

**NOTICE OF SPECIAL MEETING**  
**POCATELLO DEVELOPMENT AUTHORITY**  
August 14, 2019

The Board of Commissioners of the Pocatello Development Authority (PDA) will hold a special meeting at 11:00 a.m. on Wednesday, August 14, 2019, in the Paradise Conference Room at City Hall, 911 North 7<sup>th</sup>, Pocatello, Idaho for the following purpose:

1. To hold an Executive Session of the Board of Commissioners pursuant to Idaho Code § 74-206(1)(f) to communicate with legal counsel for the PDA to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated, concerning the disposition of the Hoku property and the lawsuit filed by Celtic Life Sciences LLC with respect to the Hoku property.
2. To receive a report of the status of the North Portneuf TIF District. This will include a report of the status of the sale by the PDA of the Hoku property, the status of the purchaser's compliance with the sale contracts, the status of unpaid property taxes on the Hoku property, and the status of the lawsuit filed by Celtic Life Sciences LLC with respect to the Hoku property.
3. To receive public comment regarding assignment of the property purchase obligation under the Disposition and Development Agreement between the PDA and Solargise America LLC to Portneuf Capital LLC.
4. To consider approval of an assignment of the property purchase obligation under the Disposition and Development Agreement between the PDA and Solargise America LLC to Portneuf Capital LLC. A copy of the proposed assignment agreement between Solargise America LLC to Portneuf Capital LLC has been provided to the PDA.

Submitted by:



Melanie Gygli, Interim Executive Director  
August 8, 2019

City Hall is accessible to persons with disabilities. Program access accommodations may be provided with three (3) days' advance notice by contacting Skyler Beebe at [sbeebe@pocatello.us](mailto:sbeebe@pocatello.us); 208.234.6248; or 5815 South 5<sup>th</sup> Avenue, Pocatello, ID.

**POCATELLO DEVELOPMENT AUTHORITY**  
**Board of Commissioners Special Meeting**  
**August 14, 2019 – 11:00 a.m.**  
**Paradise Conference Room – Pocatello City Hall**

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In the event this meeting is still in progress at 12:00 p.m., a ten-minute recess may be called.

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1. **CALL TO ORDER, DISCLOSURE OF CONFLICT OF INTEREST, AND ACKNOWLEDGMENT OF GUESTS.**
2. **EXECUTIVE SESSION – North Portneuf TIF District.** The Board may approve participation in an executive session as outlined in Idaho Code § 74-206(1)(f) to communicate with legal counsel for the PDA to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated, concerning the disposition of the Hoku property and the lawsuit filed by Celtic Life Sciences LLC with respect to the Hoku property.
3. **REPORT – North Portneuf TIF District.** The Board will receive a report of the status of the North Portneuf TIF District. This will include a report of the status of the sale by the PDA of the Hoku property, the status of the purchaser's compliance with the sale contracts, the status of unpaid property taxes on the Hoku property, and the status of the lawsuit filed by Celtic Life Sciences LLC with respect to the Hoku property.
4. **PUBLIC COMMENT** – The Board will accept public comment regarding assignment of the property purchase obligation under the Disposition and Development Agreement between the PDA and Solargise America LLC to Portneuf Capital LLC.
5. **ACTION ITEM** - The Board may wish to consider approval of an assignment of the property purchase obligation under the Disposition and Development Agreement between the PDA and Solargise America LLC to Portneuf Capital LLC. A copy of the proposed assignment agreement between Solargise America LLC to Portneuf Capital LLC has been provided to the PDA and is attached hereto.
6. **ADJOURN.**

## ASSIGNMENT OF RIGHTS

THIS ASSIGNMENT OF RIGHTS ("Assignment") is made this 2 day of August, 2019 (the "Effective Date"), between **SOLARGISE AMERICA, LLC**, a Delaware limited liability company ("Assignor" or "Solargise"), and **PORTNEUF CAPITAL, LLC**, an Idaho limited liability company ("Assignee" or "Portneuf") (Assignor and Assignee collectively referred to as the "Parties"), under the following circumstances:

WHEREAS, Solargise is a party to the Disposition and Development Agreement with the Pocatello Development Authority with an effective date of September 18, 2018 ("DDA");

WHEREAS, under the terms of the DDA, Solargise has agreed to purchase the land (but not any improvements located thereon) located at 1 Hoku Way, Pocatello, Idaho, the legal description of which is attached as Exhibit A ("Property"); and

WHEREAS, Solargise and Portneuf have come to an agreement whereby Portneuf will assume the rights of Solargise to purchase the Property and Solargise will assign its rights to purchase the Property from the PDA;

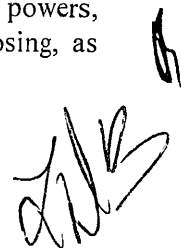
NOW THEREFORE, Assignor and Assignee hereby agree to the following:

1. As of the Effective Date, Assignor hereby assigns and transfers to Assignee all of Assignor's rights, powers, interests, duties and obligations to acquire the Property from the PDA under Section 5 of the DDA. Assignee hereby agrees to perform all such duties and obligations required as conditions precedent to acquiring the Property as set forth in Section 5.2.5 of the DDA.

2. As of the Closing, as contemplated in Section 5.2.3 of the DDA, Assignor hereby assigns and transfers to Assignee any and all of Assignor's rights, title, and interests in any and all buildings, fixtures, improvements, and structures of any kind on the Property, including but not limited to those described on Exhibit A attached hereto. Assignor, if requested by Assignee, shall cooperate in the execution of any and all documents relating to this assignment.

3. Assignee, as agreed upon by the Parties, shall submit payment of \$400,000 to PDA by 5:00 pm MT on August 2, 2019, in accordance with the Contingent Payment Agreement executed between Assignee and PDA.

4. Assignor hereby acknowledges that the Acknowledgement of Termination of Lease and Grant of Irrevocable License Agreement between Assignor and PDA has terminated and to the extent Assignor claims any rights or interests under such agreement, all such rights, powers, privileges, and interests under such agreement shall be assigned to Assignee at Closing, as contemplated in Section 5.2.3 of the DDA.

A handwritten signature in black ink, appearing to be 'J. B.', is located in the bottom right corner of the page.

5. The Parties hereby acknowledge that other than the rights to acquire the Property from PDA, Assignee does not assume any other duties or obligations of Assignor under the DDA.

6. All covenants, agreements and conditions contained in this Assignment shall be considered as running with the land and shall be binding upon, and shall operate to the benefit of, the parties and their respective successors and assigns.

Executed as of the date first stated above.

[signature pages to follow]

  
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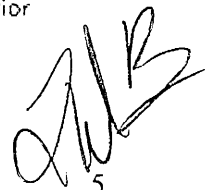


## EXHIBIT A

### Improvements

#### Real Property

- All structures above Ground that are onsite at the Plant, including without limitation, the following:
  - Administration Building: The administrative building is an estimated 44,545 square feet plan. The building is a four-story, steel-braced frame and clad structure with a double-pitch roof. The building is designed as a climate controlled space and includes a number of internal enclosures/spaces for offices, conference rooms, lunch rooms, restrooms, apartments and related spaces.
  - Control / Maintenance Building: The control maintenance building is an approximately 60'-0" x 180'-0" plan with an eave height of approximately 15'-3" over the control room area and portion of the warehouse and 23'-9" over the remaining portion of the warehouse. The building is a single story, steel braced frame and clad pre-engineered structure (Butler) with a double-pitch roof. The control room area is a climate controlled space consisting primarily of a control room, computer room, locker room, restroom, offices and a kitchen/meeting room.
  - Post Processing Building: The post processing building is an approximately 308'-0" x plan with an additional approximately 53'-0" x 68'-0" truck loading dock plan area on the southwest corner. The majority of the building is approximately 21'-0" high, with portions extending up to approximately 30'-0". The building is a single story, steel braced frame and clad structure with a membrane roof. The building was designed to be a climate controlled space to include a number of internal enclosures/spaces including rod sizing/breaking room, sample preparation room, slim rod/analytic puller room, laboratories, break/lunch rooms, offices and restrooms. The building incorporates cleanroom enclosures with associated HVAC.
  - Reactor Building including Chiller Building: The reactor building is a multi-space enclosure. The building is a three-story, steel braced frame and clad structure with a double-pitch roof. The building was designed to be a climate controlled space and houses the reactors, reactor support electrical equipment, gas consoles, and wash facilities, and includes a number of internal enclosures/spaces for offices.
  - Waste Treatment Building: The wastewater treatment building is an approximately 100'-0" 62'-0" plan with an eave height of approximately 34'-0". The building is a single story, steel braced frame and clad pre-engineered structure (Butler) with a double-pitch roof. The building includes heating and ventilation and consists primarily of an open plan space with one framed interior enclosure.
  - Compressor Building

  
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BY THE BOARD OF COMMISSIONERS OF THE URBAN RENEWAL AGENCY OF POCATELLO, IDAHO:

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE URBAN RENEWAL AGENCY OF POCATELLO, IDAHO, ALSO KNOWN AS THE POCATELLO DEVELOPMENT AUTHORITY, APPROVING THE ASSIGNMENT OF THE OBLIGATION TO PURCHASE THE REAL PROPERTY PURSUANT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT BETWEEN THE AGENCY AND SOLARGISE AMERICA, LLC, BUT NOT THE DEVELOPMENT OBLIGATION, TO PORTNEUF CAPITAL, LLC; AUTHORIZING THE EXECUTION OF DOCUMENTS REQUIRED TO MEMORIALIZE THE ASSIGNMENT AND TO FINALIZE THE DISPOSITION OF THE REAL PROPERTY; AND PROVIDING AN EFFECTIVE DATE.

THIS RESOLUTION, made on the date hereinafter set forth by the Pocatello Urban Renewal Agency of the city of Pocatello, Idaho, also known as the Pocatello Development Authority, an independent public body, corporate and politic, authorized under the authority of the Idaho Urban Renewal Law of 1965, Chapter 20, Title 50, Idaho Code, as amended and supplemented (the "Law") and the Local Economic Development Act, Chapter 29 Title 50, Idaho Code as amended and supplemented (the "Act"), a duly created and functioning urban renewal agency for Pocatello, Idaho, hereinafter referred to as the "Agency;"

WHEREAS, the City Council (the "City Council") of the city of Pocatello (the "City") found that deteriorating areas exist in the City, therefore, for the purposes of the Law, created an urban renewal agency pursuant to the Law, authorizing the Agency to transact business and exercise the powers granted by the Law and the Act upon making the findings of necessity required for creating the Agency;

WHEREAS, the Mayor has duly appointed the Board of Commissioners of the Agency, which appointment was confirmed by the City Council;

WHEREAS, the City Council, on April 19, 2007, after notice duly published, conducted a public hearing on the North Portneuf Urban Renewal Plan (the "North Portneuf Plan");

WHEREAS, following said public hearing, the City Council adopted its Ordinance No. 2814 on April 19, 2007, approving the North Portneuf Plan and making certain findings;

WHEREAS, the Agency owns certain real property located at 1 Hoku Way, Pocatello, Idaho (the "Property"), which Property is located within the jurisdictional boundaries of the North Portneuf Plan;

WHEREAS, the Agency took ownership of the Property subject to a lease with V.A. Metals, LLC (the "Lease");

WHEREAS, on August 22, 2018, at an open meeting duly noticed and held in accordance with the Open Meeting Law, Idaho Code Title 74, Chapter 2, the Agency authorized entering into a

Disposition and Development Agreement (“DDA”) with Solargise America, LLC and terminating the Lease;

WHEREAS, pursuant to the DDA, the Agency published a Request for Proposals for the development of the Property and, in accordance with Idaho Code § 50-2011, advised the public of the intent to dispose of the Property to Solargise America, LLC and sought public comment on the planned disposition and invited competing proposals for consideration prior to disposing of the Property to Solargise America, LLC;

WHEREAS, no competing proposals were received and at an open meeting duly noticed and held in accordance with the Open Meeting Law, Idaho Code Title 74, Chapter 2, on January 16, 2019, the Agency selected Solargise America, LLC as the developer to acquire the Property and subsequently develop the Property in accordance with the terms of the DDA;

WHEREAS, per the terms of the DDA, Solargise America, LLC, agreed to acquire the Property as is with no warranty as to title or condition of the Property and paid a \$200,000 non-refundable earnest money deposit;

WHEREAS, the Agency, in accordance with the terms of the DDA, extended the deadline for Solargise America, LLC to close on the acquisition of the Property;

WHEREAS, the current deadline to close on the acquisition of the Property is August 19, 2019;

WHEREAS, in consideration of the extensions, Solargise America, LLC agreed to pay a non-refundable fee of \$100,000 in addition to the Purchase Price under the DDA and to pay an additional earnest money deposit of \$300,000 on or before August 2, 2019;

WHEREAS, expressly subject to the approval of the Agency at a public meeting, the Agency accepted the payment of \$400,000 from Portneuf Capital, LLC on behalf of Solargise America, LLC on August 2, 2019;

WHEREAS, a conditional Contingent Payment Agreement was prepared by the Agency and Portneuf Capital, LLC, a true and correct copy of which is attached hereto as Exhibit A and incorporated herein as if set forth in full;

WHEREAS, Solargise America, LLC and Portneuf Capital, LLC prepared an Assignment of Rights whereby Solargise America, LLC and Portneuf Capital, LLC agreed to the assignment of Solargise America, LLC’s obligation to acquire the Property, which Portneuf Capital, LLC would then lease back to Solargise America, LLC for Solargise America, LLC to meet its development obligations under the terms of the DDA;

WHEREAS, according to the terms of the Assignment of Rights, Portneuf Capital, LLC is not undertaking any obligation to the Agency to develop the Property and Solargise America, LLC remains obligated to develop the Property according to the terms of the DDA;

WHEREAS, a true and correct copy of the Assignment of Rights is attached hereto as Exhibit B and is incorporated herein as if set forth in full;

WHEREAS, pursuant to the terms of the Contingent Payment Agreement, if the Agency does not approve the assignment of the purchase obligation under the DDA from Solargise America, LLC to Portneuf Capital, LLC, the \$400,000 will be returned to Portneuf Capital, LLC;

WHEREAS, the Agency Board has determined it is in the best interest of the Agency, the City of Pocatello, Bannock County, and the public to approve, authorize, and ratify the execution of the Contingent Payment Agreement and the Assignment of Rights.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE BOARD OF COMMISSIONERS OF THE POCATELLO DEVELOPMENT AUTHORITY OF POCATELLO, IDAHO, AS FOLLOWS:

Section 1. That the above statements are true and correct.

Section 2: That the Contingent Payment Agreement, attached hereto as Exhibit A, and the Assignment of Rights, attached hereto as Exhibit B, are hereby approved as to both form and content.

Section 3: That the Chair, Vice-Chair, Secretary and Treasurer are hereby authorized to sign and enter into the Contingent Payment Agreement and the Assignment of Rights and, further, are hereby authorized to execute all necessary documents required to implement the actions contemplated by the Contingent Payment Agreement, the Assignment of Rights and the DDA, including but not limited to executing all closing documents, including but not limited to the deed transferring the Property to Portneuf Capital, LLC at closing, subject to representations by Agency legal counsel that all conditions precedent to actions and any necessary technical changes to the Contingent Payment Agreement, the Assignment of Rights and the DDA or other documents required to implement the actions contained therein are acceptable and that said changes are consistent with the provisions of the Contingent Payment Agreement, the Assignment of Rights, or the DDA (as applicable) and the comments and discussions received at the August 14, 2019, Agency Board meeting.

Section 4: That this Resolution shall be in full force and effect immediately upon its adoption and approval.

PASSED by the Pocatello Development Authority of the city of Pocatello, Idaho, on August 14, 2019. Signed by the Chair of the Board of Commissioners and attested by the Secretary to the Board of Commissioners, on August 14, 2019.

APPROVED:

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

# EXHIBIT A

## PORTNEUF CAPITAL – POCATELLO DEVELOPMENT AUTHORITY

### CONTINGENT PAYMENT AGREEMENT

This Contingent Payment Agreement ("Agreement") outlines the general terms and conditions upon which **PORTNEUF CAPITAL, LLC**, an Idaho limited liability company ("Portneuf") will pay the sum of Four Hundred Thousand Dollars and no/100 (\$400,000.00) to the **POCATELLO DEVELOPMENT AUTHORITY**, a public body corporate and politic of the State of Idaho ("PDA") pursuant to and expressly subject to the terms of this Agreement. Portneuf and the PDA may each be referred to as a "Party" and collectively, the "Parties." All references in this Agreement to financial matters are intended to be in US Dollars whether or not so indicated.

WHEREAS, Solargise America, LLC ("Solargise") is a party to the Disposition and Development Agreement with the PDA with an effective date of September 18, 2018 ("DDA");

WHEREAS, under the terms of the DDA, Solargise has agreed to purchase the land (but not any improvements located thereon) located at 1 Hoku Way, Pocatello, Idaho, the legal description of which is attached as Exhibit A ("Property");

WHEREAS, Solargise, pursuant to the DDA and the terms of extensions to certain obligations under the DDA, must pay the PDA the sum of \$400,000.00 on or before 5 p.m. MT on August 2, 2019 (the "Payment").

WHEREAS, Solargise and Portneuf are negotiating the terms of an assignment of Solargise's right to acquire the Property (but not any assignment of any development obligations) under the DDA (the "Assignment").

WHEREAS, in order to allow Solargise and Portneuf additional time to negotiate the Assignment, which will be presented to the PDA for consent and approval, Portneuf has agreed to make the Payment, subject to and expressly contingent upon the terms of this Agreement.

NOW THEREFORE, the Parties agree as follows:

1. **Payment.** Subject to the terms of this Agreement, Portneuf agrees to make the Payment to the PDA on or before 5 p.m. MT on August 2, 2019. The Payment shall be made by cashier's check or bank check made out to the "Pocatello Development Authority" and be provided to Melanie Gygli, PDA Executive Director, at 911 N 7th Ave, Pocatello, ID 83201.
2. **Contingent Nature of the Payment.** The Payment is subject to and expressly contingent on the following (the "Contingencies"):
  - a. On or before August 9, 2019, Portneuf and Solargise shall make a good faith effort to agree to the terms of the Assignment and provide the PDA with a fully executed Assignment for the PDA to consider for its consent and approval.

- b. If Portneuf cannot reach an agreement with Solargise on the terms of the Assignment, Portneuf may, in its sole discretion, so notify the PDA of the failure and the PDA shall return the Payment to Portneuf, either in the form of a bank check or cashier's check or, if the check provided to the PDA by Portneuf has not been cashed by the PDA, a return of the uncashed check.
  - c. If Portneuf and Solargise have not agreed to the terms of the Assignment and presented such Assignment to the PDA for consent and approval at an open meeting held on or before August 16, 2019, the PDA shall return the Payment to Portneuf, either in the form of a bank check or cashier's check or, if the check provided to the PDA by Portneuf has not been cashed by the PDA, a return of the uncashed check.
  - d. If Portneuf and Solargise have agreed to the terms of the Assignment and presented such Assignment to the PDA for consent and approval at an open meeting held on or before August 16, 2019, in accordance with Idaho's Open meeting Law, Idaho Code Title 74, chapter 2 and the PDA does not consent to and approve the Assignment, the PDA shall return the Payment to Portneuf, either in the form of a bank check or cashier's check or, if the check provided to the PDA by Portneuf has not been cashed by the PDA, a return of the uncashed check.
  - e. The Parties understand and acknowledge that the PDA is under no obligation to consent or approve the Assignment at the open meeting to be held on or before August 16, 2019.
3. **Application of Payment.** This Payment, *if not refunded to Portneuf pursuant to Section 2 of this Agreement*, shall be applied as follows:
- a. \$300,000 will be applied to the Purchase Price under the DDA and shall be non-refundable in the event the DDA is terminated by Portneuf prior to Closing (as defined in the DDA) or Portneuf fails for any reason to purchase the Property under the Assignment.
  - b. \$100,000 will be retained by the PDA as consideration for the extensions under the DDA and shall not be applied to the Purchase Price under the DDA. This \$100,000 is non-refundable in the event the DDA is terminated by Portneuf or Portneuf fails for any reason to purchase the Property under the Assignment.
4. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of Idaho.

5. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same Agreement.
6. **Notices.** Any notice given pursuant to this Agreement shall be deemed to have been sufficiently given or served for all purposes to a Party (a) if delivered personally to such Party or to an executive officer of such Party to whom the same is directed, (b) if sent (by regular mail, facsimile, or electronic mail) to such Party or to an executive officer of such Party to whom the same is directed.
7. **Review by Legal Counsel.** Portneuf has been advised by the PDA to retain legal counsel. Portneuf represented to the PDA that it has retained legal counsel. Each Party is represented by legal counsel and has had the opportunity to have this Agreement reviewed by its respective legal counsel.

IN WITNESS WHEREOF, the Parties hereto have subscribed to this Agreement to be effective the date signed below (last date signed).

Pocatello Development Authority:



By: Scott Smith

Its: Chair

Date: 8/2/2019

PORTNEUF CAPITAL, LLC:

\_\_\_\_\_  
By: Lysle David (LD) Barthlome

Its: Manager

Date: \_\_\_\_\_

5. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same Agreement.
6. **Notices.** Any notice given pursuant to this Agreement shall be deemed to have been sufficiently given or served for all purposes to a Party (a) if delivered personally to such Party or to an executive officer of such Party to whom the same is directed, (b) if sent (by regular mail, facsimile, or electronic mail) to such Party or to an executive officer of such Party to whom the same is directed.
7. **Review by Legal Counsel.** Portneuf has been advised by the PDA to retain legal counsel. Portneuf represented to the PDA that it has retained legal counsel. Each Party is represented by legal counsel and has had the opportunity to have this Agreement reviewed by its respective legal counsel.

IN WITNESS WHEREOF, the Parties hereto have subscribed to this Agreement to be effective the date signed below (last date signed).

Pocatello Development Authority:

\_\_\_\_\_  
By: Scott Smith

Its: Chair

Date: \_\_\_\_\_

PORTNEUF CAPITAL, LLC:



By: Lysle David (LD) Barthlome

Its: Manager

Date: 8-2-19

EXHIBIT A

Parcel 1:

A PARCEL OF LAND LOCATED IN THE EAST 1/2 OF SECTION 17, AND IN THE WEST 1/2 OF THE WEST 1/2 OF SECTION 16, T6S,R34E, B.M., BANNOCK COUNTY, IDAHO, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS (ALL ANGLE POINTS BEING MARKED BY A 1/2-INCH DIAMETER REBAR WITH A YELLOW PLASTIC CAP STAMPED "PLS 4440", UNLESS OTHERWISE NOTED):

COMMENCING AT THE WEST 1/4 CORNER OF SAID SECTION 16, SAID CORNER BEING MARKED BY A FOUND 3/8 -INCH DIAMETER REBAR WITH NO MARKINGS, SAID REBAR BEING REFERENCED BY A BANNOCK COUNTY BRASS CAP MONUMENT 25 FEET EAST OF THE CORNER;

THENCE S0°11'07"W ALONG THE WEST LINE OF SECTION 16, 280.55 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF THE OREGON SHORT LINE RAILROAD (NOW OPERATING AS THE UNION PACIFIC RAILROAD), SAID POINT BEING 50 FEET DISTANT, MEASURED AT RIGHT ANGLES, FROM THE CENTERLINE OF THE NO. 1 MAINLINE TRACK (FORMERLY THE WEST BOUND MAINLINE), AND SAID POINT BEING MARKED BY A SET 5/8-INCH REBAR WITH AN ALUMINUM CAP STAMPED "PLS 8075", SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE N56°36'03"W ALONG THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF THE OREGON SHORT LINE RAILROAD, 2557.86 FEET TO AN ANGLE POINT ON THE NORTHEASTERLY DEED LINE DESCRIBED IN CORPORATION WARRANTY DEED INSTRUMENT NO. 96009187;

THENCE SOUTHEASTERLY ALONG THE SAID NORTHEASTERLY DEED LINE THE FOLLOWING 10 COURSES AND DISTANCES:

S21°52'28"E, 267.87 FEET TO AN ANGLE POINT; THENCE S30°43'41"E, 1457.94 FEET TO AN ANGLE POINT; THENCE S40°27'06"E, 201.74 FEET TO AN ANGLE POINT;

THENCE S54°05'17"E, 336.24 FEET TO AN ANGLE POINT; THENCE S43°50'53"E, 313.03 FEET TO AN ANGLE POINT; THENCE S55°07'13"E, 664.68 FEET TO AN ANGLE POINT; THENCE S42°27'04"E, 177.06 FEET TO AN ANGLE POINT; THENCE S59°48'13"E, 280.11 FEET TO AN ANGLE POINT; THENCE S71°50'27"E, 699.97 FEET TO AN ANGLE POINT; THENCE S72°36'36"E, 428.65 FEET TO AN ANGLE POINT ON THE WEST 1/16 LINE OF SECTION 16; THENCE N0°03'36"E ALONG THE WEST 1/16 LINE OF SECTION 16, 653.80 FEET TO THE SOUTHWEST 1/16 CORNER OF SAID SECTION 16, SAID CORNER BEING MARKED BY A 6-INCH DIAMETER STEEL FENCE CORNER POST;

THENCE S89°05'05"W ALONG the SOUTH 1/16 LINE OF SECTION 16, 43.11 FEET TO A POINT ON the SOUTHWESTERLY DEED LINE DESCRIBED IN INSTRUMENT NO. 27678, SAID POINT BEING MARKED BY A SET 5/8-INCH DIAMETER REBAR WITH AN ALUMINUM CAP STAMPED "PLS 8075";

THENCE N56°36'03"W ALONG SAID SOUTHWESTERLY DEED LINE, 1519.62 FEET TO A POINT ON the WEST DEED DESCRIBED IN SAID INSTRUMENT NO. 27678, SAID POINT ALSO BEING ON the WEST LINE OF SECTION 16, AND SAID POINT BEING MARKED BY A SET 5/8-INCH DIAMETER REBAR WITH AN ALUMINUM CAP STAMPED "PLS 8075";

THENCE N 0°11'17" E ALONG THE WEST LINE OF SAID SECTION 16, 179.29 FEET TO THE POINT OF BEGINNING.

