and, to the Knowledge of the Borrower, each other party to any Tax Equity Document, no material default or event of default has occurred and is continuing under such Tax Equity Document.
- (c) No loan to any Fund required or permitted to be made under the Limited Liability Company Agreement of such Fund has been made and remains outstanding.
- (d) No Fund has incurred any Indebtedness or other material obligations or liabilities, direct or contingent, other than Permitted Indebtedness.
- (e) Neither the applicable Guarantor nor any Fund is in breach or default under or with respect to any contractual obligation for or with respect to any outstanding amount or amounts payable under such contractual obligation that equals or exceeds \$ \*\*\* individually or \$\*\*\* in the aggregate inclusive of all Guarantors and Funds.
- (f) No Fund maintains any cash reserves that exceed \$ \*\*\* individually or \$\*\*\* in the aggregate, except to the extent required pursuant to the Tax Equity Documents of such Fund.
- (g) Neither the applicable Guarantor nor the Provider, has given or received written notice of an action, claim or threat of removal as managing member or manager, as applicable, under the Limited Liability Company Agreement for such Fund.
- (h) No event has occurred under the Tax Equity Documents in respect of such Fund that would allow the Tax Equity Member of such Fund to remove, or give notice of removal, of the Guarantor or, in the case of Lessee, Provider as the managing member or manager, as applicable, of such Fund.
- (i) To the Knowledge of the Borrower, no Lessee Default has occurred and is continuing.
- (j) No event or circumstance has occurred and is continuing that has resulted or could reasonably be expected to result in or trigger any material limitation, reduction, suspension, withholding or other restriction on distributions to the applicable Guarantor pursuant to the terms of the Tax Equity Documents for such Fund, except as is already reflected in the Base Case Model.

Exhibit O-4-3

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

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(k) There are no threatened in writing or ongoing audits, challenges, or other actions regarding (i) the tax structure, tax basis, tax characterization or tax-related legal compliance of any Fund or any Project owned or leased by any Fund, as applicable, or (ii) any ITC, Grant or other tax benefit or any other incentive claimed, awarded or received (or expected to be claimed, awarded or received) by or to a Fund or with respect to any Project owned or leased by any Fund, as applicable. Any prior audit, challenge or other action regarding the foregoing has been resolved in a manner that is not adverse to any Fund or its direct or indirect owners.

(l) No Tax Equity Member (or any of its Affiliates or employees) has made a claim under any indemnity or otherwise in contract or in tort against a Fund, or a claim under any indemnity or otherwise in contract or in tort against the Sponsor, in each case which remains unpaid.

(m) All preferred return payments and target lessee distributions required to be made on or prior to the Closing Date to any Tax Equity Member pursuant to any Limited Liability Company Agreement or Master Lease Agreement have been made.

(n) All contingent true-up payments required to be made by any Fund or Guarantor pursuant to any Fund Tax Equity Documents have been made. The only Fund with a contingent true-up payment payable by a Fund or Guarantor reasonably expected to come due following the Closing Date is Fund XVIII, and the expected amount that the Borrower reasonably expects would be payable by Fund XVIII Guarantor in respect of such true-up payment is accurately reflected in the Base Case Model.

(o) No "Undrawn Commitment Fees", "Unused Commitment Fees" or "Late Delivery Fees", in each case as defined in the applicable Fund Limited Liability Company Agreement, are required to be paid by any Fund or Guarantor pursuant to any Fund Tax Equity Documents, and no Fund or Guarantor reasonably expects any such fees could become payable in an aggregate amount in excess of \$\*\*\*.

(p) As of the Closing Date, the cash distribution percentages, with respect to distributions to the applicable Guarantors and the Tax Equity Members, for each Fund are accurately reflected in the Base Case Model.

(q) Neither any Guarantor nor any Fund has conducted any business other than the business contemplated by the Portfolio Documents applicable to such Guarantor and such Fund.

Exhibit O-4-4

[\*\*\*] DESIGNATES PORTIONS OF THIS DOCUMENT THAT HAVE BEEN OMITTED PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT AND FILED SEPARATELY WITH THE COMMISSION.

**FIRST AMENDMENT TO LEASE**  
T-Stat One, LLC/Vivint Solar, Inc.

**THIS AMENDMENT** (this “*Amendment*”) is entered into as of the 20<sup>th</sup> day of July, 2015, between **T-STAT ONE, LLC**, a Utah limited liability company (“*Landlord*”), and **VIVINT SOLAR, INC.**, a Delaware corporation (“*Tenant*”). (Landlord and Tenant are referred to in this Amendment collectively as the “*Parties*” and individually as a “*Party*.”)

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Definition—Lease. As used in this Amendment, “*Lease*” means the Lease, dated in the initial paragraph as of August 12, 2014, entered into between Landlord, as landlord, and Tenant, as tenant, and, where applicable, as amended by this Amendment. Any term used in this Amendment that is capitalized but not defined shall have the same meaning as set forth in the Lease.

2. Purpose. The Parties desire to amend the Lease in accordance with the terms and conditions set forth in this Amendment.

3. Lease Definitions. The following definitions in Paragraph 1 of the Lease are revised to read as follows:

“*Basic Monthly Rent*” means the following amounts per calendar month for the periods indicated based on 152,120 rentable square feet, which amounts are subject to adjustment as set forth in the definition of “Premises”; *provided, however*, that if the Commencement Date occurs on a date other than the Projected Commencement Date, then the periods set forth below shall begin on such other date that is the Commencement Date (as memorialized in a certificate entered into between the Parties) and shall shift accordingly in a manner consistent with the definition of “Expiration Date” (with the Expiration Date being on the last day of the relevant month):

	Annual Cost Per	
<u>Periods</u>	<u>Basic Monthly Rent</u>	<u>Rentable Square Foot</u>
February 1, 2016 through June 30, 2016, inclusive	\$ 339,100.83 per month	\$2 6.75
July 1, 2016 through January 31, 2017, inclusive	\$85,567.50 per month	\$6.75
February 1, 2017 through January 31, 2018, inclusive	\$ 339,100.83 per month	\$ 26.75
February 1, 2018 through January 31, 2019, inclusive	\$ 347,594.20 per month	\$ 27.42
February 1, 2019 through January 31, 2020, inclusive	\$ 356,214.33 per month	\$ 28.10

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February 1, 2020 through January 31, 2021, inclusive	\$365,214.77 per month	\$28.81
February 1, 2021 through January 31, 2022, inclusive	\$ 374,341.97 per month	\$ 29.53
February 1, 2022 through January 31, 2023, inclusive	\$ 383,722.70 per month	\$ 30.27
February 1, 2023 through January 31, 2024, inclusive	\$ 393,230.20 per month	\$ 31.02
February 1, 2024 through January 31, 2025, inclusive	\$ 403,118.00 per month	\$ 31.80
February 1, 2025 through January 31, 2026, inclusive	\$ 413,132.52 per month	\$ 32.59
February 1, 2026 through January 31, 2027, inclusive	\$ 423,527.43 per month	\$ 33.41
February 1, 2027 through January 31, 2028, inclusive	\$ 434,049.07 per month	\$ 34.24

*(if the first option to extend set forth in Paragraph 3.3 is exercised)*

February 1, 2028 through January 31, 2029, inclusive	\$ 444,951.00 per month	\$ 35.10
February 1, 2029 through January 31, 2030, inclusive	\$ 456,106.47 per month	\$ 35.98
February 1, 2030 through January 31, 2031, inclusive	\$ 467,515.47 per month	\$ 36.88
February 1, 2031 through January 31, 2032, inclusive	\$ 479,178.00 per month	\$ 37.80
February 1, 2032 through January 31, 2033, inclusive	\$ 491,094.07 per month	\$ 38.74

*(if the second option to extend set forth in Paragraph 3.3 is exercised)*

February 1, 2033 through January 31, 2034, inclusive	\$ 503,390.43 per month	\$ 39.71
February 1, 2034 through	\$ 515,940.33 per month	\$ 40.70

January 31, 2035, inclusive

February 1, 2035 through \$528,870.53 per month \$41.72  
January 31, 2036, inclusive

February 1, 2036 through \$ 542,054.27 per month \$ 42.76  
January 31, 2037, inclusive

February 1, 2037 through \$ 555,618.30 per month \$ 43.83  
January 31, 2038, inclusive

“ **Building** ” means the to-be-constructed building on the land generally shown on the attached Exhibit E, located in Lehi, Utah, which building will contain approximately 136,908 usable square feet and approximately 152,120 rentable square feet, subject to final measurement and verification as set forth in the definition of “Premises”.

