

SOLAR FACILITY SYSTEM SITE SUBLEASE AGREEMENT

(Building Owner is Not Purchaser of Solar Output)

This Solar Facility System Site Sublease Agreement ("Agreement"), made this 20th day of JANUARY 2011, between the Board of Trustees of Haywood Community College ("LESSOR") and FLS Owner II, LLC, a North Carolina limited liability company ("LESSEE"). LESSOR and LESSEE are at times collectively referred to hereinafter as the "Parties."

WITNESSETH

In consideration of the mutual covenants contained herein, Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereto agree as follows:

1. **PREMISES and RECITATIONS.** The County of Haywood (the "County") 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 (hereinafter the "Property"). The County has leased the Property to LESSOR pursuant to that certain Lease dated October 1, 2010, a copy of which is attached hereto as **Exhibit B-1** and which is incorporated herein by this reference (the "Lease"). The County and LESSOR also entered into that certain Agency Agreement dated October 1, 2010, a copy of which is attached hereto as **Exhibit B-2** (the "Agency Agreement"). By and through the Lease and Agency Agreement, LESSOR has acquired and the County has relinquished certain possessory rights in and to the Property.

To the extent that any provision of this Agreement conflicts with a provision contained in the Lease, the provisions of this Agreement shall govern.

LESSEE plans to acquire, install, maintain, and operate the Solar Heating and Cooling Thermal Facility and Solar Water Heating Thermal Facility (collectively, the "Solar Thermal Facility"), Absorption Chiller, Emergency Generator and PV System (collectively, the "System"), which System is the subject of that certain Solar Purchase Agreement, each by and between FLS Solar 20, LLC, a North Carolina limited liability company an affiliate of LESSEE ("Solar 20") and LESSOR of even date herewith (the "SPA"). Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the SPA.

LESSOR has contracted with Miles-McClellan Construction Company, Inc. (the "General Contractor"), and such other subcontractors and replacements of General Contractor as LESSOR shall elect from time to time in its sole discretion, for the construction of the Building. Contemporaneously with LESSEE's installation of the System, General Contractor will be constructing the Building.

LESSEE has obtained a License of Temporary Construction Access ("Access License") from LESSOR for the sole purpose of constructing and installing the System in accordance with this Agreement and the SPA. Pursuant to the Access License, LESSEE and its contractors, subcontractors, suppliers and engineers have such rights of ingress and egress to, from and over the Property as are reasonably required for the construction, installation, testing, commissioning and start up of the System to place it in Commercial Operation (as defined in the SPA).

LESSOR hereby subleases unto LESSEE sufficient ground space on the Property for location of metering equipment and solar storage tanks, together with certain portions of the roof, floor space and access areas of the Building including sufficient space upon the Building for the installation and maintenance of wires, cables, conduits and pipes running from the leased floor space to the leased roof space (collectively, the "Premises"), together with the non-exclusive rights of ingress, egress and regress over the balance of the Property seven (7) days a week, twenty-four (24) hours a day for the purpose of LESSOR's installing, repairing, replacing, removing, operating and maintaining the System or any of its components as required or permitted pursuant to the terms and conditions of this Agreement; provided, however, that after the Building is operational, all such activities shall be performed during the LESSOR's normal business hours or as otherwise arranged between the Parties, unless a bona fide emergency exists, in which event LESSEE may enter the Premises at any time and without approval by LESSOR provided that LESSEE gives reasonable notice to LESSOR. The exact location of the Premises is illustrated on the attached **Exhibit B**, which may be amended from time to time with the written consent of the Parties.

2. TERM and RENTAL. This Agreement shall be effective with respect to the Absorption Chiller, Emergency Generator and Solar Thermal Facility upon the Thermal Commercial Operation Date (the "Thermal Effective Date") and shall be effective with respect to the PV System upon the PV Commercial Operation Date (the "PV Effective Date") and both shall extend for a period of ten (10) years following each of the Thermal Effective Date and the PV Effective Date (respectively, the "Thermal Lease Term" and the "PV Lease Term"). Upon expiration of each of the Thermal Lease Term and the PV Lease Term the Parties agree to use their best efforts, in good faith, to renegotiate and enter into a new lease agreement for the Premises and/or the System, unless Lessor has exercised its right to purchase the System under the SPA.

Commencing on the PV Effective Date, LESSEE shall pay on an annual basis to LESSOR the amount of One Thousand Five Hundred and 00/100 Dollars (\$1,500.00) as rental as provided herein. The rental for the first year shall be due and payable on the PV Effective Date and shall be prorated for the number of calendar days in such year. The rental for each subsequent year shall increase by two and one-half percent (2.5%) per year and shall be due and payable to LESSOR on or before the first calendar day of such year. The rental for the last year shall be prorated for the number of calendar days in such year. Notwithstanding anything to the

contrary contained herein, should the PV System fail to commence or maintain Commercial Operation, LESSEE shall pay on an annual basis to LESSOR the amount of One and 00/100 Dollars (\$1.00) as rental, due and payable on each anniversary of the Thermal Effective Date.

3. BREACH and TERMINATION. It is a condition of this Agreement that Solar 20 and LESSOR perform each of its respective duties and obligations under the SPA. A breach of the SPA by either party shall be considered a breach of this Agreement. In the event of a breach of this Agreement by either party, and subject to any right to cure under Section 5, the other party may terminate the same by giving thirty (30) days written notice to the other party. Thereafter, LESSEE may remove the System, as defined herein, from the Premises consistent with the terms of this Agreement and the SPA.

Notwithstanding anything to the contrary contained herein, in the event that the SPA is terminated by mutual agreement of LESSOR or Solar 20 or by either LESSOR or Solar 20 pursuant to Section 2.1(b) of the SPA, this Agreement shall automatically terminate and be of no further force and effect.

4. COVENANTS. LESSOR hereby agrees and covenants that (i) LESSOR shall perform all of its duties and obligations under the SPA; (ii) LESSOR shall use commercially reasonable efforts to ensure that the General Contractor constructs the roof of the Building in a manner that will support the System; and (iii) LESSOR shall not plant any trees or vegetation that materially interfere with the operation of the System. LESSEE hereby agrees and covenants as follows: (i) LESSEE shall, or ensure that Solar 20 shall, perform all of Solar 20's duties and obligations under the SPA; (ii) the System, and all of its components, and the installation, operation, maintenance, repair, replacement or removal thereof, shall not damage the Property, the Building, or the Premises; (iii) all work performed by LESSEE or Solar 20 or any of their respective agents, employees, contractors, or affiliates shall be performed in a good and workmanlike manner, in compliance with all laws and regulations, and in such a manner as to minimize the interruption of and interference with LESSOR's other use of the Premises, the Building, or the Property; and General Contractor's construction of the Building; (iv) LESSEE shall ensure that no liens are filed against the Premises or the Property due to any work done by or on behalf of Lessee and/or Solar 20, and if any such lien is filed against the Premises or the Property, LESSEE shall promptly cause such lien to be discharged and released of record without cost to LESSOR, and shall indemnify LESSOR against all costs and expenses (including reasonable attorneys' fees and court costs actually incurred at trial and on appeal) incurred in discharging and releasing such liens; and (v) LESSEE shall ensure that the installation and operation of the System complies with all applicable laws, regulations, and rules and any future enactments and amendments, and LESSEE shall give LESSOR prompt written notice of any change to any laws, regulations, or rules of which LESSEE has actual notice of that adversely affects the compliance of the System with any laws or regulations. The filing of a lien, judgment, impediment of title or encumbrance against the Property which threatens foreclosure or otherwise could have a materially adverse impact on the Property or on LESSEE's rights under this Agreement and is not listed on the attached **Exhibit E** and is not remedied within sixty (60) days of said filing shall be considered a breach of this Agreement.

5. DEFAULT. In the event LESSEE materially breaches this Agreement, LESSOR shall give LESSEE written notice of such breach. After receipt of such written notice by

LESSEE, LESSEE shall have thirty (30) days in which to cure said default, provided LESSEE shall have such an extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and LESSEE commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. If after ninety (90) days the breach is not cured, LESSOR may terminate this Agreement and LESSEE shall remove all of the equipment constituting the System, consistent with **Section 11** below. In the event LESSOR breaches this Agreement, LESSEE shall provide LESSOR written notice and LESSOR shall have thirty (30) days in which to cure said breach, provided LESSOR shall have such an extended period as may be required beyond the thirty (30) days if the nature of the cure is such that it reasonably requires more than thirty (30) days and LESSOR commences the cure within the thirty (30) day period and thereafter continuously and diligently pursues the cure to completion. If after ninety (90) days the breach is not cured, LESSEE may terminate this Agreement and remove all of the equipment constituting the System notwithstanding the notice provisions found in **Section 3** above.