Parcel 2:

A TRIANGULAR-SHAPED PARCEL OF LAND LOCATED IN the NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 16,

T6S,R34E, B.M., BANNOCK COUNTY, IDAHO, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST 1/16 CORNER OF SAID SECTION 16, SAID CORNER BEING MARKED BY A 6-INCH DIAMETER STEEL FENCE CORNER POST;

THENCE N0°41'13"E ALONG THE WEST 1/16 LINE OF SECTION 16, 149.39 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF THE OREGON SHORT LINE RAILROAD (NOW OPERATING AS THE UNION PACIFIC RAILROAD), SAID POINT BEING 50 FEET DISTANT, MEASURED AT RIGHT ANGLES, FROM the CENTERLINE OF THE NO. 1 MAINLINE TRACK (FORMERLY THE WEST BOUND MAINLINE), AND SAID POINT BEING MARKED BY A SET 5/8-INCH REBAR WITH AN ALUMINUM CAP STAMPED "PLS 8075";

THENCE S56°36'03"E ALONG THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF THE OREGON SHORT LINE RAILROAD, 263.12 FEET TO A POINT ON THE SOUTH 1/16 LINE OF SAID SECTION 16, SAID POINT ALSO BEING ON THE NORTH DEED LINE OF CORPORATE WARRANTY DEED INSTRUMENT NO. 892995, AND SAID POINT BEING MARKED BY A FOUND BANNOCK COUNTY BRASS CAP MONUMENT;

THENCE S 89°06'59" W ALONG THE SOUTH 1/16 LINE OF SAID SECTION 16, 223.15 FEET TO THE TRUE POINT OF BEGINNING.

Also retaining therefrom an easement for a water line, more particularly described as:

A 30 FOOT WIDE STRIP OF LAND LOCATED IN THE SOUTHWEST 1/4 OF SECTION 16 AND IN THE SOUTHEAST 1/4 OF SECTION 17, TOWNSHIP 6 SOUTH, RANGE 34 EAST, BOISE MERIDIAN, BANNOCK COUNTY, IDAHO, SAID STRIP BEING 15 FEET WIDE ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT THE WEST 1/4 CORNER OF SECTION 16, TOWNSHIP 6 SOUTH, RANGE 34 EAST, SAID CORNER MARKED BY A 5/8" DIA. REBAR, BEING REFERENCED BY A BANNOCK COUNTY BRASS CAP MONUMENT 25 FEET EAST OF SAID 1/4 CORNER; THENCE SOUTH 00°11'07" EAST A DISTANCE OF 280.55 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD AS DEPICTED ON THE RECORD OF SURVEY MAP RECORDED IN BANNOCK COUNTY UNDER INSTRUMENT NO. 20707393, AND BEING DESCRIBED IN PARCEL 1 OF WARRANTY DEED INSTRUMENT NO. 20705326 OF SAID COUNTY RECORDS; THENCE NORTH 56°36'03" WEST ALONG SOUTHWESTERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD A DISTANCE OF 21.00 FEET, TO A POINT ON THE CENTERLINE BEING DESCRIBED THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID SOUTHWESTERLY RIGHT-OF-WAY LINE, SOUTH 17°04'00" WEST A DISTANCE OF 78.20 FEET; THENCE SOUTH 05°26'47" WEST A DISTANCE OF 141.43 FEET; THENCE SOUTH 32°39'19" EAST A DISTANCE OF 152.37 FEET; THENCE SOUTH 56°11'41" EAST A DISTANCE OF 363.17 FEET; THENCE SOUTH 32°10'36" WEST A DISTANCE OF 488.74 FEET; THENCE SOUTH 35°23'12" WEST A DISTANCE OF 145.76 FEET, TO THE TERMINUS OF THE CENTERLINE BEING DESCRIBED.

CONTAINS 0.94 ACRES MORE OR LESS

Also retaining therefrom a Right-of-Way, Slope, and Utility easement, more particularly described as follows:

A PARCEL OF LAND LOCATED IN THE SOUTHWEST 1/4 OF SECTION 16, THE SOUTHEAST 1/4 AND THE NORTHEAST 1/4 OF SECTION 17, TOWNSHIP 6 SOUTH, RANGE 34 EAST, BANNOCK COUNTY, IDAHO; DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST 1/4 CORNER OF SECTION 16, TOWNSHIP 6 SOUTH, RANGE 34 EAST, SAID CORNER MARKED BY A 5/8" DIA. NAIL, BEING REFERENCED BY A BANNOCK COUNTY BRASS CAP MONUMENT 25 FEET EAST OF SAID 1/4 CORNER; THENCE SOUTH 00°11'07" EAST A DISTANCE OF 280.55 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD AS DEPICTED ON THE RECORD OF SURVEY MAP RECORDED IN BANNOCK COUNTY UNDER INSTRUMENT NO. 20707393, AND BEING DESCRIBED IN PARCEL 1 OF WARRANTY DEED INSTRUMENT NO. 20705326 OF SAID COUNTY RECORDS; THENCE NORTH 56°36'03" WEST ALONG SOUTHWESTERLY RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD A DISTANCE OF 2197.86 FEET, TO A POINT WHICH BEARS SOUTH 56°36'03" EAST A DISTANCE OF 360.00 FEET FROM THE MOST NORTHWEST CORNER OF SAID PARCEL 1, THE TRUE POINT OF BEGINNING; THENCE LEAVING SAID SOUTHWESTERLY RIGHT-OF-WAY LINE, SOUTH 33°23'57" WEST A DISTANCE OF 109.23 FEET; THENCE SOUTH 29°31'12" EAST A DISTANCE OF 813.32 FEET; THENCE SOUTH 35°11'19" EAST A DISTANCE OF 660.34 FEET; THENCE SOUTH 50°56'53" EAST A DISTANCE 754.39 FEET; THENCE SOUTH 56°27'03" EAST A DISTANCE OF 1146.16 FEET; THENCE SOUTH 69°53'01" EAST A DISTANCE OF 940.39 FEET TO A POINT ON THE EAST BOUNDARY LINE OF SAID PARCEL 1, DESCRIBED IN SAID DEED INSTRUMENT NO. 20705326; THENCE SOUTH 00°09'36" WEST ALONG SAID EAST BOUNDARY LINE A DISTANCE OF 107.04 FEET, TO THE SOUTHEAST CORNER OF SAID PARCEL 1; THENCE FOLLOWING THE SOUTHERLY AND SOUTHWESTERLY BOUNDARY LINE OF PARCEL 1 FOR THE NEXT FOLLOWING TEN (10) COURSES;

1. NORTH 72°36'26" WEST, 428.64 FEET;
2. NORTH 71°50'27" WEST, 699.97 FEET;
3. NORTH 59°48'13" WEST, 280.11 FEET;
4. NORTH 42°27'08" WEST, 177.06 FEET;
5. NORTH 55°07'18" WEST, 654.68 FEET;
6. NORTH 43°50'53" WEST, 313.03 FEET;
7. NORTH 54°06'17" WEST, 336.24 FEET;
8. NORTH 40°27'08" WEST, 201.74 FEET;
9. NORTH 30°43'41" WEST, 1457.94 FEET;
10. NORTH 21°52'28" WEST, 267.87 FEET TO THE NORTHWEST CORNER OF SAID PARCEL 1 WHICH POINT ALSO BEING ON THE SOUTHWESTERLY OF THE UNION PACIFIC RAILROAD RIGHT-OF-WAY LINE; THENCE FOLLOWING SAID SOUTHWESTERLY RIGHT-OF-WAY LINE SOUTH 56°36'03" EAST A DISTANCE OF 360.00 FEET, TO THE POINT OF BEGINNING.

AREA OF THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 13.30 ACRES MORE OR LESS.

# EXHIBIT B

## ASSIGNMENT OF RIGHTS

THIS ASSIGNMENT OF RIGHTS ("Assignment") is made this 2 day of August, 2019 (the "Effective Date"), between **SOLARGISE AMERICA, LLC**, a Delaware limited liability company ("Assignor" or "Solargise"), and **PORTNEUF CAPITAL, LLC**, an Idaho limited liability company ("Assignee" or "Portneuf") (Assignor and Assignee collectively referred to as the "Parties"), under the following circumstances:

WHEREAS, Solargise is a party to the Disposition and Development Agreement with the Pocatello Development Authority with an effective date of September 18, 2018 ("DDA");

WHEREAS, under the terms of the DDA, Solargise has agreed to purchase the land (but not any improvements located thereon) located at 1 Hoku Way, Pocatello, Idaho, the legal description of which is attached as Exhibit A ("Property"); and

WHEREAS, Solargise and Portneuf have come to an agreement whereby Portneuf will assume the rights of Solargise to purchase the Property and Solargise will assign its rights to purchase the Property from the PDA;

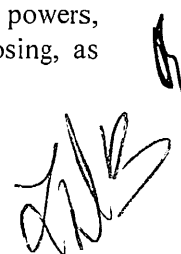
NOW THEREFORE, Assignor and Assignee hereby agree to the following:

1. As of the Effective Date, Assignor hereby assigns and transfers to Assignee all of Assignor's rights, powers, interests, duties and obligations to acquire the Property from the PDA under Section 5 of the DDA. Assignee hereby agrees to perform all such duties and obligations required as conditions precedent to acquiring the Property as set forth in Section 5.2.5 of the DDA.

2. As of the Closing, as contemplated in Section 5.2.3 of the DDA, Assignor hereby assigns and transfers to Assignee any and all of Assignor's rights, title, and interests in any and all buildings, fixtures, improvements, and structures of any kind on the Property, including but not limited to those described on Exhibit A attached hereto. Assignor, if requested by Assignee, shall cooperate in the execution of any and all documents relating to this assignment.

3. Assignee, as agreed upon by the Parties, shall submit payment of \$400,000 to PDA by 5:00 pm MT on August 2, 2019, in accordance with the Contingent Payment Agreement executed between Assignee and PDA.

4. Assignor hereby acknowledges that the Acknowledgement of Termination of Lease and Grant of Irrevocable License Agreement between Assignor and PDA has terminated and to the extent Assignor claims any rights or interests under such agreement, all such rights, powers, privileges, and interests under such agreement shall be assigned to Assignee at Closing, as contemplated in Section 5.2.3 of the DDA.

A handwritten signature in black ink, appearing to be 'JLB', is located in the bottom right corner of the page. There is also a small, illegible mark above the signature.

5. The Parties hereby acknowledge that other than the rights to acquire the Property from PDA, Assignee does not assume any other duties or obligations of Assignor under the DDA.

6. All covenants, agreements and conditions contained in this Assignment shall be considered as running with the land and shall be binding upon, and shall operate to the benefit of, the parties and their respective successors and assigns.

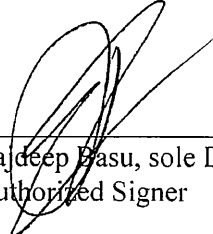
Executed as of the date first stated above.

[signature pages to follow]



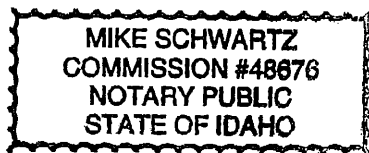
ASSIGNOR:

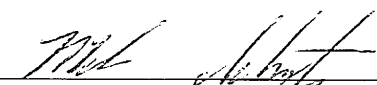
SOLARGISE AMERICA, LLC

By:   
Rajdeep Basu, sole Director and  
Authorized Signer

STATE OF IDAHO )  
 ) ss:  
COUNTY OF Bannock )

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of August, 2019, by Rajdeep Basu, as Authorized Signer of Solargise America, LLC, a Delaware limited liability company, on behalf of said limited liability company.



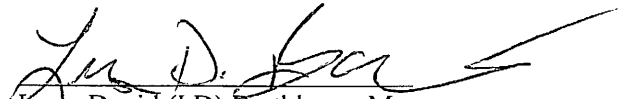
  
Notary Public

Exp 11/30/20



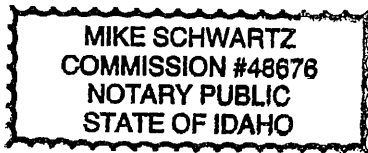
ASSIGNEE:

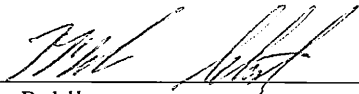
PORTNEUF CAPITAL, LLC, an Idaho  
limited liability company

  
Lysle David (LD) Barthlome, Manager

STATE OF IDAHO )  
 ) ss:  
COUNTY OF Bonanza )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of August, 2019, by Lysle David (LD) Barthlome, the Manager of Portneuf Capital, LLC, an Idaho limited liability company.



  
\_\_\_\_\_  
Notary Public  
Exp. 11/30/24

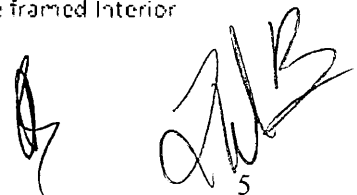
  
4

## EXHIBIT A

### Improvements

#### Real Property

- All structures above Ground that are onsite at the Plant, including without limitation, the following:
  - Administration Building: The administrative building is an estimated 44,545 square feet plan. The building is a four-story, steel-braced frame and clad structure with a double-pitch roof. The building is designed as a climate controlled space and includes a number of internal enclosures/spaces for offices, conference rooms, lunch rooms, restrooms, apartments and related spaces.
  - Control / Maintenance Building: The control maintenance building is an approximately 60'-0" x 180'-0" plan with an eave height of approximately 15'-3" over the control room area and portion of the warehouse and 23'-9" over the remaining portion of the warehouse. The building is a single story, steel braced frame and clad pre-engineered structure (Butler) with a double-pitch roof. The control room area is a climate controlled space consisting primarily of a control room, computer room, locker room, restroom, offices and a kitchen/meeting room.
  - Post Processing Building: The post processing building is an approximately 308'-0" x plan with an additional approximately 53'-0" x 68'-0" truck loading dock plan area on the southwest corner. The majority of the building is approximately 21'-0" high, with portions extending up to approximately 30'-0". The building is a single story, steel braced frame and clad structure with a membrane roof. The building was designed to be a climate controlled space to include a number of internal enclosures/spaces including rod sizing/breaking room, sample preparation room, slim rod/analytic puller room, laboratories, break/lunch rooms, offices and restrooms. The building incorporates cleanroom enclosures with associated HVAC.
  - Reactor Building including Chiller Building: The reactor building is a multi-space enclosure. The building is a three-story, steel braced frame and clad structure with a double-pitch roof. The building was designed to be a climate controlled space and houses the reactors, reactor support electrical equipment, gas consoles, and wash facilities, and includes a number of internal enclosures/spaces for offices.
  - Waste Treatment Building: The wastewater treatment building is an approximately 100'-0" x 62'-0" plan with an eave height of approximately 34'-0". The building is a single story, steel braced frame and clad pre-engineered structure (Butler) with a double-pitch roof. The building includes heating and ventilation and consists primarily of an open plan space with one framed interior enclosure.
  - Compressor Building



Handwritten signature and initials, possibly 'JLB', with a small number '3' below the signature.

**POCATELLO DEVELOPMENT AUTHORITY**  
**Board of Commissioners Meeting**  
**August 21, 2019 – 11:00 a.m.**  
**Paradise Conference Room – Pocatello City Hall**

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City Hall is accessible to persons with disabilities. Program access accommodations may be provided with three days' advance notice by contacting Skyler Beebe at [sbeebe@pocatello.us](mailto:sbeebe@pocatello.us), 208.234.6248, or 5815 South 5<sup>th</sup> Avenue, Pocatello, Idaho.

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In the event this meeting is still in progress at 12:00 p.m., a ten-minute recess may be called.

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1. **CALL TO ORDER, DISCLOSURE OF CONFLICT OF INTEREST, AND ACKNOWLEDGMENT OF GUESTS.**
2. **ACTION ITEM – Minutes.** The Board may wish to waive the oral reading of the minutes and approve the minutes from the Board of Commissioners Regular Meeting and Executive Session held July 17, 2019, and the Special Meeting and Executive Session held August 14, 2019. *See attached documents.*
3. **ACTION ITEM - Financial Report.** A financial report for the PDA will be provided by PDA Treasurer. The Board may wish to approve the financial report. *See attached documents.*
4. **ACTION ITEM – Expense Payments & Reimbursements.** The Board may wish to approve the payment or reimbursement of the following PDA expenses
  - a. \$200.00 from General Fund to Elam & Burke for legal fees re: Northgate TIF District creation.
  - b. \$150.50 from North Yellowstone District Fund to Elam & Buke for legal fees re: North Yellowstone District closure.
  - c. \$516.00 from General Fund to Elam & Burke for legal fees re: Special Counsel General
  - d. \$5,460.00 from North Portneuf District Fund to Stacey & Parks for legal services re: North Portneuf TIF District.
5. **ACTION ITEM – Administrative Fee Transfer, North Yellowstone URA.** The Board may wish to consider authorizing the annual administrative fee transfer from the North Yellowstone Urban Renewal Area in the amount of \$160,781.00.
6. **ACTION ITEM/PUBLIC HEARING – FY2020 Budget.** The Board will accept comment regarding the proposed FY2020 budget. Thereafter, the Board may wish to consider adoption of the proposed amendments. *See attached document.*
7. **ACTION ITEM – Disbursements under Previously Approved Grants & Loans.** The Board may wish to approve the following requested disbursements of funds under grants and loans previously approved by the Board. *See attached documents.*
  - a. BGS Holdings LLC is requesting disbursements of \$2,827.33 under the loan agreement approved by the Board on 11/1/18 and \$450.00 under the grant agreement approved by the Board on 10/17/18.
  - b. Simmons Surgical LLC is requesting disbursements of \$10,350.00 under the loan approved by the Board on 1/16/19.
8. **REPORT – Old Town Pocatello Master Plan.** Stephanie Palagi, Executive Director of Old Town Pocatello, will present a report on the Old Town Pocatello Master Plan.
9. **ACTION ITEM – Positron Facility Sale.** The Board may wish to consider ISU's request of an extension of the deadline contained in the Board's offer to sell the Positron facility to ISU.
10. **EXECUTIVE SESSION – North Portneuf TIF District.** The Board may approve participation in an executive session as outlined in Idaho Code § 74-206(1)(f) to communicate with legal counsel for the PDA to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated, concerning the disposition of the Hoku property and the lawsuit filed by Celtic Life Sciences LLC with respect to the Hoku property.
11. **ACTION ITEM – North Portneuf TIF District.** The Board will receive a report of the status of the North Portneuf TIF District. This will include a report of the status of the sale by the PDA of the Hoku property, the status of the purchaser's compliance with the sale contracts, the status of unpaid property taxes on the Hoku property, and the status of the lawsuit filed by Celtic Life Sciences LLC with respect to the Hoku property. The Board may wish to consider a request for extension of closing date by Solargise, or formally terminate the agreement with Solargise America, LLC and provide authorization to move ahead with an alternative disposition process.

**12. CALENDAR REVIEW** – The Board may wish to take this opportunity to inform other Board members of upcoming meetings and events that should be called to their attention.

**13. ADJOURN.**

**AGENDA ITEM**

**NO. 3**

Pocatello Development Authority  
Balance Sheet by Class  
As of July 31, 2019

	1-General Fund	3-North Yellowstone	4-Naval Ordnance	6-North Portneuf	7-Pocatello Regional Airport	TOTAL
<b>ASSETS</b>						
Current Assets						
Checking/Savings						
ICCU Checking	657,953.11	1,599,836.90	1,004,269.47	338,446.54	609,225.84	4,209,731.86
ICCU Savings	25.00	0.00	0.00	0.00	0.00	25.00
Total Checking/Savings	657,978.11	1,599,836.90	1,004,269.47	338,446.54	609,225.84	4,209,756.86
Accounts Receivable						
Accounts Receivable	3,000.00	0.00	0.00	0.00	0.00	3,000.00
Total Accounts Receivable	3,000.00	0.00	0.00	0.00	0.00	3,000.00
Other Current Assets						
Accrued Interest Income	23,932.63	4,424.57	173.37	66.68	100.00	28,697.25
Property Tax Receivable	0.00	98,168.01	0.00	201,165.23	0.00	299,333.24
Total Other Current Assets	23,932.63	102,592.58	173.37	201,231.91	100.00	328,030.49
Total Current Assets	684,910.74	1,702,429.48	1,004,442.84	539,678.45	609,325.84	4,540,787.35
Other Assets						
Inventory - Leasehold	424,779.00	0.00	0.00	0.00	0.00	424,779.00
Note Receivable	76,000.00	0.00	0.00	0.00	0.00	76,000.00
Total Other Assets	500,779.00	0.00	0.00	0.00	0.00	500,779.00
<b>TOTAL ASSETS</b>	<b>1,185,689.74</b>	<b>1,702,429.48</b>	<b>1,004,442.84</b>	<b>539,678.45</b>	<b>609,325.84</b>	<b>5,041,566.35</b>
<b>LIAB FUND BALANCE</b>						
Liabilities						
Current Liabilities						
Other Current Liabilities						
Acct Payable	18,311.63	0.00	0.00	6,964.31	0.00	25,275.94
Security Deposit	0.00	0.00	0.00	200,000.00	0.00	200,000.00
Total Other Current Liabilities	18,311.63	0.00	0.00	206,964.31	0.00	225,275.94
Total Current Liabilities	18,311.63	0.00	0.00	206,964.31	0.00	225,275.94
Long Term Liabilities						
Deferred Interest Receivable	23,632.57	0.00	0.00	0.00	0.00	23,632.57
Deferred Notes Receivable Rev	76,000.00	0.00	0.00	0.00	0.00	76,000.00
Deferred Tax Revenues	0.00	10,399.03	0.00	201,025.90	0.00	211,424.93
Total Long Term Liabilities	99,632.57	10,399.03	0.00	201,025.90	0.00	311,057.50
Total Liabilities	117,944.20	10,399.03	0.00	407,990.21	0.00	536,333.44
Fund Balance						
Fund Balance	1,931,837.57	3,590,235.69	868,662.92	136,330.61	499,607.73	7,026,674.52
Net Income	-864,092.03	-1,898,205.24	135,779.92	-4,642.37	109,718.11	-2,521,441.61
Total Fund Balance	1,067,745.54	1,692,030.45	1,004,442.84	131,688.24	609,325.84	4,505,232.91
<b>TOTAL LIABILITIES &amp; FUND BALANCE</b>	<b>1,185,689.74</b>	<b>1,702,429.48</b>	<b>1,004,442.84</b>	<b>539,678.45</b>	<b>609,325.84</b>	<b>5,041,566.35</b>

Pocatello Development Authority  
Profit & Loss by Class  
July 2019

	1-General Fund	3-North Yellowstone	4-Naval Ordnance	6-North Portneuf	7-Pocatello Regional Airport	TOTAL
<b>Ordinary Income/Expense</b>						
<b>Income</b>						
Interest Income	171.38	222.79	248.50	77.11	137.10	856.88
Personal Property tax replace	0.00	23,003.35	6,043.21	404.91	0.00	29,451.47
Property Taxes	0.00	686,141.95	151,458.91	14,747.91	53,554.96	905,903.73
Rental Income	750.00	0.00	0.00	0.00	0.00	750.00
<b>Total Income</b>	<b>921.38</b>	<b>709,368.09</b>	<b>157,750.62</b>	<b>15,229.93</b>	<b>53,692.06</b>	<b>936,962.08</b>
<b>Gross Profit</b>	<b>921.38</b>	<b>709,368.09</b>	<b>157,750.62</b>	<b>15,229.93</b>	<b>53,692.06</b>	<b>936,962.08</b>
<b>Expense</b>						
Administrative	78.97	0.00	0.00	0.00	0.00	78.97
Capital Construction	0.00	0.00	134,850.00	0.00	0.00	134,850.00
Economic Grants Issued	10,247.83	0.00	0.00	0.00	0.00	10,247.83
Economic Loans	2,086.00	0.00	0.00	0.00	0.00	2,086.00
Professional Services						
Other Professional Services	3,152.90	0.00	0.00	1,520.00	0.00	4,672.90
<b>Total Professional Services</b>	<b>3,152.90</b>	<b>0.00</b>	<b>0.00</b>	<b>1,520.00</b>	<b>0.00</b>	<b>4,672.90</b>
<b>Total Expense</b>	<b>15,565.70</b>	<b>0.00</b>	<b>134,850.00</b>	<b>1,520.00</b>	<b>0.00</b>	<b>151,935.70</b>
<b>Net Ordinary Income</b>	<b>-14,644.32</b>	<b>709,368.09</b>	<b>22,900.62</b>	<b>13,709.93</b>	<b>53,692.06</b>	<b>785,026.38</b>
<b>Net Income</b>	<b>-14,644.32</b>	<b>709,368.09</b>	<b>22,900.62</b>	<b>13,709.93</b>	<b>53,692.06</b>	<b>785,026.38</b>

At month end, the Authority had cash on hand of \$4,209,756.86. The checking account balance was \$4,209,731.86 and the savings account balance was \$25.00

Pocatello Development Authority recognized greater than normal financial activity during the month of July. The Authority received revenues totaling \$936,962.08 of which \$856.88 was interest earnings on cash invested. Property tax revenues and replacement dollars were received from the North Yellowstone District (\$709,145.30), the Naval Ordinance District (\$157,502.12), the North Portneuf District (\$15,152.82), and the Airport District (\$53,554.96). Rental income from the Positron Facility was received in the amount of \$750.

Expenses paid for the month totaled \$151,935.70. The administrative expenses were \$78.97 for the lunch meeting in July. Capital construction in the Naval Ordinance District totaled \$134,850. Economic grants were issued in the amount of \$10,247.83 and economic loans were issued for \$2,086. Other professional services include \$3,152.90 to Elam & Burke for Northgate TIF creation and special council and \$1,520 to Stacey & Parks, PLLC for legal assistance on the Hoku Property.