“ **Expiration Date** ” means the date that is the last day of the month, twelve (12) years after the later of the following:

(i) the Commencement Date, if the Commencement Date occurs on the first day of a calendar month; or

(ii) the first day of the first full calendar month following the Commencement Date, if the Commencement Date does not occur on the first day of a calendar month,

as such date may be extended or sooner terminated in accordance with this Lease.

“ **Permitted Use** ” means only the following, and no other purpose: general office purposes, including normal and reasonable uses customarily incidental thereto, such as executive, administrative, technical support, customer service, call center, data functions and research and development. In no event may the Premises be used as an executive office suite operation without Landlord’s prior consent.

“ **Premises** ” means all of the usable area of the Building, comprising in the aggregate a total of approximately 136,908 usable square feet and approximately 152,120 rentable square feet, all as shown on Appendix 1 to the attached Exhibit A, subject to final measurement and verification as set forth below in this definition. The Premises do not include, and Landlord reserves, the land and other area beneath the floor of the Premises, the pipes, ducts, conduits, wires, fixtures and equipment above the suspended ceiling of the Premises and the structural elements that serve the Premises or comprise the Building; *provided, however*, that, subject to Paragraphs 9.2 and 17.1, Tenant may, at Tenant’s sole cost and expense, install Tenant’s voice and data lines, wiring, cabling and facilities above the suspended ceiling of the Premises for the conduct by Tenant of business in the Premises for the Permitted Use. Landlord’s reservation includes the right to install, use, inspect, maintain, repair, alter and replace those areas and items and to enter the Premises in order to do so in accordance with and subject to Paragraph 9.3. For all purposes of this Lease, the calculation of usable square feet contained within the Premises and the Building

shall be subject to final measurement and verification by the Architect, at Landlord's sole cost and expense, according to ANSI/BOMA Standard Z65.1-2010 (or any successor standard), and the rentable square feet contained within the Premises and the Building shall be the quotient of the usable square feet so calculated divided by .9. (The immediately preceding sentence shall be the sole and exclusive method used for the measurement and calculation of usable and rentable square feet under this Lease for the Premises and the Building.) On request of Tenant, Landlord shall provide Tenant with a copy of the Architect's verification and certification as to the actual usable and rentable square feet of the Premises prior to the Commencement Date. In the event of a variation between the square footage set forth above in this definition and the square footage set forth in such verification and certification, the Parties shall amend this Lease accordingly to conform to the square footage set forth in such verification and certification, amending each provision that is based on usable or rentable square feet, including, without limitation, Basic Monthly Rent, Security Deposit, Tenant's Parking Stall Allocation, Tenant's Percentage of Operating Expenses and the TI Allowance, and shall appropriately reconcile any payments already made pursuant to those provisions; *provided*, that if the Architect and Tenant's architect disagree on the amount of usable or rentable square feet within the Premises and the Building, and such disagreement is not resolved within ten (10) business days after such measurement and verification is completed by the Architect, such disagreement shall be resolved by an independent, licensed architect mutually selected by the Parties, acting reasonably, the cost of which architect shall be shared equally by the Parties.

***“ Projected Commencement Date ”*** means February 1, 2016; *provided, however*, that if for any reason the Commencement Date has not occurred on or before the Projected Commencement Date, Tenant's sole and exclusive remedy therefor shall be only as expressly set forth in Paragraph 3.2.

***“ Security Deposit ”*** means an amount equal to Basic Monthly Rent for the final calendar month of the initial period constituting the Term (\$434,049.07), which amount is subject to adjustment as set forth in the definition of “Premises”.

***“ Tenant Delay ”*** has the meaning set forth in Paragraph 4 of the attached Exhibit A; *provided, however*, that as of April 20, 2015, there have been no Tenant Delays.

***“ Tenant's Parking Stall Allocation ”*** means seven hundred (700) parking stalls, inclusive of the twenty-four (24) underground, reserved parking stalls described in Paragraph 19.1.

***“ Tenant's Percentage of Operating Expenses ”*** means 100.000 percent, which is the percentage determined by dividing the rentable square feet of the Premises (152,120 rentable square feet) by the rentable square feet of the Building (152,120 rentable square feet) (whether or not leased), multiplying the quotient by 100 and rounding to the third (3<sup>rd</sup>) decimal place, which percentage is subject to adjustment as set forth in the definition of “Premises”.

#### 4. Accounting: Electricity.

4.1. Accounting. The phrase “ to the extent applicable to cash-basis accounting ” contained in the definition of “ Operating Expenses ” in Paragraph 1 of the Lease and in Paragraph 5.3(a) of the Lease is deleted in both places.

4.2. Electricity. Notwithstanding anything contained in the Lease or in this Amendment to the contrary, the cost of all electricity used on the Property shall be paid directly by Tenant to the provider when due, and shall not be part of the Operating Expenses. Inasmuch as Tenant will be paying directly for the costs for any such excess, there will be no extra charge under Paragraph 8.2(a)(i) of the Lease for excess electric current provided to the Premises, and no charge for after-hours lighting as described in Paragraph 8.3 of the Lease. The standard charge for after-hours HVAC shall, as of the Commencement Date, be approximately \$12.50 per hour instead of \$25.00 per hour.

5. Construction Cost Reporting. The following new Paragraph 2.2(c) is added to the Lease:

(c) Prior to the Commencement Date, within four (4) business days after receipt of a request from Tenant, Landlord shall provide to Tenant a cumulative update setting forth all construction cost data for the construction of the Building and such other data as is reasonably requested by Tenant, all of which may be publicly disclosed in Tenant’s financial statements.

6. Security Deposit; Basic Monthly Rent.

(a) Based on the new rentable square footage of the Premises set forth in Paragraph 3 of this Amendment, the amount of the Security Deposit is \$434,049.07. Therefore, concurrently with the execution and delivery of this Amendment, Tenant shall pay to Landlord the sum of \$135,749.07, the additional incremental amount of the Security Deposit, or such greater amount as is necessary to cause the Security Deposit held by Landlord to equal \$434,049.07.

(b) Based on the new rentable square footage of the Premises and the increased initial Basic Monthly Rent amount set forth in Paragraph 3 of this Amendment, the amount of the advance Basic Monthly Rent payment due under Paragraph 4(c) of the Lease is \$339,100.83, none of which has yet been paid by Tenant to Landlord. Therefore, concurrently with the execution and delivery of this Amendment, Tenant shall pay to Landlord the sum of \$339,100.83 as such advance payment.

7. Extension. Paragraph 3.3 of the Lease is deleted in its entirety and is replaced with the following new Paragraph 3.3:

3.3. Extension.

(a) Tenant shall have the option to extend the initial period constituting the Term under this Lease for two (2) additional periods of five (5) years each, provided that Tenant gives Landlord notice of the exercise of each such option on or before the date that is twenty-four (24) months prior to the expiration of the then-existing period constituting the Term, and that at the time each such notice is given and on the commencement of the extension term concerned:

(i) this Lease is in full force and effect;

(ii) no Tenant Default then exists; and

(iii) Tenant has not assigned this Lease or subleased all or any portion of the Premises under any then-existing sublease (excluding any Non-Consent Transfer), and such extension is not being made in connection with or for the purpose of facilitating any such assignment or sublease.

Each such extension term shall commence at 12:01 a.m. on the first day following the expiration of the immediately preceding period constituting the Term.

(b) During each such extension term, all provisions of this Lease shall apply, except for any provision relating to the improvement of the Premises by Landlord or at Landlord's expense.

(c) If Tenant exercises either such option in a timely manner, the Parties shall, within thirty (30) days thereafter, enter into an amendment to this Lease reflecting the new Basic Monthly Rent and the new Expiration Date. If Tenant fails to exercise either such option in a timely manner, the relevant option to extend (and any subsequent option to extend) shall automatically terminate and be of no further force or effect.

