Freddie Mac Loan Number: \_\_\_\_\_\_\_\_\_\_

Property Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT – SOLAR AGREEMENTS**

(Revised 7-30-2024)

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENTAGREEMENT – SOLAR AGREEMENTS (**“Agreement”**) is made to be effective as of the \_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, between **[NAME OF SELLER/SERVICER]**, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (**“Lender”**) and [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] (**“Solar Company”**).

**RECITALS**

A. Solar Company has entered into an agreement with [\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ organized and existing under the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_] **(“Property Owner”**) dated [\_\_\_\_\_\_\_\_\_\_, 202\_] (**“Solar Agreement”**) relating to the design, ownership, financing, installation, operation and/or maintenance of a system for conversion of solar energy to electrical energy (“**Solar Facility**”) on the property described in Exhibit A attached to this Agreement (**“Property”**).

B. Lender has made or has committed to make or has purchased a loan to Property Owner in the original principal amount of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (**“Loan”**) which is evidenced by a promissory note (the “**Note”**) and made upon the terms and conditions of a Multifamily Loan and Security Agreement, dated as of \_\_\_\_\_\_\_\_\_ between Lender and Property Owner (“**Loan Agreement**”) and secured by a mortgage, deed of trust or security deed (**“Mortgage”** and along with the Loan Agreement, Note and other documents required under the Loan Agreement, the “**Loan Documents**”) covering the Property.

C. Solar Company has agreed that the Solar Agreement will be subject and subordinate to the Mortgage held by Lender, provided Solar Company is assured of continued use of the Property under the terms of the Solar Agreement.

**AGREEMENT**

NOW, THEREFORE,in consideration of the mutual benefits accruing to the parties hereto and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. Recitals.** The foregoing Recitals are hereby incorporated into this Agreement as agreements among the parties.

**2. Subordination**. The Solar Agreement with all rights, options, liens and charges created by the Solar Agreement is expressly made and will continue to be subject to and subordinate in all respects to the terms, conditions, lien, operation and effect of the Mortgage and to any renewals, modifications, consolidations, replacements and extensions of the Mortgage.

**3. Nondisturbance**. If Lender takes possession of the Property or becomes the owner of the Property by foreclosure, conveyance in lieu of foreclosure or otherwise, so long as Solar Company complies with and performs its obligations under the Solar Agreement and no event of default has occurred under the Solar Agreement, then Lender agrees as follows:

(a) Lender will not terminate, impair or disturb the possession of Solar Company.

(b) The Solar Agreement will continue in full force and effect as a direct Solar Agreement between Lender and Solar Company, upon and subject to all of the terms, covenants and conditions of the Solar Agreement, for the balance of the term of the Solar Agreement.

**[USE THIS VERSION OF SECTION 4 IF THE SOLAR FACILITY IS NOT OWNED BY THE BORROWER]**

**[4. Collateral, Property Owner’s Lien**. Lender hereby agrees that its security interest in the Property as set forth in the Mortgage shall not extend to, and does not in any manner include, any interest whatsoever in the Solar Facility. Property Owner hereby waives and relinquishes any and all of Property Owner’s lien, rights of levy or distraint, claim, security interest or other interest that Property Owner may now or hereafter have in or with respect to the Solar Facility.**]**

**[USE THIS VERSION OF SECTION 4 IF THE SOLAR FACILITY IS OWNED BY THE BORROWER]**

**[4. Reserved.]**

**5. Application of Insurance and Condemnation Proceeds**. Solar Company has been advised that the insurance and condemnation provisions of the Mortgage give Lender certain rights to require that insurance and condemnation proceeds be applied to payment of the indebtedness secured thereby and not to restoration or rebuilding, and Solar Company hereby waives any terms of such Solar Agreement with respect to the application of insurance and condemnation proceeds which are inconsistent with the terms of the Mortgage. Notwithstanding anything to the contrary herein, Lender shall have no rights to any insurance and condemnation proceeds compensating for the loss, restoration, or rebuilding of the Solar Facility.

**6. Consent**. Subject to the terms and conditions of this Agreement, Lender consents to the Solar Agreement.

**7. Mortgage Remedies**. Nothing contained in this Agreement will prevent Lender from naming Solar Company in any foreclosure or other action or proceeding initiated by Lender pursuant to the Mortgage to the extent necessary under applicable law for Lender to avail itself of and complete the foreclosure or other remedy.

**8. Attornment**. If Lender or any other party becomes the owner of the Property by foreclosure, conveyance in lieu of foreclosure or otherwise (**“Successor Property Owner”**), then Solar Company agrees as follows:

(a) Solar Company will perform and observe its obligations under the Solar Agreement.