Year to date revenues of \$2,120,137.96 (see page 3) are less than expenses of \$4,641,579.57, so there is an overall net use of reserves of \$2,521,441.61.

Pocatello Development Authority  
Profit & Loss by Class  
October 2018 through July 2019

	1-General Fund	3-North Yellowstone	4-Naval Ordnance	6-North Portneuf	7-Pocatello Regional Airport	TOTAL
<b>Ordinary Income/Expense</b>						
<b>Income</b>						
Interest Income	2,388.14	48,248.28	1,972.97	747.34	1,069.80	54,426.53
Loan Interest Income	0.00	0.00	0.00	0.00	115.91	115.91
Personal Property tax replace	0.00	46,006.70	12,086.42	809.82	0.00	58,902.94
Property Taxes	0.00	1,607,814.65	256,570.53	26,275.00	108,532.40	1,999,192.58
Rental Income	7,500.00	0.00	0.00	0.00	0.00	7,500.00
<b>Total Income</b>	<b>9,888.14</b>	<b>1,702,069.63</b>	<b>270,629.92</b>	<b>27,832.16</b>	<b>109,718.11</b>	<b>2,120,137.96</b>
<b>Gross Profit</b>	<b>9,888.14</b>	<b>1,702,069.63</b>	<b>270,629.92</b>	<b>27,832.16</b>	<b>109,718.11</b>	<b>2,120,137.96</b>
<b>Expense</b>						
Administrative	1,697.54	2,000.00	0.00	278.41	0.00	3,975.95
Capital Construction	0.00	0.00	134,850.00	0.00	0.00	134,850.00
<b>Debt Service</b>						
Interest	0.00	62,651.87	0.00	0.00	0.00	62,651.87
Principal	0.00	3,533,000.00	0.00	0.00	0.00	3,533,000.00
<b>Total Debt Service</b>	<b>0.00</b>	<b>3,595,651.87</b>	<b>0.00</b>	<b>0.00</b>	<b>0.00</b>	<b>3,595,651.87</b>
Dues and Memberships	1,350.00	0.00	0.00	0.00	0.00	1,350.00
Economic Grants Issued	497,843.37	0.00	0.00	0.00	0.00	497,843.37
Economic Loans	304,610.32	0.00	0.00	0.00	0.00	304,610.32
<b>Professional Services</b>						
Other Professional Services	59,663.40	2,623.00	0.00	25,712.20	0.00	87,998.60
Professional Services - Other	8,815.54	0.00	0.00	6,483.92	0.00	15,299.46
<b>Total Professional Services</b>	<b>68,478.94</b>	<b>2,623.00</b>	<b>0.00</b>	<b>32,196.12</b>	<b>0.00</b>	<b>103,298.06</b>
<b>Total Expense</b>	<b>873,980.17</b>	<b>3,600,274.87</b>	<b>134,850.00</b>	<b>32,474.53</b>	<b>0.00</b>	<b>4,641,579.57</b>
<b>Net Ordinary Income</b>	<b>-864,092.03</b>	<b>-1,898,205.24</b>	<b>135,779.92</b>	<b>-4,642.37</b>	<b>109,718.11</b>	<b>-2,521,441.61</b>
<b>Net Income</b>	<b>-864,092.03</b>	<b>-1,898,205.24</b>	<b>135,779.92</b>	<b>-4,642.37</b>	<b>109,718.11</b>	<b>-2,521,441.61</b>

General Fund Obligations (w/payments requested as of 8/21/19)

Name	Grant	Drawn	Remaining	Loan	Drawn	Remaining	Payments Start
Northgate TIF				\$2,000,000.00	(\$2,000,000.00)	\$0.00	2021 - TIF reimbursement begins
Station Square	\$100,000.00	(\$15,059.00)	\$84,941.00	\$100,000.00	(\$47,882.44)	\$52,117.56	NA 8/1/2020 (\$6,250 + interest quarterly)
The Yellowstone				\$16,795.00	\$0.00		Not yet disbursed, \$1,050 + interest quarterly
The Yellowstone/Bridge				\$26,000.00	(\$26,000.00)	\$0.00	1/1/2020 (\$1,625 + interest quarterly)
Inergy	\$25,000.00	\$0.00	\$25,000.00				Only if employment incentive not met
BGS	\$60,000.00	(\$60,000.00)	\$0.00	\$200,000.00	(\$193,455.52)	\$6,544.48	NA 6/1/2020 (\$12,500 + interest quarterly)
Simmons	\$75,000.00	(\$55,818.18)	\$19,181.82	\$125,000.00	(\$70,450.29)	\$54,549.71	NA 6/1/2020 (\$7,813 + interest quarterly)
Snyder	\$75,000.00	(\$37,000.00)	\$38,000.00				NA
Barthlome	\$10,000.00	(\$10,000.00)	\$0.00	\$17,500.00			NA Chose not to take loan

**ELAM & BURKE**  
ATTORNEYS AT LAW

251 East Front Street, Suite 300  
Post Office Box 1539  
Boise, Idaho 83701  
Telephone 208 343-5454  
Fax 208 384-5844

Tax Id No. 82-0451327

Pocatello Development Authority  
Attn: Melanie Gygli  
City of Pocatello  
P.O. Box 4169  
Pocatello, ID 83205

JULY 31, 2019

Invoice # 180604

Billing Atty - MSC

RE: Special Counsel General

CLIENT/MATTER: 09212-00003

JULY 31, 2019

Invoice # 180604

\*\*\* INVOICE SUMMARY PAGE \*\*\*

PROFESSIONAL FEES	516.00
COSTS ADVANCED	.00
TOTAL INVOICE	516.00

PAGE 3

**ELAM & BURKE**  
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Pocatello Development Authority  
Attn: Melanie Gygli  
City of Pocatello  
P.O. Box 4169  
Pocatello, ID 83205

JULY 31, 2019

Invoice # 180604

Billing Atty - MSC

FOR PROFESSIONAL SERVICES RENDERED

From JULY 3, 2019 Through JULY 31, 2019

RE: Special Counsel General

CLIENT/MATTER: 09212-00003

7/03/19	MSC	.10	Continue to review and assess issues related to the disposition of the Positron facility.	21.50
7/24/19	MSC	2.00	Review and assess information related to the Positron facility in anticipation of discussing next steps. Attend and participate in Agency discussion re same.	430.00
7/24/19	RPA	.30	Address disposition requirements and how to transfer property to ISU for future development and use.	64.50

ATTORNEY	RATE	HOURS	AMOUNT	NON-CHARGEABLE	
				HOURS	AMOUNT
Armbruster, Ryan P. Shareholder	215.00	.30	64.50	.00	.00
Conrad, Meghan S. Shareholder	215.00	2.10	451.50	.00	.00
		2.40	516.00	.00	.00

PAGE 1

**ELAM & BURKE**  
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Fax 208 384-5844

Tax Id No. 82-0451327

RE: Special Counsel General

CLIENT/MATTER: 09212-00003  
JULY 31, 2019  
Invoice # 180604

COSTS ADVANCED

TOTAL COSTS ADVANCED .00

INVOICE TOTAL 516.00

**ELAM & BURKE**

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Pocatello Development Authority  
Attn: Melanie Gygli  
City of Pocatello  
P.O. Box 4169  
Pocatello, ID 83205

JULY 31, 2019

Invoice # 180605

Billing Atty - MSC

RE: North Yellowstone District Closure

CLIENT/MATTER: 09212-00004

JULY 31, 2019

Invoice # 180605

\*\*\* INVOICE SUMMARY PAGE \*\*\*

PROFESSIONAL FEES	150.50
COSTS ADVANCED	.00
TOTAL INVOICE	150.50

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**ELAM & BURKE**  
ATTORNEYS AT LAW

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Attn: Melanie Gygli  
City of Pocatello  
P.O. Box 4169  
Pocatello, ID 83205

JULY 31, 2019

Invoice # 180605

Billing Atty - MSC

FOR PROFESSIONAL SERVICES RENDERED

From JULY 8, 2019 Through JULY 31, 2019

RE: North Yellowstone District Closure

CLIENT/MATTER: 09212-00004

7/08/19	MSC	.50	Review, revise and final the transmittal letter and circulate the same to Ms. Gygli with instructions.	107.50
7/10/19	MSC	.20	Review email communications from Ms. Gygli concerning distribution of the City Council ordinance terminating the North Yellowstone RAA. Follow up with state tax commission representatives and Anita Hymas re same.	43.00

ATTORNEY		RATE	HOURS	AMOUNT	NON-CHARGEABLE	
					HOURS	AMOUNT
Conrad, Meghan S.	Shareholder	215.00	.70	150.50	.00	.00
			.70	150.50	.00	.00

ELAM & BURKE

ATTORNEYS AT LAW

251 East Front Street, Suite 300  
Post Office Box 1539  
Boise, Idaho 83701  
Telephone 208 343-5454  
Fax 208 384-5844

Tax Id No. 82-0451327

RE: North Yellowstone District Closure

CLIENT/MATTER: 09212-00004  
JULY 31, 2019  
Invoice # 180605

COSTS ADVANCED

TOTAL COSTS ADVANCED .00

INVOICE TOTAL 150.50

ELAM & BURKE  
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Pocatello Development Authority  
Attn: Melanie Gygli  
City of Pocatello  
P.O. Box 4169  
Pocatello, ID 83205

JULY 31, 2019

Invoice # 180603

Billing Atty - MSC

RE: Northgate Plan

CLIENT/MATTER: 09212-00001

JULY 31, 2019

Invoice # 180603

\*\*\* INVOICE SUMMARY PAGE \*\*\*

PROFESSIONAL FEES	200.00
COSTS ADVANCED	.00
TOTAL INVOICE	200.00

PAGE 3

**ELAM & BURKE**

ATTORNEYS AT LAW

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Tax Id No. 82-0451327

Pocatello Development Authority  
Attn: Melanie Gygli  
City of Pocatello  
P.O. Box 4169  
Pocatello, ID 83205

JULY 31, 2019

Invoice # 180603

Billing Atty - MSC

FOR PROFESSIONAL SERVICES RENDERED

From JULY 1, 2019 Through JULY 31, 2019

RE: Northgate Plan

CLIENT/MATTER: 09212-00001

7/01/19	RPA	.20	Review information on sewer improvements, comments by DEQ and impact on development schedule.	40.00
7/09/19	MSC	.20	Review and follow up on email communications to/from Ms. Gygli concerning reimbursable improvements.	40.00
7/10/19	MSC	.60	Conference call with Ms. Gygli to discuss Northgate projects and timing of the OPA.	120.00

ATTORNEY	RATE	HOURS	AMOUNT	NON-CHARGEABLE	
				HOURS	AMOUNT
Armbruster, Ryan P. Shareholder	200.00	.20	40.00	.00	.00
Conrad, Meghan S. Shareholder	200.00	.80	160.00	.00	.00
		1.00	200.00	.00	.00

**ELAM & BURKE**  
ATTORNEYS AT LAW

251 East Front Street, Suite 300  
Post Office Box 1539  
Boise, Idaho 83701  
Telephone 208 343-5454  
Fax 208 384-5844

Tax Id No. 82-0451327

RE: Northgate Plan

CLIENT/MATTER: 09212-00001  
JULY 31, 2019  
Invoice # 180603

COSTS ADVANCED

TOTAL COSTS ADVANCED .00

INVOICE TOTAL 200.00

PAGE 2

UNLESS OTHERWISE AGREED, ALL ACCOUNTS ARE DUE WITHIN 30 DAYS OF THIS STATEMENT.  
*We also accept Visa, MasterCard, Discover and American Express.*

**Stacey & Parks, PLLC**  
 802 W Bannock Suite LP 110  
 BOISE, ID 83702  
 United States  
 (208) 917-7780

**Stacey & Parks, PLLC**

**Melanie Gygli**  
 sent via email

**Balance** \$5,460.00  
**Invoice #** 00169  
**Invoice Date** August 12, 2019  
**Payment Terms** Net 30  
**Due Date** September 11, 2019

**Hoku Property Sale**

**Time Entries**

Date	EE	Activity	Description	Rate	Hours	Line Total
07/16/2019	MP	Communication with Opposing Party	Receive and review email from Solargise's counsel. Respond to same. Follow up with PDA Board members Smith and Carr and Melanie Gygli regarding same.	\$200.00	0.4	\$80.00
07/18/2019	MP	Communication with Opposing Party	Prepare for and attend meeting with Solargise's India counsel regarding curing the default and a pending request for an additional extension. Review cure provisions in the DDA. Draft meeting summary to Board members Smith and Carr and Executive Director Gygli.	\$200.00	1.6	\$320.00
07/19/2019	MP	Communication with Opposing Party	Telephone call with Raj Basu regarding closing, request for extension, need for extension, negotiations with VA Metals and Celtic Life, and tax issues with Bannock County. Draft summary email to Scott Smith, Chad Carr, and Melanie Gygli.	\$200.00	1.8	\$360.00
07/20/2019	MP	Communication with Opposing Party	Receive and review proposed request for extension from Raj Basu of Solargise. Follow up with Raj Basu regarding revising the request to include additional information the PDA Board will need to evaluate the request.	\$200.00	0.4	\$80.00
07/22/2019	MP	Communication with Opposing Party	Meeting with Solargise's counsel regarding request for extension. Telephone call with Raj Basu regarding same and status of project, reasons extension is needed, and plan moving to closing. Review letter requesting extension. Follow up with Melanie Gygli, Scott Smith, and Chad Carr regarding same.	\$200.00	1.7	\$340.00
07/23/2019	MP	Client Communication	Telephonic meeting with Scott Smith, Chad Carr, and Melanie Gygli regarding Solargise request for extension and assessment of same.	\$200.00	1.1	\$220.00

07/24/2019	MP	Client Meeting	Prepare for and attend meeting of Pocatello Development Authority, including executive session, concerning disposition of Hoku property.	\$200.00	2.0	\$400.00
07/24/2019	MP	Document Preparation	Draft letter agreement regarding approval of extension request. Draft follow up email to PDA Board members Carr and Smith and Melanie Gygli regarding same.	\$200.00	0.7	\$140.00
07/25/2019	MP	Communication with Opposing Party	Email exchange with Raj Basu regarding extension and conditions of same.	\$200.00	0.3	\$60.00
07/25/2019	MP	Client Communication	Communication with Board members Smith and Carr and Melanie Gygli regarding extension request from Solargise and conditions of same.	\$200.00	0.3	\$60.00
07/25/2019	MP	Communication with Opposing Party	Meeting with Raj Basu regarding closing issues, DDA obligations, and extension request.	\$200.00	1.0	\$200.00
07/26/2019	MP	Document Preparation	Prepare final letter agreement and follow up with Raj Basu regarding same.	\$200.00	0.7	\$140.00
07/30/2019	MP	Client and Opposing Party Communication	Receive several emails from Melanie Gygli and Chad Carr regarding negotiation of assignment between LD Barthlome and Raj Basu. Follow u with Raj Basu regarding same. Coordinate meeting of principals regarding assignment. Review DDA assignment provisions.	\$200.00	1.1	\$220.00
07/31/2019	MP	Document Review and Assessment	Review DDA and develop strategy regarding processing assignment in compliance with DDA terms and Idaho law.	\$200.00	0.7	\$140.00
07/31/2019	MP	Client and Opposing Party Communication	Communicate with Raj Basu and LD Barthlome regarding meeting to discuss assignment.	\$200.00	0.3	\$60.00
07/31/2019	MP	Communication with Opposing Party	Communicate with Raj Basu regarding wiring instructions and details concerning PDA's wiring requirements.	\$200.00	0.4	\$80.00
07/31/2019	MP	Assess and Analyze	Assess and analyze proposed assignment agreement between Solargise and Portneuf Capital in preparation for meeting with principals regarding same.	\$200.00	0.5	\$100.00
08/01/2019	MP	Travel	Travel to and from Pocatello for meeting of principals to discuss assignment and authorization and approval of same.	\$100.00	7.4	\$740.00
08/01/2019	MP	Client and Opposing Party Communication	Attend meeting of principals to discuss assignment of DDA from Solargise to Portneuf Capital, closing time line, contingent payment agreement, meeting for approval of the assignment, and status of project development and construction schedule.	\$200.00	2.0	\$400.00
08/01/2019	MP	Document Preparation	Prepare contingent payment agreement.	\$200.00	1.5	\$300.00
08/01/2019	MP	Assess and Analyze	Additional assessment and analysis of proposed assignment agreement re DDA from Solargise to Portneuf Capital.	\$200.00	0.6	\$120.00

08/02/2019	MP	Communication with Opposing Party	Receiev emails from LD Barthlome regarding contingent payment agreement. Revise agreement and draft follow up responses to LD Bathlome regarding same.	\$200.00	0.5	\$100.00
08/02/2019	MP	Client Communication	Receive edits to contingent payment agreement from Scott Smith. Draft follow up response to same. Follow up with LD Barthlome regarding same.	\$200.00	0.3	\$60.00
08/02/2019	MP	Client Communication	Receive emails with proposed agenda and special meeting notice. Review same. Follow up with Scott Smith and Melanie Gygli regarding same.	\$200.00	0.3	\$60.00
08/05/2019	MP	Analysis and Drafting	Analysis of proposed assignment agreement between Solargise and Portneuf Capital. Draft email to PDA Board members concerning the contingent payment agreement, the proposed assignment, and the need for a special meeting to approve the arrangement.	\$200.00	1.0	\$200.00
08/07/2019	MP	Client and Opposing Party Communication	Communicate with buyer regarding closing. Communicate with title company regarding closing, closing instruction letter, indemnity agreements, title commitment exceptions, and documentation required for closing. Follow up with LD Barthlome regarding closing and open items regarding same. Communicate with Melanie Gygli regarding special meeting to approve assignment and closing.	\$200.00	1.2	\$240.00
08/11/2019	MP	Document Preparation	Prepare resolution approving assignment of rights from Solargise to Portneuf and contingent payment agreement between PDA and Portneuf. Follow up with Melanie Gygli regarding same.	\$200.00	1.2	\$240.00

Totals:                    **31.0**            **\$5,460.00**

Time Entry Sub-Total:	\$5,460.00
<b>Sub-Total:</b>	<b>\$5,460.00</b>
<b>Total:</b>	<b>\$5,460.00</b>
<b>Amount Paid:</b>	<b>\$0.00</b>
<b>Balance Due:</b>	<b>\$5,460.00</b>

**AGENDA ITEM**

**NO. 6**

**Pocatello Development Authority - Budget 2019-2020 fiscal year**

	<b>General Fund</b>	<b>Naval Ordinance</b>	<b>North Portneuf</b>	<b>Airport</b>	<b>Northgate (2)</b>	<b>Total</b>
Beginning Cash Balance July 31, 2019	\$657,806.73	\$1,004,020.97	\$338,369.43	\$609,088.74	\$0.00	\$2,609,285.87
<b>INCOME:</b>						
Administrative fees - estimated	38,736.00					38,736.00
Property taxes		255,389.00	34,951.00	97,016.00		387,356.00
Interest Income	500.00	600.00	3,000.00	100.00		4,200.00
<b>Total Projected Income:</b>	<u>39,236.00</u>	<u>255,989.00</u>	<u>37,951.00</u>	<u>97,116.00</u>	<u>0.00</u>	<u>430,292.00</u>
<b>EXPENSE:</b>						
Contingency (3)	666,609.73	1,234,470.97	355,084.43	696,502.74		2,952,667.87
City payment for HOKU land purchase (1)			17,741.00			17,741.00
Administrative expense - estimated		25,539.00	3,495.00	9,702.00		38,736.00
Luncheon costs	2,000.00					2,000.00
Office expenses	300.00					300.00
Dues and memberships	1,750.00					1,750.00
Errors and omission insurance	6,383.00					6,383.00
Banking and Professional services	20,000.00					20,000.00
<b>Total Projected Expense:</b>	<u>697,042.73</u>	<u>1,260,009.97</u>	<u>376,320.43</u>	<u>706,204.74</u>	<u>0.00</u>	<u>3,039,577.87</u>
<b>CALCULATED ENDING BALANCE</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>

1. Scheduled to payoff on October 31, 2030
  2. The Northgate TIF district is open, but will not start collecting tax money until FY 2021. It is listed on the budget for transparency.
  3. The General fund contingency covers the Northgate project and potential unplanned projects.
- The remaining contingencies in the other districts are for potential unplanned projects.

**AGENDA ITEM**

**NO. 7**

# Pocatello Development Authority

City of Pocatello  
911 North 7th Avenue  
Pocatello, Idaho 83205

An urban renewal agency for the City of Pocatello, Idaho

TO: Pocatello Development Authority, Board of Commissioners

FROM: Melanie Gygli, Interim Executive Director *MG*  
Merril Quayle, Public Works Development Engineer *MB*

DATE: Meeting of August 21, 2019

SUBJECT: BGS Holdings – Issuance of Funds

As part of the Economic Development Agreements with BGS Holdings, the Board approved loan funds of up to \$200,000.00 and a grant for \$60,000.00 for costs related to a variety of work on the building at 228 South Main.

A request for payment in the amount of \$3,277.33 has been submitted for a variety of supplies and work. No code-related permits or inspections were required, but the work has been completed to the extent of the invoices. The request is divided between the loan (\$2,827.33) and the grant (\$450.00).

With this request, the total drawn on the loan is \$193,455.52, with \$6,544.48 remaining. The total drawn on the grant is \$60,000.00 with no additional funds remaining.

It is our determination that the fund request is appropriate for payment. Payment should be made as follows:

1. CP Integrity Construction, \$2,572.08
2. William Coryell, \$705.25

# Pocatello Development Authority

70

City of Pocatello  
911 North 7th Avenue  
Pocatello, Idaho 83205

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TO: Pocatello Development Authority Board of Directors *An urban renewal agency for the City of Pocatello, Idaho*

FROM: Melanie Gygli, Interim Executive Director *MG*  
Merril Quayle, Public Works Development Engineer *MQ*

DATE: Meeting of August 21, 2019

SUBJECT: Simmons Surgical – Issuance of Loan Funds

As part of the Economic Development Loan & Grant Agreements with Simmons Surgical, the Board provided loan funds of \$125,000.00 for costs related to necessary repairs and add facilities to create a surgical skills training suite and an Air BnB-type lodging room in the building at 312 West Center.

Dane Simmons, representing Simmons Surgical, has submitted a request for \$24,850.00 covering a variety of interior work. Because a portion may require formal permits that have not yet been obtained, consideration was made for a total of \$10,350.00. This work was inspected on August 15, 2019, and we determined the fund request is proportionate to the work that has been done.

With this request, the total drawn on this loan will be \$70,450.29; remaining to be drawn is \$54,549.71.

Please make check payable to Simmons Surgical in the amount of \$10,350.00.

**From:** Raj Basu <[raj.basu@solargise.world](mailto:raj.basu@solargise.world)>  
**Sent:** Wednesday, August 14, 2019 4:06:56 PM  
**To:** Matt Parks <[mcp@splawidaho.com](mailto:mcp@splawidaho.com)>  
**Subject:** PDA/Solargise/One Hoku Way

Dear Mathew,

Further to the PDA meeting this morning and our follow up call we are requesting the following:

1. On Monday 19th August we will pay the outstanding 2015 taxes to bannock county
2. On Monday 19th August we will pay \$400,000 to the PDA which means we will have already paid over 50% of the of the purchase price which is non refundable
3. On Monday 19th August we can also pay an additional \$100,000 to the PDA towards the purchase price (keep in mind that we have already paid \$200,000 to the PDA)
4. On Monday 20th September we we will close the purchase by paying the remainder of the purchase price and property taxes that are due.

We hereby request a special PDA meeting on Friday 16th August so that our request can be heard and an extension be granted till September 20th based on the above payments.

Thank you.

Kind regards

Raj Basu  
Group Executive Chairman

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M +1 202 830 5177 USA  
M +91 7022 628 321 INDIA  
M +1 514 346 0444 CANADA  
E [raj.basu@solargise.world](mailto:raj.basu@solargise.world)  
W [solargise.world](http://solargise.world)

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Solargise India Pvt. Ltd.  
3rd Floor, Basappa Complex  
40/1 A, Lavelle Road  
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Karnataka, India

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**CH&** CAIRNCROSS & HEMPELMANN  
ATTORNEYS AT LAW  
524 2nd Ave., Suite 500  
Seattle, WA 98104  
www.cairncross.com  
office 206.587.0700  
fax 206.587.2308

August 20, 2019

VIA EMAIL

Rajdeep Basu  
Solargise UK Ltd.  
24 Fitzroy Square  
London, W1T 6EP, United Kingdom

**Re: Confirmation of V.A. Metals, LLC's Ownership and Control of Solargise America  
LLC and Notice of Member Meeting**

Dear Mr. Basu:

We represent V.A. Metals, LLC ("VAM"). By this Letter, VAM confirms its ownership and control of Solargise America, LLC ("Solargise"). As you know, VAM and Solargise America are parties to that certain Asset Purchase Agreement dated June 6, 2018 ("APA") through which VAM conveyed its interests in certain assets in exchange for Class B preferred units in Solargise. Pursuant to the APA, the redemption of VAM's Class B units is subject to the terms and conditions of that certain Amended and Restated Operating Agreement of Solargise America LLC dated June 6, 2018 ("LLC Agreement"), entered into by VAM and Solargise UK Ltd. Under the LLC Agreement, in the event that Solargise is unable to redeem VAM's Class B units, such units shall be converted to Class A Member Units in Solargise.

By letter dated April 1, 2019, Neil Macleod, on behalf of Solargise, informed VAM that Solargise was unable to redeem VAM's Class B units as required by the APA and LLC Agreement. Instead, Solargise provided its express consent to the conversion of VAM's Class B units to Class A units. By letter dated April 4, 2019, VAM provided notice to Solargise of its exercising its rights to convert its 31,172,217 Class B units to Class A units. Accordingly, VAM has held and continues to hold a 94% controlling interest in Solargise.