8. Rooftop Equipment. Paragraph 3.4 of the Lease is deleted in its entirety and is replaced with the following new Paragraph 3.4:

3.4. Rooftop Equipment. Tenant may, at its sole cost and expense (without charge, other than as contemplated by Paragraph 5 with respect to Operating Expenses), but under Landlord's supervision, install, maintain and from time to time replace, on a nonexclusive basis (meaning that there may be Landlord (but not other tenant) satellite dishes, antenna or equipment on the roof of the Building, but not unsightly, prominent towers that would detract from the Building appearance), one or more solar panels, antennas and other solar and networking equipment solely for Tenant's personal use in the Premises, together with a connection to the Premises (such solar panels, antennas and other solar and networking equipment, together with any lines, wires, conduits or related improvements installed by Tenant in connection therewith, are referred to collectively as the "**Rooftop Equipment**"), with a non-penetrating base on the roof of the Building, in accordance with specifications reasonably approved in advance by Landlord, provided that:

(a) Tenant shall obtain Landlord's prior approval of the proposed location of the Rooftop Equipment and the method for fastening the Rooftop Equipment to the roof;

(b) Tenant shall, at its sole cost and expense, comply with all Laws, the conditions of any bond, warranty or insurance maintained by Landlord on the roof and any applicable requirements of any covenants, conditions and restrictions affecting the Property (whether recorded on or after the date of the Lease);

(c) Tenant shall not interfere with any other Landlord satellite dish, antenna, communication facility or equipment then present on the roof ; and

(d) the Rooftop Equipment shall be within the roof screen walls so as not to be visible from the exterior of the Building.

Tenant shall maintain the Rooftop Equipment at all times in a good, safe and clean condition. Tenant shall repair any damage to the Building caused by Tenant's installation, maintenance, replacement, use or removal of the Rooftop Equipment. The Rooftop Equipment shall remain the property of Tenant during the Term and after Lease end, and Tenant shall, at its sole cost and expense, remove the Rooftop Equipment at Lease end, unless the Parties mutually agree that the Rooftop Equipment is to remain in place and become the sole property of Landlord at Lease end. In such event, at Lease end, the Rooftop Equipment shall be left by Tenant in place, in good condition and working order, and shall become the sole property of Landlord. If the Rooftop Equipment is removed, Tenant shall repair and restore the area(s) of the Building concerned to their condition prior to the installation of the Rooftop Equipment (subject only to normal and reasonable wear and tear that would have occurred absent the installation of the Rooftop Equipment). If a Tenant Default occurs and, as a result, Landlord retakes possession of the Premises (with or without terminating the Lease), or if Tenant fails to remove the Rooftop Equipment at Lease end without the Parties' mutual agreement as set forth above, then Landlord may, at Tenant's sole cost and expense, remove the Rooftop Equipment and repair and restore the area(s) of the Building concerned to their condition prior to the installation of the Rooftop Equipment, and Tenant shall promptly reimburse Landlord for all costs and expenses incurred by Landlord in connection with such removal, repair and restoration and any storage of the Rooftop Equipment. Tenant shall indemnify, defend and hold harmless Landlord from and against all claims, liabilities, losses, damages, costs and expenses, including, without limitation, attorneys' fees and costs, incurred by or asserted against Landlord and arising out of Tenant's installation, maintenance, replacement, use or removal of the Rooftop Equipment.

9. Crown Signage. Paragraph 3.5(g) of the Lease is deleted in its entirety and is replaced with the following new Paragraph 3.5(g):

(g) In connection with the Crown Signage, Tenant shall, at Tenant's sole cost and expense, comply with all Laws, the conditions of any warranty or insurance maintained by Landlord on the Building and any applicable requirements of any covenants, conditions and restrictions affecting the Property. The size, location, design, color and all other aspects and specifications of the Crown Signage must be submitted to, and approved in advance by, Landlord, the applicable municipality and the architectural review committee ("ARC") of Thanksgiving Point prior to the manufacture and installation of the Crown Signage; *provided, however*, that if the size, location, design, color and all other aspects and specifications of the Crown Signage are approved by the applicable municipality and ARC, then Landlord also shall approve the same. All designs and specifications for the Crown Signage must be in full compliance with the signage ordinance of the applicable municipality. Tenant shall be solely responsible for any cleanup, damage or other mishaps that may occur during the installation or removal of the Crown Signage by Tenant and agrees to fully indemnify Landlord for all injuries to

persons or damage to property related thereto. Final, executed releases of lien by all signage and installation companies must be provided by Tenant to Landlord prior to Tenant making final payment to the signage and installation companies.

10. Lease of Additional Building. Paragraph 3.6 of the Lease is deleted in its entirety and is replaced with the following new Paragraph 3.6:

3.6. Lease of Additional Building. Commencing on the full execution and delivery of this Lease and continuing until (but not including) January 1, 2018, and provided that (i) this Lease is in full force and effect, (ii) no Tenant Default then exists, (iii) Tenant has not assigned this Lease or subleased all or any portion of the Premises under any then-existing sublease (excluding any Non-Consent Transfer), (iv) the right of expansion described in this Paragraph 3.6 is not being exercised in connection with or for the purpose of facilitating any such assignment or sublease, and (v) on the request of Landlord's affiliate, Tenant provides to Landlord current financial statements for Tenant, prepared in accordance with generally accepted accounting principles consistently applied and certified by Tenant to be true and correct, demonstrating sufficient Tenant financial strength for such additional space, Tenant may, on written notice given to Landlord prior to January 1, 2018, elect to lease all (but not less than all) of the building (the "**Adjacent Building**") to be constructed by Landlord's affiliate on the approximately 5.85 acres of land (the "**Adjacent Land**") adjacent to the Property, as the Adjacent Land is generally described on the attached Exhibit F. If Tenant makes such election in a timely manner, Tenant and Landlord's affiliate shall reasonably negotiate the terms and conditions of such lease, beginning with the form of this Lease, which shall include, without limitation, the following terms:

(a) the term of such lease shall be at least ten (10) years, with the projected commencement date within twelve (12) months after such lease is fully executed and delivered;

(b) the basic monthly rent on the commencement date of such lease shall be, on a per rentable square foot basis, the same as the Basic Monthly Rent that is payable on such date under this Lease, and shall thereafter increase annually by 2.5% on a cumulative basis;

(c) the tenant improvement allowance for the Adjacent Building shall be \$50.00 per usable square feet;

(d) Landlord's affiliate shall provide a minimum of seven hundred (700) parking stalls for Tenant's use;  
and

(e) the exterior common amenities shall be located just North of the Adjacent Building.

The Adjacent Building shall have substantially the same design, build out and finishes as the Building. If Tenant and Landlord's affiliate are able to agree on the terms and conditions of such lease (other than those set forth above) within thirty (30) days after receipt by Landlord of Tenant's notice of election, Tenant and Landlord's affiliate shall

promptly enter into a new lease prepared by Landlord ' s affiliate in form similar to this Lease, reflecting the agreed on terms and conditions of such lease. If Tenant and Landlord ' s affiliate, after using their best efforts, are unable to agree on the other terms and conditions of such lease within such thirty (30)-day period (as evidenced by the execution and delivery of a new lease), or if Tenant fails to give such notice of exercise to Landlord prior to January 1, 2018 , then such option to lease additional space shall automatically terminate and thereafter cease to have any further force or effect. Landlord represents to Tenant that, as of the date of this Lease, Landlord is an affiliate of the owner of the Adjacent Land, and has the authority to bind Landlord ' s affiliate to the terms of this Paragraph 3.6 . The provisions of this Paragraph 3.6 shall survive the termination of this Lease if, but only if, the lease to Tenant of the entire Thanksgiving Station Building Two is still in full force and effect.

11. Leasing Restriction . The following new Paragraph 3.8 is added to the Lease:

3.8. Protected Business--Restrictions .

(a) Provided that this Lease is in full force and effect and no Tenant Default then exists, then for so long as (but only for so long as) the following two (2) conditions are met (the “ **Conditions** ”):

(1) all of Thanksgiving Station Building One or all of Thanksgiving Station Building Two is actually leased and occupied by Vivint Solar, Inc. or a Non-Consent Transferee; *and*

(2) such occupant is a company specializing in solar power, including, without limitation, solar panel sales and distribution (the “ **Protected Business** ”), then neither Landlord nor Landlord's affiliates shall:

(i) lease premises in the Project to any other company that specializes in the Protected Business; or

(ii) grant rights for signage advertising the Protected Business to be erected in the Project by any person other than Tenant.

