

Recording by: Zoë Gamble Hanes
Return to: Blanco Tackabery & Matamoros, P.O. Drawer 25008
Winston-Salem, NC 27114 Attn: Zoë Gamble Hanes

STATE OF NORTH CAROLINA) SUBORDINATION, NON-DISTURBANCE
) AND ATTORNMENT AGREEMENT
) REGARDING SOLAR FACILITY
COUNTY OF HAYWOOD)

This SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT REGARDING SOLAR FACILITY (“**Agreement**”) is made as of _____, 2010, by and between FLS OWNER II, LLC, a North Carolina limited liability company (“**Sublessee**”), the County of Haywood (“**Owner**”), The Board of Trustees of Haywood Community College (the “**Lessee**”) and Bank of America, N.A. (“**Lender**”), with reference to the following facts and intentions of the parties:

RECITALS

- A. Owner owns certain real property located at the intersection of Freedlander Drive and College Drive on which an approximately 36,500 square foot building will be built to be known as the Creative Arts Building (the “**Building**”) on the campus of Haywood Community College, Clyde, Haywood County, North Carolina said real property being more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the “**Property**”). Owner has, pursuant to that certain Lease dated October 1, 2010, between Owner and Lessee, leased the Property to Lessee (the “**Lease**”). Lessee has, pursuant to that certain Solar Facility Site Sublease Agreement dated _____, 2010 (as modified from time to time, the “**Sublease**”), leased a portion of the Property (the “**Premises**”), to Sublessee for the purpose of allowing Sublessee to install on the Premises

certain equipment more fully detailed in the Sublease, which is owned exclusively by Sublessee (the "**System**"), which System is intended to generate electricity for sale to a public utility and thermal power for sale to the Lessee (or Owner in the event that the Lease terminates for any reason) pursuant to the Energy Purchase Obligations (defined below). The Sublessee has leased, or will lease, the System to FLS Solar 20, LLC, a North Carolina limited liability company (the "**Pass-Through Tenant**") in order to facilitate the allocation of solar energy tax credits to CCG Energy Partners Fund 29, LP, a Delaware limited partnership (the "**Fund**") which is an investor member of the Pass-Through Tenant.

- B. Owner, as borrower, has procured a loan in the amount of \$11,200,000 (the "**Loan**") from Lender, which is secured by, among other things, a deed of trust on all or a portion of the Property (the "**Deed of Trust**"). The Deed of Trust and all other instruments, certificates and other documents executed in connection with the Loan, together with all amendments, restatements, replacements, supplements or other modifications thereof entered into in accordance with the terms of the Lease, Sublease and this Agreement, are individually or collectively (as the context requires) herein referred to as the "**Loan Documents**".

THEREFORE, The parties agree as follows:

SECTION 1 - SUBORDINATION.

1.1 **Subordination of Sublease.** Subject to the provisions of Section 2 hereof, the Sublease, and all of the terms, covenants, and provisions thereof, and all rights, remedies and options of Sublessee thereunder and any subtenant are and shall at all times continue to be subject and subordinate in all respects to the terms, covenants, and provisions of the Deed of Trust and other Loan Documents, and to the lien thereof, and to all sums secured thereby. If the Sublease is, or has been, executed, delivered, and recorded prior to the Deed of Trust, the foregoing subordination shall apply with the same force and effect as if the Deed of Trust had been recorded prior to the execution of the Sublease.

1.2 **Sole Agreement.** This Agreement is the sole agreement with regard to the subordination of the Sublease to the Deed of Trust.

SECTION 2 - NON-DISTURBANCE; ATTORNMENT; OWNERSHIP OF SOLAR FACILITY.