(b) Solar Company will attorn to and recognize Lender and any Successor Property Owner as the Property Owner under the Solar Agreement for the remainder of the term of the Solar Agreement, such attornment to be automatic and self-operative.

(c) Solar Company will execute and deliver upon request of Successor Property Owner a commercially reasonable agreement of attornment to Successor Property Owner.

(d) Solar Company will, upon receipt of notice from Lender following the occurrence of an event of default under any of the Loan Documents, pay all amounts payable under the Solar Agreement to Lender.

**9.** **Protection of Successor Property Owner**. Solar Company agrees that Successor Property Owner will not be liable for, subject to or bound by any of the following:

(a) Claims, offsets or defenses which Solar Company might have against Property Owner.

(b) Acts or omissions of Property Owner.

(c) Rent or additional rent which Solar Company might have paid for more than the current period.

(d) Any security deposit or other prepaid charge paid to Property Owner.

(e) Construction or completion of any improvements for Solar Company’s use and occupancy.

(f) Warranties of any nature whatsoever, including any warranties respecting use, compliance with zoning, hazardous wastes or environmental laws, Property Owner’s title, Property Owner’s authority, habitability, fitness for purpose or possession.

(g) Amendments or modifications of the Solar Agreement made without its written consent.

(h) Any and all sums that would otherwise be due and payable pursuant to the Solar Agreement other than those which are the result of any acts or omissions of Successor Property Owner and accrue after the date on which Successor Property Owner obtains title to the Property.

(i) Any and all sums that would otherwise be due and payable upon the termination of the Solar Agreement or any other agreement between Property Owner and Solar Company related thereto, other than those which are the result of any acts or omission of Successor Property Owner and accrue after the date on which Successor Property Owner obtains title to the Property.

(j) Any fees, costs, or expenses in conjunction with a termination of the Solar Agreement or any other agreement between Property Owner and Solar Company related thereto, other than those which are the result of any acts or omission of Successor Property Owner and accrue after the date on which Successor Property Owner obtains title to the Property.

**10. Successor Property Owner Exculpation**. Solar Company will look solely to Successor Property Owner’s interest in the Property for the payment and discharge of any obligation or liability imposed upon Successor Property Owner under the Solar Agreement.

**11.** **Estoppel**.

(a) Solar Company hereby represents to Lender that:

(i) The Solar Agreement constitutes the entire agreement between Solar Company and Property Owner with respect to the Solar Facility.

(ii) The Solar Agreement is unmodified and is in full force and effect.

(iii) The Solar Agreement is a valid and binding agreement enforceable against such party in accordance with its terms.

(iv) To the best of Solar Company’s knowledge, there does not exist any default, claim, controversy or dispute under the Solar Agreement.

(v) Solar Company has not commenced any action nor sent or received any notice to terminate the Solar Agreement.

(vi) Such party has not performed any acts or executed any other instrument which might prevent the Lender from exercising its rights under the collateral assignment of the Solar Agreement granted to Lender by the Loan Documents.

(b) Solar Company hereby covenants and agrees:

(i) Not to alter or modify the Solar Agreement in any respect without prior written consent of Lender*.*

(ii) To promptly deliver to Lender a copy of any notice of default under the terms of the Solar Agreement that Solar Company provides to Property Owner.

(iii) Not to terminate the Solar Agreement by reason of default of Property Owner without prior notice to Lender and the right to cure such default within an additional period of 30 days beyond any cure period afforded to Property Owner in the Solar Agreement; provided, however, if the default cannot be remedied within such time, if Lender commences to cure such default and thereafter diligently proceeds with such efforts, Lender shall have an additional 60 days to complete such cure. Notwithstanding the foregoing, if either Lender or Property Owner do not cure or commence curing such default within the time provided and the default threatens Solar Company’s ability to conduct its business or threatens to materially damage the equipment that comprises the Solar Facility, Solar Company shall be permitted to exercise their rights under the Solar Agreement.

(iv) Not to pay any rent or other sums due or to become due under the Solar Agreement more than 30 days in advance of the date on which the same are due or become due under the Solar Agreement.

(v) To certify promptly in writing to Lender in connection with any proposed assignment of the Loan Agreement, whether or not any default on the part of Property Owner then exists under the Solar Agreement.

**12.** **Miscellaneous Provisions.**

(a) This Agreement represents the entire understanding and agreement between the parties with regard to the matters addressed herein, and will supersede and cancel any prior agreements with regard to such matters.

(b)If there is any conflict or inconsistency between the terms of the Solar Agreement and the terms of this Agreement, then the terms of this Agreement will control.