(b) If at any time the Conditions are met as to neither (i) all of Thanksgiving Station Building One, nor (ii) all of Thanksgiving Station Building Two, then this Paragraph 3.8 shall automatically terminate and thereafter have no further force or effect.

Except as expressly set forth in this Paragraph 3.8 , there is no other leasing or signage restriction on Landlord or Landlord's affiliates with respect to the Project and no other restriction on other uses or tenants created by this Lease, and no such other restriction may be implied, inferred, construed or deemed to exist.

12. Basic Monthly Rent . Paragraph 4(c) of the Lease is deleted in its entirety and is replaced with the following new Paragraph 4(c) :

(c) In addition to the foregoing, concurrently with its execution and delivery of this Lease, Tenant shall pay to Landlord in advance Basic Monthly Rent for the first full calendar month following the Commencement Date in which full Basic Monthly Rent is payable (that is, \$26.75 per rentable square foot on an annual basis), which shall be applied by Landlord to pay Basic Monthly Rent for such month on the date due.

13. Generator. Paragraph 8.1(c) of the Lease is deleted in its entirety and is replaced with the following new Paragraph 8.1(c):

(c) Tenant may, at its sole cost and expense, install its own backup generator, in which case Tenant shall receive a credit of \$35,000.00 applicable to its TI Allowance. Alternatively, if Tenant elects to connect to the Building backup generator prior to Landlord's commencement of the construction of the Tenant Improvements, such connection shall be made by Landlord for Tenant, at Tenant's sole cost and expense (subject to the TI Allowance), and an additional \$0.50 per rentable square foot of the Premises (on an annual basis) shall be added to any Basic Monthly Rent payable on the Commencement Date.

14. Financial Statements. The last sentence in Paragraph 18.2 of the Lease is deleted in its entirety and is replaced with the following new sentence:

Tenant shall have no obligation to produce financial statements in addition to those, if any, then existing, and shall have no obligation to produce financial statements more often than once in any twelve (12)-month period.

15. Parking. Paragraph 19.1 of the Lease is deleted in its entirety and is replaced with the following new Paragraph 19.1:

19.1. Parking. Parking on the Property is provided generally to tenants of the Building and the adjacent buildings on a non-reserved, first-come-first-served basis. Tenant and Tenant's Occupants shall have the non-exclusive right (together with tenants of the adjacent buildings) without charge, other than as contemplated by Paragraph 5 with respect to Operating Expenses, to use a number of parking stalls located on the Property equal to Tenant's Parking Stall Allocation only, and shall not use a number of parking stalls greater than Tenant's Parking Stall Allocation (excluding *de minimis*, occasional excess use), unless prior consent has been given by Landlord; *provided, however*, that as part of Tenant's Parking Stall Allocation, Landlord shall provide to Tenant, and mark with appropriate signage (at Tenant's cost), a minimum of twenty-four (24) reserved, underground covered parking stalls, with elevator access to all floors of the Building and roll-down security door, at no other additional cost in the parking structure under the Building in a mutually acceptable location. Another parking structure shall be located approximately as shown on the site plan attached as Appendix 1 to the attached Exhibit A, which will be used exclusively by the Building and Thanksgiving Station Building Two.

16. Notices. The notice address for Tenant set forth in Paragraph 22.3 of the Lease is deleted in its entirety and is replaced with the following new notice addresses:

If to Tenant :

Vivint Solar, Inc.  
3301 North Thanksgiving Way, Suite 500  
Lehi, Utah 84043  
Attention: D. Evan Pack  
E-mail: [evan.pack@vivintsolar.com](mailto:evan.pack@vivintsolar.com)

with a required copy to :

Vivint Solar, Inc.  
3301 North Thanksgiving Way, Suite 500  
Lehi, Utah 84043  
Attention: Vivint Solar Legal Department  
E-mail: [solarlegal@vivintsolar.com](mailto:solarlegal@vivintsolar.com)

17. Entire Agreement. The first sentence in Paragraph 22.16 of the Lease is deleted in its entirety and is replaced with the following new sentence:

This Lease (including Exhibits A, B, C, D, E and F (with any Appendixes to Exhibit A)) exclusively encompasses the entire agreement of the Parties, and supersedes all previous negotiations, understandings and agreements between the Parties, whether oral or written, including, without limitation, any oral discussions, letters of intent and email correspondence.

18. Floor Plans and Site Plan. Paragraph 1(a) of Exhibit A attached to the Lease is deleted in its entirety and is replaced with the following new Paragraph 1(a):

(a) Preliminary drawings of the floor plans of the Premises and the site plan of the Property are attached as Appendix 1. The attachment of the site plan of the Property as part of said Appendix 1 is only for the purpose of indicating the approximate location and configuration of improvements to be constructed on the Property (subject in all respects to receipt of approval from Lehi City), and shall have no other purpose or effect, including without limitation, the purpose or effect of constituting any representation, warranty or guaranty whatever of the actual location, design or existence of any improvements shown thereon that are not located on the Property.

19. Base Building Improvements. Paragraph 1(b) of Exhibit A attached to the Lease is deleted in its entirety and is replaced with the following new Paragraph 1(b):

(b) Landlord shall cause the Base Building Improvements (the “ **Base Building Improvements** ”) described on the attached Appendix 2 to be completed in accordance with the plans and specifications (the “ **Building Plans** ”) prepared by Landlord, at Landlord’s cost and expense, and Laws. The Parties shall work together to select an appropriate core/shell architect (the “ **Architect** ”). In addition, Landlord shall seek input from and consult with Tenant regarding the design and layout of the Base Building Improvements, and shall use reasonable efforts to incorporate Tenant’s comments and suggestions in the preparation of the Building Plans so long as such comments and

suggestions do not increase the cost of the Base Building Improvements (unless Tenant agrees to bear such cost , subject to the TI Allowance ). Landlord has, at Landlord's sole cost and expense, engaged RAPT Studios to assist in the design of the Base Building Improvements. Landlord shall, at Tenant ' s sole cost and expense, subject to the TI Allowance, engage RAPT Studios to assist in the design of the Tenant Improvements , unless otherwise agreed by Tenant . The Base Building Improvements shall be made at Landlord ' s sole cost and expense (which shall not be less than \$98.00 per rentable square foot of the Building, inclusive of up to \$100,000.00 of Landlord ' s costs for the Amenities, as defined in paragraph 19 of the attached Appendix 2 , but exclusive of the fees for the preparation of the Building Plans and the fees paid to RAPT Studios), and the cost thereof shall not reduce the TI Allowance, except as provided in Paragraph 2 of this Exhibit and except that any changes, alterations, modifications or upgrades to:

(i) the Base Building Improvements or the Building Plans requested by Tenant and approved by Landlord; or

(ii) the Tenant Improvements or the Tenant Improvement Plans (both defined below) that result in changes, alterations, modifications or upgrades to the Base Building Improvements or the Building Plans,

shall be made at Tenant's sole cost and expense, subject to the TI Allowance.

20. TI Allowance . Paragraph 3(a) of Exhibit A attached to the Lease is deleted in its entirety and is replaced with the following new Paragraph 3(a) :

(a) Landlord shall contribute the amount of \$7,850,000.00 (the "**TI Allowance**") toward the costs incurred for the Tenant Improvements and Change Orders, including, without limitation, painting, carpeting, voice and data cabling, signage, tile, wall covering, light fixtures, plans, permits, insurance and architectural fees (but expressly excluding Tenant's Property); *provided, however*, that if all or any portion of the TI Allowance is not used on or before the date that is one (1) year after the Commencement Date, the TI Allowance or such portion that is not used shall be lost and shall no longer be available to Tenant. In calculating the cost of Tenant Improvements and Change Orders, Landlord shall give Tenant the benefit of any cash, trade and quantity discounts actually received by Landlord.

21. Appendixes . Appendixes 1 and 2 to Exhibit A attached to the Lease are deleted in their entirety and are replaced with the new Appendixes 1 and 2 attached to this Amendment. Appendix 3 to Exhibit A attached to the Lease is deleted in its entirety (and all references to Appendix 3 in the Lease are also deleted).