6. USE. LESSEE shall use the Premises for the sole purpose of installing, maintaining, repairing, replacing, as needed, and operating the System, and each of its components. LESSEE shall, to the extent that it is in LESSEE's reasonable control, maintain the Premises in a good, clean, and weather tight condition. The installation of the System, and each of its components, shall be made at LESSEE's sole expense. LESSEE shall have the right to replace, repair, add or otherwise modify its equipment, including the System or any portion thereof, regardless of whether the equipment is specified on any exhibit attached hereto. LESSOR will maintain the Property, including the Premises, in good condition, reasonable wear and tear excepted. The Parties acknowledge and agree that LESSEE's ability to use the Premises for installation and operation of the System is contingent upon LESSEE obtaining or causing Solar 20 to obtain all certificates, permits and other approvals (collectively, the "Governmental Approvals") that may be required by any Federal, State or local authorities with respect to the System as well as a building structural analysis reasonably acceptable to LESSEE. LESSOR shall reasonably cooperate with LESSEE in LESSEE's efforts to obtain such Governmental Approvals and shall take no action which would materially adversely affect LESSEE's ability to use the Premises as described herein; provided, LESSEE shall solely be responsible for obtaining the Governmental Approvals and any fees assessed by the applicable governmental entities. LESSEE shall reasonably cooperate with General Contractor in obtaining any and all Governmental Approvals required by General Contractor. In the event that any application for any Governmental Approval is finally rejected or LESSEE reasonably determines that any Governmental Approval will not be obtained in a timely manner or any Governmental Approval is revoked, canceled, expires, lapses, or is otherwise withdrawn or terminated or that LESSEE determines in its reasonable discretion, that the Premises are no longer technically compatible for installation and operation of the System or LESSEE, in its sole discretion will be unable to use the Premises for installation and operation of the System, LESSEE shall have the right to terminate this Agreement upon thirty (30) days' prior notice to LESSOR without triggering the default provisions of this Agreement or the SPA or any liability under this Agreement or the SPA. Notwithstanding the forgoing, upon early termination of this Agreement, if the Solar Thermal Facility has commenced Commercial Operations, to the extent permitted by law, LESSEE shall coordinate with LESSOR to allow a reasonable period of time (not to exceed one hundred twenty (120) days) for LESSOR to replace the System to ensure that the Building can continue operating in substantially the same manner as it did with the System installed. Upon

any such termination detailed in this **Section 6**, this Agreement shall become null and void and, except for the terms and conditions of the SPA and **Sections 11** and **27** of this Agreement, the Parties shall have no further obligations hereunder. To the extent that it does not materially, adversely affect the use of the Premises by LESSEE, as determined in LESSEE's reasonable discretion, LESSOR retains any and all air rights, development rights, signage rights, and any other rights of LESSOR on and above the roof.

7. INDEMNIFICATION.

a. LESSOR and LESSEE (each, in such case, an "Indemnifying Party") shall, to the extent permitted by law, indemnify, defend and hold the other Party and its employees, directors, officers, managers, members, shareholders and agents (each, in such case, an "Indemnified Party") harmless from and against any and all third party claims, suits, damages, losses, liabilities, expenses and costs (including reasonable attorneys' fees), including, but not limited to, those arising out of property damage (including environmental claims) and personal injury and bodily injury (including death, sickness and disease) and claims related to actual or alleged patent infringement, to the extent caused solely by the Indemnifying Party's (i) breach of any obligation, representation or warranty contained herein and/or (ii) negligent or willful acts or omissions. Notwithstanding anything to the contrary contained herein, the LESSOR will not be required to indemnify the LESSEE if any such indemnification would constitute a waiver of governmental or sovereign immunity under the law.

b. When the Indemnifying Party is required to indemnify any Indemnified Party in accordance with this Section 7, the Indemnifying Party shall assume on behalf of such Indemnified Party, and conduct with due diligence and in good faith, the defense of any claim against such Indemnified Party, whether or not the Indemnifying Party shall be joined therein, and the Indemnified Party shall cooperate with the Indemnifying Party in such defense. The Indemnifying Party shall be in charge of the defense and settlement of such claim; provided, however, that without relieving the Indemnifying Party of its obligations hereunder or impairing the Indemnifying Party's right to control the defense or settlement thereof, the Indemnified Party may elect to participate through separate counsel in the defense of any such claim, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party. In the event that the Indemnified Party shall have reasonably concluded that there exists a material conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defense of any such claim, then each party shall retain their separate counsel (at the sole cost of the Indemnifying Party) and shall have the right to control the defense of such claim but shall have no right to settle such claim without the written consent of the Indemnifying Party. In the event the Indemnifying Party does not employ counsel to assume the defense of any such claim asserted against any Indemnified Party within twenty (20) days after the Indemnifying Party's receipt of notice of the commencement of an action thereon, the Indemnified Party may thereafter retain counsel for the defense thereof, in which case the reasonable fees and expenses of counsel shall be paid by the Indemnifying Party. The Indemnifying Party shall not settle any such claims or actions in a manner which would require any action or forbearance from action by any Indemnified Party without the written consent of the Indemnified Party, which consent shall not be unreasonably withheld or delayed.

c. The indemnification obligations contained in this Section 7 shall not be construed so as to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to an Indemnified Party hereunder. In claims against an Indemnified Party pursuant to the indemnification obligations contained in this Section 7 and which are brought by an employee of the Indemnifying Party or anyone directly or indirectly employed by the Indemnifying Party or anyone for whose acts it may be liable, the indemnification obligations contained in this Section 7 shall not be limited (a) by a limitation on the amount or type of damages, compensation, or benefits payable by or for the Indemnifying Party under workers' or workmen's compensation acts, disability benefit acts, or other employee benefit acts, or (b) pursuant to any common law or case law.

d. To the extent the terms of this Section 7 conflict with the SPA, the SPA shall control.

8. REPAIR. LESSEE shall be solely responsible for maintaining and repairing the System and all of its components in a proper operating and safe condition at its sole cost and expense and in conformance with the requirements of the SPA. Except as hereinafter provided, LESSOR shall be responsible for maintaining and repairing the Premises at its sole cost and expense. In the event any roof puncture, leak, malfunction or any other damage to the Premises or the Building is caused by LESSEE or the System or any of its components and requires remediation on or about the Premises or the Building, LESSOR shall promptly notify LESSEE and LESSEE shall promptly provide any and all necessary remediation measures; provided, however, that in a bona fide emergency LESSOR may make as narrow of a remediation measure as is reasonably necessary to stop such an emergency and charge the amounts of such remediation to LESSEE, who shall pay such amounts within thirty (30) days. Except as expressly permitted in the SPA or this Agreement, in no event shall LESSOR attempt to move, repair, replace or maintain the System. If LESSEE must temporarily remove the System so LESSOR may perform any maintenance and repair of the Premises, LESSOR shall be responsible for all associated costs of removal and reinstallation of the System in accordance with the SPA, unless the reason for the repair or maintenance was caused or created by the System, LESSEE or Solar 20, its respective agents, employees, contractors or affiliates. All repair and maintenance performed on the Premises shall be conducted diligently and in a good and workmanlike matter.

9. INSURANCE. LESSOR will procure at its own cost and expense, and keep in force during both the Thermal Lease Term and PV Lease Term, a policy or policies of fire and extended coverage insurance covering the Property and LESSOR's property located thereon, including the Premises and any buildings located on the Property, with full replacement coverage, for the benefit of LESSOR and any beneficiary of any Deed of Trust on the fee simple title to the Property, as their interests may appear. LESSEE agrees that it will keep all of the System insured against loss or damage by fire or other casualty, with extended coverage to the full fair insurable value thereof. LESSOR shall not insure the System. LESSEE agrees that all personal property of LESSEE, including the System, in or on the Premises shall be at the risk of LESSEE only and that LESSOR shall not be liable for damage caused by fire or other casualty. Neither LESSOR nor any beneficiaries of any Deed of Trusts shall have any right, title or interest with respect to the System and or any insurance proceeds with respect thereto unless and until LESSOR exercises its right to purchase the System pursuant to the SPA.

LESSOR and LESSEE agree that if the System, the Property, the Premises or any furniture, fixtures, machinery, equipment or other personal property located therein are damaged or destroyed by fire or other insured casualty, the rights, if any, of either party against the other with respect to such damage or destruction are hereby waived if and to the extent permitted by any applicable or required insurance policies. The Parties agree to ensure that the policies of insurance obtained by them permit such waivers of subrogation and shall furnish evidence of such, each to the other.

10. REMOVAL UPON TERMINATION. LESSEE, upon termination of this Agreement, shall cause, within one hundred and twenty (120) days, the removal of any components of the System (e.g., the Absorption Chiller, Emergency Generator, Solar Heating and Cooling Thermal Facility, Solar Water Heating Thermal Facility and/or the PV System) for which LESSOR has not exercised its purchase option with respect to such component of the System, and the restoration of the Premises to the original condition that the Premises would have been in had those components of the System never been installed, reasonable wear and tear excepted consistent with the terms of the SPA. LESSOR agrees and acknowledges, unless and until LESSOR exercises its right to purchase the System or any component thereof, that all of the System (including all of its components) shall remain the sole property of LESSEE and LESSEE shall have the right to remove the same, whether or not said items are considered fixtures and attachments to real property under applicable law. LESSOR waives any and all right, title, and interest, including without limitation, any "landlord lien", in and to the System.

11. RIGHTS UPON TRANSFER. Should the LESSOR, at any time during the Thermal Lease Term or PV Lease Term, assign any or all of its rights under the Lease and/or the SPA, such assignment shall be under and subject to this Agreement, the SPA and LESSEE'S rights hereunder.

12. QUIET ENJOYMENT. LESSOR covenants that LESSEE, on performing covenants herein contained, shall peaceably and quietly have, hold and enjoy the Premises and the rights set forth herein subject to the terms of this Agreement and the SPA.

13. TITLE. LESSOR covenants that as of the Commencement Date, it will be seized of good and sufficient interest in the Premises and have full authority to enter into and execute this Agreement. LESSOR further covenants that there are no (i) liens, judgments or financial encumbrances against the Property or the Premises other than that certain Deed of Trust, Security Agreement, and Fixture Filing dated October 1, 2010, by and among the County, Bank of America, NA, and PRLAP, Inc. and (ii) that there are no covenants, easements or restrictions which prevent the use of the Premises by the LESSEE as described herein. In the event that LESSOR obtains title to the Property and/or the Building from the County, this Agreement and the SPA shall continue in full force and effect, whether or not the Lease is terminated by operation of law or otherwise. LESSOR acknowledges that the System is LESSEE's property and not a fixture or in any way part of the real estate.