2.1 **Non-Disturbance of Sublease.** Notwithstanding anything to the contrary contained in the Sublease, so long as (a) no event has occurred which, with the passage of time or the giving of notice or both, would constitute a default under the Sublease (beyond any period given to Sublessee or any other party in the Sublease to cure such default), (b) the Sublease is in full force and effect, both as of the date Lender files a lis pendens, or otherwise commences a Foreclosure (defined below), and at all times thereafter, Lender agrees for itself and its successors in interest and for any other person

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acquiring title to the Property through a Foreclosure that the leasehold interest of Sublessee under the Sublease and Sublessee's rights under the Sublease shall not be terminated by reason of such Foreclosure, and the Sublease shall continue in full force and effect and Lender shall recognize and accept Sublessee as tenant under the Sublease subject to the provisions of the Sublease and the Sublease will be recognized as a direct lease between any such transferee and Sublessee. For purposes of this Agreement, a "Foreclosure" shall include a sheriff's sale after judicial foreclosure proceedings, a trustee's sale under the power of sale contained in any Deed of Trust, the termination of any superior lease of the Property including the Lease and any other transfer of the Owner's interest in the Property under peril of foreclosure, including an assignment or sale in lieu of foreclosure. If any action or proceeding is commenced by Lender for the Foreclosure of the Deed of Trust or the sale of the Property, Sublessee shall not be named as a party therein unless such joinder shall be required by law and the Foreclosure or sale is made subject to all rights of Sublessee under the Sublease.

2.2 **Attornment.** Notwithstanding anything to the contrary contained in the Sublease, should title to, possession of or control of the Property or any other interest therein, be transferred to Lender or any other person or entity ("New Owner") by, or in-lieu of Foreclosure, and the Lease terminates, Sublessee agrees, for the benefit of New Owner and effective immediately and automatically upon the occurrence of any such transfer so long as the New Owner shall be bound by the terms and conditions of the Sublease, and upon Sublessee's receipt of written notice from the New Owner that the New Owner has acquired title to the Property, that: (a) Sublessee shall be bound to New Owner in accordance with the Sublease for the remainder of the Sublease term; and (b) Sublessee hereby attorns to New Owner as its landlord without the execution of any further instrument. Subject to the foregoing, Sublessee reserves its rights to any and all claims or causes of action available to Sublessee at law or against such prior landlord for prior losses or damages and against the successor landlord for all losses or damages arising from and after the date that such successor landlord takes title to the Property.

2.3 **Ownership of System.** Sublessee represents and warrants that it is the sole owner of the System, and Owner and Lessee disclaim any ownership rights with respect to the System. Notwithstanding anything to the contrary in the Deed of Trust or any of the other Loan Documents, Lender acknowledges and agrees, for itself and any New Owner, that the System is not part of the collateral securing the Deed of Trust, and Lender further covenants, for itself and any New Owner, that it shall not seek to enforce the lien of the Deed of Trust against the System or any part thereof. The Parties intend that, notwithstanding their method and degree of annexation, their adaptation or application to the underlying realty comprising the Property or its past, present or future classification for purposes of local or state property taxation, the System is and shall remain tangible personal property under the laws of North Carolina and shall not constitute fixtures, that the System is subject to removal from the Property, and title to the System has been and shall remain severed from the title to the Property to the maximum extent permitted by the laws of North Carolina. To the extent that, notwithstanding the intent and agreement of the Parties as expressed herein, all or any

part of the System shall be determined to constitute a fixture, Lender hereby irrevocably disclaims any interest whatsoever in such assets as fixtures.

SECTION 3 - ESTOPPEL.

OWNER AND SUBLESSEE WARRANT AND REPRESENT TO LENDER, AS OF THE DATE HEREOF, THAT:

3.1 **Sublease Effective.** The Sublease has been duly executed and delivered by Sublessee and Lessee and, subject to the terms and conditions thereof, the Sublease is in full force and effect, the obligations of each party thereunder are valid and binding, and there have been no modifications or additions to the Sublease, written or oral.

3.2 **No Default.** There exists no breach, default, or event or condition which, with the giving of notice or the passage of time or both, would constitute a breach or default under the Sublease either by Sublessee or Lessee and neither of them has any existing claims, defenses or offsets against rental due or to become due under the Sublease.

SECTION 4 - ENERGY PURCHASE OBLIGATIONS.