22. Exhibit B--Rules .

(a) For so long as (but only for so long as) Tenant is the sole occupant of the Building, food trucks serving Tenant's Occupants may be parked on the Property in areas reasonably designated by Tenant, and in such areas, such trucks will not be considered an obstruction prohibited by Paragraph 1 of Exhibit B attached to the Lease. If Tenant is not the sole occupant of the Building, food trucks serving Tenant's Occupants may be parked on the Property only in areas reasonably designated by Landlord, and in

such areas, such trucks will not be considered an obstruction prohibited by Paragraph 1 of Exhibit B attached to the Lease. Notwithstanding the foregoing to the contrary, no food trucks or equipment trucks are permitted on the top deck of the exterior parking structure located on the Property .

(b) Paragraphs 10, 17 and 22 of said Exhibit B are deleted in their entirety.

(c) Paragraph 21 of said Exhibit B is deleted in its entirety and is replaced with the following new Paragraph 21 :

21. Public Areas . Subject to the terms and conditions of the Lease, Landlord may control and operate the Common Areas, in such manner as Landlord reasonably deems best for the benefit of the tenants, consistent with Comparable Buildings, provided that such control and operation shall not unreasonably interfere with Tenant's access to, or use of, the Premises.

23. Exhibit F . Exhibit F attached to the Lease is deleted in its entirety and is replaced with the new Exhibit F attached to this Amendment.

24. LEED Certification . The Building shall be certified Silver or better pursuant to the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED®) building certification program.

25. Signage Restriction . For so long as (but only for so long as) Tenant is the sole tenant within the Project, Landlord shall not erect any pole sign or billboard-type signage within the area shown on Attachment A , incorporated by this reference.

26. Solar Panels . Tenant may, at its sole cost and expense (without charge, other than as contemplated by Paragraph 5 of the Lease with respect to Operating Expenses), but under Landlord's supervision, install, maintain and from time to time replace within the parking area located on the Property one or more solar panels solely for Tenant's personal use in the Premises, together with a connection to the Premises (such solar panels, together with any lines, wires, conduits or related improvements installed by Tenant in connection therewith, are referred to collectively as the "**Solar Panels** "), provided that:

(a) the size, location, design, color and all other aspects of, and the plans and specifications for, the Solar Panels must be submitted to, and approved in advance by, Landlord; and

(b) Tenant shall, at its sole cost and expense, comply with all Laws and any applicable requirements of any covenants, conditions and restrictions affecting the Property (whether recorded on or after the date of the Lease).

Tenant shall maintain the Solar Panels at all times in a good, safe and clean condition. Tenant shall repair any damage to the Property caused by Tenant's installation, maintenance, replacement, use or removal of the Solar Panels. The Solar Panels shall remain the property of Tenant during the Term and after Lease end, and Tenant shall, at its sole cost and expense, remove the Solar Panels at Lease end, unless the Parties mutually agree that the Solar Panels are to remain in place and become the sole property of Landlord at Lease end. In such event, at Lease end, the Solar Panels shall be left by Tenant in place, in good condition and working order, and shall become the sole property of Landlord. If the Solar Panels are removed, Tenant shall repair and restore the area(s) of the Property concerned to their condition prior to the installation of the

Solar Panels ( subject only to normal and reasonable wear and tear that would have occurred absent the installation of the Solar Panels ) . If a Tenant Default occurs and, as a result, Landlord retakes possession of the Premises (with or without terminating the Lease), or if Tenant fails to remove the Solar Panels at Lease end without the Parties' mutual agreement as set forth above , then Landlord may, at Tenant ' s sole cost and expense, remove the Solar Panels and repair and restore the area(s) of the Property concerned to their condition prior to the installation of the Solar Panels , and Tenant shall promptly reimburse Landlord for all costs and expenses incurred by Landlord in connection with such removal, repair and restoration and any storage of the Solar Panels . Tenant shall indemnify, defend and hold harmless Landlord from and against all claims, liabilities, losses, damages, costs and expenses, including, without limitation, attorneys ' fees and costs, incurred by or asserted against Landlord and arising out of Tenant ' s installation, maintenance, replacement, use or removal of the Solar Panels .

27. Enforceability. Each Party represents and warrants that:

- (a) such Party was duly formed and is validly existing and in good standing under the laws of the state of its formation;
- (b) such Party has the requisite power and authority under all applicable laws and its governing documents to execute, deliver and perform its obligations under this Amendment;
- (c) the individual executing this Amendment on behalf of such Party has full power and authority under such Party 's governing documents to execute and deliver this Amendment in the name of, and on behalf of, such Party and to cause such Party to perform its obligations under this Amendment;
- (d) this Amendment has been duly authorized, executed and delivered by such Party; and
- (e) this Amendment is the legal, valid and binding obligation of such Party, and is enforceable against such Party in accordance with its terms.

28. Brokerage Commissions. Except as may be set forth in one or more separate agreements between (i) Landlord and Landlord's broker, or (ii) Landlord or Landlord's broker and Tenant's broker:

- (a) Landlord represents and warrants to Tenant that no claim exists for a brokerage commission, finder 's fee or similar fee in connection with this Amendment based on any agreement made by Landlord; and
- (b) Tenant represents and warrants to Landlord that no claim exists for a brokerage commission, finder 's fee or similar fee in connection with this Amendment based on any agreement made by Tenant.

Landlord shall indemnify, defend and hold harmless Tenant from and against any claim for a brokerage commission, finder's fee or similar fee in connection with this Amendment based on an actual or alleged agreement made by Landlord. Tenant shall indemnify, defend and hold harmless Landlord from and against any claim for a brokerage commission, finder's fee or similar fee in connection with this Amendment based on an actual or alleged agreement made by Tenant.

29. Entire Agreement. The Lease, as amended by this Amendment, exclusively encompasses the entire agreement of the Parties, and supersedes all previous negotiations, understandings and agreements between the Parties, whether oral or written, including, without limitation, any oral discussions, letters of intent and email correspondence. The Parties acknowledge and represent, by their signatures below, that the Parties have not relied on any representation, understanding, information, discussion, assertion, guarantee, warranty, collateral contract or other assurance, except those expressly set forth in the Lease and this Amendment, made by or on behalf of any other Party or any other person whatsoever, prior to the execution of this Amendment. The Parties waive all rights and remedies, at law or in equity, arising or which may arise as the result of a Party's reliance on such representation, understanding, information, discussion, assertion, guarantee, warranty, collateral contract or other assurance.

30. General Provisions. In the event of any conflict between the provisions of the Lease and the provisions of this Amendment, the provisions of this Amendment shall control. Except as set forth in this Amendment, the Lease is ratified and affirmed in its entirety. This Amendment shall inure to the benefit of, and be binding on, the Parties and their respective successors and assigns. This Amendment shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the state of Utah. This Amendment may be executed in any number of duplicate originals or counterparts, each of which when so executed shall constitute in the aggregate but one and the same document. Each exhibit referred to in, and attached to, this Amendment is an integral part of this Amendment and is incorporated in this Amendment by this reference.

*[Remainder of page intentionally left blank; signatures on following page]*

**THE PARTIES** have executed this Amendment on the respective dates set forth below, to be effective as of the date first set forth above.

***LANDLORD :***

**T-STAT ONE, LLC ,**  
a Utah limited liability company

By /s/ Nathan W. Ricks  
Nathan W. Ricks  
Manager

Date 7/20/15

***TENANT :***

**VIVINT SOLAR, INC. ,**  
a Delaware corporation

By /s/ Paul Dickson

Print or Type Name of Signatory:

Paul Dickson

Its

Date 7/20/15

## Appendix 2

### **Base Building Improvements and Tenant Improvements**

#### **Base Building Improvements** **(to be provided at Landlord's sole cost and expense)**

##### General Building Information

1. Code: 2009 International Building Code
2. Jurisdiction: Lehi City and State of Utah
3. Type of Construction: Type IIA, Occupancy Classification B
4. Building Height: 5 Stories + Mechanical Penthouse
5. Fire Sprinklers: Wet Fire Sprinkler system throughout
6. Structural Design: Reinforced concrete walls for the bathroom and elevators cores, wide flange structural steel columns and beams, and lightweight composite concrete floor over metal decking.
7. Floor Live Loads:
  - a) Office and partitions:50 PSF + 20 PSF
  - b) Lobbies and main floor:100 PSF
  - c) Corridors above main floor:80 PSF
  - d) Mechanical rooms:125 PSF
  - e) Concentrated Loads - All Areas:2000 PSF
8. Floor to Floor heights: 13'-10" (structure)
9. Ceiling heights:
  - a) Lobbies and corridors 9'-6" to 11' (finished)
  - b) Tenant Areas 9' to 9'-6" ceilings finished
10. Elevators:

Three high speed, high efficient Otis Gen2 traction elevators servicing all floors including cab finishes .