14. ROLE OF SOLAR 20; INTEGRATION. The Parties acknowledge that LESSEE has entered into an agreement (the "LESSEE/Solar 20 Agreement") with its affiliate Solar 20 pursuant to which LESSEE has agreed to install, operate, maintain, repair, and, if necessary, remove the System. Pursuant to the LESSEE/Solar 20

Agreement, should LESSEE fail to perform such duties, Solar 20 has the authority to install, operate, maintain, repair, and, if necessary, remove the System in accordance with the SPA and may exercise LESSEE's access and other rights pursuant to this Agreement. LESSEE represents and warrants that the LESSEE/Solar 20 Agreement does not affect the substantive rights of LESSOR under this Agreement of the SPA. It is agreed and understood that (a) the Lease, (b) the Agency Agreement, (c) this Agreement, (d) the SPA, and (e) the LESSEE/Solar 20 Agreement contain all agreements, promises and understandings between Solar 20, the County, LESSEE and LESSOR relating to the contents therein and that no verbal or oral agreements, promises or understandings shall be binding upon either Solar 20, the County, LESSEE or LESSOR in any dispute, controversy or proceeding at law, and any addition, variation or modification to this Agreement shall be void and ineffective unless made in writing signed by the Parties. In the event any provision of this Agreement is found to be invalid or unenforceable, such finding shall not affect the validity and enforceability of the remaining provisions of this Agreement. The failure of either Party to insist upon strict performance of any of the terms or conditions of this Agreement or to exercise any of its rights under this Agreement shall not waive such rights and such Party shall have the right to enforce such rights at any time and take such action as may be lawful and authorized under this Agreement, either in law or in equity.

15. GOVERNING LAW. This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of North Carolina.

16. ASSIGNMENT. This Agreement may be sold, assigned or transferred by LESSEE without approval or consent of LESSOR to LESSEE's principal, affiliates, subsidiaries of its principal or to any entity which acquires all or substantially all of LESSEE's assets in the market in which the Property is located by reason of a merger, acquisition or other business reorganization. As to other parties, this Agreement may not be sold, assigned or transferred without the written consent of LESSOR, which consent will not be unreasonably withheld or delayed.

17. NOTICES. 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:

If to Lessee:

FLS Owner II, LLC
239 Amboy Road
Asheville, NC 28806
Attention: Michael Shore
Phone: (828) 350-3993
Fax: (828)-350-3997

If to Lessor:

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:
Blanco Tackabery & Matamoros, P.A.
110 S. Stratford Rd 5th Fl.
(P.O. Drawer 25008)
Winston-Salem, NC 27104
(Winston-Salem, NC 27114)
Attn: Zoë Gamble Hanes

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

18. TAXES. LESSOR shall pay annually all real estate taxes and LESSEE shall pay annually the personal property taxes or other taxes directly attributable to the System; provided, if such taxes are paid by LESSOR, LESSEE shall reimburse LESSOR for the amount of any such tax payment within forty-five (45) days of receipt of reasonable documentation indicating the amount paid and the calculation of LESSEE's pro-rata share (on the proportionate value of the System and the other personal property that was combined with such tax payment), if such taxes were combined with any other taxes paid by LESSOR.

19. SUCCESSORS.

a. This Agreement shall extend to and bind the heirs, personal representatives, successors and assigns of the Parties hereto.

b. Without limiting any other provision of this Agreement, the Parties intend and agree that the obligations of LESSOR as "Purchaser" under the SPA to purchase the entire Thermal Output of the Solar Thermal Facility (as such terms are defined in the SPA) shall be binding on any and all successive tenants or owners of the Property throughout both the Thermal Lease Term and PV Lease Term.

20. COUNTY. As detailed in the Lease, in the event of the expiration or termination of the Lease, for any reason, at any time prior to the expiration or termination of this Agreement and the SPA, the County shall, automatically and without further act or deed, assume, and be deemed to have assumed, the rights and obligations of the LESSOR under this Agreement and the SPA, and the County shall thereafter be bound to LESSEE under this Agreement and the SPA to the same extent as if the County was the original lessor under this Agreement and the original purchaser under the SPA. In consideration of the County's willingness to assume this Agreement and the SPA, LESSEE shall attorn to the County as its new landlord under this Agreement. Further, should the County, at any time during the term of this Agreement or the SPA, decide to sell all or any part of the Property to a third party purchaser, such sale shall be under and subject to this Agreement and LESSEE's rights hereunder. Additionally, any provision of the Lease that affects LESSEE's interests requires the consent of LESSEE to amend.

21. SUBORDINATION AND NON-DISTURBANCE. This Agreement is subject and subordinate to any and all deeds of trust and mortgages now or hereafter encumbering the Property; provided such subordination is subject to LESSEE's prior receipt of a non-disturbance

agreement from LESSEE's mortgagee, substantially in the form of **Exhibit C** (an "SNDA"). With respect to deeds of trust or mortgages where LESSOR is the mortgagor, LESSOR shall use commercially reasonable efforts to provide LESSEE with such an SNDA from any existing mortgagee(s) within thirty (30) days of executing this Agreement. With respect to deeds of trust or mortgages where the County is the mortgagor, LESSOR agrees to use commercially reasonable efforts to cause the County to provide LESSEE with such an SNDA from any existing mortgagee(s) within the thirty (30) days of executing this Agreement.

22. RECORDING. The Parties hereby agree to execute and cause to be recorded a Memorandum of Lease substantially in the form of Exhibit D setting forth the terms of this Agreement, said Memorandum of Lease to be recorded in the Office of the Register of Deeds for the county in which the Property is located. The date set forth in the Memorandum of Lease is for recording purposes only and bears no reference to commencement of either term or rent payments

23. LESSOR'S RIGHT TO CURE. In the event of a default in the payment and/or other performance of any deed of trust or other security interest encumbering the Property, LESSOR shall not prevent LESSEE from, at its sole option and without obligation, curing or correcting such default and upon doing so, LESSEE shall be subrogated to any and all rights, titles, liens and equities of the holders of such deed of trust or security interest and LESSEE shall be entitled to deduct and setoff against all rents that may otherwise become due under this Agreement the sums paid by LESSEE to cure or correct such defaults.

24. ENVIRONMENTAL.

a. LESSOR shall be responsible for all obligations of compliance with any and all environmental and industrial hygiene laws, including any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or concerns as may now or at any time hereafter be in effect, that are or were in any way related to activity now conducted in, on, or in any way related to the Property, unless such conditions or concerns are caused by the activities of LESSEE.

b. LESSOR shall, to the extent permitted by law, hold LESSEE harmless and indemnify LESSEE from and assume all duties, responsibility and liability at LESSOR'S cost and expense, for all duties, responsibilities, and liability (for payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is in any way related to: i) failure to comply with any environmental or industrial hygiene law, including without limitation any regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene concerns or conditions as may now or at any time hereafter be in effect, unless such compliance results from conditions caused by LESSEE; and ii) any environmental or industrial hygiene conditions arising out of or in any way related to the condition of the Property or activities conducted thereon, unless such environmental conditions are caused by the LESSEE or the System.

25. ACCESS TO THE PREMISES. Subject to the SPA and the following paragraph, LESSOR shall have the continuing right of access to the various components of the System at reasonable times and in a reasonable manner for demonstrating the operation of the System to students, prospective students, faculty, or the general public, and other reasonable uses and purposes not inconsistent with the LESSEE's use of the Premises.

Recognizing that the equipment and components of the System will be located within a functioning educational building of LESSOR and recognizing that building maintenance and normal operations will require that LESSOR's staff work within close proximity of particular components of the System, the LESSEE will provide, within thirty (30) days of the Solar Thermal Effective Date and as a part of the maintenance plan the following: (i) a list (to be mutually agreed upon by LESSEE and LESSOR) of specific equipment and components that, access to, will require LESSOR's employees to give notice to LESSEE and be accompanied by a representative of LESSEE and (ii) any specific access limitations that are critical to the performance and safety of the System.

26. DAMAGE TO PREMISES. Damages to the Premises shall be governed by the terms and conditions of the SPA. Any right to terminate the SPA shall automatically cause a corresponding right of such Party (or its Affiliate) to terminate this Agreement, subject to the terms and conditions of the SPA.

27. CONDEMNATION In the event of the condemnation of any portion of the Premises, LESSEE may terminate this Agreement upon thirty (30) days' prior notice to LESSOR if such condemnation may reasonably be expected to disrupt LESSEE's operation and maintenance of the System at the Premises for more than forty-five (45) days. LESSEE, its successors and/or assigns, may, on its own behalf, make a claim in any condemnation proceeding involving the Premises for losses related to the System, its relocation costs and its damages and losses (but not for the loss of its leasehold interest). Any such notice of termination shall cause this Agreement to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Agreement and the Parties shall make an appropriate adjustment as of such termination date with respect to payments due to the other under this Agreement.

28. SURVIVAL. The provisions of the Agreement relating to indemnification from one Party to the other Party shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

29. APPLICABLE LAWS. LESSEE shall use the Premises as may be required or as permitted by applicable laws, rules and regulations. LESSOR agrees to keep the Property in conformity with all applicable, laws, rules and regulations and agree to reasonably cooperate with LESSEE regarding any compliance required by LESSEE in respect to their use of the Premises.