By this Letter, VAM provides you and Solargise UK Ltd. with notice, pursuant to Section 4.2 of the LLC Agreement, of a Meeting of Members to be held Thursday, August 22, 2019 at 11:30 a.m. Pacific Time at the law offices of Cairncross & Hempelmann, P.S., 524 Second Ave., Suite 500, Seattle, Washington 98104. Arrangements may be made to appear by telephone. The purpose of the Meeting will be your removal as Director and the election of a replacement Director. You are hereby directed to

*irizzardi@cairncross.com/Direct: (206) 254-4444*  
*cyoung@cairncross.com/Direct: (206) 254-4492*

Rajdeep Basu  
August 20, 2019  
Page 2

cease from entering into any agreements of any kind that involve Solargise until such time as the Meeting of Members is held.

In the event you have any questions or concerns, please do not hesitate to contact us.

Very truly yours,

A handwritten signature in black ink, appearing to be 'JR', with a long horizontal line extending to the right.

John R. Rizzardi  
Christopher L. Young  
Attorneys for V.A. Metals, LLC

## Gygli, Melanie

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**From:** Darren Miller <dmiller@mytrufiber.com>  
**Sent:** Tuesday, August 20, 2019 12:30 PM  
**To:** Gygli, Melanie  
**Cc:** Matt Parks  
**Subject:** Concerning the Hoku property  
**Attachments:** Due Diligence Outline on Solargise 8-20-19.pdf

To the Board of the Pocatello Development Authority,

Portneuf Capital has done considerable due diligence regarding the Hoku Plant, VA Metals, and Solargise. I want to present this outline to you for consideration before the PDA meeting on the 21st of August. This is not a document we were planning on sharing, but we have come to believe the PDA should have this information. There have been considerable developments over the past week regarding VA Metals and it's relationship to Solargise America. Portneuf Capital has been working with Celtic Life and VA Metals to come to a reasonable plan to move forward with the site. In our opinion, Solargise America will be unable to complete their plans for the site. I will outline the basics here; the details and supporting documents are attached.

The following information is based upon the best belief, opinions and understanding of Portneuf Capital:

1. VA Metals is the owner of the operating machinery at the Hoku facility, not Solargise America.
  - a. Solargise America is in default to VA Metals to the tune of \$32M.
  - b. VA Metals is taking over Solargise America – it already owns 94%.
  - c. Raj is part of Solargise UK with two other partners. Solargise UK is only a 6% owner in Solargise America.
  - d. Raj Basu **HAS NO AUTHORITY** to act on behalf of VA Metals.
2. Celtic Life purchased the buildings from VA Metals prior to VA Metals transferring them to Solargise. If Solargise obtains the ground, there will be litigation over the ownership of the buildings. This will delay any development of the Hoku site for a considerable time.
3. Money Raj Basu is bringing forward for tax payments is just a delay tactic – he rounded up money outside the company. He does not have the support of Solargise UK – it is uncertain the other owners of Solargise UK even know about this.
4. Raj Basu does not have the funding to complete the purchase from PDA, let alone to fund the DDA.
  - a. Raj Basu may be able to round up additional funding over the next few weeks, though this is in no way certain. If he were to purchase the ground from the PDA, the DDA is still a pipe dream.
  - b. Solargise America has been unable to get financial backing to execute the DDA, so the DDA should be terminated.
  - c. Solargise has failed to meet any deadlines set by the PDA, so again the DDA should be terminated.

Portneuf Capital is actively pursuing the Hoku property, so we are understandably opposed to other interests. However, even if Portneuf Capital were not involved, the Board must recognize that the DDA is most likely never going to be met. Can Solargise provide any proof of secured funds? Why is Solargise continuing to delay the payment to PDA and back taxes if, as Raj Basu has said, Solargise America has obtained \$500 million in committed funding to execute the DDA? Has Solargise ever constructed a working plant anywhere? Thank you for your time.

Regards,  
Darren Miller  
Portneuf Capital  
208-251-6269 cell

Portneuf Capital, LLC remains very interested in developing the "Hoku" facility and has invested considerable time in due diligence on the site and the various players to ensure a successful development. Part of this process involved review of prior transactions, conversations with those involved, review of title reports, and discussions with prospective tenants and purchasers of the equipment. At one point, Solargise approached Portneuf about helping to purchase the property, as Solargise did not have any financing arranged, nor the funds to close the purchase of the land from the PDA. Portneuf came to the table and put \$400,000 down with the PDA, only to see Raj Basu back out of the deal the morning it was up for approval with the PDA. While Basu cited several reasons in the local paper, none of which were true, the fact is that Basu kept trying to change the deal on Portneuf. When Portneuf stood firm to its commitment, Basu bailed.

While Portneuf would like to continue to pursue the property, we feel compelled to disclose some of the things we learned in the process that may help Bannock County and the PDA deal with what will likely be one more attempt by Raj Basu to convince everyone that money is around the corner and he just needs a little more time. No extension will provide Solargise with the ability to find financing, it only delays the ability to develop the former Hoku site into a productive business park for the City of Pocatello. Here are specifics learned in our due diligence that may be insightful (we are under no nondisclosure agreement). The following information is based upon the best belief, opinions and understanding of Portneuf Capital:

- I. Raj Basu has not been truthful with the PDA, County, or the media.
  - A. Raj Basu has not been forthcoming concerning who owns and controls Solargise America.
    1. Basu claimed in a PDA meeting that he had two UK partners and the VA Metals was only an entity that Solargise UK had loaned money.
    2. The Truth:
      - a. Solargise America has two equity owners: VA Metals (94%) and Solargise UK (6%) (see Exhibit A - Operating Agreement of Solargise America).
      - b. Until recently, VA Metals only held Class B, nonvoting interests in Solargise America. However, because Solargise America is in breach of its agreements with VA Metals, Solargise America consented to the conversion of VA Metals' Class B units to Class A voting units (see Exhibit B - Solargise letter dated April 4, 2019). This process is underway and once completed will provide voting control over Solargise America to VA Metals.
      - c. Neither Raj Basu nor any Solargise entity is a member of VA Metals. VA Metals is currently controlled by KV Naidu.
  - B. Raj Basu has been deceptive with the PDA and the local media concerning Solargise's acquisition of the equipment at the Hoku plant.

1. Raj Basu claims Solargise America purchased all of the equipment and buildings at the Hoku site from VA Metals. He stated in a recent Idaho State Journal article that Solargise America loaned VA Metals money to acquire the plant and that Solargise America had an option to purchase the equipment, which was exercised.
2. The Truth:
  - a. Solargise America loaned VA Metals approximately \$1.2M for engineering costs and other expenses, but it was not in connection with the acquisition of the plant by VA Metals.
  - b. VA Metals acquired the Hoku facility (equipment and buildings) from JH Kelly prior to any interaction with Solargise UK and before the existence of Solargise America.
  - c. VA Metals negotiated with Raj Basu and Solargise UK for over two years regarding a joint venture with Solargise UK or an acquisition of the equipment by Solargise UK. Negotiations stalled because Solargise UK could not follow through on commitments and could not arrange financing.
  - d. Negotiations changed in April 2018 when Basu went behind the back of Irfan Sharief, the manager of VA Metals, and arranged a deal with KV Naidu to oust Sharief and enter into a deal with Solargise UK.
  - e. Solargise UK entered into a deal with VA Metals in which VA Metals contributed the equipment assets to Solargise America in exchange for an equity interest in Solargise America.
  - f. As part of the deal, Solargise American had a redemption obligation of approximately \$32M (see Exhibit C - Asset Purchase Agreement). VA Metals was entitled, at certain time intervals, to demand redemption of the Class B interests (all redemptions totaled approximately \$32M).
  - g. On March 28, 2019, VA Metals demanded the redemption according to the agreements (see Exhibit D – VA Metals Demand Letters).
  - h. Neither Solargise America nor Solargise UK was in a position to make payment on the redemption obligation and responded with consent for VA Metals to be issued Class A interests in Solargise America (Exhibit B).
  - i. VA Metals accepted the consent of Solargise America to convert Class B to Class A (see Exhibit E – VA Metals Acceptance Letter).

- j. Neither Solargise UK nor Solargise America ever paid VA Metals any consideration for the equipment assets. The entire value of Solargise America was the assets contributed by VA Metals.
  - k. VA Metals is currently working with counsel in Seattle, WA to complete the process of the Class B to Class A conversion or issuance of new Class A interests. Once completed, VA Metals will control Solargise America and Raj Basu will be immediately removed as a director and will have no further involvement in the company.
- C. Raj Basu has lied about acquisition of the buildings on the Hoku site.
- 1. Raj Basu knew that VA Metals sold the buildings to Celtic Life Sciences prior to his agreement with VA Metals assigning the equipment to Solargise America.
  - 2. Celtic Life Sciences paid consideration to VA Metals (over \$1.25M in payments from Celtic to VA Metals that can be shown on VA Metals' bank statements) and received an assignment and bill of sale on the buildings from VA Metals, signed by KV Naidu and consented to by Irfan Sharief and Prosenjit Purkayastha, both of whom had authority to act for VA Metals at the time. It is interesting to note that Celtic Life has paid more to VA Metals than Solargise UK and Solargise America combined.
  - 3. Solargise America is not a bona fide purchaser of the buildings for two key reasons: first, Solargise America did not take in good faith, as they already knew the buildings had been conveyed previously for consideration; and second, they paid no consideration for the transfer (VA Metals transfer of any rights it had was done by contribution for equity, not a sale transfer).
  - 4. Celtic Life would have submitted a competing proposal to Solargise America's rfp, but was not willing to waive claims against the PDA at that time, something that was required in order to submit a bid. Celtic did however submit opposition to the Solargise America rfp in the form of public comment (See Exhibit F – Celtic Life Letter to PDA). In that public comment, Celtic Life predicted what would happen if Solargise was selected – that the property would never be developed because Solargise would not be able to follow through on commitments. That was true then and now.
- D. Raj Basu is lying about his intentions for the Hoku site.
- 1. Solargise America has been negotiating for an exit from the Hoku site for months because of its lack of financing and the \$32M obligation it is under to VA Metals.

2. Solargise America had at one time intended to move the equipment at the Hoku site to Canada. Like other Solargise projects, the Canadian project seems to be stalled due to lack of financing.
- E. PDA's mission and purpose is to assist in the development of properties within the City of Pocatello.
1. Raj Basu has no experience and has not been able to complete any projects of significance.
  2. Solargise has no intention of any long-term development in Pocatello. Solargise America never even bothered to be qualified to conduct business in Idaho. Why is that? Because they never intended to operate in Idaho.
  3. Talk of polysilicon production and 450 jobs relating to that is akin to opening a unicorn farm at the site – it will never happen. The PDA knows this, Raj knows this, we all know this. Solargise cannot live up to its obligations under the DDA – it is the obligation of the PDA to terminate the DDA with Solargise.
- F. Solargise cannot show the financial capability to undertake its development of \$150M into the site.
1. Solargise has missed deadlines to acquire the property, to which the PDA has offered extension after extension. It is time to face the fact that Solargise is a complete fraud and will never be able to muster the financing to develop the property.
  2. Solargise has been unable to even pay the property taxes.
- G. PDA issued Solargise a notice of default and the default was not cured by the end of the cure period.
1. Under the DDA, Solargise has no right to continue.
  2. Solargise has made a mockery of the PDA and its deadlines. All delays and defaults are all within the control of Solargise – and all stem from one of two sources:
    - a. Lack of financing; or
    - b. Lack of technical expertise. Irfan Sharief was the mastermind behind the "Sand to Solar" concept and the technical enhancements that could have made the Hoku facility equipment of value in production. Raj Basu, despite stealing Sharief's work, lacks the technical capabilities to move the work forward. This

explains why there has been absolutely not movement in the project since Solargise took over the facility in May of 2018. They don't know what they are doing.

- H. Solargise represented in the DDA that the purchase of the property from the PDA is for development purposes only, not for investment. Within the past 30 days, Solargise has been negotiating for the "flip" of the property with at least one local group. This goes against the purpose of the PDA and the express intent of the DDA.
- I. Representations of Solargise in the DDA are not true and cannot be met as closing conditions (see Section 5.3.1 of DDA).
- J. Solargise failed to close on the purchase of the property by the "Outside Date" and failed to pay the property taxes as required by Sections 10.1 and 10.2.

**EXHIBIT A**  
**OPERATING AGREEMENT OF SOLARGISE AMERICA**  
**[see attached]**

**EXHIBIT B**  
**SOLARGISE UK LETTER DATED APRIL 1, 2019**  
**[see attached]**

**EXHIBIT C**  
**ASSET PURCHASE AGREEMENT**  
**[see attached]**

**EXHIBIT D**  
**DEMAND LETTERS OF VA METALS**  
**[see attached]**

EXHIBIT E  
VA METALS ACCEPTANCE LETTER  
[see attached]

**EXHIBIT F**  
**CELTIC LIFE LETTER TO PDA**  
**[see attached]**

EXHIBIT A  
OPERATING AGREEMENT OF SOLARGISE AMERICA  
[see attached]

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**SOLARGISE AMERICA LLC**

*A Delaware Limited Liability Company*  
**Amended and Restated Operating Agreement**

**Entered into as of June 6, 2018**

**THE LIMITED LIABILITY COMPANY UNITS REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, THE SECURITIES LAWS OF ANY STATE OR OF ANY OTHER JURISDICTION. THE UNITS MUST BE ACQUIRED FOR INVESTMENT PURPOSES ONLY, AND NEITHER THE UNITS NOR ANY PART THEREOF MAY BE OFFERED FOR SALE, PLEDGED, HYPOTHECATED, SOLD, ASSIGNED OR TRANSFERRED AT ANY TIME EXCEPT IN COMPLIANCE WITH (I) THE SECURITIES ACT OF 1933, AS AMENDED AND ANY OTHER APPLICABLE SECURITIES LAWS PURSUANT TO REGISTRATION THEREUNDER OR EXEMPTION THEREFROM OR OTHERWISE AND (II) THE TERMS AND CONDITIONS OF THIS AGREEMENT. THE UNITS SHALL NOT BE TRANSFERRED OF RECORD EXCEPT IN COMPLIANCE WITH THOSE LAWS AND THIS AGREEMENT.**

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**AMENDED AND RESTATED OPERATING AGREEMENT OF  
SOLARGISE AMERICA LLC**

THIS AMENDED AND RESTATED OPERATING AGREEMENT (this "Agreement") of Solargise America LLC, a Delaware limited liability company (the "Company"), is made and entered into as of June 6, 2018 (the "Effective Date"), by and among the members identified on Exhibit A hereto, as amended from time to time (each a "Member" and, collectively, the "Members").

**EXPLANATORY STATEMENT**

WHEREAS, the Company was formed in May 2018 (the "Formation Date") by the filing of a Certificate of Formation with the office of the Secretary of State of the State of Delaware pursuant to the relevant provisions of the Act; and

WHEREAS, the Company and each of the parties executing this Agreement desire to amend and restate the Company's existing Operating Agreement effective as of May 30, 2018 (the "Original Operating Agreement") on the terms and conditions set forth herein, and for this Agreement to supersede the Original Operating Agreement in its entirety; and

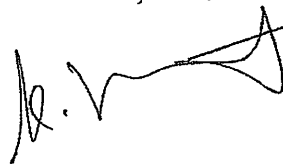
WHEREAS, the Members deem it desirable to enter into this Agreement in order to set forth certain agreements among themselves relating to the governance of the Company and granting certain rights and imposing certain restrictions on themselves and the Units now or at any time held by the Members or issuable to the Members or other persons.

**TERMS**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members, intending to be legally bound hereby amend and restate the Original Operating Agreement in its entirety and further agree as follows:

**ARTICLE 1  
THE COMPANY**

**1.1 Formation.** The Company was formed by the agreement of the sole Member on the Formation Date as a limited liability company under and pursuant to the provisions of the Delaware Limited Liability Company Act, 6 Del. C. § 18-101 *Et Seq.* (as amended from time to time, the "Act"). The fact that the Certificate of Formation of the Company (the "Certificate") is on file in the office of the Secretary of State of the State of Delaware constitutes notice that the Company is a limited liability company. The rights and liabilities of the Members shall be as provided under the Act, the Certificate and this Agreement.



**1.2 Name.** The name of the Company is "Solargise America LLC". The business of the Company shall be conducted under that name or under such other name as may from time to time be selected by the Company.

**1.3 Purpose.** The Company is formed for the object and purpose of, and the nature of the business to be conducted and promoted by the Company, engaging in any lawful act or activity for which limited liability companies may be formed under the Act.

**1.4 Location.** The principal place of business of the Company shall be located at such address as the Board may determine from time to time. The Company may establish other places of business when and where required by or advisable to the Company's business.

**1.5 Registered Office and Registered Agent.** The registered office of the Company required to be maintained in the State of Delaware is as provided in the Certificate or such other registered office (which shall not be a place of business of the Company) as the board may designate from time to time in the manner provided by law.

**1.6 Term.** The Company will have perpetual existence unless dissolved in accordance with the terms of this Agreement.

**1.7 Definitions.** In addition to the terms defined elsewhere in this Agreement, the following terms used in this Agreement shall have the meanings specified below. Unless the context otherwise requires, capitalized terms used but not defined in this Agreement shall have the meanings given to them in the Act.

(a) "Adjusted Capital Account Deficit" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(i) Credit to such Capital Account any amounts which such Member is obligated to restore pursuant to any provision of this Agreement or is deemed obligated to restore pursuant to the penultimate sentences of Treasury Regulation §§1.704-2(g)(1) and 1.704-2(i)(5); and

(ii) Debit to such Capital Account the items described in §1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5), and 1.704-1(b)(2)(ii)(d)(6) of the Treasury Regulations.

The foregoing definition of "Adjusted Capital Account Deficit" is intended to comply with the provisions of §1.704-1(b)(2)(ii)(d) of the Treasury Regulations and shall be interpreted consistently therewith.

(b) "Affiliate" means, with respect to any Person, (a) any person directly or indirectly owning, controlling or holding with power to vote ten percent (10%) or more of the outstanding voting securities of that person, (b) any person ten percent (10%) or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by that person, (c) any person directly or indirectly

controlling, controlled by or under common control with that person, and (d) any officer, director, partner or manager of any person described in subsection (a), (b) or (c) of this paragraph, and the term "control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management, activities or policies of any person whether through the ownership of voting securities, by contract, employment or otherwise.

- (c) "APA" shall have the meaning set forth in Section 2.2(c).
- (d) "Approved Sale" shall have the meaning set forth in Section 8.4(a).
- (e) "Approving Members" shall have the meaning set forth in Section 8.4(a).
- (f) "Board" shall have the meaning set forth in Section 3.1.
- (g) "Capital Account" shall have the meaning set forth in Section 5.1.
- (h) "Capital Contribution" means, with respect to any Member and a Unit in the Company held or purchased by such Member, the amount of money and the initial Gross Asset Value of any property (other than money) contributed to the Company (net of liabilities assumed or taken subject to by the Company) with respect to such Unit.
- (i) "Capital Account Excess" shall mean, with respect to a Member, the excess (if any) of such Member's Capital Account over such Member's Targeted Account.
- (j) "Capital Account Shortfall" shall mean, with respect to a Member, the excess (if any) of such Member's Targeted Account over such Member's Capital Account.
- (k) "Capital Proceeds" means any and all proceeds (whether in the form of cash or property) received by the Company or receivable by its Members from a Capital Transaction, reduced by expenses incurred by the Company in connection with such Capital Transaction, liabilities of the Company which are repaid out of the proceeds from such Capital Transaction, and such reserves as the Board may determine to be necessary for the needs of the Company.
- (l) "Capital Transaction" means a sale or disposition of all, or a significant portion of, the Company's business. The Board's determination of whether a transaction encompasses a significant portion of the Company's business will be conclusive.
- (m) "Chair" shall have the meaning set forth in Section 3.3.
- (n) "Class A Member Units" shall have the meaning set forth in Section 2.1.

(o) "Class B Member Units" shall have the meaning set forth in Section 2.1.

(p) "Class Units" shall have the meaning set forth in Section 2.1.

(q) "Code" means the Internal Revenue Code of 1986, as amended from time to time, or any corresponding federal tax statute enacted after the date of this Agreement. A reference to a specific section of the Code refers not only to such specific section but also to any corresponding provision of any federal tax statute enacted after the date of this Agreement, as such specific section or corresponding provision is in effect on the date of application of the provisions of this Agreement containing such reference.

(r) "Company Minimum Gain" has the meaning set forth in sections 1.704-2(b)(2) and 1.704-2(d) of the Treasury Regulations.

(s) "Company Options" shall have the meaning set forth in Section 2.7(b).

(t) "Company Warrant" means a warrant or option to acquire Units issued by the Company other than in exchange for services.

(u) "Corporate Governing Documents" shall have the meaning set forth in Section 8.5(a).

(v) "Convertible Securities" shall mean any evidence of indebtedness, units or other securities directly or indirectly convertible into, or exercisable or exchangeable for, Class Units.

(w) "Director" shall have the meaning set forth in Section 3.1.

(x) "Depreciation" means, for each Fiscal Year or other period, an amount equal to the depreciation, amortization, or other cost recovery deduction allowable for federal income tax purposes with respect to an asset for such Fiscal Year or other period, except that if the Gross Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year or other period, Depreciation shall be an amount which bears the same ratio to such beginning Gross Asset Value as the federal income tax depreciation, amortization, or other cost recovery deduction for such Fiscal Year or other period bears to such beginning adjusted tax basis. In the event that the federal income tax depreciation, amortization, or other cost recovery deduction is zero, Depreciation shall be determined with reference to such beginning Gross Asset Value using any reasonable method.

(y) "Dissolution Event" shall have the meaning set forth in Section 10.1.

(z) "Equity Incentive Plan" shall mean an equity compensation plan of the Company anticipated to be adopted on or after the date hereof.

3.9. (aa) "Fair Market Value" shall have the meaning set forth in Section

10.2. (bb) "Final Distribution" shall have the meaning set forth in Section

(cc) "Fiscal Year" means the taxable year which, unless the Code requires a different period, is (i) the calendar year, or (ii) any portion of the period described in clause (i) of this sentence for which the Company is required to allocate Profit, Loss and other items of Company income, gain, loss or deduction pursuant to Article 6.

(dd) "Formation Date" has the meaning set forth in the preamble to this Agreement.

(ee) "Gross Asset Value" means, with respect to any asset, the adjusted basis of such asset for federal income tax purposes, except as follows:

(i) The initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross Fair Market Value of such asset, as determined pursuant to Section 3.9 hereof.

(ii) The Gross Asset Value of any Company property distributed to a Member shall be the gross Fair Market Value of such asset on the date of distribution as determined pursuant to Section 3.9 hereof.

(iii) The Gross Asset Values of all the Company assets shall be adjusted to equal their respective gross Fair Market Values (taking Code Section 7701(g) into account), as determined by the Board in accordance with Section 3.9 as of the following times: (A) the acquisition of an additional Unit in the Company by any new or existing Member; (B) the distribution by the Company to a Member of more than a *de minimis* amount of property with respect to a Unit; (C) the liquidation of the Company within the meaning of Treasury Regulations § 1.704-1(b)(2)(ii)(g), provided that an adjustment described in clauses (A) and (B) of this paragraph shall be made only if the Board determines that such adjustment is necessary to reflect the relative economic interests of the Members in the Company.

(iv) The Gross Asset Value of Company assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Sections 734(b) or 743(b) of the Code should the Company make an election under Section 754 of the Code, but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulations §1.704-1(b)(2)(iv)(m).

(v) If the Gross Asset Value of an asset has been determined or adjusted pursuant to this definition, such Gross Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses.

- (ff) "Initial Director" has the meaning set forth in Section 3.2.
- (gg) "Majority Vote of the Board" means the affirmative vote or consent of at least a majority of the members of the Board.
- (hh) "Majority Vote of the Members" means the affirmative vote or consent of the Members holding at least a majority of the Voting Units.
- (ii) "Meeting Supervisor" shall have the meaning set forth in Section 4.2(i).
- (jj) "Member(s)" has the meaning set forth in the recitals.
- (kk) "Member Nonrecourse Debt" has the meaning set forth in section 1.704-2(b)(4) of the Treasury Regulations.
- (ll) "Member Nonrecourse Debt Minimum Gain" means an amount, with respect to each Member Nonrecourse Debt, equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with section 1.704-2(i)(3) of the Treasury Regulations.
- (mm) "Member Nonrecourse Deductions" has the meaning set forth in sections 1.704-2(i)(1) and 1.704-2(i)(2) of the Treasury Regulations.
- (nn) "Net Cash Flow" means, for each Fiscal Year or other period of the Company, the gross cash receipts of the Company from all sources except Capital Transactions, but excluding any amounts, such as gross receipts taxes, that are held by the Company as a collection agent or in trust for others or that are otherwise not unconditionally available to the Company, less all amounts paid by or for the account of the Company during the same Fiscal Year or other period (specifically including payments of principal and interest on any Company indebtedness and expenses reimbursed to the Members), and less any amounts determined by the Board to be necessary to provide a reasonable reserve for working-capital needs or any other contingencies of the Company. Net Cash Flow shall not be reduced by depreciation, amortization, cost recovery deductions, depletion, similar allowances or other non-cash items, but shall be increased by any reduction of reserves previously established.
- (oo) "Nonrecourse Deductions" has the meaning set forth in sections 1.704-2(b)(1) and 1.704-2(c) of the Treasury Regulations.
- (pp) "Nonrecourse Liability" has the meaning set forth in section 1.704-2(b)(3) of the Treasury Regulations.
- (qq) "Notice" shall have the meaning set forth in Section 12.6(a).
- (rr) "Officers" shall have the meaning set forth in Section 3.5.

(ss) “Option” shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Class Units or Convertible Securities.