11. Two exit steel stairways with concrete pans from all floors – painted and finished.

12. Heating, Ventilation and Air Conditioning (HVAC):

- a) Ventilation and cooling is provided by a floor-by-floor Variable Air Volume (VAV) system served by one (1) roof-mounted, air-cooled liquid chiller of 350 tons nominal capacity. Chilled water is circulated through a closed loop vertical plumbing riser to air handlers located in the equipment room on each floor. Supply and return air ducts are extended from the air handler into the lease area and looped around each floor to supply conditioned air to the VAV terminal boxes.
- b) Air conditioning equipment capacity is sized using the following load assumptions: Occupancy load: Average of one person per 175 square feet of usable office space.
- c) Heating: One (1) natural gas-fired boiler of 2 million BTU's, located in the mechanical penthouse on the roof, and is providing hot water to all VAV terminal boxes through a vertical plumbing riser in the building core with plumbing loops on each floor.

13. Domestic Water:

Cold and warm water is provided to all restrooms and showers in the core of the building via 2 stand-alone, gas-fired hot water heaters in the penthouse. A circulation pump will continuously circulate warm water from the boiler through a vertical plumbing riser in the core of the building. Cold domestic water is stubbed out into lease space on each floor for future tenant use. The hot water side is serviced with a water softener located in the penthouse.

14. Fire Protection System.

A fire riser is constructed to meet applicable national and local Building code requirements. The fire protection water supply enters the Building underground at the fire control room on the main floor near the exterior of the Building. Wet standpipes rise vertically through the stairwells. Branch lines complete with sprinkler heads are installed in the building core. A main branch line (defined as 2-½" in diameter or larger) is extended from the core into the tenant lease areas on each floor in two directions as part of the Base Building Improvements. The main branch line extended into tenant lease areas along with secondary branch lines (defined as 2" in diameter or less) and all sprinkler head installation are at Tenant's sole cost and expense, to the extent that such costs (together with all other costs payable by Tenant) exceed the TI Allowance .

15. Electrical Systems:

Electrical service is installed to meet applicable national and local building codes.

- a) Power to Panel Electrical service is provided from the electrical utilities service entry point to the switchboard and panels in the equipment room located on each floor.
  - Lighting load: Average lighting load is .60 watts per one square foot for all areas.
  - Office equipment load: Average of one personal computer (CPU and monitor) per 240 square feet of usable office space.

- b) Fire alarm system is provided to meet applicable building codes in the core areas of the Building. Systems are designed to the necessary capacity to integrate future horns and strobes on Tenant's floors. Horns, strobes, pull stations and cabinets in the lease areas are at Tenant's sole cost and expense, to the extent that such costs (together with all other costs payable by Tenant) exceed the TI Allowance .
- c) Communication conduit and interduct is provided from the elevator core to Thanksgiving Way and to Ashton Boulevard for Qwest copper lines and fiber lines as well as conduits for other communication providers. Conduit has also been extended between buildings for future communication connections in Thanksgiving Station. Tenant must have arrangements made with a communication provider in the park for communication services no later than 75 days prior to occupancy.
- d) Emergency back-up generator is provided for life safety in the building core and shell.

#### 16. Access Control System

An after-hour exterior door access control system is installed as part of the Base Building Improvements. The system includes electromagnetic locks installed at the head of all exterior doors and is connected to a server in the main floor electrical room. Card readers are installed at primary entrances to the Building. Scheduling and monitoring of after-hour usage is controlled by a computer in Landlord's office. The system is expandable. The incremental cost for additional expansion control modules and/or cards and readers for Tenant use is at Tenant's sole cost and expense, to the extent that such costs exceed the TI Allowance .

#### 17. Surveillance System:

Landlord has an IP based video surveillance system that monitors all exterior building entrances and parking lots. Surveillance cameras are mounted on the roof, in the main floor lobby, and in the main floor exit corridors. All cameras are monitored and controlled on a computer in Landlord's office.

#### 18. Parking:

A minimum of 90% of all parking stalls are sized 9' x'18'. Handicap accessible parking stalls are provided according to all applicable laws along with designated parking stalls for high fuel efficient vehicles and secure bicycle storage.

#### 19. Special Amenities:

Landlord shall install a basketball court and pavilion on the Property and such other amenities, if any, as are reasonably agreed to by the Parties, all of which shall be referred to as the "*Amenities* ." As part of Landlord's minimum of \$98.00 per rentable square foot of the Building for the Base Building Improvements, Landlord shall spend at least \$100,000 in connection with the Amenities. If, as a result of Tenant requests (which shall be subject to the reasonable approval of Landlord), Landlord spends more than \$100,000 in connection with the Amenities, all incremental costs of the Amenities above \$100,000 (not to exceed an additional \$200,000) shall be divided equally between Landlord and Tenant. With respect to such incremental costs of the Amenities above \$100,000, such costs allocated to Tenant may not be paid for out of the TI Allowance, and

such costs allocated to Landlord may not be paid out of the \$9 8 .00 per rentable square foot of the Building for the Base Building Improvements .

### **Base Building Improvement Standard Finishes**

Base Building Improvements are constructed in accordance with applicable national and local building and life-safety code requirements including stairwells, elevators, restrooms, mechanical systems, fire protection systems and electrical systems on each floor, finished per the following Building standards:

- Exterior Building Finishes: Combination of EFIS, reflective glass and glass curtain walls, aluminum frames & entrances.
- Exterior common areas of hardscape and landscape completed per approved site plan including lighted walkways to building entrances, up lighting on the building exterior and lighted parking areas.

### **Interior Common Areas**

- Restrooms: finished floors, tile wainscot, walls (above the wainscot) and ceilings are painted sheetrock, recessed and surface mounted lighting and wall sconces are provided. Motion censored faucets and paper towel dispensers. The men's' restrooms have wall mounted fixtures with pressurized flush valves with motion censored water closets along with waterless urinals to conserve water. The women's restrooms have dual flush valves in each water closet to conserve water.
- 2 Drinking fountains per floor located just outside the restrooms.
- Equipment rooms: Concrete walls, sealed concrete floors; exposed structure ceilings; fluorescent strip lighting hung from structure above.
- Stairwells: Concrete and steel stairs and landings, with sealed concrete walls, sealed concrete floors and painted steel handrails. Lighting for emergency egress is included.
- Elevators: finished floors and walls.
- Life-safety exit and egress lighting with alarms and horns as required by code.
- Building signage including stairwells, exiting, and elevator instructions as per code.

### **No-Smoking**

Tenants, employees, or visitors may not smoke in the building or within 25 feet of any door or operable window. A designated smoking area has been provided on the outside corner of the building with a smoker's pole for proper disposal of cigarette butts.

### **Lease Areas**

All improvements, except as provided above and specifically noted elsewhere, within the Premises are excluded from the Base Building Improvements and are at Tenant's sole cost and expense, to the extent that such costs (together with all other costs payable by Tenant) exceed the TI Allowance , including but not limited to: interior partitions; sheetrock on perimeter walls; sheetrock column wraps; doors; hardware; interior sidelights; interior glass walls; ceilings; painting; floor coverings; cabinetry; millwork; VAV boxes; HVAC finish; plumbing; electrical service from the panel; phone/data/communication service from the first floor point of demarcation; wall finishes; lighting; building permits and project management services as described.