30. TIME. Time is of the essence with respect to each and every obligation of this Agreement.

31. CAPTIONS. The captions contained in this Agreement are inserted for convenience only and are not intended to be part of the Agreement. They shall not affect or be utilized in the construction or interpretation of the Agreement.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

LESSOR:

**THE BOARD OF TRUSTEES OF HAYWOOD
COMMUNITY COLLEGE**

By: Mark A. Bumgarner
Name: MARK A. BUMGARNER
Title: BOARD OF TRUSTEES CHAIR

LESSEE:

FLS OWNER II, LLC (SEAL)

By: FLS Energy, Inc. Managing Member

By: Michael Shore
Michael Shore, President

Exhibit A

(Legal Description of Property)

EXHIBIT A

BEGINNING at a point in the southern margin of College Drive located S 19-07-24 W 883.62 from NCGS Horizontal and Vertical Control Monument "Haywood Tech" [Northing = 670672.5913 (feet), Easting = 829207.25434 (feet), Datum SPC 83, Combined Orid Factor = 0.99988425, and Elevation = 2654.69], and running thence from said POINT OF BEGINNING S 39-42-33 E 371.95 with the margin of college drive to a set 5/8 inch rebar with a survey I.D. cap; thence along with a 6 inch concrete curb and with a curve to the right having a radius of 134.96 feet, an arc length of 83.06 feet, a tangent of 42.89 feet, a delta of 35-15-43, and a chord bearing and distance of S 22-04-41 E 81.75 feet to a set 5/8 inch rebar with a survey I.D. cap; thence with a concrete walk S 76-04-20 W 25.82 feet to a point; thence S 05-37-21 E 55.41 feet to a set 5/8 inch rebar with a survey I.D. cap; thence continuing with the concrete walk S 76-53-23 W 59.62 feet to a 5/8 inch rebar with a survey I.D. cap near Sawmill Drive; thence N 83-45-30 W 252.08 feet to a set 5/8 inch rebar with a survey I.D. cap; thence N 45-35-08 W 48.45 feet to a set 5/8 inch rebar with a survey I.D. cap; thence N 84-30-16 W 27.88 feet to a set 60d nail with a brass disk; thence N 05-38-55 E 90.43 feet to a set 60d nail with a brass disk; thence N 84-21-11 W 162.04 feet passing along the northern side of the Basic Skills/Daycare Building (Building 800); thence N 27-12-45 W 68.18 feet to a point near the eastern edge of Feedlander Drive; thence with a curve to the left having a radius of 548.00 feet, an arc length of 174.03 feet, a tangent of 87.75 feet; a delta of 18-11-44, and a chord bearing and distance of N 53-53-15 E 173.30 feet to a set 5/8 inch rebar with a survey I.D. cap; thence running near the eastern edge of Freedlander Drive N 44-47-23 E 87.47 feet to a set 5/8 inch rebar with a survey I.D. cap; thence N 48-56-18 E 64.56 feet to a set 5/8 inch rebar with a survey I.D. cap; thence with a curve to the right having a radius of 36.00 feet, an arc length of 57.21 feet, a tangent of 36.67 feet, a delta of 91-03-21 feet, and a chord bearing and distance of S 85-32-01 E 51.38 feet to a set 5/8 inch rebar with a survey I.D. cap; thence N 49-59-40 E 5.59 feet to the POINT OF BEGINNING.

BEING 3.200 acres as shown on plat entitled "Plat Prepared for: Haywood County, a body politic" by Sechser Precision Surveying and Mapping, PLLC, Firm License Number P-0211, dated 06-09-2010 and bearing File Number 8638-04-A and Job Number 09-001 as recorded in Plat Cabinet C, Slot _____, Haywood County Registry.

BEING a portion of the property deeded to Turner A. Cathy, et al., Trustees of Haywood Technical Institute from Haywood County Consolidated School System by deed dated November 11, 1969 and recorded in Deed Book 237, Page 683, Haywood County Registry. The name was changed from Haywood Technical Institute to Haywood Technical College by action of the HCC Board of Trustees in September, 1979 as reflected in page 1 of the Sept. 1979 Trustee Minutes. The name was changed from Haywood Technical College to Haywood Community College by action of the HCC Board of Trustees in November 1987 as reflected in the Nov. 1987 Trustee Minutes, pages 1 and 2.

Exhibit B-1

Lease



2010008713

HAYWOOD CO, NC FEE \$68.00
PRESENTED & RECORDED

10-15-2010 11:45:01 AM

SHERRI C. ROGERS REGISTER OF DEEDS

REGISTER OF DEEDS

BY SHERRI C. ROGERS REGISTER OF DEEDS
DEPUTY REGISTER OF DEEDS

BK: RB 791

PG: 295-313

LEASE

by and between

COUNTY OF HAYWOOD, NORTH CAROLINA

as Lessor

and

THE BOARD OF TRUSTEES OF HAYWOOD COMMUNITY COLLEGE

as Lessee

Dated as of October 1, 2010

This document was prepared by:
Rebecca B. Joyner, Esq.
Parker Poe Adams & Bernstein LLP
150 Fayetteville Street, Suite 1400
Raleigh, North Carolina 27602

LEASE

THIS LEASE, dated as of October 1, 2010, and entered into by and between the COUNTY OF HAYWOOD, NORTH CAROLINA, a political subdivision of the State of North Carolina, as lessor (the "County"), and THE BOARD OF TRUSTEES OF HAYWOOD COMMUNITY COLLEGE, a body corporate which has general control and supervision of all matters pertaining to Haywood Community College (the "College"), and is duly organized and existing under the laws of the State of North Carolina (the "Board").

WITNESSETH:

WHEREAS, the County and the Board have determined to cooperate in a plan to finance the cost to provide for the renovation of the General Education Building (the "Education Building") and the construction of a new Creative Arts Building (the "Crafts Building," and together with the Education Building, the "Community College Projects") to replace the current Crafts Building, both on the campus of College, which each has found to be necessary and desirable to provide for improved higher education in the County; and

WHEREAS, the Board previously owned the site on which the Crafts Building, as more particularly described in Exhibit A (the "Site") will be located, and as part of the financing plan described above, the Board has executed and delivered a General Warranty Deed conveying the Site, as more particularly described in Exhibit A hereto, and the improvements thereon to the County, who now owns the Site;

WHEREAS, as a part of such plan, the County will enter into an Installment Financing Contract, dated as of October 1, 2010 (the "Contract"), between the County and Bank of America, N.A. to finance the cost of the Community College Projects and a Deed of Trust, Security Agreement and Fixture Filing, dated as of October 1, 2010 (the "Deed of Trust"), from the County for the benefit of the Bank in order to secure the County's obligations under the Contract;

WHEREAS, as a part of such plan, the County and the Board have entered into an Agency Agreement, dated as of October 1, 2010 (the "Agency Agreement"), providing, among other matters, for the transfer of the Site and the improvements thereon by the County for lease to the Board and the accomplishment of the Community College Projects;

WHEREAS, as a part of such plan, the County proposes to lease the Site and the improvements thereon (collectively, the "Leased Property") to the Board and the Board has determined to lease the Leased Property from the County; and

WHEREAS, as a part of such plan, the Board proposes to sublease a portion of the Leased Property and the improvements thereon, including without limitation portions of the roof of the Crafts Building (collectively the "Subleased Property") to an affiliate of or entity controlled by FLS Energy, Inc. for the purposes of installing a solar electricity and energy production system that is currently contemplated to include a solar thermal water heating facility, solar thermal heating and cooling facility, photovoltaic electricity system, absorption chiller, and emergency generator and associated wiring and other infrastructure pursuant to a Solar Facility System Sublease Agreement (the "Sublease") and Solar Purchase Agreement (the "SPA");

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein

contained, the parties hereto agree as follows:

**ARTICLE I
DEFINITIONS; RULE OF CONSTRUCTION**

All capitalized terms used in this Lease and not otherwise defined herein have the meanings assigned to them in the Agency Agreement, the Contract and the Deed of Trust, unless the context clearly requires otherwise. In addition, the following terms have the meanings specified below, unless the context clearly requires otherwise:

"Board Representative" means the Chairman of the Board, the College's President or any other person at the time designated, by a written certificate furnished to the County and signed on the Board's behalf by its Chairman, to act on the Board's behalf for the purpose of performing any act under this Lease.

"Closing Date" means October 15, 2010.

"Contract" means an Installment Financing Contract dated as of October 1, 2010 between the County and Bank of America, N.A., a national banking association.

"County Representative" means any person at the time designated, by a written certificate furnished to the Board and signed on the County's behalf by the Chairman of its Board of Commissioners, to act on the County's behalf for the purpose of performing any act under this Lease.

"Event of Default" means one or more events of default as defined in Section 12.1.

"Lease" means this Lease, as it may be duly amended.

"Lease Term" means the term of this Lease as determined under Article IV.

"Lease Year" means, initially, from the Closing Date through June 30, 2011, and, thereafter, means the twelve-month period of each year commencing on July 1 and ending on the next June 30.

"Leased Property" means the Site, as described in Exhibit A, and the improvements thereon; provided, however, that the definition of "Leased Property" shall in no event include the System (as defined in the SPA) or any other improvements, modifications, alterations, or additions made by the Solar Developer to the Subleased Property or the Leased Property.

"Solar Developer" means, initially, FLS Energy, Inc. or any affiliate thereof or entity controlled thereby, or any subsequent solar developer.

All references to articles or sections are references to articles or sections of this Lease, unless the context clearly indicates otherwise.

**ARTICLE II
REPRESENTATIONS, COVENANTS AND WARRANTIES**

The County and the Board each represent, covenant and warrant for the other's benefit as follows:

(a) Neither the execution and delivery of this Lease, nor the fulfillment of or compliance with its terms and conditions, nor the consummation of the transactions contemplated hereby, results or will result in a breach of the terms, conditions and provisions of any agreement or instrument to which either is now a party or by which either is bound, or constitutes a default under any of the foregoing.

(b) To the knowledge of each party, there is no litigation or proceeding pending or threatened against such party (or against any other person) affecting the rights of such party to execute or deliver this Lease or to comply with its obligations under this Lease. Neither the execution and delivery of this Lease by such party, nor compliance by such party with its obligations under this Lease, requires the approval of any regulatory body or any other entity the approval of which has not been obtained.

The County represents, covenants and warrants for the benefit of the Board as follows:

(1) The County shall have no right, title, or interest in the System.