(tt) “Option Exercise Date” shall have the meaning set forth in Section 6.6(a).

(uu) “Option Grant Letter” shall mean an agreement between the Company and a Company service provider, authorized by the Equity Incentive Plan or otherwise by the Board, which grants a Company Option or in exchange for services to the Company service provider and sets forth certain terms concerning the acquisition, holding, exercise, and disposition of such Company Option by the Company service provider.

(vv) “Option Holder” shall have the meaning set forth in Section 6.6(b).

(ww) “Option Income” shall have the meaning set forth in Section 6.6(d).

(xx) “Option Units” shall have the meaning set forth in Section 2.7(b) hereof.

(yy) “P-Series” shall have the meaning set forth in Section 2.8.

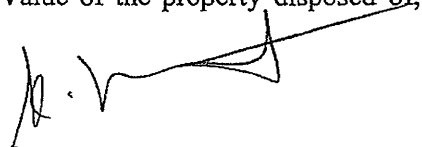
(zz) “Percentage Interest” means, as to a Member, the percentage determined by dividing the number of Class Units held by such Member by the number of Class Units outstanding, all as set forth next to such Member’s name on Exhibit A hereto, as amended from time to time.

(aaa) “Profits” and “Losses” shall mean, for each Fiscal Year or other period, an amount equal to the Company’s taxable income or loss for such Fiscal Year or period, determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Section 703(a)(1) of the Code shall be included in taxable income or loss), with the following adjustments:

(i) Income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses shall be added to such taxable income or loss.

(ii) Expenditures of the Company described in Section 705(a)(2)(B) of the Code or treated as such expenditures pursuant to Treasury Regulation §1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses shall be subtracted from such taxable income or loss.

(iii) Gain or loss resulting from any disposition of Company assets with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Gross Asset Value of the property disposed of,



notwithstanding that the adjusted tax basis of such property differs from its Gross Asset Value.

(iv) In the event the Gross Asset Value of any Company asset is adjusted pursuant to the definition of Gross Asset Value, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the Gross Asset Value of the asset) or an item of loss (if the adjustment decreases the Gross Asset Value of the asset) from the disposition of such asset and shall be taken into account for purposes of computing Profits and Losses.

(v) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing taxable income or loss, there shall be taken into account Depreciation for such fiscal year or other period.

Notwithstanding any other provision of this definition, any items which are specially allocated pursuant to Sections 6.2, 6.3, 6.5, 6.6, 6.7, and 10.2 hereof shall not be taken into account in computing Profits or Losses.

The amounts of the items of Company income, gain, loss or deduction available to be specially allocated pursuant to Sections 6.2, 6.3, 6.5, 6.6, 6.7 and 10.2 hereof shall be determined by applying rules analogous to those set forth in subparagraphs (i) through (v) above.

(bbb) "Put Option A" shall have the meaning set forth in Section 8.3(a).

(ccc) "Put Option B" shall have the meaning set forth in Section 8.3(b).

(ddd) "Put Option C" shall have the meaning set forth in Section 8.3(c).

(eee) "Put Option D" shall have the meaning set forth in Section 8.3(d).

(fff) "Put Option E" shall have the meaning set forth in Section 8.3(e).

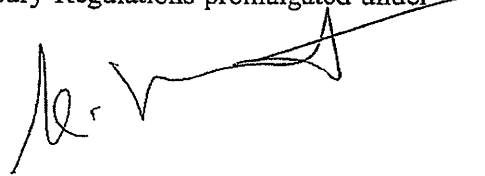
(ggg) "Put Option F" shall have the meaning set forth in Section 8.3(f).

(hhh) "Put Options" shall have the meaning set forth in Section 8.3(f).

(iii) "Redemption Notice" shall have the meaning set forth in Section 8.3(g).

(jjj) "Redemption Price" shall mean, with respect to any Class B Member Unit, the per unit price as of the Effective Date as set forth in Exhibit A (the "Unit Price") of the initial Capital Contribution for the Class B Member Units.

(kkk) "Regulations" means the Treasury Regulations promulgated under the Code, as from time to time in effect.

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(lll) "Regulatory Allocations" shall have the meaning set forth in Section 6.3.

(mmm) "Retained Earnings Threshold" shall have the meaning set forth in Section 2.8(d)(ii).

(nnn) "Sale Transaction" shall have the meaning set forth in Section 8.4(a).

(ooo) "Securities Act" means the Securities Act of 1933, as amended from time to time, or any corresponding federal securities statute enacted after the date of this Agreement.

(ppp) "Target Account" shall mean, with respect to any Member for any Fiscal Year or other period, an amount equal to the hypothetical distribution such Member would receive if all assets of the Company, including money at the end of such period: (a) were sold for cash equal to their Gross Asset Value (taking into account any adjustments to Gross Asset Value for such period); (b) all liabilities allocable to such assets were then due and were satisfied according to their terms; (c) all minimum gain chargebacks required by this Agreement were made; (d) and all obligations of Members to contribute additional capital to the Company were satisfied; and (e) all remaining proceeds from such sale were distributed to the Members pursuant to Section 7.1(b).

(qqq) "Tax Distributions" shall have the meaning set forth in Section 7.1(c).

(rrr) "Tax Matters Partner" shall have the meaning set forth in Section 12.5(a).

(sss) "Tax Payment Loan" shall have the meaning set forth in Section 7.2.

(ttt) "Threshold Amount" shall have the meaning set forth in Section 2.8(d)(i).

(uuu) "Transfer" or "Transferred" shall have the meaning set forth in Section 8.1.

(vvv) "Treasury Regulations" means the income tax regulations, including temporary regulations, promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

(www) "Trustee" shall have the meaning set forth in Section 8.3(g).

(xxx) "Trustee Account" shall have the meaning set forth in Section 8.3(g).

(yyy) "Trustee Agreement" shall have the meaning set forth in Section 8.3(g).

(zzz) "Unit" or "Units" means an equity ownership interest in the Company (which shall be considered personal property for all purposes) which shall entitle any record owner who is validly admitted as a Member of the Company as provided herein to the rights and privileges (and subject its holder to the burdens) associated with such Unit as set forth herein.

(aaaa) "Unvested Class Units" shall have the meaning set forth in Section 7.1(d).

(bbbb) "V.A. Metals" shall have the meaning set forth in Section 2.2(c).

(cccc) "Vested Class Units" shall have the meaning set forth in Section 7.1(d).

(dddd) "Voting Units" means the Class A Member Units.

(eeee) "Warrant Exercise Date" shall have the meaning set forth in Section 6.5(a).

(ffff) "Warrant Holder(s)" shall mean the record owner(s) of the Company Warrants.

(gggg) "Warrant Units" shall have the meaning set forth in Section 2.7(a).

(hhhh) "Withholding Tax Act" shall have the meaning set forth in Section 7.2.

## **ARTICLE 2**

### **CAPITAL MATTERS**

**2.1 Classes of Units.** The Company shall initially have two classes of membership interests in the form of certificated (a) voting class-A common units (the "Class A Member Units") and (b) non-voting class-B preferred units (the "Class B Member Units" and collectively with Class A Member Units, the "Class Units"), with the rights and privileges as are specified in this Agreement. The Company is authorized to issue up to 35,000,000 Class A Member Units and [32,672,217] Class B Member Units.

#### **2.2 Ownership Exhibit, Initial Capital Contributions.**

(a) The name, present mailing address, initial Capital Contribution and the number of Units held by each Member, as of the Effective Date are as set forth next to each Member's respective name on Exhibit A attached hereto. The Company will maintain in its books and records and updated schedule of the aggregate Capital Contributions of each Member, the current Capital Accounts of each Member and the Percentage Interest of each Member, as well as any changes thereto.

(b) Exhibit A may be amended from time to time by the Board (as defined in Section 3.1, or its authorized designee) to reflect, the admission of additional Members to the Company, changes in the Capital Contribution, changes in the number of issued and outstanding Units, and changes in the ownership of Units.

(c) The Company shall be entitled to treat the person in whose name any Unit(s) stand on the books of the Company as the absolute owner thereof, and shall not be bound to recognize any equitable or other claim to, or interest in, such Unit or Units on the part of any other person. Notwithstanding the foregoing, all Class B Member Units held by V.A. Metals, LLC ("V.A. Metals") as of the Effective Date shall be subject to a first priority security interest by Solargise UK Ltd. and Solargise (HK) Ltd. pursuant to the Asset Purchase Agreement dated as on or about the Effective Date by and between V.A. Metals and Solargise UK Ltd. (the "APA"). Provided further that in the circumstance of liquidation or dissolution of the Company, Class B Member Units held by V.A. Metals, LLC shall take first precedence in liquidation proceedings, including settlement, payment against and transfer of such Class B Member Units.

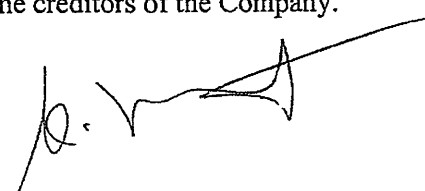
**2.3 Additional Capital Contributions.** No Member shall be obligated to make any additional Capital Contribution or advance to the Company.

**2.4 Interest on Capital.** No interest shall be payable with respect to any Capital Contributions made to the Company.

**2.5 Limited Liability of Members.** Except as and to the extent required under the Act or this Agreement, no Member shall be liable for the debts, liabilities, contracts, or any other obligations of the Company.

**2.6 Loans to the Company.** Without in any way limiting the authority of the Board to cause the Company to borrow funds from an unaffiliated third party (instead of, or in addition to, any loan(s) of the type contemplated by this Section 2.6), any Member or Affiliate of a Member may, with the consent of the Board, lend or advance money to the Company; provided, that such a loan shall be on terms and conditions not less favorable than those available from unaffiliated third parties for similar loans. If a Member, with the consent of the Board, shall make any loan or loans to the Company or advance money on its behalf, the amount of such loan or advance shall not be treated as a Capital Contribution to the Company and shall not increase such Member's Capital Account but shall instead be treated as a debt due from the Company to a creditor as to all parties and as for all purposes to the fullest extent permitted by law. Any such loan shall be a debt of the Company to such Member and shall be payable or collectible only out of the Company property in accordance with the terms and conditions upon which such loan was made and shall bear interest at a rate at least equal to the applicable federal rate as defined in Section 1274(d) of the Code unless such requirement is waived by the Board. Any such loan shall be subject to the highest priority permitted by law as to the creditors of the Company.

**2.7 Unexercised Warrants and Options.**

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(a) Warrant Holders shall be treated as Members with respect to the Units underlying their respective Company Warrants (the "Warrant Units") for the purposes of this Agreement only if, when, and to the extent such Company Warrants are exercised in accordance with the terms of the Company Warrants, the applicable Units are issued by the Company, and the applicable Warrant Holder is admitted as a Member of the Company, provided that the date upon which a Warrant Holder is treated as a Member with respect to such Warrant Units shall be no later than the date upon which the Company is obligated to issue such Warrant Units pursuant to the terms of such Company Warrant.

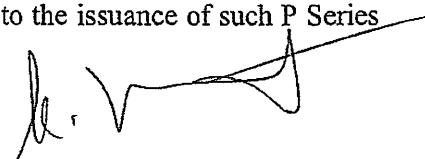
(b) Persons issued options to acquire Class Units pursuant to Option Grant Letters authorized by the Equity Incentive Plan or otherwise by the Board ("Company Options") shall be treated as Members with respect to the Class Units underlying such Company Options (the "Option Units") for the purposes of this Agreement only if, when, and to the extent such Company Options are exercised in accordance with the terms of the Option Grant Letters pursuant to which the Company Options were issued, the applicable Option Units are issued by the Company pursuant to the applicable Option Grant Letter, and the applicable person complies with the terms of admission as a Member of the Company pursuant to this Agreement. The allocation and Capital Account treatment of the exercise of a Company Option shall be governed by the terms of this Agreement.

## **2.8 Compensatory Issuance of Class Units as Profits Interests.**

(a) Subject to Section 2.1 and upon the terms and conditions set forth in the unit grant agreements approved by the Board, the Company may issue profits interest series of Class Units as equity compensation for services provided or to be provided to the Company by employees, officers, consultants, independent contractors, or advisors of the Company or its Affiliate. Such Units are intended to constitute "profits interests," as such term is used by Rev. Proc. 93-27. Issuances of Class Units pursuant to this Section 2.8 are intended to be nontaxable to their recipients to the fullest extent permitted by law, although neither the Board, the Members, nor the Company makes any representation as to the tax consequences of the issuance of Class Units pursuant to this Section 2.8.

(b) Immediately prior to each issuance of Class Units pursuant to this Section 2.8 (each a "P Series" of Class Units, to be consecutively designated as "Series P-1," "Series P-2," etc.), the Gross Asset Value of all Company property shall be adjusted to equal their respective gross Fair Market Values (taking Section 7701(g) of the Code into account) as determined by the Board in its sole discretion.

(c) Each P Series of Class Units shall entitle its record owner to share in the appreciation in the Fair Market Value of the Company from the date of issuance of such P Series of Class Units with respect to amounts distributable pursuant to Section 7.1 in proportion to the Percentage Interest applicable to such P Series of Class Units and not in any Fair Market Value of the Company accrued prior to the issuance of such P Series of Class Units.



(d) In connection with the issuance of each P Series of Class Units pursuant to this Section 2.8 using the Fair Market Value of the Company determined above in Section 2.8(b), the Board (or its authorized designee) shall promptly thereafter:

(i) amend Section 7.1(b) (through attachment of a completed Exhibit C to this Agreement approved by the Board and executed by the Board or any authorized designee of the Board) to provide for a subsection corresponding to each P Series of Class Units and establishing the then Fair Market Value of the Company as the minimum aggregate Capital Proceeds distribution amount that must be made pursuant to Section 7.1(b) with respect to the Units of the Company issued and outstanding prior to the issuance of such P Series of Class Units before such P Series of Class Units shall share in Capital Proceeds distributions made pursuant to Section 7.1(b) (the "Threshold Amount" of such P Series of Class Units).

(ii) amend Section 7.1(a) (through attachment of a completed Exhibit C to this Agreement) to provide for a subsection corresponding to each P Series of Class Units and establishing the then retained Net Cash Flow of the Company as the minimum aggregate distribution amount that must be made pursuant to Section 7.1(a) with respect to the Units of the Company issued and outstanding prior to the issuance of such P Series of Class Units before such P Series of Class Units shall share in distributions of Net Cash Flow pursuant to Section 7.1(a) (the "Retained Earnings Threshold" of such P Series of Class Units).

### ARTICLE 3

#### MANAGEMENT OF THE COMPANY

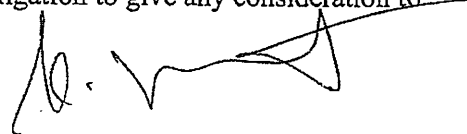
**3.1 Board.** Management of the Company shall be vested in a board of managers (the "Board") consisting initially of one (1) manager (a "Director"), with such number fixed by a Majority Vote of the Members. The Director need not be Members or residents of the State of Delaware. The Board shall have full, plenary, exclusive and complete power and authority to manage and control the Company, provided that as long as V.A. Metals or its assignee is a Member, any transfer, sale, or assignment of the Purchased Assets (as defined in the APA) shall require the consent of all of the Members. The Board shall function in substantially the same manner as the board of directors of a Delaware corporation. All actions by the Company that would require the approval of the board of directors of a Delaware corporation under the General Corporation Law of the State of Delaware, or for which it would be customary using good practice to obtain such approval, shall require approval by the Board. Except as otherwise provided in this Agreement, the Board shall act by vote of at least a majority of the Directors then in office.

**3.2 Appointment and Resignation and Removal of Directors; Term of Office.** The initial Director is identified as such on Exhibit B hereto ("Initial Director"). A Director may resign at any time. A resignation shall be made in writing and shall take

effect at the time specified therein, or if no time be specified, at the time of its receipt by the Members. The acceptance of a resignation shall not be necessary to make it effective, unless expressly so provided in the resignation. Subject to the terms set forth in this Section 3.2, a Director shall remain in office until such Director (i) is removed in accordance with this Article 3, (ii) is removed by a Majority Vote of the Members, (ii) resigns in a written instrument delivered to the Board or (iv) dies or is otherwise unable to serve (as determined by either at least a Majority Vote of the Board or a Majority Vote of the Members), or until as otherwise provided in this Article 3. Vacancies on the Board due to removal, resignation, death or incapacity shall be filled by Majority Vote of the Members. Notwithstanding the foregoing, in the event of death or incapacity of the Initial Director, the Initial Director's designee shall serve as a Director of the Company. Such designee shall be (a) a trustee of an *inter vivos* or testamentary trust or trusts exclusively for the Initial Director's benefit or for the benefit of the Initial Director's spouse or descendants or (b) a representative of any entity controlled by the Initial Director, his spouse or descendants or any such trust.

**3.3 Board Chair.** Upon appointment of more than one Director, the Directors (by a Majority Vote of the Board) shall select the Director that will act as Chair of the Board (the "Chair").

**3.4 Fiduciary Duties.** This Agreement is not intended to, and does not, create or impose any fiduciary duty on the Board, any Director in their capacity as such, nor on any Member or their respective Affiliates, and, (i) to the maximum extent permitted by applicable law, (A) in voting or otherwise acting, in such capacity as the Board, a Director or a Member, with respect to the Company, the Board, each Director, each Member and their respective Affiliates will have no obligation to consider what may be in the best interests of any Member and will have no duties (including fiduciary duties) to the Company or the Members, and (B) each Member (on its own behalf and on behalf of the Company) fully and unconditionally waives any and all duties (including any and all fiduciary duties) that the Board, any Director, or any Member or any of their respective Affiliates may owe to such Member or the Company under applicable law, and (ii) each of the parties hereto hereby waives any and all fiduciary duties that, absent such waiver, may be implied by applicable law, and in doing so, acknowledges and agrees that the duties and obligations of the Board and the Directors in their capacity as such and each Member and their respective Affiliates are only as expressly set forth in this Agreement. An indemnified person under Section 3.6 acting under this Agreement shall not be liable to the Company or to any other indemnified person for its, his or her good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they restrict the duties (including fiduciary duties) and liabilities of an indemnified person otherwise existing at law or in equity, are agreed by the parties hereto to replace such other duties and liabilities of such indemnified person. Notwithstanding any other provision of this Agreement or as otherwise required by applicable law, whenever in this Agreement an indemnified person is permitted or required to make a decision (i) in its, his or her discretion or under a grant of similar authority, the indemnified person shall be entitled to consider only such interests and factors as such indemnified person desires, including its, his or her own interests, and shall, to the fullest extent permitted by applicable law, have no duty or obligation to give any consideration to

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any interest of or factors affecting the Company or any other indemnified person, or (ii) in its, his or her good faith or under another express standard, the indemnified person shall act under such express standard and shall not be subject to any other or different standards.

**3.5 Officers.** In performing its duties, the Board is authorized to delegate responsibility to such officers (the "Officers") or other delegates or agents as the Board sees fit. Every Director and Officer shall have the authority to bind the Company by entering into contracts and incurring obligations in the Company's name, but solely to the extent such authority is delegated by the Board to such Director or Officer.

**3.6 Indemnification of the Directors and Officers.**

(a) The Company shall indemnify, save harmless and pay all judgments and claims against any Director or Officer relating to any liability or damage incurred by reason of any act performed or omitted to be performed by such Director or Officer in connection with the Company's business, including reasonable attorneys' fees incurred by such Director or Officer in connection with the defense of any action based on any such act or omission, which attorneys' fees may be reimbursed as incurred.

(b) Notwithstanding any provision of this Agreement or the Act to the contrary, (i) the Company shall not indemnify or pay the expenses of any Director or Officer (including attorneys' fees) in a suit or claim brought by such Director or Officer or any Member affiliated with such Director, and (ii) the Company shall not indemnify or pay the expenses of any Director or Officer (including attorneys' fees) unless such Director or Officer has (A) acted in good faith, (B) acted in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Company, and (C) in the case of a criminal proceeding, had no reasonable cause to believe that the conduct at issue was unlawful.

(c) No Director shall be liable, in damages or otherwise, to the Company or to any Member for any loss or liability that arises out of any act performed or omitted to be performed by such Director pursuant to the authority granted by this Agreement, other than any loss or liability that results from acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law.

(d) This Section 3.6 shall survive the termination of this Agreement for any reason.

**3.7 Rights and Powers of the Members.** The Members shall not have any right or power to take part in the direct management or control of the Company or its business operations. The Members shall have no right to vote on or approve any Company matter or transaction, or to exercise any other powers or privileges under the Act, except with respect to (a) amendments to this Agreement, (b) increase in the number of Class Units, (c) removes a Director pursuant to a Majority Vote of the Members under Section 3.2 (iii), (d) to the extent otherwise expressly provided herein or (e) otherwise required by the Act or the Certificate.

**3.8 Insurance.** If requested by at least a Majority Vote of the Board or by a Majority Vote of the Members, the Company shall maintain in effect a "directors and officers" liability insurance policy covering the Directors and Officers of the Company, with coverage on customary terms and at customary levels for businesses of the size of the Company, all as determined by the Board.

**3.9 Determination of Fair Market Value.** Valuations of the Company or Company property and the determination of "Fair Market Value" shall be conducted at such times as required by this Agreement or as otherwise deemed appropriate by the Board. Except as otherwise provided herein, such determinations of Fair Market Value shall be made by the Board in their sole discretion (and with the aid of a formal third party valuation report when deemed necessary or advisable by the Board in its sole discretion in order to apply the terms of this Agreement or comply with applicable laws).

#### **ARTICLE 4 MEETINGS**

**4.1 Board Meetings.** The Board shall meet at such time and place within or outside the State of Delaware as shall be designated from time to time by the Board. Each Director shall be given at least two (2) days' prior written notice of any meeting of the Board and will be permitted to participate in any meeting of the Board by telephone or similar communications equipment. Any Director may call a meeting of the Board.

**4.2 Member Meetings.**

(a) Meetings of the Members, for any purpose or purposes, unless otherwise prescribed by applicable law, may be called by the Board or by a Majority Vote of the Members.

(b) The Chair, the Board or the Members calling a meeting pursuant to this Section 4.2 may designate any place as the place for any meeting of the Members. If no designation is made, the place of meeting shall be the principal office of the Company.

(c) Each Member shall be given at least two (2) days' prior written notice of any meeting of the Members and shall be permitted to participate in any such meeting of the Members by telephone or similar communications equipment.

(d) For the purpose of determining the Members entitled to notice of, or to vote at, any meeting of the Members or any adjournment of the meeting, or the Members entitled to receive payment of any distribution, or to make a determination of the Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring the distribution or relating to such other purpose is adopted, as the case may be, shall be the record date for the determination of the Members. Only the Members of record on the date fixed shall be so entitled notwithstanding any permitted transfer of a Member's Units after any record date fixed as provided in this Section 4.2. When a determination of the Members entitled to vote at any meeting of the Members has been made as provided in this Section 4.2, the determination shall apply to any adjournment of the meeting.

(e) A meeting of the Members duly called shall not be organized for the transaction of business unless a quorum is present. The presence of the Members who own a majority of the outstanding Units represented in person or by proxy shall constitute a quorum at any meeting of the Members.

(f) Except as otherwise provided in the Act, the Certificate or this Agreement, whenever any Company action is to be taken by vote of the Members, it shall be authorized upon receiving the Majority Vote of the Members.

(g) At all meetings of the Members, a Member entitled to vote may vote in person or by proxy executed in writing by such Member or by a duly authorized attorney-in-fact. The proxy shall be filed with the Board before or at the time of the meeting.

(h) Where two (2) or more proxies of a Member are present, the Company shall, unless otherwise expressly provided in the proxy, accept as the vote of the Member represented thereby, the vote cast by a majority of them, and, if a majority of the proxies cannot agree whether to vote or upon the manner of voting, the voting shall be divided equally among those persons.

(i) A proxy, unless coupled with an interest, shall be revocable at will, notwithstanding any other agreement or any provision in the proxy to the contrary, but the revocation of a proxy shall not be effective until written notice thereof has been given to the Secretary of the Company or, in the case of a vacancy in the office or absence of the Secretary, one (1) of the following persons present at the meeting of the Members (the "Meeting Supervisor") in the order stated: (i) the Chair, (ii) the Director or Officer supervising the meeting of the Members, or (iii) such person as shall be designed by a Majority Vote of the Members. An unrevoked proxy shall not be valid after three (3) years from the date of its execution unless a longer time is expressly provided therein. A proxy shall not be revoked by the death or incapacity of the maker unless, before the vote is counted or the authority is exercised, written notice of the death or incapacity is given to the Secretary of the Company or, in the case of a vacancy in the office or absence of the Secretary, to the Meeting Supervisor, as set forth herein.

#### 4.3 Notice of Meeting; Waiver.

(a) Whenever any written notice is required to be given under the provisions of the Act, the Certificate or this Agreement, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of the notice. Neither the business to be transacted at, nor the purpose of, a meeting need be specified in the waiver of notice of the meeting.

(b) Attendance of a person at any meeting shall constitute a waiver of notice of the meeting, except where a person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting was not lawfully called or convened.

**4.4 Consent in Lieu of Meeting.** Any action required or permitted to be taken at a meeting of the Board or the Members may be taken without a meeting if, prior to the action, written consents describing the action to be taken are signed by the minimum number of Directors or Members that would be necessary to authorize the action at a meeting at which all Directors or Members entitled to vote thereon were present and voting. Any such written consent made pursuant to this Section 4.4 shall be filed with the Board. Prompt notice of the taking of the Company action without a meeting by less than unanimous written consent shall be given to those Directors or Members who have not consented in writing.

**ARTICLE 5**  
**CAPITAL ACCOUNTS AND RELATED MATTERS**

**5.1 Capital Accounts.**

(a) A single, separate capital account shall be maintained for each Member in accordance with the Regulations issued under Section 704(b) of the Code (each such account, a "Capital Account") and this Section 5.1.