4.1 **Energy Purchase Obligations.** The solar thermal energy generated by the System will be sold by the Pass-Through Tenant to the Lessee pursuant to that certain Solar Purchase Agreement by and between Pass-Through Tenant and Lessee (the "SPA") (the SPA and all of its provisions, are referred to herein as "**Energy Purchase Obligations**"). In the event the Lease terminates for any reason, pursuant to the Lease, Owner has agreed to assume the obligations of Lessee found in the Sublease and the Energy Purchase Obligations.

4.2 **Survivability of Energy Purchase Obligations.** The Owner, Lessee, Sublessee and Pass-Through Tenant intend and agree that the Energy Purchase Obligations shall be binding on all successive owners of the Property for a period commencing upon the placed in service date of the System (which date shall be provided by the Sublessee to the parties when the System is placed in service) and ending on the expiration of the Initial Term or any applicable Renewal Term, provided that the Pass-Through Tenant is not in default of its obligations to supply solar thermal energy from the System to the Owner or other counterparties, as applicable, and provided that the Sublessee has not elected to terminate the Energy Purchase Obligations earlier. Lender agrees, for itself and any New Owner, that the Solar Purchase Agreement shall not be terminated by any Foreclosure.

SECTION 5 - MISCELLANEOUS.

5.1 **Heirs, Successors and Assigns.** The covenants herein shall be binding upon, and inure to the benefit of, the heirs, successors and assigns of the parties hereto.

5.2 **Addresses; Request for Notice.** Any notice or other communications hereunder shall be in writing and shall be deemed to have been given (unless otherwise set forth herein), if delivered in person, deposited with an overnight express agency, fees prepaid, or mailed by United States express, certified or registered mail, postage prepaid, return receipt requested, to the parties at the following addresses, or to such other address as shall be later provided in writing by one Party to the other:

Sublessee:

FLS Owner II, LLC
239 Amboy Road
Asheville, NC 28806
Attn: Michael Shore
Telephone: 828-669-5070
Facsimile: 828-669-5046

With copy to:

Blanco Tackabery
(110 S. Stratford Rd, 5th Floor)
P.O. Drawer 25008
Winston-Salem, NC 27114
(Winston-Salem, NC 27104)
Attn: Zoë Gamble Hanes
Telephone: 336-293-9000
Facsimile: 336-293-9030

Owner:

County of Haywood, North Carolina
215 North Main Street
Waynesville, North Carolina 28786
Attention: County Manager
Phone: _____
Fax: _____

Lessee

The Board of Trustees of Haywood Community College
Haywood Community College
185 Freedlander Drive
Clyde, North Carolina 28721
Attention: President
Phone: _____
Fax: _____

With a copy to:
Kilpatrick Stockton LLP
3737 Glenwood Avenue, Suite 400
Raleigh, NC 27607
Attn: Steve Levitas

Lender:
Bank of America, N.A.
101 South Tryon Street
NC1-002-03-10
Charlotte, North Carolina 28255
Attention: Government Banking
Telephone: (980) 386 5452
Facsimile: (980) 386-6668

Pass-Through Tenant

FLS Owner II, LLC
400 Eastside Dr.
Black Mountain, NC 28711
Attn: Michael Shore
Telephone: 828-669-5070
Facsimile: 828-669-5046

With copy to:

Blanco Tackabery
(110 S. Stratford Rd, 5th Floor)
P.O. Drawer 25008
Winston-Salem, NC 27114
(Winston-Salem, NC 27104)
Attn: Zoë Gamble Hanes
Telephone: 336-293-9000
Facsimile: 336-293-9030

With a copy to:

CCG Energy Partners Fund 29, LP
c/o William L. Hoffman, Esq.
CityScape Capital Group, LLC
116 Village Boulevard, Suite 200
Princeton, New Jersey 08540
Telephone: (609) 951-2200
Facsimile: (609) 951-2247

5.3 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute and be construed as one and the same instrument.

5.4 **Section Headings.** Section headings in this Agreement are for convenience only and are not to be construed as part of this Agreement or in any way limiting or applying the provisions hereof.