(2) Neither the entering into of the Sublease and SPA and consummating the transactions contemplated thereby nor the construction and installation of the System by the Board and/or the Solar Developer shall cause the County's obligations to make Installment Payments under the Contract to be "*private activity bonds*" within the meaning of the Internal Revenue Code of 1986, as amended or otherwise cause the Installment Payments to become taxable obligations.

ARTICLE III DEMISING CLAUSE

The County hereby leases the Leased Property to the Board and the Board hereby leases the Leased Property from the County, in accordance with the provisions of this Lease, to have and to hold for the Lease Term.

ARTICLE IV LEASE TERM

Section 4.1. Commencement. The Lease Term commences on the Closing Date.

Section 4.2 Termination. The Lease Term terminates on the earlier of the following dates or events:

(a) the date on which the County has paid or made provision for all Installment Payments (as defined in the Contract) and all other payments due under Contract in accordance with its terms; or

(b) an Event of Default and termination of this Lease under Article XII.

ARTICLE V

QUIET ENJOYMENT; TRANSFER

Section 5.1 *Quiet Enjoyment; Transfer.* The County hereby covenants that the Board shall, during the Lease Term, peaceably and quietly have and hold and enjoy the Leased Property without suit, trouble or hindrance from the County, except as expressly required or permitted by this Lease. The County shall not interfere with the quiet use and enjoyment of the Leased Property during the Lease Term. The County shall, at the Board's request, join and cooperate fully in any legal action in which the Board asserts its right to such possession and enjoyment, or which involves the imposition of any taxes or other governmental charges on or in connection with the Leased Property. In addition, the Board may at its own expense join in any legal action affecting its possession and enjoyment of the Leased Property, and shall be joined (to the extent legally possible and at the Board's expense) in any action affecting its liabilities hereunder.

The provisions of this Section 5.1 are subject to rights to inspect the Leased Property granted to parties under the Contract and to the right hereby reserved to the County to inspect the Leased Property at any reasonable time.

If the Board deems the Site no longer necessary for College purposes, the Board may request that the County transfer the Site to the Board so that the Board may dispose of such property, provided that any transfer requires consent of the Bank so long as the Contract and Deed of Trust are in effect. The County agrees to consider such request in a timely manner and to not unreasonably withhold its approval of such transfer to the Board; provided, however, that both parties hereto recognize that the County may not be able to transfer any Site that is subject to a security interest related to a financing for the Site.

Section 5.2 *Transfer Upon Lease Termination.* At the end of the Lease Term under Section 4.2(a) and upon confirmation from the County that the lien on the Leased Property has been released pursuant to the Deed of Trust, the County hereby agrees to execute, deliver and record a Limited Warranty Deed transferring title to the Lease Property to the Board, together with such other documents as are necessary to convey to the Board good and marketable title to the Leased Property, subject only to (a) Permitted Encumbrances and (b) any encumbrance or imperfection caused by or attributable to the Board.

ARTICLE VI CONSIDERATION FOR LEASE

Section 6.1 *Use of Leased Property; Assumption of Obligations.* The Board hereby agrees to use the Leased Property for higher education purposes in fulfillment of its obligation, shared by the County, to provide for improved higher education in the County. In addition, in consideration of its rights under this Lease, the Board undertakes the obligations imposed on it hereunder, including those imposed by Section 8.1.

ARTICLE VII CONSTRUCTION AND OTHER ACCOMPLISHMENT OF COMMUNITY COLLEGE PROJECTS AND CERTAIN RELATED COVENANTS

Section 7.1 *Construction and Other Accomplishment of Community College Projects.* The County has provided in the Agency Agreement for the construction and other accomplishment of the Community College Projects by the Board as the County's agent. The Board represents that it has reviewed all provisions concerning the construction and other accomplishment of the Community College Projects in the Contract and hereby approves such provisions. The Board shall take possession of the

Leased Property on the date of delivery of this Lease. Title to the Leased Property shall be held by the County, subject only to Permitted Encumbrances.

Section 7.2 *Maintenance, Repair, Taxes and Assessments.*

(a) *Maintenance; Repair.* The Board shall use, or cause to be used, the Leased Property in a careful and proper manner, in compliance with all applicable laws and regulations, and, at its sole expense, shall service, repair, maintain and insure, or cause to be serviced, repaired, maintained and insured, the Leased Property so as to keep the Leased Property in good condition, repair, appearance and working order for the purposes intended, ordinary wear and tear excepted.

(b) *Taxes and Assessments.* The Board shall also pay, or cause to be paid, all taxes and assessments, as applicable, including, but not limited to, utility charges, of any type or nature levied, assessed or charged against any portion of the Leased Property, provided that with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Board shall be obligated to pay only such installments as are required to be paid as and when the same become due.

(c) *Contests.* The Board may, at its sole expense and in its name, in good faith contest any such taxes, assessments, utility and other charges, as applicable, and, if any such contest occurs, may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom, but before such nonpayment it shall consult with the County and, if the County requires, furnish the County with the opinion of a counsel acceptable to the County, to the effect that, by nonpayment of any such items, the interest of the County in the Leased Property will not be materially endangered and that the Leased Property will not be subject to loss or forfeiture. The County will cooperate fully in such contest on the request and at the expense of the Board.

Section 7.3 *Modification of Leased Property, Liens.*

(a) *Additions, Modifications and Improvements.* The Board shall, at its own expense, have the right to make, or cause to be made, additions, modifications and improvements to any portion of the Leased Property if such additions, modifications or improvements are necessary or beneficial for the use of such portion of the Leased Property, including, without limitation, the installation of the System. Except as set forth in the following sentence, such additions, modifications and improvements shall thereafter comprise part of the Leased Property and be subject to the provisions of this Lease. Notwithstanding the foregoing, the System shall not be part of the Leased Property or subject to the provisions of this Lease. Such additions, modifications and improvements shall not in any way damage any portion of the Leased Property or cause it to be used for purposes other than those authorized under the provisions of State and federal law or in any way which would cause the interest components of the Installment Payments to be includable in gross income for purposes of federal income taxation under Section 103 of the Internal Revenue Code of 1986, as amended.

(b) *Liens.* The Board will not permit any mechanic's or other lien to be established or remain against the Leased Property for labor or materials furnished in connection with any additions, modifications or improvements made by the Board under this Section, but if any such lien is filed or established and the Board first notifies, or causes to be notified, the County of the Board's intention to do so, the Board may in good faith contest any lien filed or established against the Leased Property and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom and shall provide the County with full security against any loss or forfeiture which might arise from the nonpayment of any such item, in form satisfactory to the County.

The County will cooperate fully in any such contest on the request and at the expense of the Board.

Except as provided in this Article and except as the County may consent thereto, which consent shall not be unreasonably withheld, the Board shall not, directly or indirectly, create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Leased Property, other than the respective rights of the Board and the County as herein provided. Except for the Deed of Trust and except as provided in this Article or otherwise with the County's consent, the Board shall promptly, at its own expense, take such action as may be necessary to duly discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim for which it is responsible, if the same shall arise at any time; provided that the Board may contest such liens, charges, encumbrances, or claims if it desires to do so. The Board shall reimburse the County for any expense incurred by the County in order to discharge or remove any such mortgage, pledge, lien, charge, encumbrance or claim.

ARTICLE VIII BOARD'S ASSUMPTION OF COUNTY'S OBLIGATIONS

Section 8.1 *Assumption of Obligations.* The Board hereby assumes all the County's obligations under the Contract regarding the maintenance of general liability and casualty insurance with respect to the Leased Property. It is expressly understood that the Board does not assume the County's obligation under the Contract to pay the Installment Payments and that the Board does not indemnify the County or any other party to the Contract for third-party claims asserted against any party to the Contract relating to the payment of the Installment Payments.

Section 8.2 *Transfer of Obligations.* The Board shall carry out the County's obligations under the Contract with respect to the construction of the Community College Projects.

Section 8.3 *Board's General Covenant.* The Board further undertakes not to take or omit to take any action the taking or omission of which would cause the County to be in default in any manner under the Contract. In particular, the Board covenants not to make any use of the Leased Property that would cause the County's obligations to make Installment Payments under the Contract to be "*private activity bonds*" within the meaning of the Internal Revenue Code of 1986, as amended. If the Board takes or omits to take any such action, then the Board shall proceed with all due diligence to take such action as may be necessary to cure such default.

Section 8.4 *County's Cooperation.* The County shall cooperate fully with the Board in filing any proof of loss or taking any other action under this Lease. Neither the County nor the Board may voluntarily settle, or consent to the settlement of, any proceeding arising out of any insurance claim with respect to the Leased Property without the other's written consent.

Section 8.5 *Advances; Performance of Obligations.* If the Board fails to pay any amount required to be paid by it under this Lease, or fails to take any other action required of it under this Lease, then the County may (but is under no obligation to) pay such amount or perform such other obligation. The Board agrees to reimburse the County for any such payment or for its costs incurred in connection with performing such other obligation.

ARTICLE IX DISCLAIMER OF WARRANTIES; OTHER COVENANTS

Section 9.1 *Disclaimer of Warranties.* THE COUNTY MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION,

MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR FITNESS FOR A PARTICULAR USE OF THE LEASED PROPERTY OR ANY PART THEREOF OR ANY OTHER REPRESENTATION OR WARRANTY WITH RESPECT TO THE LEASED PROPERTY OR ANY PART THEREOF. The County is not liable for any direct or indirect, incidental, special or consequential damage in connection with or arising out of this Lease or the existence, furnishing, functioning or use by anyone of any item, product or service provided for herein.

Section 9.2 Further Assurances; Corrective Instruments. The Board and the County agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Leased Property hereby leased or intended so to be, or for otherwise carrying out the intention hereof.

Section 9.3 Board and County Representatives. Whenever under the provisions hereof the approval of the Board or the County is required to take some action at the request of the other, unless otherwise provided, such approval or such request is to be given for the Board by the Board Representative and for the County by the County Representative, and the Board and the County are authorized to act on any such approval or request of such representative of the other.