(i) To each Member's Capital Account there shall be credited the amount of cash and the Gross Asset Value of any asset transfer by the Member to the Company as a Capital Contribution, such Member's allocated share of Profits, any items in the nature of income or gain which are specially allocated pursuant to this Agreement and which would otherwise be included in the computation of Profits and Losses, and the amount of any Company liabilities assumed by such Member or which are secured by any property of the Company distributed to such Member.

(ii) From each Member's Capital Account there shall be debited the amount of cash and the Gross Asset Value of any property of the Company distributed to such Member pursuant to any provision of this Agreement, such Member's allocated share of Losses, any items in the nature of expenses or losses which are specially allocated pursuant to this Agreement and which would otherwise be included in the computation of Profits and Losses, and the amount of any liabilities of such Member assumed by the Company or which are secured by any property contributed by such Member to the Company.

(b) In determining the amount of any liability for purposes of this Section 5.1, there shall be taken into account Code Section 752(c) and any other applicable provisions of the Code and Regulations.

(c) Upon a transfer of any Unit in accordance with the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent it relates to the transferred Unit.

(d) The foregoing provisions of this Section 5.1 and the other provisions of this Agreement relating to the maintenance of Capital Accounts are intended to comply with Regulations §1.704-1(b), and shall be interpreted and applied in a manner consistent with such Regulations. The Board shall (i) make any adjustments

that are necessary or appropriate to maintain equality between the aggregate Capital Accounts of the Members and the amount of capital reflected on the Company's balance sheet, as computed for book purposes, in accordance with Regulations §1.704-1(b)(2)(iv)(q), and (ii) make any appropriate modifications in the event unanticipated events might otherwise cause this Agreement not to comply with Regulations §1.704-1(b). In the event that the Board shall determine that it is prudent to modify the manner in which Capital Accounts or any debits or credits thereto are computed in order to comply with such Regulations, the Board may make such modifications.

**5.2 Revaluations.** The Capital Accounts of the Members shall be adjusted to reflect each revaluation of Company assets made pursuant to the definition of Gross Asset Value; provided that any adjustments hereunder shall be made in accordance with and to the extent provided in Regulations §§1.704-1(b)(2)(iv)(f) and (g) and taking into account Proposed Regulation Section 1.704-1(b)(2)(iv)(h).

**5.3 No Deficit Funding Obligation.** Except as otherwise expressly required by law or this Agreement, no Member shall be required to reimburse the Company for any negative balance in such Member's Capital Account or restore any negative Capital Account of another Member.

**5.4 Withdrawal and Return of Capital.** No Member shall have the right to withdraw capital from the Company or to receive any distribution of or return on such Member's Capital Contributions, or to voluntarily retire, withdraw or otherwise cease to be a Member of the Company.

## **ARTICLE 6** **ALLOCATIONS**

**6.1 Allocations.** After giving effect to the special allocations set forth in Sections 6.2, 6.3, 6.5, 6.6, 6.7, and 10.2, Profits or Losses for any Fiscal Year shall be allocated to the Members as follows:

(a) The Company's Profits for any Fiscal Year shall be allocated to the Members having Capital Account Shortfalls for such Fiscal Year (as determined after taking into account all contributions, distributions, and special allocations during such Fiscal Year) in proportion to their respective Capital Account Shortfalls.

(b) The Company's Losses for any Fiscal Year shall be allocated to the Members having Capital Account Excesses for such Fiscal Year (as determined after taking into account all contributions, distributions, and special allocations during such Fiscal Year) in proportion to their respective Capital Account Excesses.

**6.2 Regulatory Allocations.** Notwithstanding the provisions of Section 6.1, the following special allocations shall be made in the following order and priority:

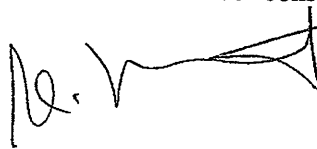
(a) *Minimum Gain Chargeback.* Except as otherwise provided in Treasury Regulations § 1.704-2(f) of the Regulations, notwithstanding any other

provision of this Section 6.2, if there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Company Minimum Gain, determined in accordance with Treasury Regulations §1.704-2(g). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with Treasury Regulations §1.704-2(f) (6) and §1.704-2(j) (2). This Section 6.2(a) is intended to comply with the minimum gain chargeback requirement in Treasury Regulations §1.704-2(f) and shall be interpreted consistently therewith.

(b) *Member Minimum Gain Chargeback.* Except as otherwise provided in Treasury Regulations § 1.704-2(i) (4), notwithstanding any other provision of this Section 6.2, if there is a net decrease in Member Nonrecourse Debt Minimum Gain attributable to a Member Nonrecourse Debt during any Fiscal Year, each Member who has a share of the Member Nonrecourse Debt Minimum Gain attributable to such Member Nonrecourse Debt, determined in accordance with Treasury Regulations §1.704-2(i) (5), shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, subsequent Fiscal Years) in an amount equal to such Member's share of the net decrease in Member Nonrecourse Debt, determined in accordance with Treasury Regulations §1.704-2(i) (4). Allocations pursuant to the previous sentence shall be made in proportion to the respective amounts required to be allocated to each Member pursuant thereto. The items to be so allocated shall be determined in accordance with §§ 1.704-2(i) (4) and 1.704-2(j) (2) of the Regulations. This Section 6.2(b) is intended to comply with the minimum gain chargeback requirement in Treasury Regulations §1.704-2(i) (4) and shall be interpreted consistently therewith.

(c) *Qualified Income Offset.* If any Member unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulations §§1.704-1(b)(2)(ii)(d)(4), (5), or (6), which create or increase an Adjusted Capital Account Deficit for such Member for any Fiscal Year, then items of Company income and gain (consisting of a pro rata portion of each item of Company income, including gross income, and gain for such year and, if necessary, for subsequent years) shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, the Adjusted Capital Account Deficit so created as quickly as possible. It is the intent that this Section 6.2(c) be interpreted as a "qualified income offset" and as otherwise necessary to comply with the alternate test for economic effect set forth in Treasury Regulations §1.704-1(b)(2)(ii)(d).

(d) *Loss Allocation Limitation.* Notwithstanding anything to the contrary in this Agreement, the Losses allocated pursuant to Section 6.1 hereof shall not exceed the maximum amount of Losses that can be so allocated without causing any Member to have an Adjusted Capital Account Deficit at the end of any Fiscal Year. In the event that some, but not all, of the Members would have an Adjusted Capital Account Deficit as a consequence of an allocation of Losses pursuant to Section 6.1 hereof, the limitation set forth in the preceding sentence shall be applied on a Member by Member basis so as to allocate the maximum permissible Losses to each Member consistent with



Treasury Regulations §1.704-1(b)(2)(ii)(d). If any Member would have a Adjusted Capital Account Deficit at the end of any Fiscal Year which is in excess of the sum of any amount, if any, that such Member is obligated to restore to the Company under Treasury Regulations §1.704-1(b)(2)(ii)(c) and such Member's share of Company Minimum Gain as defined in Treasury Regulations §1.704-2(g)(1) and Member Minimum Gain as determined pursuant to Treasury Regulations §1.704-2(i) (which are also treated as obligations to restore in accordance with Treasury Regulations §1.704-1(b)(2)(ii)(d)), the Capital Account of such Member shall be specially credited with items of Company income (including gross income) and gain in the amount of such excess as quickly as possible.

(e) *Nonrecourse Deductions.* Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Members in proportion to their respective Percentage Interests.

(f) *Member Nonrecourse Deductions.* Any Member Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulations §1.704-2(i) (1).

(g) *Section 754 Adjustments.* To the extent an adjustment to the adjusted tax basis of any Company asset, pursuant to Code Section 734(b) or Code Section 743(b) is required, pursuant to Treasury Regulations §1.704 1(b)(2)(iv)(m)(2) or Treasury Regulations §1.704 1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of such Member's interest in the Company, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in accordance with their interests in the Company in the event Treasury Regulations §1.704 1(b)(2)(iv)(m)(2) applies, or to the Member to whom such distribution was made in the event Treasury Regulations §1.704 1(b)(2)(iv)(m)(4) applies.

**6.3 Curative Allocations.** The allocations set forth in Section 6.2 (the "Regulatory Allocations") are intended to comply with certain requirements of the Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss or deduction pursuant to this Section 6.3. Therefore, notwithstanding any other provision of this Article 6 (other than the Regulatory Allocations), the managing Members shall make such offsetting special allocations of Company income, gain, loss or deduction in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member's Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of the Agreement and all Company items were allocated pursuant to Section 6.1.

#### 6.4 Other Allocation Rules.

(a) Profits, Losses and any other items of income, gain, loss or deduction shall be allocated to the Members pursuant to this Article 6 as of the last day of each Fiscal Year; provided that Profits, Losses and such other items shall also be allocated at such times as the Gross Asset Values of Company property are adjusted pursuant to the definition of Gross Asset Value.

(b) For purposes of determining the Profits, Losses, or any other items allocable to any period, Profits, Losses, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Company using any permissible method under Code Section 706 and the Treasury Regulations thereunder.

**6.5 Treatment of Company Warrant Exercise.** For all purposes of this Agreement, to the extent consistent with the Code and/or Regulations, any exercise of a Company Warrant shall be treated as follows:

(a) Upon exercise of a Company Warrant (a "Warrant Exercise Date") and after issuance or deemed issuance of the underlying Warrant Unit(s) pursuant to Sections 2.1 and 2.7 hereof, the applicable Warrant Holder shall become a Member with respect to the Warrant Unit(s) underlying the exercised Company Warrant;

(b) Any amount paid or deemed paid (including the fair market value of any property transferred or deemed transferred to the Company) by the Warrant Holder to purchase or exercise a Company Warrant shall be deemed to be a Capital Contribution made with respect to the corresponding Warrant Unit(s) received as of the Warrant Exercise Date and the Capital Account shall be adjusted accordingly;

(c) Consistent with the provisions of Treasury Regulation §1.704-1(b), the Company shall revalue the Gross Asset Values of its property and adjust the Capital Accounts of its Members upon any exercise of a Company Warrant. The Company shall specially allocate items of gain and loss otherwise includable in the computation of Profit and Loss and attributable to such revaluation (and, if necessary, Company gain and loss not attributable to such revaluation) to a Warrant Holder receiving Warrant Unit(s) on a Warrant Exercise Date in a manner that eliminates (to the fullest extent possible) the Capital Account Shortfall or Capital Account Excess associated with the applicable Warrant Unit(s) received on the exercise of a Company Warrant.

(d) In the event the Capital Account adjustments made pursuant to Section 6.5(c) hereof are insufficient to eliminate the Capital Account Shortfall or Capital Account Excess associated with the applicable Warrant Unit(s), such Capital Account Shortfall or Capital Account Excess shall be eliminated by direct adjustments among the Capital Accounts of the Members.

**6.6 Allocation Treatment of Company Options.** For all purposes of this Agreement, to the extent consistent with the Code and/or Regulations, any exercise of a Company Option to purchase an Option Unit in accordance with the terms of the corresponding Option Grant Letter shall be treated as follows:

(a) Immediately prior to and as of the date of the exercise of a Company Option (an "Option Exercise Date") and consistent with the provisions of Proposed Treasury Regulation §§1.706-3; 1.83-3; 1.83-6; 1.704-1; 1.707-1; 1.721-1 and 1.761-1, relating to the tax treatment of certain transfers of partnership equity in connection with the performance of services, the Gross Asset Value of all Company Property shall be revalued and the Capital Accounts of the Members adjusted. The Company shall specially allocate items of gain and loss otherwise includable in the computation of Profit and Loss and attributable to such revaluation to the Members in a manner that eliminates (to the fullest extent possible) the Capital Account Shortfalls or the Capital Account Excesses of the Members;

(b) Upon exercise of a Company Option and after the revaluation and allocation made pursuant to Section 6.6(a) hereof and the issuance of the underlying Option Unit(s) pursuant to Section 2.1 and 2.7 hereof, the holder of such Company Option (an "Option Holder") shall become a Member with respect to the Option Unit(s) underlying the exercised Company Option;

(c) Any amount paid or deemed paid (including the fair market value of any property transferred or deemed transferred to the Company) by the Option Holder to purchase or exercise a Company Option shall be deemed to be a Capital Contribution made with respect to the corresponding Option Unit(s) received as of the Option Exercise Date and the Capital Account of the Option Holder shall be adjusted accordingly;

(d) The Company shall be deemed to have paid compensation income to the Option Holder immediately after the exercise of the Company Option and receipt of an Option Unit in an amount equal to the Capital Account Shortfall (if any) of the Option Holder attributable to such Option Unit, calculated immediately after the application of Section 6.6(c) hereof ("Option Income");

(e) Option Income shall be deemed paid to the Option Holder with respect to services rendered to the Company and shall be treated as such by the Company and the Option Holder for all tax and financial accounting purposes;

(f) Option Income shall be credited to the Capital Account of the Option Holder with respect to the applicable Option Unit(s) immediately after the application of Section 6.6(d) hereof;

(g) The Company compensation deduction associated with the Option Income shall be specially allocated to the Members of the Company in such a manner so as to eliminate (to the fullest extent possible) the then Capital Account Excesses of the Members, calculated immediately after the application of Section 6.6(f) hereof, in proportion to such Capital Account Excesses.

(h) It is understood and agreed that the provisions of this Section 6.6 shall be applied (a) whether or not the proposed Regulations referred to above are adopted and become part of the Regulations and (b) if the final Regulations adopted differ materially from the provisions applied by this Section 6.6, the Directors may

recommend such amendments to this Agreement as they believe to be required to satisfy the Regulations as adopted.

**6.7 Allocations in the Event of Forfeiture.** In the event that, any Member is issued Units for services, and such Units are forfeited, then for the Fiscal Year in which such forfeiture occurs:

(a) except as provided in this Section 6.7, with respect to such forfeited Units, such Member's allocable portion of all items of Company income, gain, loss or deduction for the Fiscal Year in which the forfeiture occurs shall be zero; and

(b) the Company shall make such allocations with respect to the forfeiture of such Units as are required under the Treasury Regulations then in force.

**6.8 Tax Allocation.** For each Fiscal Year, items of taxable income, deduction, gain, loss or credit shall be allocated for income tax purposes among the Members in the same manner as their corresponding book items were allocated pursuant to Sections 6.1, 6.2, 6.3, 6.5, 6.6, and 6.7 and 10.2 for such Fiscal Year, as modified by the following principles:

(a) In accordance with Code Section 704(c) and the Regulations thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its initial Gross Asset Value (computed in accordance with the definition of Gross Asset Value) using the traditional allocation method of Treasury Regulation §1.704-3(b) unless the record owners of a majority of the Class Units elect to use a different method.

(b) If the Gross Asset Value of any Company asset is adjusted pursuant to subparagraph (ii) of the definition of Gross Asset Value, subsequent allocations of income, gain, loss, and deduction with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its Gross Asset Value in the same manner as under Code Section 704(c) and the Regulations thereunder.

(c) Unless otherwise provided herein, any elections or other decisions relating to allocations under this Section 6.8 shall be made by the Board in any manner that reasonably reflects the purpose and intention of this Agreement.

(d) With respect to any forfeited Units, all modifications required under the Treasury Regulations then in force.

(e) Allocations pursuant to this Section 6.8 are solely for purposes of federal, state, and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

**6.9 Binding Effect.** The Members are aware of the income tax consequences of the allocations made by this Article 6 and hereby agree to be bound by the provisions of this Article 6 in reporting their shares of Company income, gain, loss and deduction for federal income tax purposes.

**6.10 Amendment.** The Members shall consent to any amendment to this Article 6 proposed by the Board which the Board reasonably determines to be in the best interests of the Company and to be necessary or advisable to comply with the requirements of the Code or the Regulations regarding the allocation of Profits and Losses and all tax items including items of income, gain, deduction, loss or credit.

## **ARTICLE 7** **DISTRIBUTIONS**

### **7.1 Generally.**

(a) **Distributions of Net Cash Flow.** After providing for any reserves that it may deem appropriate, the Board may make distributions of Net Cash Flow to the Members in accordance with the Members' Percentage Interests (but subject to the limitations set forth in Section 2.8 with respect to the Class Units issued in P Series of profits interests).

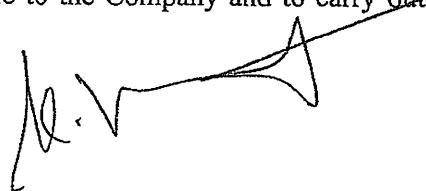
(b) **Distributions of Capital Proceeds.** Capital Proceeds shall be distributed to the Members within a reasonable time following the Capital Transaction to which the Capital Proceeds relate to Members in proportion to their respective Percentage Interests (but subject to the limitations set forth in Section 2.8 with respect to the Class Units issued in P Series of profits interests).

(c) **Distributions to Pay Taxes.** To the extent that Net Cash Flow is available for distribution and the Board so determines, the Company may distribute to each Member in cash, within thirty (30) days of the incurrence of any tax liability by each Member as a result of such Member's ownership of Units (to the extent not otherwise distributed pursuant to Section 7.1), an amount equal to the aggregate state and federal income tax liability such Member would have incurred as a result of such Member's ownership of Units calculated (i) as if such Member's income were taxable at the maximum marginal income tax rates provided for with respect to natural persons (or, if higher, with respect to taxable corporations) under the federal, state and local income tax laws applicable to the Member with the highest such tax rate, as determined by the Company in its sole discretion, (ii) as if allocations from the Company pursuant to Section 6.8 hereunder were, for such year, the sole source of income and loss for such Member, and (iii) by taking into account the carryover of items of loss, deduction and expense previously allocated by the Company to such Member (such distributions, "Tax Distributions"). Any Tax Distributions will be deemed to be an advance distribution of amounts otherwise distributable to the Members pursuant to Section 7.1 and will reduce the amounts that would subsequently otherwise be distributable to the Members pursuant to Section 7.1.

(d) **Unvested Class Units.** Notwithstanding any provision of this Agreement to the contrary, if the Company makes a distribution, then any cash or property that is otherwise distributable with respect to any Class Units issued that have not yet become vested (the "Unvested Class Units"), less any corresponding Tax Distributions, shall instead be set aside in a trust maintained by the Company (and in the case of cash, shall be placed by the Company in a separate interest-bearing account) for the benefit of the holder of such Unvested Class Units until such time as the holder's Unvested Class Units vest in accordance with their respective terms. As a holder's Unvested Class Units become vested in accordance with their respective terms (the "Vested Class Units"), the Company shall promptly distribute to the holder the portion of the amount of cash or other property set aside in trust (together with accrued interest thereon in the case of cash held in trust) that is attributable to the newly Vested Class Units. If any such Unvested Class Units fail to become Vested Class Units and are forfeited to or acquired by the Company, then the cash or other property otherwise distributable with respect to the Unvested Class Units shall revert to the Company and shall become available for distribution to all of the other Members in accordance with this Article 7.

(e) **Member Payments Constituting Distributions.** This Article 7 does not govern payments made by the Company to the Members to the extent such payments constitute either non-partner capacity payments within the meaning of Code Section 707(a)(1) or otherwise or guaranteed payments within the meaning of Code Section 707(c).

**7.2 Withholding.** Any amount paid by the Company for or with respect to any Member on account of any withholding tax or other tax payable with respect to the income, profits or distributions of the Company pursuant to the Code, the Treasury Regulations, or any state or local statute, regulation or ordinance requiring such payment (each a "Withholding Tax Act") shall be treated as a Tax Distribution to the Member for all purposes of this Agreement. To the extent that the amount required to be remitted by the Company under a Withholding Tax Act exceeds the amount then otherwise distributable to the Member, the excess shall constitute a loan from the Company to the Member (a "Tax Payment Loan"). Each Tax Payment Loan shall be payable upon demand and shall bear interest, from the date that the Company makes the payment to the relevant taxing authority, at the applicable Federal short-term rate under Code section 1274(d)(1), determined and compounded semiannually. So long as any Tax Payment Loan or the interest thereon remains unpaid, the Company shall make future distributions due to the Member under this Agreement by applying the amount of any such distribution first to the payment of any unpaid interest on all Tax Payment Loans of the Member and then to the repayment of the principal of all Tax Payment Loans of the Member. The Members shall take all actions necessary to enable the Company to comply with the provisions of any Withholding Tax Act applicable to the Company and to carry out the provisions of this subsection.

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**ARTICLE 8**  
**ASSIGNMENTS OF COMPANY INTERESTS; COMPANY SALE;**  
**CONVERSION TO CORPORATE FORM**

**8.1 Representations and Warranties.** Each Member hereby represents and warrants to the Company and to each of the other Members that: (i) the Member is maintaining its Units for such Member's own account and without an intent to distribute such Units, and (ii) the Member acknowledges that the Units have not been registered under the Securities Act or any state securities laws and, notwithstanding any other provision of this Article 8, may not be resold or Transferred by the Member without appropriate registration or the availability of an exemption from such registration requirements. For the purposes of this Agreement, the term "Transfer" or "Transferred" shall mean any sale, assignment, encumbrance, hypothecation, pledge, conveyance in trust, gift, transfer by bequest, devise or descent, or other transfer or disposition of any kind, including, but not limited to, transfers to receivers, levying creditors, trustees or receivers in bankruptcy proceedings or general assignees for the benefit of creditors, whether voluntary or by operation of law, directly or indirectly, of any Units.

**8.2 Prohibited Transfers.** Notwithstanding anything in this Agreement to the contrary, any attempt by V.A. Metals, LLC, including any permitted assignee or successor in interest to V.A. Metals, to Transfer its Class B Member Units to any person, including its Affiliates, stockholders, members or partners, without the written consent of the Company and each Member holding Class A Member Units shall be void.

**8.3 Redemption Right.**

(a) On the Effective Date, V.A. Metals shall have the right (but not the obligation) to cause the Company to purchase up to one million five hundred thousand (1,500,000) of its Class B Member Units at the Redemption Price ("Put Option A"), which shall be redeemed in accordance with Section 8.3(g) below.

(b) Within sixty (60) days of, but not prior to thirty (30) days from, the Effective Date, V.A. Metals shall have the right (but not the obligation), to cause the Company to purchase up to one million (1,000,000) of its Class B Member Units at the Redemption Price ("Put Option B"), which shall be redeemed in accordance with Section 8.3(g) below.

(c) Within ninety (90) days of, but not prior to sixty (60) days from, the Effective Date, V.A. Metals shall have the right (but not the obligation), to cause the Company to purchase up to one million (1,000,000) of its Class B Member Units at the Redemption Price ("Put Option C"), which shall be redeemed in accordance with Section 8.3(g) below.

(d) Within one hundred twenty (120) days of, but not prior to ninety (90) days from, the Effective Date, V.A. Metals shall have the right (but not the obligation), to cause the Company to purchase up to two million (2,000,000) of its Class

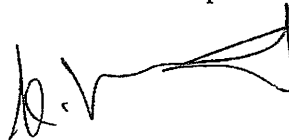
B Member Units at the Redemption Price ("Put Option D"), which shall be redeemed in accordance with Section 8.3(g) below.

(e) Within one hundred fifty (150) days of, but not prior to one hundred twenty (120) days from, the Effective Date, V.A. Metals shall have the right (but not the obligation), to cause the Company to purchase up to two million one hundred seventy-two thousand two hundred seventeen (2,172,217) of its Class B Member Units at the Redemption Price ("Put Option E"), which shall be redeemed in accordance with Section 8.3(g) below.

(f) Within two hundred ten (210) days of, but not prior to one hundred fifty (150) days from, the Effective Date, or upon the Company procuring leasehold or ownership rights over the Land (as defined in the APA and in accordance with Clause Article 6.03 of the APA), whichever is later, V.A. Metals shall have the right (but not the obligation), to cause the Company to purchase up to twenty-five million (25,000,000) of its Class B Member Units at the applicable Redemption Price ("Put Option F" and together with Put Option A, Put Option B, Put Option C, Put Option D and Put Option E, the "Put Options"), which shall be redeemed in accordance with Section 8.3(g) below.

(g) If V.A. Metals desires to exercise any of its Put Options, V.A. Metals shall give written notice to the Company specifying the number of Class B Member Units to be sold subject to the time and number limitations for each applicable Put Option (the "Redemption Notice"). The closing of any sales of Class B Member Units pursuant to this Section 8.3 shall take place no later than sixty (60) days following receipt by the Company of the Redemption Notice. The Company shall give V.A. Metals at least ten (10) days' written notice of the date of closing. At the closing of any sale pursuant to Section 8.3(a)-(f), the Company shall pay, in the form of a cash payment to a trustee account held by Can Do Consulting, Mauritius (the "Trustee") held with Mauritius Commercial Bank (the "Trustee Account") pursuant to that certain Trustee Agreement dated on or about the Effective Date (the "Trustee Agreement") and solely in accordance with the instructions issued by Solargise UK. The Parties agree that the disbursement of any and all monies from the Trustee Account shall be performed solely upon the instructions of Solargise UK Ltd. Unless otherwise agreed upon by V.A. Metals and the Company, the applicable redemption shall be performed amounts for the Class B Member Units shall be payable as below:

- (i) Upon redemption of Put Option A, seven hundred and fifty thousand dollars (\$750,000.00) from Put Option A shall be utilized towards the purchase of the Land (as defined in the APA), as consideration for purchase of the Land, two hundred thousand dollars (\$200,000.00) from Put Option A shall be utilized towards the payment and settlement of any costs, including but not limited to legal fees and five hundred and fifty thousand dollars (\$550,000.00) from Put Option A shall be paid to V.A. Metals.
- (ii) Upon redemption of Put Option B, six hundred and fifty thousand dollars (\$650,000.00) from Put Option B shall be utilized towards the purchase of the Land (as defined in the APA), as consideration for the purchase of the Land (as

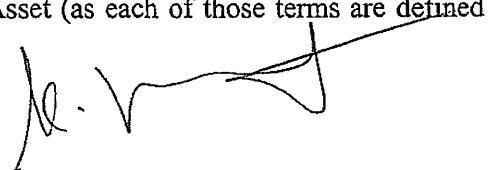


that term is defined in the APA), one hundred thousand dollars (\$100,000.00) from Put Option B shall be utilized towards the payment and settlement of any costs, including but not limited to legal fees, and two hundred and fifty thousand dollars (\$250,000.00) from Put Option B shall be paid to V.A. Metals.