**Tenant Improvements**  
**(to be provided at Tenant's sole cost and expense, subject to the TI Allowance)**

**Structure and Shell**

- Any structural support required for Tenant equipment
- Any structural support required for roof-mounted Tenant equipment

**HVAC and Plumbing**

- Building standard HVAC, including VAV boxes, medium and low-pressure ductwork, diffusers, sensors and controls.
- Independent HVAC/cooling systems for computer rooms, server rooms, etc.
- Plumbing and fixtures for kitchens, break rooms, additional restrooms, drinking fountains, etc.

**Electrical and Fire Sprinkler System**

- Fire sprinkler drops and finish sprinkler heads
- Building standard light fixtures
- Illuminated exit lights in Tenant corridors and space
- Tenant electrical panels, electrical wiring from panels to equipment, outlets, furniture, cubicles, FF&E, etc.
- Building standard switches and power outlets
- Building standard voice and data boxes

**Finishes and Miscellaneous**

- Building standard acoustical ceilings
- Building standard sheetrock ceilings
- Building standard paints, wall coverings, etc.
- Building standard doors
- Interior walls (framing, insulation, sheetrock, finishes, etc.)
- Additional thermal insulation (exterior walls), as requested by Tenant
- Additional sound insulation (interior walls), as requested by Tenant
- Tenant lobby and corridor finishes
- Floor coverings (carpet, ceramic tile, VCT tile, etc.) including base
- Window blinds
- Cabinetry (break room, kitchen, offices, copy centers, etc.)
- All other finishes and improvements not included in Base Building Improvements
- Tenant signage/logo
- Voice and data cabling

**Tenant Property (to be provided at Tenant's sole cost and expense)**

**Miscellaneous**

- Tenant furniture, fixtures and equipment
- All Tenant personal property

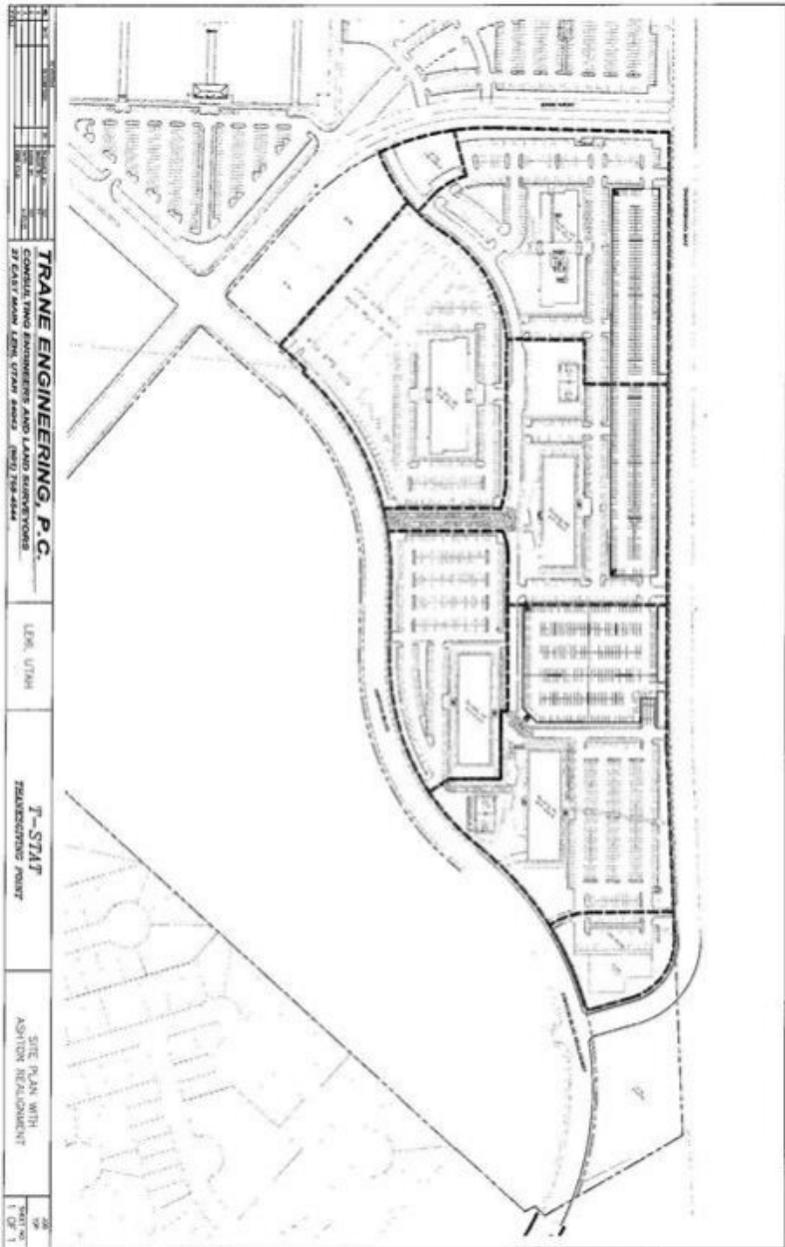
**EXHIBIT F**

**Adjacent Land**

(See attached)

Exhibit F-1

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**Attachment A**

**Restricted Signage Area**

(See attached)

Attachment A-1

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**SECOND AMENDMENT TO LEASE**  
T-Stat One, LLC/Vivint Solar, Inc.

**THIS AMENDMENT** (this “*Amendment*”) is entered into as of the 4th day of October, 2016, between **T-STAT ONE, LLC**, a Utah limited liability company (“*Landlord*”), and **VIVINT SOLAR, INC.**, a Delaware corporation (“*Tenant*”). (Landlord and Tenant are referred to in this Amendment collectively as the “*Parties*” and individually as a “*Party*.”)

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. Definition—Lease. As used in this Amendment, “*Lease*” means the Lease, dated in the initial paragraph as of August 12, 2014, as amended by the First Amendment to Lease (the “*First Amendment*”), dated July 20, 2015, both entered into between Landlord, as landlord, and Tenant, as tenant, and, where applicable, as amended by this Amendment. Any term used in this Amendment that is capitalized but not defined shall have the same meaning as set forth in the Lease.

2. Purpose. The Parties desire to amend the Lease in accordance with the terms and conditions set forth in this Amendment.

3. Additional Space. Paragraph 3.6 (Lease of Additional Building) of the Lease is deleted in its entirety

4. Entire Agreement. The first sentence in Paragraph 22.16 of the Lease is deleted in its entirety and is replaced with the following new sentence:

This Lease (including Exhibits A, B, C, D and E (with any Appendixes to Exhibit A)) exclusively encompasses the entire agreement of the Parties, and supersedes all previous negotiations, understandings and agreements between the Parties, whether oral or written, including, without limitation, any oral discussions, letters of intent and email correspondence.

5. Exhibit F. Exhibit F (Adjacent Land) attached to the Lease is deleted in its entirety.

6. Enforceability. Each Party represents and warrants that:

(a) such Party was duly formed and is validly existing and in good standing under the laws of the state of its formation;

(b) such Party has the requisite power and authority under all applicable laws and its governing documents to execute, deliver and perform its obligations under this Amendment;

(c) the individual executing this Amendment on behalf of such Party has full power and authority under such Party’s governing documents to execute and deliver this Amendment in the name of, and on behalf of, such Party and to cause such Party to perform its obligations under this Amendment;

(d) this Amendment has been duly authorized, executed and delivered by such Party; and

(e) this Amendment is the legal, valid and binding obligation of such Party, and is enforceable against such Party in accordance with its terms.

7. Brokerage Commissions. Except as may be set forth in one or more separate agreements between (i) Landlord and Landlord's broker, or (ii) Landlord or Landlord's broker and Tenant's broker:

(a) Landlord represents and warrants to Tenant that no claim exists for a brokerage commission, finder's fee or similar fee in connection with this Amendment based on any agreement made by Landlord; and

(b) Tenant represents and warrants to Landlord that no claim exists for a brokerage commission, finder's fee or similar fee in connection with this Amendment based on any agreement made by Tenant.

Landlord shall indemnify, defend and hold harmless Tenant from and against any claim for a brokerage commission, finder's fee or similar fee in connection with this Amendment based on an actual or alleged agreement made by Landlord. Tenant shall indemnify, defend and hold harmless Landlord from and against any claim for a brokerage commission, finder's fee or similar fee in connection with this Amendment based on an actual or alleged agreement made by Tenant.