Section 9.4 Compliance with Requirements. During the Lease Term, the Board and the County shall observe and comply promptly with all current and future orders of all courts having jurisdiction over the Leased Property or any portion thereof (or be diligently and in good faith contesting such orders), and all current and future requirements of all insurance companies' written policies covering the Leased Property or any portion thereof.

ARTICLE X TITLE TO LEASED PROPERTY; LIMITATIONS ON ENCUMBRANCES

Except for (i) personal property purchased or leased by the Board at its own expense, and (ii) the System and any other improvements, modifications, alterations, or additions made by the Solar Developer to the Subleased Property or the Leased Property, title to the Leased Property and any and all additions and modifications to or replacements of any portion of the Leased Property shall be held in the County's name, subject only to Permitted Encumbrances, until conveyed as provided in this Lease, notwithstanding (a) the occurrence of any event of damage, destruction, condemnation or construction or title defect or (b) the violation by the County of any provision of this Lease.

The Board has no right, title or interest in the Leased Property or any additions and modifications to or replacements of any portion of the Leased Property, except as expressly set forth in this Lease.

ARTICLE XI SUBLEASING AND INDEMNIFICATION

Section 11.1 Board's Subleasing. Unless otherwise agreed to between the County and the Board prior to the execution and delivery of this Lease and pursuant to Section 1.6 of the Deed of Trust, the Board may not assign or sublease the Leased Property, in whole or in part, without the prior written consent of the County, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, the County hereby grants its consent to the Board's entering into of the Sublease and the SPA.

Section 11.2 Indemnification. Except as provided in Section 8.1, to the extent permitted by

law, the Board agrees to indemnify and save the County, its officers, employees and agents harmless against and from all claims by or on behalf of any person, firm, corporation or other legal entity arising from the operation or management of the Leased Property by the Board during the Lease Term, including any claims arising from: (a) any condition of the Leased Property, (b) any act of negligence of the Board or of any of its agents, contractors or employees or any violation of law by the Board or breach of any covenant or warranty by the Board hereunder; or (c) the incurrence of any cost or expense in connection with the construction and other accomplishment of the Community College Projects in excess of the moneys available therefor in the Project Account. The Board shall be notified promptly by the County of any action or proceeding brought in connection with any claims arising out of circumstances described in (a), (b) or (c) above.

ARTICLE XII EVENTS OF DEFAULT

Section 12.1 *Events of Default.* Each of the following is an "*Event of Default*" under this Lease and the term "*Default*" means, whenever it is used in this Lease, any one or more of the following events:

(a) The Board's or the County's failure to observe and perform any covenant, condition or agreement on its part to be observed or performed for a period of 30 days after written notice specifying such failure and requesting that it be remedied has been given to the defaulting party by the non-defaulting party, unless the non-defaulting party agrees in writing to an extension of such time before its expiration; but if the failure stated in such notice cannot be corrected within the applicable period, the non-defaulting party shall not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the defaulting party within the applicable period and diligently pursued until such failure is corrected and, further, if by reason of any event or occurrence constituting force majeure the defaulting party is unable in whole or in part to carry out any of its agreements contained herein (other than its obligations contained in Section 6.2 or 8.1 hereof), the defaulting party shall not be deemed in default during the continuance of such event or occurrence.

(b) The dissolution or liquidation of the Board, the College or the County or the voluntary initiation by the Board or the County of any proceeding under any federal or state law relating to bankruptcy, insolvency, arrangement, reorganization, readjustment of debt or any other form of debtor relief, or the initiation against the Board or the County of any such proceeding which shall remain undismissed for 60 days, or the entry by the Board or the County into an agreement of composition with creditors or the Board's or the County's failure generally to pay its debts as they become due.

Section 12.2 *Remedies on Default.* Whenever any Event of Default has happened and is continuing, the non-defaulting party may terminate this Lease or take whatever action at law or in equity may appear necessary or desirable, including the appointment of a receiver, to collect the amounts then due, or to enforce performance and observance of any obligation, agreement or covenants under this Lease.

In the event of the expiration or termination of this Lease, for any reason, at any time prior to the expiration or termination of the Sublease and the SPA, the County shall, automatically and without further act or deed, assume, and be deemed to have assumed, the rights and obligations of the College

under the Sublease and the SPA, and the County shall thereafter be bound to the Solar Developer under the Sublease and the SPA to the same extent as if the County was the original lessor under the Sublease and the original purchaser under the SPA. In consideration of the County's willingness to assume the Sublease and the SPA, by its limited joinder to this Lease, Solar Developer shall cause its affiliates (FLS Owner II, LLC in the case of the Sublease and FLS Solar 20, LLC in the case of the SPA) to attorn to the County as its new landlord under the Sublease and purchaser under the SPA, and the County and the Solar Developer agree that the Sublease and SPA shall continue in full force and effect as direct contracts between the County and the Solar Developer upon all of the terms, covenants, conditions and agreements set forth therein. This provision shall survive the expiration or termination of this Lease. This provision may hereinafter be referred to as the "Assumption Upon Termination Provision."

Section 12.3 *No Remedy Exclusive.* No remedy herein conferred on or reserved is intended to be exclusive, and every such remedy is cumulative and in addition to every other remedy given hereunder and every remedy now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing on any default impairs any such right or power, and any such right and power may be exercised from time to time as may be deemed expedient. It is not necessary to give any notice in order to be entitled to exercise any remedy reserved in this Article XII, other than such notice as may be required in this Article XII.

Section 12.4 *Waivers.* If any agreement contained herein is breached by either party and thereafter waived by the other party, such waiver is limited to the particular breach so waived and will not be deemed to waive any other breach hereunder.

Section 12.5 *Waiver of Appraisal, Valuation, Stay, Extension and Redemption Laws.* The Board and County agree, to the extent permitted by law, that in the case of a termination of the Lease Term by reason of an Event of Default, neither the Board nor the County nor any one claiming through or under either of them shall or will set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereafter in force in order to prevent or hinder the enforcement of any remedy provided hereunder; and the Board and the County, for themselves and all who may at any time claim through or under either of them, each hereby waives, to the full extent that it may lawfully do so, the benefit of such laws.

ARTICLE XIII MISCELLANEOUS

Section 13.1 *Notices.* All notices, certificates or other communications hereunder are sufficiently given if given by United States mail in certified form, postage prepaid, and will be deemed to have been received five Business Days (as defined in the Contract) after deposit in the United States mail in certified form, postage prepaid, as follows:

- (a) If intended for the County, addressed to it at the following address:

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

(b) If intended for the Board, addressed to it at the following address:

Haywood Community College
185 Freedlander Drive
Clyde, North Carolina 28721
Attention: President

Section 13.2 *Binding Effect.* This Lease is binding on and inures to the benefit of the Board and the County, subject, however, to the limitations contained in Article XI.

Section 13.3 *Net Lease.* This Lease is a "net lease," and the Board shall pay absolutely net during the Lease Term all other payments required hereunder, free of any deductions, and without abatement or setoff.

Section 13.4 *Payments Due on Non-Business Days.* If the date for making any payment or the last day for performance of any act or the exercising of any right, as provided in this Lease, is not a Business Day, such payment may be made or act performed or right exercised on the next succeeding day that is a Business Day with the same force and effect as if done on the nominal date provided in this Lease.

Section 13.5 *Severability.* If any provision of this Lease, other than the requirement of the County to provide quiet enjoyment of the Leased Property, is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 13.6 *Execution in Counterparts.* This Lease may be simultaneously executed in several counterparts, each of which is an original and all of which constitute but one and the same instrument.

Section 13.7 *Applicable Law.* This Lease is governed by and to be construed in accordance with the laws of the State of North Carolina.

Section 13.8 *Captions.* The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Lease.

Section 13.9. *Amendments and Further Instruments.* The County and the Board may, from time to time, execute and deliver such amendments to this Lease and such further instruments as may be required or desired for carrying out the expressed intention of this Lease; provided, however that any amendment affecting the Assumption Upon Termination Provision shall require the prior written consent of the Solar Developer, which consent may be given or withheld in Solar Developer's sole discretion.

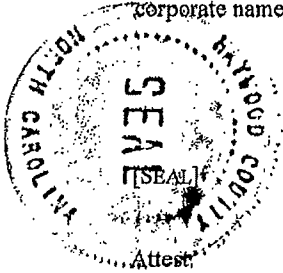
Section 13.10 *Memorandum of Lease.* The County and the Board shall, on or before the Closing Date, file this Lease or a memorandum of this Lease legally sufficient to comply with the relevant provisions of the North Carolina General Statutes with the Haywood County Register of Deeds. Any memorandum of this Lease shall specifically include the Assumption Upon Termination Provision for the benefit of the Solar Developer, and which shall further state that the Assumption Upon Termination Provision contained in any such memorandum of this Lease shall expressly survive the termination, cancellation or release of record of the memorandum of this Lease.

Section 13.11 *Subordinate to Deed of Trust.* This Lease is subordinate to the Deed of Trust.

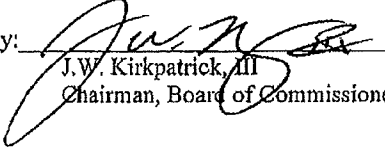
Section 13.12 *Rights Upon Transfer.* Should the County, at any time during the term of the Sublease or the SPA, transfer all or any part of the Leased Property to the Board, such transfer shall be under and subject to the Sublease, which shall then convert to a lease, the SPA, and Solar Developer's rights hereunder and thereunder.

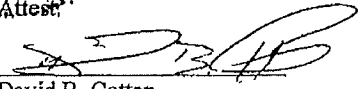
[Signatures Begin on Following Page]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed in their corporate names by their duly authorized officers, all as of the day and year first above written.