- (iii) Upon redemption of Put Options C to F, the Parties agree that a maximum of two hundred thousand dollars (\$200,000.00) may be deducted from any or collectively from all of the Put Options C to F to be utilized towards the payment of any and all costs, including but not limited to legal fees. The remainder of any and all amounts payable shall be paid to V.A. Metals.
- (iv) The Parties agree that redemption of Put Option F shall be conditional on the Company procuring leasehold or ownership rights over the Land (as defined in the APA) as specified in Article 6.03 of the APA.
- (v) The Parties further agree that the maximum amount of deductions from the monies payable through redemption of Put Options A to E to be utilized towards the payment of costs including but not limited to legal fees shall be a maximum of one million and five hundred thousand dollars (\$1,500,000.00).
- (vi) The Parties further agree that, upon instruction of Solargise UK and/or the Company, the Trustee shall be required to retain certain monies payable under the Put Options above to be utilized towards the settlement and payment of any and all costs to be incurred to resolve and settle any and all Claims and payment of any and all legal fees on behalf of V.A. Metals.

(h) All money deposited into the Trustee Account shall be disbursed pursuant to the Trustee Agreement and at the sole instructions of Solargise UK Ltd. At the closing of any sale pursuant to this Section 8.3, V.A. Metals shall sell, free and clear of all liens, such Class B Member Units. The Company and V.A. Metals shall each take all actions as may be reasonably necessary to consummate any sale, including, but not limited to, entering into agreements and delivering certificates and instruments and consents as may be deemed necessary or appropriate by the Company. Any closing shall occur at the executive offices of the Company or such other place as V.A. Metals and the Company may agree. In the event of the failure of V.A. Metals to proceed with a closing under this Section 8.3, the Company shall have the right to specific performance. In the event of the failure of the Company to proceed with a closing under this Section 8.3 due to its own failure to perform its obligations, the Class B Member Units under the applicable Put Option shall convert into Class A Member Units. From and after the Company's tender of payment for the Class B Member Units, in the case of a purchase of all such Class B Member Units, V.A. Metals shall cease to be a Member of the Company and cease to be entitled to any dividends or distributions from the Company.

(i) In the circumstance that any claim, suit, litigation or any other legal action that is threatened, pending, or filed in relation to the Plant, the Site, the Plant IP, the Existing Equipment or any Purchased Asset (as each of those terms are defined

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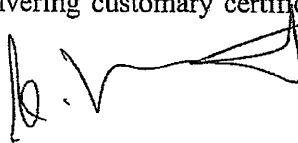
under the APA) or any and all underlying real property and assets in the Plant and Site, including but not limited to any and all buildings, cables, pipes and other installed infrastructure, whether above or below ground at the Plant and Site, that threatens or extinguishes or damages the Company's or Solargise UK Ltd.'s, as applicable, rights over the same, the time period specified for the execution, exercise and completion of any or all of the Put Options and any and all related payments shall be delayed for any such period as necessary to ensure the successful and favorable resolutions of such suits, litigations or legal actions, as determined in the Company's or Solargise UK Ltd.'s reasonable discretion, and that such delay shall be taken into account and adjusted to the time period for the execution and enforcement of the Put Options and any and all related payments.

(j) In the event of any suits, litigations or legal actions as described in Section 8.3(h) above against the Company or Solargise UK Ltd., the Company shall have the right to exercise the immediate next Put Option for an amount up to one million dollars (\$1,000,000.00) solely for the purposes of making payment towards, and settlement of, any and all legal costs payable for the closure and settlement of any and all such suits, litigations or legal actions.

(k) Upon the exercise of all of the Put Options under this Agreement, this Agreement may be amended and restated at Solargise UK Ltd.'s sole discretion to reflect the conversion of all of the Class B Member Units of V.A. Metals.

#### 8.4 Company Sale.

(a) In the event of an Approved Sale (as defined below), each Member agrees (i) to vote its Percentage Interest at any regular or special meeting of the Members (or consent pursuant to a written consent in lieu of such meeting) in favor of such Approved Sale, and to raise no objections against the Approved Sale or the process pursuant to which the Approved Sale was arranged, (ii) to waive any and all dissenters', appraisal or similar rights with respect to such Approved Sale, and (iii) if the Approved Sale is structured as a sale of equity securities by the Members of the Company, to sell the Units then owned by such Member on the terms and conditions of such Approved Sale. "Approved Sale" means (i) a transaction or series of transactions with a third party on an arm's length basis (including by way of merger, consolidation or sale of equity securities to a third party by one or more Members), the result of which is that the holders of the Company's voting securities immediately prior to such transaction or series of transactions own less than a majority of the combined voting power of the outstanding voting securities of the Company or the surviving or resulting entity, as the case may be, following the transaction or series of transactions, and (ii) a sale of all or substantially all of the Company's assets (each of the transactions in clauses (i) and (ii), a "Sale Transaction"), which, in each case, has been approved by (x) the Board and (y) a Majority Vote of the Members (the "Approving Members"). Each Member will take all necessary and desirable actions in connection with the consummation of the Sale Transaction, including, without limitation, entering into an agreement reflecting the terms of the Approved Sale, surrendering unit certificates, giving customary and reasonable representations and warranties, executing and delivering customary certificates or other



documents and taking all other actions deemed necessary or appropriate by the Board and Approving Members in connection with the Approved Sale.

(b) As security for the performance of each Member's obligations pursuant to this Section 8.5 regarding any Approved Sale, each Member hereby grants to the Board, with full power of substitution and resubstitution, an irrevocable proxy to vote all Percentage Interests, at all meetings of the Members held or taken after the date of this Agreement with respect to an Approved Sale, or to execute any written consent in lieu thereof, and hereby irrevocably appoints the Board, with full power of substitution and resubstitution, as the Member's attorney-in-fact with authority to sign any documents with respect to any such vote or any actions by written consent of the Members taken after the date of this Agreement. This proxy shall be deemed to be coupled with an interest and shall be irrevocable. This proxy shall terminate upon the consummation of a firm commitment underwritten public offering pursuant to a registration statement filed with, and declared effective by, the Securities and Exchange Commission.

#### **8.5 Conversion to Corporate Form.**

(a) In the event Board shall determine that it is desirable or helpful for the business of the Company to be conducted as a corporation rather than as a limited liability company to facilitate a public offering or private placement of securities of the Company or for other reasons as determined by the Board to be in the best interests of the Company, the Board, in its sole discretion, shall have the power to incorporate the Company, whether through a conversion, merger, reorganization or other transaction (a "Corporate Conversion" and such new corporation, the "Issuer Corporation"). In connection with any such Corporate Conversion, the Members shall receive, in exchange for their Percentage Interests, shares of capital stock of such Issuer Corporation having the same relative economic interest (as determined by the Board in its sole discretion) as such Members have in the Company immediately prior to the Corporate Conversion, subject to such modifications as the Board deems necessary or appropriate to ensure an equitable distribution to all equity holders in the Company, including, without limitation, those holders of Options and/or Profits Interests, or to take into account the change in form from a limited liability company to a corporation. In consummating a Corporate Conversion, the Board shall have the power to prepare, as appropriate, the certificate of incorporation, by-laws, stockholders agreement, voting agreement, investor rights agreement and/or any other governing documents or equity holder agreements as the Board, in its sole discretion, deems to be necessary or appropriate in consummating the Corporate Conversion (collectively, the "Corporate Governing Documents").

(b) In the event of a Corporate Conversion, each Member agrees (i) to, if necessary, vote its Percentage Interest at any regular or special meeting of the Members (or consent pursuant to a written consent in lieu of such meeting) in favor of such Corporate Conversion, and to raise no objections against the Corporate Conversion or the process pursuant to which the Corporate Conversion was arranged, (ii) to waive any and all dissenters', appraisal or similar rights with respect to such Corporate Conversion, (iii) to execute and deliver to the Company any counterpart signature pages to the Corporate Governing Documents as are necessary to be executed by the Members in order to

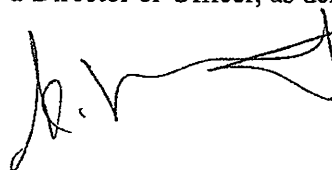
consummate the Corporate Conversion; (iv) deliver and surrender to the Company any certificates issued to such Member representing such Member's Units; and (v) to otherwise take all actions in connection with the consummation of the Corporate Conversion as are deemed necessary or appropriate by the Board in connection with such Corporate Conversion. As soon as practical after taking the necessary actions to consummate the Corporate Conversion, the Board shall provide to each Member share certificates representing the class and/or series of capital stock into which their Units were converted. The Board may make such provision as shall be reasonably necessary to ensure compliance with the Securities Act and other securities laws in connection with any Corporate Conversion and subsequent issuances of stock.

(c) As security for the performance of each Member's obligations pursuant to this Section 8.6, each Member hereby grants to the Board, with full power of substitution and resubstitution, an irrevocable proxy to vote, if necessary, all Percentage Interests, at all meetings of the Members held or taken after the date of this Agreement with respect to a Corporate Conversion, or to execute any written consent in lieu thereof, and hereby irrevocably appoints the Board, with full power of substitution and resubstitution, as the Member's attorney-in-fact with authority to sign any documents with respect to any such vote or any actions by written consent of the Members taken after the date of this Agreement. This proxy shall be deemed to be coupled with an interest and shall be irrevocable. This proxy shall terminate immediately prior to the consummation of a firm commitment underwritten public offering pursuant to a registration statement filed with the Securities and Exchange Commission (unless the Corporation Conversion is in connection with an initial public offering in which case the proxy shall not terminate until immediately after the consummation of such initial public offering).

## **ARTICLE 9** **ACCOUNTS**

**9.1 Books, Records and Financial Statements.** At all times during the continuance of the Company, the Company shall maintain books of account, in each case, that shall show a true and accurate record of all costs and expenses incurred, all charges made, all credits made and received and all income derived in connection with the operations of the Company's business in accordance with generally accepted accounting principles. Such books of account shall be maintained at the principal place of business of the Company and shall be open to inspection and examination at reasonable times by the Members and any duly authorized representatives for any purpose reasonably related to the Members' interest in the Company, subject in each case to such limitations, exclusions and procedures as the Board determines.

**9.2 Bank Accounts.** All funds of the Company will be deposited in its name in an account or accounts maintained with such bank or banks as selected by the Company. The funds of the Company shall not be commingled with the funds of any other person. Checks will be drawn upon the Company account or accounts only for the purposes of the Company and shall be signed by a Director or Officer, as delegated by the Board.

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**9.3 Other Information.** The Board and the Officers of the Company may release such information concerning the operations of the Company to such sources as is customary in the industry or required by law or regulation or by order of any regulatory body. The Board shall use commercially reasonable efforts to cause to be maintained and preserved all books of account and other relevant records for such periods as are customary in the industry; required by law, regulation or any regulatory body; and for such other periods where the Board determines retention to be necessary or appropriate for their continued business or historical value.

## **ARTICLE 10** **DISSOLUTION**

**10.1 Events of Dissolution.** The Company shall be dissolved upon the occurrence of any of the following events (each a "Dissolution Event"): (i) a Majority Vote of the Members that it is no longer in the best interests of the Company to continue the business of the Company, or (ii) the entry of an order of judicial dissolution under the Act.

**10.2 Application of Proceeds.** Upon a Dissolution Event, the Board shall wind up the business of the Company after a final allocation of profits and losses in accordance with Article 6, the proceeds arising from such dissolution of the Company shall be distributed or used as follows and in the following order of priority: (i) for payment of the Company's liabilities and obligations to its creditors (including creditors who are also Members), and the expenses of such dissolution, (ii) to the setting up of any reserves that the Board may deem reasonably necessary for any contingent or unforeseen liabilities or obligations of the Company, and (iii) to the Members in the order and priority set forth in Section 7.1(a) (the "Final Distribution"). Immediately prior to the Final Distribution, the Capital Account balances of the Members shall be adjusted, taking into account all contributions, distributions, and allocable items for the Fiscal Year of the Final Distribution and all other accounting periods of the Company, such that the Capital Account of each Member prior to the Final Distribution equals (to the fullest extent possible) the distribution to be received by such Member pursuant to the Final Distribution. The Company may specially allocate items otherwise included in the computation of Profits and Losses in making such adjustments to the Capital Accounts of the Members.

## **ARTICLE 11** **CONFIDENTIALITY**

**11.1 Confidentiality.** Each Member shall keep confidential and shall not, without prior written consent of the Board, disclose any information with respect to the Company or its Affiliates or use any such information other than for a Company purpose or a purpose reasonably related to protecting such Member's interest in the Company. However, a Member may disclose any such information (a) as has become generally available to the public other than as a result of the breach of this Section 11.1 by such Member or any agent or Affiliate of Member, (b) as may be required to be included in any report, statement or testimony required to be submitted to any municipal, state or national regulatory body having jurisdiction over such Member, (c) as may be required in response

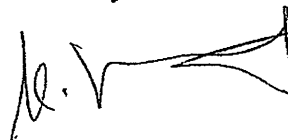
to any summons or subpoena or in connection with any litigation or any reasonable inquiry or request for information by a governmental authority, (d) to the extent necessary in order to comply with any law, order, regulation or ruling, or request of any court or other governmental authority, (e) to its investment committees, oversight boards, investors, employees and professional advisors (including, but not limited to, such Member's consultants, auditors and counsel), so long as such persons are advised of the confidentiality obligations contained herein, and (f) as may be required in connection with an audit or review by any taxing authority or other governmental authority. Notwithstanding any other provision of this Agreement, the Board shall have the right to keep confidential from all or some of the Members (and specifically from Members who are subject to freedom of information acts, public records laws or similar laws) for such period of time as the Board determines is reasonable (i) any information that the Board reasonably believes to be in the nature of trade secrets and (ii) any other information (A) the disclosure of which the Board in good faith believes is not in the best interest of the Company or could damage the Company or its investments or (B) that the Company is required by law or by agreement with a third Person to keep confidential. The Board may disclose any information concerning the Company or the Members necessary to comply with applicable laws and regulation, including any money laundering or anti-terrorist laws or regulations, and each Member shall provide the Board, promptly upon request, all information that the Board reasonably deems necessary to comply with such laws and regulations.

## ARTICLE 12

### MISCELLANEOUS

**12.1 Amendments.** Notwithstanding any provision of this Agreement or the Act, the Board does not have the authority to amend, modify or waive this Agreement except by approval of at least a Majority Vote of the Board and Majority Vote of the Members; provided, however, that Exhibit A and Exhibit B shall be amended from time to time by the Board (or its authorized designee) to reflect, to the extent required in accordance with the terms of this Agreement, the admission of Members to or the removal of Members from the Company, changes in the number of issued and outstanding Units, changes in the ownership of Units and the appointment of Directors to or the resignation or removal of managers from the Board. Notwithstanding the foregoing, in the event that the Company's underwriter, insurer, or financier requires or otherwise recommends that this Agreement be amended without materially affecting the commercial terms of this Agreement, this Agreement may be amended upon the mutual consent of Solargise UK Ltd. and V.A. Metals.

**12.2 Notices.** All notices, requests, demands, claims and other communications hereunder shall be in writing and shall be deemed duly given or made (i) when personally delivered to the intended recipient (or an officer of the intended recipient) or sent by telecopy or facsimile followed by the mailing of a confirmation copy as set forth in clause (ii) or (iii) below, provided that if notice is delivered or sent after 5:00 p.m. US Eastern Time or on a Saturday, Sunday or legal holiday in jurisdiction to which such notice is sent or delivered, notice shall be effective on the business day after the date such notice is

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delivered or sent, (ii) on the business day after the date sent when sent by a nationally recognized overnight courier service, or (iii) four (4) business days after it is sent by registered or certified mail, return receipt requested, postage prepaid if to the Company, to its address and, if to a Member, to the address set forth on Exhibit A hereto. Any party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other parties notice in the manner herein set forth.

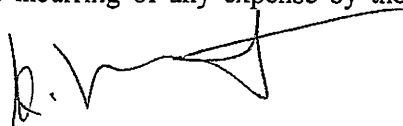
**12.3 Entire Agreement.** This Agreement constitutes the entire agreement among the parties hereto with respect to the subject matter hereof, and supersedes any prior agreement or understanding among the parties hereto with respect to the subject matter hereof.

**12.4 Governing Law.** This Agreement shall be construed in accordance with and governed by the internal laws of the State of Delaware, without regard to conflicts of laws principles.

**12.5 Designation of Tax Matters Partner.**

(a) To the extent necessary, the Member designated by a majority of the Directors (provided such person agrees to so serve) shall serve as the "Tax Matters Partner" of the Company as defined by Code Section 6231(a)(7). In that capacity, the Tax Matters Partner is authorized and empowered to act and represent the Company and each of the Members before the Internal Revenue Service in any audit or examination of any Company tax return and before any court selected by the Tax Matters Partner for judicial review of any adjustments assessed by the Internal Revenue Service. By the execution of this Agreement, each of the Members consents and acknowledges that each person (provided such person agrees to so serve) designated by the Directors shall be the Tax Matters Partner, and that each Member agrees to be bound by, and agrees not to take any action inconsistent with, the actions or inaction of the Tax Matters Partner, including, but not limited to, the extension of the statute of limitations or any contest, settlement or other action or position that the Tax Matters Partner deems proper under the circumstances. Each Member agrees to notify the Tax Matters Partner of any such action to be taken by the Member, in violation of this Agreement or otherwise, at least ten (10) days prior to the date the Member takes the action. The Tax Matters Partner shall notify each Member in writing of all administrative and judicial proceedings for the adjustment of Company items and shall include in periodic reports to the Members information it deems appropriate in its discretion to keep the Members informed of the status of the proceedings. The Tax Matters Partner shall have the authority to take all actions necessary or desirable in its discretion to accomplish the matters set forth in this Section 12.5.

(b) The Company shall bear all reasonable expenses, including legal and accounting fees, claims, liabilities, losses and damages, incurred by the Tax Matters Partner in connection with any administrative or judicial proceeding with respect to the tax liability of the Members. The Members shall have no obligation to provide funds for such purpose. The taking of any action and the incurring of any expense by the Tax

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Matters Partner in its discretion and the provisions regarding limitation of liability and indemnification of Directors and Officers set forth in this Agreement shall be fully applicable to the Tax Matters Partner in its capacity as such.

(c) The Tax Matters Partner is authorized to make any and all elections for federal, state, local, and foreign tax purposes including, without limitation, any election, if permitted by applicable law: (i) to make the election provided for in Section 6231(a)(1)(B)(ii) of the Code; (ii) to adjust the basis of Company property pursuant to Sections 754, 734(b), and 743(b) of the Code, or comparable provisions of state, local, or foreign law, in connection with transfers of Company interests and Company distributions; (iii) to extend the statute of limitations for assessment of tax deficiencies against Members with respect to adjustments to the Company's federal, state, local, or foreign tax returns; and (iv) to file any tax returns and execute any agreements or other documents relating to or affecting such tax matters, including agreements or other documents that bind the Members with respect to such tax matters or otherwise affect the rights of the Company and the Members.

#### **12.6 Code § 83 Safe Harbor Election.**

(a) By executing this Agreement, each Member authorizes and directs the Company to elect to have the "Safe Harbor" described in the proposed Revenue Procedure set forth in Internal Revenue Service Notice 2005-43 (the "Notice") apply to any Unit in the Company transferred to a service provider by the Company on or after the effective date of such Revenue Procedure in connection with services provided to the Company. For purposes of making such Safe Harbor election, the Board shall designate the Tax Matters Partner as the "Member who has responsibility for federal income tax reporting" by the Company and, accordingly, execution of such Safe Harbor election by such Member or the Tax Matters Partner shall constitute execution of a "Safe Harbor Election" in accordance with Section 4.04(1) of the Notice. The Company and each Member hereby agrees to comply with all requirements of the Safe Harbor described in the Notice, including, without limitation, the requirement that each Member shall prepare and file all federal income tax returns reporting the income tax effects of each Safe Harbor Company Unit issued by the Company in a manner consistent with the requirements of the Notice.

(b) The Company and any Member may pursue any and all rights and remedies it may have to enforce the obligations of the Company and the Members (as applicable) under this Section 12.6, including, without limitation, seeking specific performance and/or immediate injunctive or other equitable relief from any court of competent jurisdiction (without the necessity of showing actual money damages, or posting any bond or other security) in order to enforce or prevent any violation of the provisions of this Section 12.6. A Member's obligations to comply with the requirements of this Section 12.6 shall survive such Member's ceasing to be a Member of the Company or the termination, dissolution, liquidation, and winding up of the Company, and, for purposes of this Section 12.6, the Company shall be treated as continuing in existence.

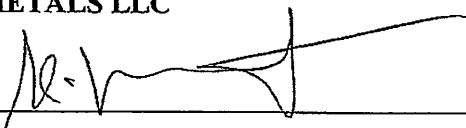
(c) Each Member authorizes the Tax Matters Partner to amend subsections (a) and (b) of this Section 12.6 to the extent necessary to achieve substantially the same tax treatment with respect to any interest in the Company transferred to a service provider by the Company in connection with services provided to the Company as set forth in Section 4 of the Notice (e.g., to reflect changes from the rules set forth in the Notice in subsequent Internal Revenue Service guidance), provided that such amendment is not materially adverse to any Member (as compared with the after-tax consequences that would result if the provisions of the Notice applied to all interests in the Company transferred to a service provider by the Company in connection with services provided to the Company).

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be executed as of the date first stated above.

**SOLARGISE UK LTD.**

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

**V.A. METALS LLC**

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

**SOLARGISE AMERICA LLC**  
**COUNTERPART SIGNATURE PAGE**  
**TO**  
**AMENDED AND RESTATED OPERATING AGREEMENT**

6<sup>th</sup> June, 2018

The undersigned, desiring to become a member as of the date set forth above of Solargise America LLC, a Delaware limited liability company (the "Company"), hereby adopts and agrees to be bound by all of the terms and provisions of, and shall be entitled to all of the benefits and privileges of, the Amended and Restated Operating Agreement among the Company and the members of the Company (the "Operating Agreement"), and further authorizes the Company to attach this signature page to the Operating Agreement in order to make the undersigned a party to the Operating Agreement.



V.A. Metals, LLC  
Name: Kola Venkatrama Naidu  
Address:  
V.A. Metals, LLC  
1 Hoku Way  
Pocatello, Idaho 83204

Acknowledged and Agreed as of  
June 6, 2018

SOLARGISE AMERICA LLC

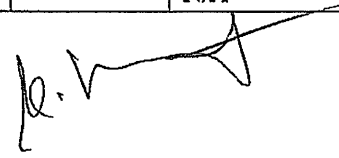
By: \_\_\_\_\_  
Name: Rajdeep Basu  
Title: Manager

**Exhibit A**

**MEMBERS**

**As of June 6, 2018**

<b>Member Name and Address</b>	<b>Capital Contribution</b>	<b>Class Units</b>	<b>Unit Price (as of Effective Date)</b>	<b>Type of Class Unit</b>
Solargise UK Ltd. [ADDRESS] [ADDRESS]	\$2,327,783	2,327,783	\$1.00	Class A
V.A. Metals, LLC [ADDRESS] [ADDRESS]	\$32,672,217	32,672,217	\$1.00	Class B
<b>Total Issued and Outstanding:</b>	N/A	<b>35,000,000</b>		N/A
<b>Total Authorized</b>	N/A	<b>35,000,000</b>		N/A



**Exhibit B**

**BOARD OF MANAGERS**

Rajdeep Basu
--------------

**EXHIBIT C-1**

**P-SERIES SECTION 2.8 COMPENSATORY ISSUANCE OF CLASS UNITS AS PROFITS INTERESTS**

SERIES P-1

On \_\_\_\_\_, 20\_\_, the Company granted \_\_\_ P-Series Class Units, designated Series P-1 in accordance with Section 2.8 of the Agreement. Commensurate with such grant, the Board of Managers ("Board") determined that the Fair Market Value of the Company was \$\_\_\_\_\_ and that the Threshold Amount associated with such new grant of Series P-1 Class Units is therefore \$\_\_\_\_\_ **and the Retained Earnings Threshold associated with such new grant of Series P-1 Class Units is therefore \$\_\_\_\_\_.** A summary of the methodology used by the Board in calculating the Fair Market Value of the Company (including a summary of any valuation reports obtained to establish Fair Market Value) is set forth below.

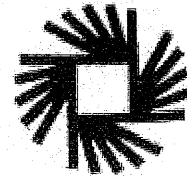
Valuation Summary:

IN WITNESS WHEREOF, and pursuant to Board's approval and at the Board's direction, the Company hereby amends the Agreement to include this Exhibit C-1.

**SOLARGISE AMERICA LLC**

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

**EXHIBIT B**  
**SOLARGISE UK LETTER DATED APRIL 1, 2019**  
**[see attached]**



**SOLARGISE**

Date: 1<sup>st</sup> April 2019

To,  
VA Metals LLC  
One Hoku Way,  
Pocatello, Idaho  
83204

Dear Sir/Ma'am,

Ref: Amended and Restated Operating Agreement dated 6<sup>th</sup> June 2018, Asset Purchase Agreement dated 6<sup>th</sup> June 2018, Redemption Notices dated 28<sup>th</sup> March 2019

Subject: Waiver of Redemption Period and Redemption of Class B Member Units

We are in receipt of 6 (six) redemption notices dated 28<sup>th</sup> March 2019 ("Redemption Notices") delivered by you to us in relation to the redemption of a total of 31,172,217 (Thirty one million one hundred and seventy two thousand two hundred and seventeen) non-voting Class B Member Units held by you in Solargise America LLC (We/Our/Us) ("Class B Units").