5.5 **Attorneys' Fees.** If any legal action, suit or proceeding is commenced between Sublessee and Lender regarding their respective rights and obligations under this Agreement, the prevailing party shall be entitled to recover, in addition to damages or other relief, costs and expenses, reasonable attorneys' fees and court costs (including, without limitation, expert witness fees). As used herein, the term "prevailing party" shall mean the party which obtains the principal relief it has sought, whether by compromise settlement or judgment. If the party which commenced or instituted the action, suit or proceeding shall dismiss or discontinue it without the concurrence of the other party, such other party shall be deemed the prevailing party.

5.6 **Modification of Sublease.** The Sublease may not be modified or amended in any material respect, nor shall the Sublease be canceled or surrendered, without the prior written consent, in each instance, of Lender, which consent shall not be unreasonably withheld, conditioned or delayed, excluding non-material changes which do not affect the rights of the parties under the Sublease or any economic terms thereof.

5.7 **Termination.** This Agreement shall terminate in the event Lender cancels the Deed of Trust of record.

[SEPARATE SIGNATURE PAGES ATTACHED]

IN WITNESS WHEREOF, the Lender hereto has executed this Agreement as of the day and year first above written.

LENDER

Bank of America, N.A.

By: *R. Brooks Scurry, III*
R. Brooks Scurry, III, Vice President

STATE OF NORTH CAROLINA

MECKLENBURG COUNTY

I Shannon B. Humrickhouse, a Notary Public of the County and State aforesaid, certify that R. Brooks Scurry, III, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal or stamp, this the 6th day of December, 2010.

Shannon B. Humrickhouse
Notary Public

Shannon B. Humrickhouse
Printed Name of Notary Public

My Commission Expires: 03/17/2014
[Notarial Seal/Stamp]



IN WITNESS WHEREOF, the Owner hereto has executed this Agreement as of the day and year first above written.

OWNER

(Affix Corporate Seal)

THE COUNTY OF HAYWOOD

ATTEST:

By: _____

Name: _____

Title: _____

Marty Stamey, Clerk to the

Board of County Commissioners

STATE OF NORTH CAROLINA

_____ COUNTY

I _____, a Notary Public of the County and State aforesaid, certify that _____, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal or stamp, this the ____ day of _____, 20__.

Notary Public

Printed Name of Notary Public

My Commission Expires: _____
[Notarial Seal/Stamp]

IN WITNESS WHEREOF, the Lessee hereto has executed this Agreement as of the day and year first above written.

LESSEE

(Affix Corporate Seal)

The Board of Trustees of Haywood Community College

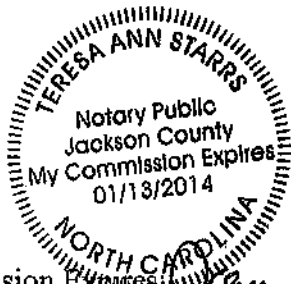
By: Mark A. Bungarner
Name: MARK A. BUNGARNER
Title: BOARD OF TRUSTEES CHAIR

STATE OF NORTH CAROLINA

JACKSON COUNTY

I Teresa Ann Starrs, a Notary Public of the County and State aforesaid, certify that Mark Bungarner, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal or stamp, this the 21ST day of December, 2010.



Teresa Ann Starrs
Notary Public

Teresa Ann Starrs
Printed Name of Notary Public

My Commission Expires Jan. 13, 2014
[Notarial Seal/Stamp]

IN WITNESS WHEREOF, the Sublessee hereto has executed this Agreement as of the day and year first above written.

SUBLESSEE

FLS OWNER II, LLC (SEAL)

By: FLS Energy, Inc., Managing Member

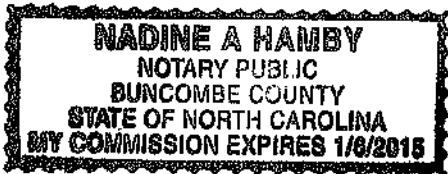
By: [Signature]
Michael Shore, President

STATE OF NORTH CAROLINA

Buncombe COUNTY

I Nadine Hamby, a Notary Public of the County and State aforesaid, certify that Michael Shore, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal or stamp, this the 1st day of December, 2010.



Nadine A Hamby
Notary Public

Nadine A Hamby
Printed Name of Notary Public

My Commission Expires: January 6, 2015
[Notarial Seal/Stamp]