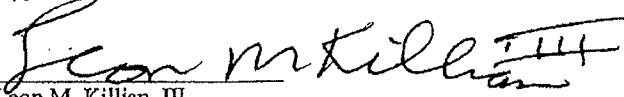


COUNTY OF HAYWOOD, NORTH CAROLINA

By: 
J.W. Kirkpatrick, III
Chairman, Board of Commissioners


David B. Cotton
Clerk to the Board of Commissioners

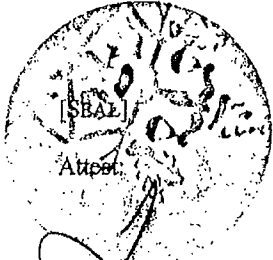
Approved as to Form:


Leon M. Killian, III
County Attorney

[Counterpart signature page to the Lease]

THE BOARD OF TRUSTEES OF HAYWOOD
COMMUNITY COLLEGE


By: Mark A. Berger
Chairman



Sharon Starns
Secretary

The Solar Developer, on its own behalf and on behalf of its affiliates, signs this Lease for the purpose of acknowledging this Lease as it affects the Sublease and SPA, including without limitation Section 12.2 and Section 13.9 of this Lease.

FLS ENERGY, INC.

By 
Michael Shore, President

STATE OF NORTH CAROLINA)
)
COUNTY OF HAYWOOD)

I, a Notary Public of the County and State aforesaid, certify that David B. Cotton (the "Signatory") personally came before me this day and acknowledged that he is the Clerk to the Board of Commissioners for the County of Haywood, North Carolina and that by authority duly given and as the act of said County, the foregoing instrument was signed in its name by the Chairman of the Board of Commissioners of the County of Haywood, North Carolina and attested by him as Clerk to said Board of Commissioners.

I certify that the Signatory personally appeared before me this day, and
(check one of the following)

(I have personal knowledge of the identity of the Signatory); or

(I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:
(check one of the following)

a driver's license or
 in the form of _____); or

(a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal, this the 12th day of October, 2010.

Rebecca Morgan
Notary Public

Print: Name: Rebecca Morgan
[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: 4/14/13
[NOTARY SEAL] (MUST BE FULLY LEGIBLE)



STATE OF NORTH CAROLINA)
)
COUNTY OF HAYWOOD)

I, a Notary Public of the County and State aforesaid, certify that Teresa Starrs (the "Signatory") personally came before me this day and acknowledged that he/she is the Secretary of the Board of Trustees of Haywood Community College (the "Board") and that by authority duly given and as the act of said Board, the foregoing instrument was signed in its name by the Chairman of said Board and attested by him/her as Secretary of said Board.

I certify that the Signatory personally appeared before me this day, and
(check one of the following)

(I have personal knowledge of the identity of the Signatory); or

(I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:
(check one of the following)

a driver's license or
 in the form of _____); or

(a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

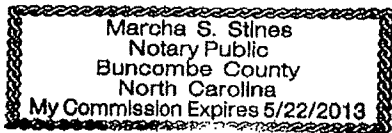
Witness my hand and official stamp or seal, this the 7th day of October, 2010.

Marcha A Stines

Notary Public

Print: Name: Marcha S. Stines
[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: 05/22/2013
[NOTARY SEAL] (MUST BE FULLY LEGIBLE)



STATE OF North Carolina)
COUNTY OF Buncombe)

I, a Notary Public of the County and State aforesaid, certify that Michael Shore (the "Signatory") personally came before me this day and acknowledged that she/he is the President of FLS Energy, Inc. ("FLS Energy") and that by authority duly given and as the act of said FLS Energy, the foregoing instrument was signed in its name by Michael Shore.

I certify that the Signatory personally appeared before me this day, and
(check one of the following)

(I have personal knowledge of the identity of the Signatory); or

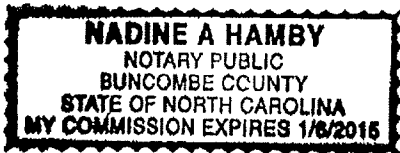
(I have seen satisfactory evidence of the Signatory's identity, by a current state or federal identification with the Signatory's photograph in the form of:
(check one of the following)

a driver's license or
 in the form of _____); or

(a credible witness has sworn to the identity of the Signatory).

The Signatory acknowledged to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated.

Witness my hand and official stamp or seal, this the 11th day of October, 2010,



Nadine A Hamby
Notary Public
Print: Name: Nadine A. Hamby
[Note: Notary Public must sign exactly as on notary seal]

My Commission Expires: January 6, 2015
[NOTARY SEAL] (MUST BE FULLY LEGIBLE)

EXHIBIT A

LEGAL DESCRIPTION OF THE SITE

BEGINNING at a point in the southern margin of College Drive located S 19-07-24 W 883.62 from NCGS Horizontal and Vertical Control Monument "Haywood Tech" [Northing = 670672.5913 (feet), Easting = 829207.25434 (feet), Datum SPC 83, Combined Orid Factor = 0.99988425, and Elevation = 2654.69], and running thence from said POINT OF BEGINNING S 39-42-33 E 371.95 with the margin of college drive to a set 5/8 inch rebar with a survey I.D. cap; thence along with a 6 inch concrete curb and with a curve to the right having a radius of 134.96 feet, an arc length of 83.06 feet, a tangent of 42.89 feet, a delta of 35-15-43, and a chord bearing and distance of S 22-04-41 E 81.75 feet to a set 5/8 inch rebar with a survey I.D. cap; thence with a concrete walk S 76 04-20 W 25.82 feet to a point; thence S 05-37-21 E 55.41 feet to a set 5/8 inch rebar with a survey I.D. cap; thence continuing with the concrete walk S 76-53-23 W 59.62 feet to a 5/8 inch rebar with a survey I.D. cap near Sawmill Drive; thence N 83-45-30 W 252.08 feet to a set 5/8 inch rebar with a survey I.D. cap; thence N 45-35-08 W 48.45 feet to a set 5/8 inch rebar with a survey I.D. cap; thence N 84-30-16 W 27.88 feet to a set 60d nail with a brass disk; thence N 05-38-55 E 90.43 feet to a set 60d nail with a brass disk; thence N 84-21-11 W 162.04 feet passing along the northern side of the Basic Skills/Daycare Building (Building 800); thence N 27-12-45 W 68.18 feet to a point near the eastern edge of Feedlander Drive; thence with a curve to the left having a radius of 548.00 feet, an arc length of 174.03 feet, a tangent of 87.75 feet; a delta of 18-11-44, and a chord bearing and distance of N 53-53-15 E 173.30 feet to a set 5/8 inch rebar with a survey I.D. cap; thence running near the eastern edge of Freedlander Drive N 44-47-23 E 87.47 feet to a set 5/8 inch rebar with a survey I.D. cap; thence N 48-56-18 E 64.56 feet to a set 5/8 inch rebar with a survey I.D. cap; thence with a curve to the right having a radius of 36.00 feet, an arc length of 57.21 feet, a tangent of 36.67 feet, a delta of 91-03-21 feet, and a chord bearing and distance of S 85-32-01 E 51.38 feet to a set 5/8 inch rebar with a survey I.D. cap; thence N 49-59-40 E 5.59 feet to the POINT OF BEGINNING.

BEING 3.200 acres as shown on plat entitled "Plat Prepared for: Haywood County, a body politic" by Sechser Precision Surveying and Mapping, PLLC, Firm License Number P-0211, dated 06-09-2010 and bearing File Number 8638-04-A and Job Number 09-001 as recorded in Plat Cabinet C, Slot 58/7 Haywood County Registry.

BEING a portion of the property deeded to Turner A. Cathy, et al., Trustees of Haywood Technical Institute from Haywood County Consolidated School System by deed dated November 11, 1969 and recorded in Deed Book 237, Page 683, Haywood County Registry. The name was changed from Haywood Technical Institute to Haywood Technical College by action of the HCC Board of Trustees in September, 1979 as reflected in page 1 of the Sept. 1979 Trustee Minutes. The name was changed from Haywood Technical College to Haywood Community College by action of the HCC Board of Trustees in November 1987 as reflected in the Nov. 1987 Trustee Minutes, pages 1 and 2.

Exhibit B-2
Agency Agreement

AGENCY AGREEMENT

by and between

HAYWOOD COMMUNITY COLLEGE

and

HAYWOOD COUNTY, NORTH CAROLINA

Dated as of October 1, 2010

AGENCY AGREEMENT

THIS AGENCY AGREEMENT, dated as of October 1, 2010, and entered into by and between **THE BOARD OF TRUSTEES OF HAYWOOD COMMUNITY COLLEGE**, a body corporate which has general control and supervision of all matters pertaining to Haywood Community College (the "*College*"), and is duly organized and existing under the laws of the State of North Carolina (the "*Board*"), and the **COUNTY OF HAYWOOD, NORTH CAROLINA**, a political subdivision of the State of North Carolina (the "*County*"),

WITNESSETH:

WHEREAS, the County and the Board have determined to cooperate in a plan to finance a portion of the cost to provide for the renovation of the General Education Building (the "*Education Building*") and the construction of a new Creative Arts Building (the "*Crafts Building*") to replace the current Crafts Building, both on the campus of the College (collectively, the "*Community College Projects*"), which each has found to be necessary and desirable to provide for improved higher education in the County; and

WHEREAS, as a part of such plan, the Board has executed a General Warranty Deed conveying the site of the Crafts Building as more particularly described in Exhibit A hereto (the "*Site*") and the improvements thereon to the County; and

WHEREAS, as a part of such plan, the County is authorized to accept a transfer of property from the Board for the purpose of entering into a financial contract for the construction of the Crafts Building in accordance with Section 115D-15.1(b) of the General Statutes of North Carolina, as amended, related thereto, and to lease such property to the Board during the term of the financial contract; and