(c) This Agreement will be binding upon and will inure to the benefit of the respective legal successors and permitted assigns of the parties to this Agreement. Without prior notice to or the consent of the Solar Company or the Property Owner, the Lender may freely transfer or assign the Loan and the Loan Documents, including this Agreement, in whole or in part, and the Solar Company acknowledges and agrees that any future legal holder of the Note will automatically be a legal successor and permitted assignee of Lender hereunder, without the necessity of any further action or instrument. No other party will be entitled to any benefits hereunder, whether as a third-party beneficiary or otherwise.

(d) If any one or more of the provisions contained in this Agreement, or any application of any such provisions, is invalid, illegal, or unenforceable in any respect, the validity, legality, enforceability, and application of the remaining provisions contained in this Agreement will not in any way be affected or impaired.

(e) Each notice, request, demand, consent, approval or other communication (collectively, “**Notices**,” and singly, a “**Notice**”) which is required or permitted to be given pursuant to this Agreement will be in writing and will be deemed to have been duly and sufficiently given if (i) personally delivered with proof of delivery (any Notice so delivered will be deemed to have been received at the time so delivered), or (ii) sent by a national overnight courier service (such as FedEx) designating earliest available delivery (any Notice so delivered will be deemed to have been received on the next business day following receipt by the courier), or (iii) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any Notice so sent will be deemed to have been received on the date of delivery as confirmed by the return receipt), addressed to the respective parties as follows:

|  |  |
| --- | --- |
| If to Lender | Attention: |
| If to Solar Company | Attention: |

Any party, by Notice given pursuant to this Section, may change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or addresses, for its Notices, but Notice of a change of address will only be effective upon receipt. Neither party will refuse or reject delivery of any Notice given in accordance with this Section.

(f)Each of the parties will, whenever and as often as they are requested to do so by the other, execute, acknowledge and deliver, or cause to be executed, acknowledged or delivered, any and all such further instruments and documents as may be reasonably necessary to carry out the intent and purpose of this Agreement, and to do any and all further acts reasonably necessary to carry out the intent and purpose of this Agreement.

(g) This Agreement will be governed by the laws of the State in which the Property is located.

(h) Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations under this Agreement.

(i) No failure or delay on the part of any party to this Agreement in exercising any right, power, or remedy under this Agreement will operate as a waiver of such right, power, or remedy, nor will any single or partial exercise of any such right, power or remedy preclude any other or further exercise of such right, power, or remedy or the exercise of any other right, power or remedy under this Agreement.

(j) Each party to this Agreement acknowledges that if any party fails to comply with its obligations under this Agreement, the other parties will have all rights available at law and in equity, including the right to obtain specific performance of the obligations of such defaulting party and injunctive relief.

(k)This Agreement may be amended, changed, modified, altered or terminated only by a written instrument signed by the parties to this Agreement or their successors or assigns.

(l) This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

**13. Captions, Cross References and Exhibits**. The captions assigned to provisions of this Agreement are for convenience only and will be disregarded in construing this Agreement. Any reference in this Agreement to an “Exhibit” or a “Section,” unless otherwise explicitly provided, will be construed as referring, respectively, to an Exhibit attached to this Agreement or to a section of this Agreement. All Exhibits attached to or referred to in this Agreement are incorporated by reference into this Agreement.

**14. Number and Gender.** Use of the singular in this Agreement includes the plural, use of the plural includes the singular, and use of one gender includes all other genders, as the context may require.

**15. No Partnership.** This Agreement is not intended to, and will not, create a partnership or joint venture among the parties, and no party to this Agreement will have the power or authority to bind any other party except as explicitly provided in this Agreement.

**16. Determinations by Lender.** In any instance where the consent or approval of Lender may be given or is required, or where any determination, judgment or decision is to be rendered by Lender under this Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision will be made or exercised by Lender (or its designated representative) at its option, consistent with commercially reasonable standards of a prudent lender.

**17. Secondary Market.**  Lender may sell, transfer and deliver the Note and assign the Loan Agreement, the Mortgage, this Agreement and the other Loan Documents to one or more investors in the secondary mortgage market (“**Investors**”). In connection with such sale, Lender may retain or assign responsibility for servicing the Loan, including the Note, the Loan Agreement, the Mortgage, this Agreement and the other Loan Documents, or may delegate some or all of such responsibility and/or obligations to a servicer including any subservicer or master servicer, on behalf of the Investors. All references to Lender in this Agreement will refer to and include any such servicer to the extent applicable.

**[SIGNATURE AND ACKNOWLEDGMENT PAGES FOLLOW]**

IN WITNESS WHEREOF the undersigned have executed this Agreement as of the date and year first written above.

**LENDER:**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Name:  
 Title:

**SOLAR COMPANY**:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_   
a \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
 Name:  
 Title:

**EXHIBIT A**

**[insert legal description of Property]**