8. Entire Agreement. The Lease, as amended by this Amendment, exclusively encompasses the entire agreement of the Parties, and supersedes all previous negotiations, understandings and agreements between the Parties, whether oral or written, including, without limitation, any oral discussions, letters of intent and email correspondence. The Parties acknowledge and represent, by their signatures below, that the Parties have not relied on any representation, understanding, information, discussion, assertion, guarantee, warranty, collateral contract or other assurance, except those expressly set forth in the Lease and this Amendment, made by or on behalf of any other Party or any other person whatsoever, prior to the execution of this Amendment. The Parties waive all rights and remedies, at law or in equity, arising or which may arise as the result of a Party's reliance on such representation, understanding, information, discussion, assertion, guarantee, warranty, collateral contract or other assurance.

9. General Provisions. In the event of any conflict between the provisions of the Lease and the provisions of this Amendment, the provisions of this Amendment shall control. Except as set forth in this Amendment, the Lease is ratified and affirmed in its entirety. This Amendment shall inure to the benefit of, and be binding on, the Parties and their respective successors and assigns. This Amendment shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the state of Utah. This Amendment may be executed in any number of duplicate originals or counterparts, each of which when so executed shall constitute in the aggregate but one and the same document.

*[Remainder of page intentionally left blank; signatures on following page]*

**THE PARTIES** have executed this Amendment on the respective dates set forth below, to be effective as of the date first set forth above.

***LANDLORD :***

**T-STAT ONE, LLC ,**  
a Utah limited liability company

By /s/ Nathan W. Ricks  
Nathan W. Ricks  
Manager

Date

***TENANT :***

**VIVINT SOLAR, INC. ,**  
a Delaware corporation

By /s/ Dana Russell

Print or Type Name of Signatory:

Dana Russell

Its Chief Financial Officer

Date October 4, 2016

## List of Subsidiaries of the Company as of December 31, 2016

Name of Subsidiary	Jurisdiction of Incorporation
Vivint Solar Holdings, Inc. (f/k/a Vivint Solar, Inc.)	Delaware
Vivint Solar Provider, LLC	Delaware
Solmetric Corporation	California
Vivint Solar Developer , LLC	Delaware
Vivint Solar Liberty Manager , LLC	Delaware
Vivint Solar Liberty Owner , LLC	Delaware
Vivint Solar Liberty Master Tenant , LLC	Delaware
Vivint Solar Margaux Manager , LLC	Delaware
Vivint Solar Margaux Owner , LLC	Delaware
Vivint Solar Margaux Master Tenant , LLC	Delaware
Vivint Solar Fund III Manager , LLC	Delaware
Vivint Solar Fund III Owner , LLC	Delaware
Vivint Solar Fund III Master Tenant , LLC	Delaware
Vivint Solar Mia Manager , LLC	Delaware
Vivint Solar Mia Project Company , LLC	Delaware
Vivint Solar Aaliyah Manager , LLC	Delaware
Vivint Solar Aaliyah Project Company , LLC	Delaware
Vivint Solar Rebecca Manager, LLC	Delaware
Vivint Solar Rebecca Project Company, LLC	Delaware
Vivint Solar Hannah Manager, LLC	Delaware
Vivint Solar Hannah Project Company, LLC	Delaware
Vivint Solar Nicole Manager , LLC	Delaware
Vivint Solar Nicole Owner, LLC	Delaware
Vivint Solar Nicole Master Tenant, LLC	Delaware
Vivint Solar Elyse Manager, LLC	Delaware
Vivint Solar Elyse Project Company, LLC	Delaware
Vivint Solar Financing I Parent, LLC	Delaware
Vivint Solar Financing I, LLC	Delaware
Vivint Solar Owner I, LLC	Delaware
Vivint Solar Operations, LLC	Delaware
Vivint Solar Fund X Manager, LLC	Delaware
Vivint Solar Fund X Project Company, LLC	Delaware
Vivint Solar Licensing, LLC	Delaware
Vivint Solar Fund XI Manager, LLC	Delaware
Vivint Solar Fund XI Project Company, LLC	Delaware
Vivint Solar Fund XII Manager, LLC	Delaware
Vivint Solar Fund XII Project Company, LLC	Delaware
Vivint Solar Fund XIV Manager, LLC	Delaware
Vivint Solar Fund XIV Project Company, LLC	Delaware
Vivint Solar Fund XIII Manager, LLC	Delaware
Vivint Solar Fund XIII Project Company, LLC	Delaware
Vivint Solar Fund XVI Manager, LLC	Delaware
Vivint Solar Fund XVI Lessor, LLC	Delaware
VS BC Solar Lessee I, LLC	Delaware
Vivint Solar Commercial Developer , LLC	Delaware
Vivint Solar Commercial Provider, LLC	Delaware
Vivint Solar Fund XVII GP, LLC	Delaware
Vivint Solar Fund XVII LP, LLC	Delaware
Vivint Solar Fund XVIII Manager, LLC	Delaware
Vivint Solar Fund XVIII Project Company, LLC	Delaware
Vivint Solar Financing Holdings, LLC	Delaware

Vivint Solar Financing Holdings Parent, LLC	Delaware
Vivint Solar Fund XV Manager, LLC	Delaware
Vivint Solar Fund XV Project Company, LLC	Delaware
Vivint Solar Commercial Holdings, LLC	Delaware
Vivint Solar SREC Guarantor, LLC	Delaware
Vivint Solar SREC Financing, LLC	Delaware
Vivint Solar SREC Aggregator, LLC	Delaware
Vivint Solar Financing II Parent, LLC	Delaware
Vivint Solar Financing II, LLC	Delaware
Vivint Solar Financing II Parent NYGB, LLC	Delaware
Vivint Solar Financing II NYGB, LLC	Delaware
Vivint Solar Financing III Parent, LLC	Delaware
Vivint Solar Financing III, LLC	Delaware
Vivint Solar SREC Guarantor III, LLC	Delaware
Vivint Solar OTM Holdings, LLC	Delaware
Vivint Solar OTM I Manager, LLC	Delaware
Vivint Solar OTM I Lessor, LLC	Delaware
Vivint Solar Fund XIX Manager, LLC	Delaware
Vivint Solar Fund XIX Project Company, LLC	Delaware
Vivint Solar Fund 20 Manager, LLC	Delaware
Vivint Solar Fund 20 Project Company, LLC	Delaware
Vivint Solar Fund 21 Manager, LLC	Delaware
Vivint Solar Fund 21 Project Company, LLC	Delaware
Vivint Solar Servicer, LLC	Delaware

**Consent of Independent Registered Public Accounting Firm**

We consent to the incorporation by reference in the Registration Statement (Form S-8 No. 333-199077) pertaining to the 2014 Equity Incentive Plan, 2013 Omnibus Incentive Plan, and Non-Plan Stock Option Agreement of Vivint Solar, Inc. of our report dated March 16, 2017, with respect to the consolidated financial statements of Vivint Solar, Inc., included in this Annual Report (Form 10-K) for the year ended December 31, 2016.

/s/ Ernst & Young LLP

Salt Lake City, Utah  
March 16, 2017

**CERTIFICATION PURSUANT TO  
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,  
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, David Bywater, certify that:

- 1) I have reviewed this Annual Report on Form 10-K of Vivint Solar, Inc.;
- 2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- 3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- 4) The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- 5) The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 16, 2017

By: \_\_\_\_\_  
/s/ David Bywater  
David Bywater  
Chief Executive Officer  
(Principal Executive Officer)

**CERTIFICATION PURSUANT TO  
RULES 13a-14(a) AND 15d-14(a) UNDER THE SECURITIES EXCHANGE ACT OF 1934,  
AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Dana Russell, certify that:

- 1) I have reviewed this Annual Report on Form 10-K of Vivint Solar, Inc.;
- 2) Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
- 3) Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
- 4) The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
- 5) The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 16, 2017

By: \_\_\_\_\_ /s/ Dana Russell  
Dana Russell  
Chief Financial Officer and Executive Vice President  
(Principal Financial and Accounting Officer)

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Vivint Solar, Inc. (the "Company") on Form 10-K for the year ending December 31, 2016 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

Date: March 16, 2017

By: \_\_\_\_\_ /s/ David Bywater  
David Bywater  
Chief Executive Officer  
(Principal Executive Officer)