WHEREAS, as a part of such plan, the County desires to designate the Board as its agent to contract for the completion of the Community College Projects and the Board is willing to accept such an appointment; and

WHEREAS, as a part of such plan, the Board proposes to sublease a portion of the Leased Property (as defined in the Lease) and the improvements thereon, including without limitation portions of the roof of the Crafts Building (collectively the "*Subleased Property*") to FLS Owner II, LLC (together with its affiliates or any subsequent solar developer, the "*Solar Developer*") for the purposes of installing a solar electricity and energy production system that is currently contemplated to include a solar thermal water heating facility, solar thermal heating and cooling facility, photovoltaic electricity system, absorption chiller, and emergency generator and associated wiring and other infrastructure (the "*System*") pursuant to and described in more detail in a Solar Facility System Sublease Agreement (the "*Sublease*") and Solar Purchase Agreement (the "*SPA*");

WHEREAS, the Board and the County have determined to enter into an agreement in order to execute such plan and this agreement (this "*Agency Agreement*") constitutes such an agreement; and

WHEREAS, all acts, conditions and things required by law to exist, to have happened and to have been performed precedent to and in connection with the execution and entering into of this Agency Agreement do exist, have happened and have been performed in regular and due time, form and manner as required by law, and the parties hereto are now duly authorized to execute and enter into this Agency Agreement;

NOW, THEREFORE, in consideration of the promises and of the mutual agreements and covenants contained herein and for other valuable consideration, the parties hereto do hereby agree as follows:

Section 1. *Transfer of Site to County.* The Board, in furtherance of such plan, will transfer the Site to the County so that the County can pledge the Site as collateral for a financing contract by means of a General Warranty Deed substantially in the form of the draft thereof attached hereto as Exhibit A (the "*General Warranty Deed*").

Section 2. *Accomplishment of Community College Projects.* The County, in furtherance of such plan, will acquire the Site from the Board in accordance with Section 1 above and will provide for the construction and other accomplishment of the Community College Projects by the Board as hereinafter provided. The County will also finance the cost of the Community College Projects under Section 160A-20 of the General Statutes of North Carolina, as amended, by entering into an Installment Financing Contract dated as of October 1, 2010 (the "*Contract*") between the County and Bank of America, N.A., a national banking association. In addition, the County will execute and deliver to a trustee for the benefit of the Bank a Deed of Trust, Security Agreement and Fixture Filing dated as of October 1, 2010 (the "*Deed of Trust*"), which will encumber the Site, the improvements thereon and other property as security for its obligation to repay the funds advanced to the County pursuant to the Contract. Notwithstanding anything to the contrary contained herein, the System (a) shall not be financed as provided herein, (b) shall not be encumbered by the Deed of Trust, and (c) shall not be considered part of the Leased Property or the Community College Projects.

Section 3. *Lease of Sites and the improvements thereon to Board.* On the conveyance of the Site and the improvements thereon to the County by the Board, the County will lease the Site and the improvements thereon to the Board under a Lease to be entered into by the County and the Board to be dated as of October 1, 2010 (the "*Lease*"). The Board intends to enter into the Sublease for the lease of the Subleased Property to the Solar Developer, and the County hereby consents to the Sublease.

Section 4. *Board to Act as Agent of the County; Indemnification.* The County hereby irrevocably appoints the Board as its agent in connection with the construction, installation and other accomplishment of the Community College Projects. The Board, as the agent of the County for the foregoing purposes, shall cause the Community College Projects to be completed in accordance with the respective construction documents, the Contract and any applicable requirements of governmental authorities and law, specifically including Sections 143-129 and 143-341 of the General Statutes of North Carolina, as amended.

Without limiting the generality of the foregoing and by way of illustration and not limitation:

- (a) the Board shall cause the construction agreements to be reviewed and approved as to legal form in accordance with Board policies and practices for legal review of contracts prior to submittal to the County's Board of Commissioners for award;
- (b) upon commencement of construction, the Board shall supervise and oversee the construction and the purchase of equipment, acting through its architects and agents; and certify through the architect to the County for direct payment by the County of the contractors' pay requests, fees, and cost of the project; resolve any disputes arising under the construction contract at its expense; and do all things necessary and required to commence and complete the Community College Projects;
- (c) the Board shall submit all contracts and amendments thereto, including change orders

which increase or change the scope of the work to the State Construction Office for approval. If any of said actions call for a use of County funds that exceed those previously allocated and budgeted, including the use of contingency funds, the Board shall first obtain consent for such use from the County in accordance with Section 159-28 of the North Carolina General Statutes, as amended, before submitting the request to the State Construction Office;

- (d) the Board shall secure and maintain Builder's Risk insurance on the Community College Projects during construction, or require in the construction agreement that the contractor maintain such coverage;
- (e) the Board shall require in the construction agreement that the contractor maintain such types and amounts of insurance coverage as is customarily required by a community college for the construction of community college facilities, to include comprehensive general liability insurance endorsed to include the County, its officers, employees and agents as Additional Insured.

To the extent permitted by law, the Board shall indemnify and hold the County harmless against and from all claims by or on behalf of any person, firm, corporation or other legal entity arising from the accomplishment of the Community College Projects. The Board shall be notified promptly by the County of any action or proceeding brought in connection with any such claims arising from the accomplishment of the Community College Projects.

Section 5. Description of Community College Projects. With the consent of the County, the Board may make any changes in the description of the Community College Projects or of any component or components thereof; but any increase in the cost of the Community College Projects resulting from any change shall, to the extent the increased cost exceeds the funds available therefor in the Project Account, be payable solely from other funds of the Board, which funds shall be deposited to the credit of the such fund. Notwithstanding anything to the contrary contained herein, neither the System nor any other improvements, modifications, alterations, or additions made by the Solar Developer to the Subleased Property or the Leased Property shall be considered to be part of the Community College Projects.

Section 6. Right of Board to Enforce Contracts. The County hereby assigns to the Board all of its rights and powers under all purchase orders and contracts it enters into with respect to the Community College Projects, and the Board has the right to enforce in its own name or the name of the County such purchase orders or contracts; but this assignment by the County does not prevent the County from asserting said rights and powers on its own behalf.

Section 7. Construction Conferences. The Board hereby agrees that it will, on the request of the County Manager, provide to the County Manager or his designee timely notice of all conferences with representatives of the contractors and vendors with respect to the Community College Projects and that the County Manager or his designee has the right to attend all such conferences.

Section 8. Compliance with Contract. The Board agrees that, except as otherwise provided in this Agency Agreement, it will faithfully discharge all duties imposed on the County by the Contract with respect to the construction and other accomplishment of the Community College Projects and the insuring of the Community College Projects.

Section 9. Disclaimers of the County. The Board acknowledges and agrees that the design of the Community College Projects has not been made by the County, that the County has not supplied

any plans or specifications with respect thereto and that the County (a) is not a manufacturer of, or a dealer in, any of the component parts of the Community College Projects or similar Community College Projects, (b) has not made any recommendation, given any advice or taken any other action with respect to (1) the choice of any supplier, vendor or designer of, or any other contractor with respect to, the Community College Projects or any component part thereof or any property or rights relating thereto, or (2) any action taken or to be taken with respect to the Community College Projects or any component part thereof or any property or rights relating thereto at any stage of the construction thereof, (c) has not at any time had physical possession of the Community College Projects or any component part thereof or made any inspection thereof or any property or rights relating thereto, and (d) has not made any warranty or other representation, express or implied, that the Community College Projects or any component part thereof or any property or rights relating thereto (1) will not result in or cause injury or damage to persons or property, (2) has been or will be properly designed or constructed or will accomplish the results which the Board intends therefor, or (3) is safe in any manner or respect.

The County makes no express or implied warranty or representation of any kind whatsoever with respect to the Community College Projects or any component part thereof to the Board or any other circumstance whatsoever with respect thereto, including but not limited to any warranty or representation with respect to: the merchantability or the fitness or suitability thereof for any purpose; the design or condition thereof; the safety, workmanship, quality or capacity thereof; compliance thereof with the requirements of any law, rule, specification or contract pertaining thereto; any latent defect; the ability thereof to perform any function, and the benefits of any and all implied warranties and representations of the County are hereby waived by the Board.

Section 10. *Amendments and Further Instruments.* The County and the Board may, from time to time, execute and deliver such amendments to this Agency Agreement and such further instruments as may be required or desired for carrying out the expressed intention of this Agency Agreement.

Section 11. *Agency Agreement to Survive Termination of Contract.* Notwithstanding anything to the contrary contained herein, the obligations undertaken by the Board hereunder survive the termination of the Contract.

[Signatures begin on the next page]

IN WITNESS WHEREOF, the parties hereto have executed and attested this Agency Agreement by their officers thereunto duly authorized as of the day and year first written above.

THE BOARD OF TRUSTEES OF HAYWOOD
COMMUNITY COLLEGE

By: *Mark A. Brygger*
Chairman

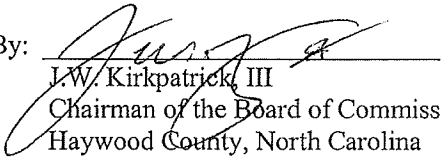
[SEAL]

Attest:

Teresa Starn
Secretary

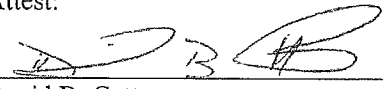
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COUNTY OF HAYWOOD, NORTH CAROLINA

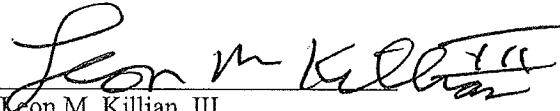
By: 
J.W. Kirkpatrick, III
Chairman of the Board of Commissioners
Haywood County, North Carolina

[SEAL]

Attest:


David B. Cotton
Clerk to the Board of Commissioners

Approved as to Form:


Leon M. Killian, III
County Attorney