In pursuance to the same, we hereby state as follows:

1. We are unable to perform the redemption and repurchase of the Class B Units held by you in Solargise America LLC.
2. We are hereby waiving our right to the redemption period of 60 (sixty) days to perform the redemption and repurchase of the Class B Units against each of the Redemption Notices as specified in Article 8.3(h) of the Amended and Restated Operating Agreement dated 6<sup>th</sup> June 2018.
3. We are hereby giving you our express consent to request for the conversion of the Class B Units to Voting Class A Member Units of the Company.

We request you to indicate your acceptance of the above at the earliest.

Thanking you,

Yours sincerely,

For and on behalf of Solargise America LLC

Name:  
Designation:

*N. S. Haldar*  
*N. S. Haldar*  
*Director*

**SOLARGISE AMERICA LLC**  
REGISTERED OFFICE  
21/1 MANJUSHREE, HALDIN ROAD,  
ULSLOOR, BANGALORE-560042,  
INDIA  
Tel: +44 20 7387 0244  
Fax: +44 20 7387 0869  
WWW.SOLARGISE.WORLD

**EXHIBIT C**  
**ASSET PURCHASE AGREEMENT**  
[see attached]

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**ASSET PURCHASE AGREEMENT**

**by and between**

**SOLARGISE AMERICA, LLC**

**and**

**V.A. METALS, LLC**

**Dated as of June 6, 2018**

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Form of Assignment and Assumption Agreement

Exhibit D

LLC Agreement of Purchaser

Exhibit E

Form of Bill of Sale

Exhibit F

Form of Naidu Indemnification Guaranty Agreement

Exhibit G

Company Operating Agreement

Exhibit H

Payment of Purchase Price In Accordance with Article 3.02(a)(ii)

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement"), dated as of June 6, 2018 ("Effective Date"), is by and between Solargise America, LLC, a company duly incorporated under the laws of Delaware ("Purchaser"), and V.A. Metals, LLC, an Idaho limited liability company (the "Company"). Certain terms used in this Agreement are defined in Section 1.01.

### Recitals

**WHEREAS**, the Company owns certain real property located at 1 Hoku Way, Pocatello, Idaho 83204 (the "Plant") including, without limitation, the Plant IP, Existing Equipment, any and all underlying real property and assets in the Plant and Site, including but not limited to any and all buildings, cables, pipes and other installed infrastructure, whether above or below ground located at the Plant and Site, and any other office equipment, stationery and other materials listed on Exhibit A hereto (collectively, the "Purchased Assets"), but specifically excluding the land (the "Land") located under the Plant;

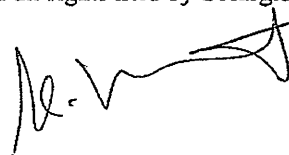
**WHEREAS**, the Company has a leasehold interest that permits the Company to be on the Land pursuant to and as evidenced by that certain lease between the City of Pocatello (the "City") and JH Kelly LLC, a Washington limited liability company ("JHK"), dated January 21, 2014, which was assigned to the Pocatello Development Authority ("PDA") pursuant to that certain Assignment of Lease Agreement, dated September 17, 2015, by and between the City and PDA, and as assigned to the Company pursuant to that certain Assignment and Amendment of Land Lease Agreement and Release of JH Kelly, dated as of January 29, 2016, by and among JH Kelly, the Company and PDA (collectively, the "Lease"). A true and correct copy of the Lease is attached hereto as Exhibit B;

**WHEREAS**, the Purchase Price (defined below) for the Purchased Assets shall be comprised of equity, minus the Closing Deductions set forth in Sections 3.02(a), in the form of non-voting shares of the Purchaser being Class B preferred units having per unit value of USD 1/- (United States Dollars One only) (the "Class B Units"), at an aggregate unit value of \$32,672,217, pursuant to the LLC Agreement. The Purchaser shall have a first priority security interest against the Class B Units, in accordance with Section 3.02(a)(iii);

**WHEREAS**, the Company is in default for not repaying certain loans by the Maturity Date (as defined in the Debenture Agreements) made by Solargise UK Ltd., a company duly incorporated under the laws of the United Kingdom ("Solargise UK") and Solargise (HK) Ltd., a Hong Kong private company limited by shares ("Solargise HK"), in favor of the Company, in the aggregate amount of [\$1,590,750]<sup>1</sup> (the "Solargise Debt"), pursuant to the Debenture Agreements;

**WHEREAS**, Solargise UK and Solargise HK both have secured first priority liens on the Personal Property, pursuant to the Security Agreements and UCC Financing Statement number B 2016-1180303-8;

**WHEREAS**, Solargise HK and Solargise UK, by way of an Assignment Letter issued by it, has assigned to Purchaser the right to collect, demand repayment or redemption of the dues owed to Solargise HK and Solargise UK under the Solargise Debt and any and all rights held by Solargise HK and Solargise UK under the Debenture Agreements;



WHEREAS, Solargise UK has advanced \$737,033 through bank transfers from the trustee account to the Company's counsels for the purpose of covering any expenses related to the defense of the Company in any Proceeding (the "Proceedings Defense Debt") and, together with the Solargise Debt, collectively, the "Extinguished Indebtedness");

WHEREAS, Purchaser, Solargise UK, Solargise HK and the Company have entered that certain Asset Transfer Agreement, dated May 21, 2018 (the "Asset Transfer Agreement"), and this Agreement contains the entire agreement between the Parties with respect to the transactions contemplated herein and supersedes the Asset Transfer Agreement and any prior agreements, understandings, or negotiations with respect to the transaction contemplated herein; and

WHEREAS, the Company desires to sell to Purchaser, and Purchaser desires to acquire from the Company, all of the Company's right, title and interest in and to the Purchased Assets, on the terms and conditions and as more specifically provided in this Agreement.

### Agreement

In consideration of the covenants and agreements contained herein and the other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

## **ARTICLE I** **DEFINITIONS**

**1.01 Definitions.** Capitalized terms and other terms used in this Agreement have the following respective meanings:

"Affiliate" of any Person means another Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such first Person. The term "control" (including derivations thereof) means (a) the possession, directly or indirectly, of the power to vote 50% or more of the equity securities of a Person having ordinary voting power, (b) the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a Person, by contract or otherwise, or (c) being a director, officer, executor, trustee or fiduciary (or their equivalents) of a Person or a Person that controls such Person.

"Applicable Law" means, with respect to any Person, any code, rule, order, Judgment, writ, injunction, act, decree, law, statute, legislation, constitution or principle of common law that is enacted, adopted, passed, approved, promulgated, made, implemented or otherwise put into effect, in each case as of the date of this Agreement, by any Governmental Entity that applies to such Person, its business and its properties.

"Business Day" means any day other than a Saturday, Sunday or a day on which banks in New York, New York are not open for business.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

"Code" means the U.S. Internal Revenue Code of 1986, as amended.

"Collateral Agreements" means this Agreement and the documents, instruments, certificates and agreements executed in connection with this Agreement.

“Company Material Adverse Effect” means any change, effect, or circumstance that, individually or when taken together with all other such similar or related changes, effects, or circumstances that have occurred prior to the date of determination of the occurrence of such change, effect, or circumstance, (a) is materially adverse to the business, assets, financial condition or results of operations of the Company, taken as a whole; or (b) would materially prevent the consummation of the Contemplated Transactions by the Company; *provided, however*, that any such change, effect, or circumstance shall not be deemed to constitute a “Company Material Adverse Effect” to the extent that any change, effect, or circumstance described in clause (a) or (b) resulted or arose from, or is related to: (i) actions or inactions in compliance with, or as required or permitted in accordance with, the terms and conditions of this Agreement; (ii) a change in general political, economic, or financial market conditions in the U.S. or elsewhere in the world (including in the credit markets) (except if such conditions have a disproportionately adverse effect on the Company relative to other similarly situated Persons); or (iii) a change that affected the industries in which the Company operates generally.

“Company Transaction Expenses” means all Transaction Expenses incurred or otherwise payable by or on behalf of the Company.

“Contemplated Transactions” means Purchaser’s acquisition of the Purchased Assets and all other transactions contemplated by this Agreement.

“Contract” means, with respect to any Person, any legally binding written or other agreement, contract, understanding, arrangement, instrument, note, guaranty, indemnity, deed, assignment, power of attorney, purchase order, work order, insurance policy, lease, license, commitment, assurance or undertaking to which such Person is a party, by which it or its assets are bound or subject or under which it has or may have any liability.

“Damages” means all actual out-of-pocket losses and damages (including the reasonable fees of counsel) incurred or suffered by such Person.

“Debenture Agreements” means collectively, that certain Non-Negotiable Compulsory Convertible Debenture Agreement, dated as of August 10, 2016, by and between the Company and Solargise HK and that certain Non-Negotiable Compulsory Convertible Debenture Agreement, dated as of August 10, 2016, by and between the Company and Solargise UK.

“Entity” means any corporation, partnership, limited liability company, professional association, trust or other entity.

“Environment” means soil, land surface or subsurface strata, surface waters (including navigable waters and ocean waters), groundwaters, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life and any other environmental medium or natural resource.

“Environmental Law” means any Applicable Law that requires or relates to: (a) advising appropriate authorities, employees or the public of intended or actual Releases of pollutants or hazardous substances or materials, violations of discharge limits or other prohibitions and the commencement of activities, such as resource extraction or construction, that could have significant impact on the Environment; (b) preventing or reducing to acceptable levels the Release of pollutants or hazardous substances or materials into the Environment; (c) reducing the quantities, preventing the Release or minimizing the hazardous characteristics of wastes that are generated; (d) assuring that products are designed, formulated, packaged and used so that they do not present unreasonable risks to human health or the Environment when used or disposed of; (e) protecting resources, species or ecological amenities; (f) reducing to acceptable levels the risks inherent in the transportation of any Hazardous Material or

other potentially harmful substance; (g) cleaning up a Release of pollutants, preventing the threat of Release or paying the costs of such clean up or prevention; (h) making responsible parties pay private parties, or groups of them, for damages done to their health or the Environment or permitting self-appointed representatives of the public interest to recover for injuries done to public assets; (i) the authority of any Governmental Entity regulating, or creating any liability for, Hazardous Materials, including but not limited to CERCLA, the federal Solid Waste Disposal Act, the federal Clean Air Act, the federal Clean Water Act, the federal Toxic Substances Control Act, the federal Hazardous Materials Transportation Act, the federal Occupational Safety and Health Act, the federal Oil Pollution Act, the federal Endangered Species Act, the federal Emergency Planning and Community Right-to-Know Act, and their state counterparts, if any; and (j) the protection or preservation of public health or the Environment.

“Existing Equipment” means all of the equipment and materials making up the Plant, as more particularly described on Exhibit A hereto.

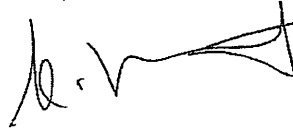
“Family Member” means with respect to each individual, such individual’s spouse, ancestors and descendants (whether natural or adopted) and any trust or other Entity (including partnership or limited liability company) solely for the benefit of such individual and/or such individual’s spouse, their respective ancestors and/or descendants.

“GAAP” means United States generally accepted accounting principles in effect as of the Closing Date applied on a consistent basis with the past practice of the Company.

“Governmental Entity” means any federal, state, local, municipal or foreign government or any court of competent jurisdiction, administrative, executive or regulatory body, agency, bureau, or commission in any domestic or foreign jurisdiction, and any appropriate division of any of the foregoing, in each case, having jurisdiction over the applicable Person.

“Hazardous Material” means: (a) any petroleum, waste oil, crude oil, asbestos, urea formaldehyde or polychlorinated biphenyl; (b) any waste, gas or other substance or material that is explosive or radioactive; (c) any “hazardous substance,” “pollutant,” “contaminant,” “hazardous waste,” “regulated substance,” “hazardous chemical” or “toxic chemical” as designated, listed or defined (whether expressly or by reference) in any statute, regulation or other Applicable Law (including CERCLA and any other so called “superfund” or “superlien” law and the respective regulations promulgated thereunder); (d) any other substance or material (regardless of physical form) or form of energy that is subject to any Applicable Law which regulates or establishes standards of conduct in connection with, or which otherwise relates to, the protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property from the presence of any solid, liquid, gas, odor, noise or form of energy; and (e) any compound, mixture, solution, product or other substance or material that contains any substance or material referred to in clause (a), (b), (c) or (d) above.

“Indebtedness” of any Person means, without duplication and to the extent outstanding at Closing, (a) the Solargise Debt; (b) the Proceedings Defense Debt; (c) indebtedness for borrowed money or indebtedness issued or incurred in substitution or exchange for indebtedness for borrowed money; (d) indebtedness evidenced by any credit agreement, note, bond, debenture, mortgage or other debt instrument or debt security; (e) amounts owing as deferred purchase price for property or services, including all seller notes and “earn-out” payments, whether or not matured; (f) any indebtedness guaranteed or otherwise supported in any manner by such Person (including guarantees in the form of an agreement to repurchase or reimburse) and commitments or obligations by which such Person assures a creditor against loss (including contingent reimbursement obligations with respect to letters of credit to the extent drawn upon); (g) obligations or commitments to repay deposits or other amounts advanced by



and owing to third parties; (h) all obligations of such Person as lessee under leases that have been or should be, in accordance with GAAP, recorded as capital leases and all obligations of such Person under synthetic leases and sale leaseback transactions; (i) all obligations under interest rate cap, swap, collar or similar transactions or currency or commodity hedging transactions (valued at the termination value thereof); (j) conditional sale or other title retention agreements relating to any purchased property; (k) accrued but unpaid Taxes; (l) the factoring or discounting of accounts receivable; and (m) any accrued but unpaid interest, premium, penalties and other amounts owing by such Person with respect to any items of a type described in clauses (a) through (l) after giving effect to the Closing; provided, that Indebtedness shall not include the endorsement of negotiable instruments for collection in the Ordinary Course of Business.

“Judgment” means any order, judgment, injunction, edict, decree, ruling, pronouncement, determination, decision, opinion, verdict, sentence, subpoena, writ or award issued, made, entered, rendered or otherwise put into effect by or under the authority of any court, administrative agency or other Governmental Entity or any arbitrator or arbitration panel.

“Knowledge of the Company” and other phrases of like substance mean the actual knowledge of Irfan Sharief and K.V. Naidu after a reasonable inquiry of employees of the Company who would reasonably be expected to have knowledge of the matter represented.

“Liens” means with respect to any property or asset, any mortgage, deed of trust, lien, pledge, hypothecation, assignment, charge, option, preemptive purchase right, easement, encumbrance, security interest, or other adverse claim of any kind in respect of such property or asset. For purposes of this Agreement, a Person will be deemed to own subject to a Lien any property or asset that it has acquired or holds subject to the interest of a vendor or a lessor under any conditional sale agreement, capital lease, or other title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such property or asset.

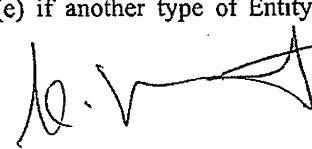
“LLC Agreement” means the Amended and Restated Operating Agreement of the Purchaser, dated as of the Closing Date, to be entered into among the Purchaser, Solargise UK, the Company and other investors, the form of which is attached as Exhibit D hereto.

“Membership Interests” means all of the issued and outstanding membership interests of the Company.

“Order” means any writ, judgment, injunction, order, or decree (including any consent decree) that is issued, promulgated or entered by or with a Governmental Entity, in each case whether preliminary or final.

“Ordinary Course of Business” means an action taken by any Person, where the action: (1) was taken in the ordinary course of business consistent with past custom and practice of the Person in question and (2) did not require authorization of by the board of directors or shareholders of such Person (or by any Person or group of Persons exercising similar authority).

“Organizational Documents” means, with respect to any particular Entity, (a) if a corporation, the articles or certificate of incorporation and the bylaws; (b) if a general partnership, the partnership agreement and any statement of partnership; (c) if a limited partnership, the limited partnership agreement and the articles or certificate of limited partnership; (d) if a limited liability company, the articles of organization or certificate of formation and operating agreement, regulations, limited liability company agreement, or company agreement; (e) if another type of Entity, any other



charter or similar document adopted or filed in connection with the creation, formation or organization of the Entity; and (f) any amendment or supplement to any of the foregoing.

“Party” or “Parties” means Purchaser and the Company.

“Permit” means any permit, license, certificate, clearance, certification, registration, qualification or authorization issued or granted by any Governmental Entity or pursuant to any Applicable Law.

“Person” means any individual, Entity or Governmental Entity.

“Plant IP” means all process engineering enhancements, know-how, complete data room, drawings, instructions, manuals and other intellectual property, including the GAP Assessment, needed to enhance the operational efficiency of the Plant to produce polysilicon from 17-22% to an anticipated 45%.

“Proceeding” means any action, arbitration, claim, hearing, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private) commenced, brought, conducted or heard by or before any Governmental Entity or arbitrator.

“Related Party” means, with respect to the Company, (a) any officer, director, member, manager, shareholder or Affiliate of the Company or any trustee or beneficiary of a unitholder of the Company, (b) any Family Member of any Person in the foregoing clause (a) of this sentence, and (c) any other Entity controlled, directly or indirectly, by one or more of the foregoing Persons.

“Release” means any release, spill, emission, leaking, pumping, pouring, dumping, emptying, injection, deposit, disposal, discharge, dispersal, leaching or migration on or into the Environment or into or out of any property.

“Representative” means, with respect to any Person, such Person’s officers, directors, employees, financial advisors, legal counsel, accountants, consultants, and other representatives and agents.

“Security Agreements” means, collectively, that certain Security Agreement, dated as of August 10, 2016, by the Company in favor of Solargise HK and that certain Security Agreement, dated as of August 10, 2016, by the Company in favor of Solargise UK.

“Subsidiary” of any Person means another Person, an amount of the voting securities, other voting ownership or voting partnership interests of which is sufficient to elect at least a majority of its board of directors or other governing body, or, if there are no such voting interests, 50% or more of the equity interests of which is owned directly or indirectly by such first Person or by another subsidiary of such first Person.

“Tax” means (i) all taxes, assessments, charges, duties, fees, levies or other governmental charges including all United States federal, state, local, foreign and other income, franchise, profits, capital gains, capital stock, transfer, sales, use, occupation, property, excise, severance, windfall profits, stamp, license, payroll, withholding and other taxes, assessments, charges, duties, fees, levies or other governmental charges, all estimated taxes, deficiency assessments, additions to tax, penalties and interest and (ii) any liability for the payment of or in respect of any amounts of the type described in clause (i) of this definition as a result of being a member of an affiliated, combined or unitary group for Tax purpose

or, as a result of any tax sharing or tax allocation agreement, arrangement or understanding or as a result of being liable for another Person's taxes as a transferee or successor, by contract or otherwise.

"Tax Return" means any return, filing, report, claim, refund request, questionnaire, information statement or other document required to be filed, including any amendments that may be filed, for any taxable period with any Taxing Authority (whether or not a payment is required to be made with respect to such filing).

"Taxing Authority" means any Governmental Entity exercising any authority to impose, regulate or administer the imposition of Taxes.

"Transaction Expense" means, with respect to any Person, all fees, costs and expenses (including all legal fees and expenses, all fees and expenses payable to any broker, advisor or finder, and all fees and expenses of any audit firm or accountants) that have been incurred in connection with the Contemplated Transactions.

"Treasury Regulations" means the Treasury Regulations promulgated from time to time by the U.S. Internal Revenue Service under the Code.

"Trustee" means Can Do Consulting, Mauritius.

**1.02 Cross References.** Each of the following terms is defined in the Section of this Agreement set forth opposite such term below:

<u>Term</u>	<u>Section</u>
Agreement.....	Preamble
Asset Transfer Agreement.....	Recitals
Assignment and Assumption Agreement.....	Section 3.02(b)(i)
Assumed Indebtedness	Section 2.06
Bill of Sale.....	Section 3.02(c)(ix)
City .....	Recitals
Claim Expiration Date	Section 7.03(b)
Claim Notice .....	Section 7.04(a)
Claimant .....	Section 7.04(a)
Class B Units.....	Recitals
Closing.....	Section 3.01
Closing Date.....	Section 3.01
Closing Deductions.....	Section 3.02(a)
Company .....	Preamble
Company Party .....	Section 7.02
Disclosure Schedule.....	Article IV
Environmental Permits	Section 4.12(b)
Excluded Liabilities .....	Section 2.03
Extinguished Indebtedness .....	Recitals
Indemnified Party .....	Section 7.05(a)
Indemnifying Party .....	Section 7.05(a)
JHK.....	Recitals
Lease.....	Recitals

<u>Term</u>	<u>Section</u>
Naidu Indemnification	
Guaranty Agreement.....	Section 3.02(b)(iii)
New Lease	Section 6.03(a)
Payoff Letters.....	Section 3.02(c)9v)
PDA .....	Recitals
Proceedings Defense Debt.....	Recitals
Property Taxes .....	Section 6.02(a)
Purchase Price .....	Section 2.04
Purchased Assets.....	Recitals
Purchaser .....	Preamble
Purchaser Party .....	Section 7.01
Real Estate Liens.....	Section 4.06
Real Property Leases	Section 4.06
Solargise Debt .....	Recitals
Solargise HK.....	Recitals
Solargise UK .....	Recitals
Tax Proceeding .....	Section 4.09(b)
Third Party Claim .....	Section 7.05(a)
Third Party Claim Notice .....	Section 7.05(a)
Transfer Taxes.....	Section 6.02(b)

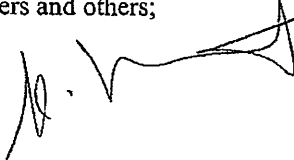
**ARTICLE II**  
**PURCHASE AND SALE**

**2.01 Purchase and Sale of Assets.** Subject to the terms and conditions set forth herein, at the Closing, the Company hereby irrevocably sells, assigns, transfers, conveys and delivers to Purchaser, and Purchaser hereby purchases from the Company, free and clear of any encumbrances, all of the Company's right, title, benefits, and interest in, to and under all of Purchased Assets, as set forth in Exhibit A attached hereto.

**2.02 Assumed Liabilities.** Subject to the terms and conditions set forth herein, the Parties agree that the Purchaser shall not assume and does not agree, and shall not be deemed to have assumed and/or have agreed to pay, perform and discharge any and all liability/ies incurred by the Company, whether in relation to the Plant, the Site, the Existing Equipment, the Plant IP or otherwise prior to the date of completion of payment of the full Purchaser Price in accordance with this Agreement.

**2.03 Excluded Liabilities.** Notwithstanding the provisions of Section 2.02 or any other provision in this Agreement to the contrary, Purchaser shall not assume and shall not be responsible to pay, perform or discharge any Liabilities of the Company or any of its Affiliates of any kind or nature whatsoever (the "Excluded Liabilities"). The Company shall pay and satisfy in due course all liabilities which it is obligated to pay and satisfy. Without limiting the generality of the foregoing, such Excluded Liabilities shall include, but not be limited to, the following:

(a) any Liabilities of the Company arising or incurred in connection with the negotiation, preparation, investigation and performance of this Agreement, the other Collateral Agreements and the transactions contemplated hereby and thereby, including, without limitation, fees and expenses of counsel, accountants, consultants, advisers and others;



(b) any Liabilities of the Company, including but not limited to employee payments, maintenance costs, liabilities towards any and all third parties, operating costs and any other liability in relation to the Plant, the Land, Plant IP, Existing Equipment, and any and all underlying real property and assets in the Plant and the Land, including but not limited to any and all buildings, cables, pipes and other installed infrastructure, whether above or below ground, at the Plant and the Land, for any period on or prior to the Closing Date;

(c) any Liability for (i) Taxes of the Company (or any Affiliate of the Company) for any Tax Period, or relating to the Purchased Assets for any Pre-Closing Tax Period; (ii) Taxes that arise out of the consummation of the transactions contemplated hereby or that are the responsibility of the Company pursuant to Section 6.05; or (iii) other Taxes of the Company (or any Affiliate of the Company) of any kind or description (including any Liability for Taxes of the Company (or any Affiliate of the Company)) that becomes a Liability of Purchaser under any common law doctrine of de facto merger or transferee or successor liability or otherwise by operation of contract or Law;

(d) any Liabilities in respect of any pending or threatened Proceeding arising out of, relating to or otherwise in respect of the Purchased Assets to the extent such Proceeding relates to such operation on or prior to the Closing Date or the occurrence of any event prior to the Closing Date;

(e) any product Liability or similar claim for injury to a Person or property which arises out of or is based upon any express or implied representation, warranty, agreement or guaranty made by the Company, or by reason of the improper performance or malfunctioning of a product, improper design or manufacture, failure to adequately package, label or warn of hazards or other related product defects of any products at any time manufactured or sold or any service performed by the Company;

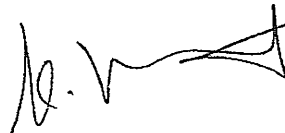
(f) any recall, design defect or similar claims of any products manufactured or sold or any service performed by the Company;

(g) any claims related to Environmental Law, or Liabilities under Environmental Laws, to the extent arising out of or relating to facts, circumstances or conditions existing on or prior to the Closing or otherwise to the extent arising out of any actions or omissions of the Company;

(h) any trade accounts payable of the Company (i) which constitute Indebtedness; or (ii) which did not arise in the Ordinary Course of Business; and

(i) any Liabilities arising out of, in respect of or in connection with the failure by the Company or any of its Affiliates to comply with any Law or governmental order.

**2.04 Purchase Price.** Subject to satisfaction of the Closing Deductions in accordance with Section 3.02(a), the aggregate purchase price for the Purchased Assets (the "Purchase Price") shall be comprised of a payment of equity in the Purchaser equal to an aggregate value of Thirty Two Million Six Hundred and Seventy Two Thousand Two Hundred and Seventeen Dollars (\$32,672,217), which shall be payable and issuable by Purchaser to the Company at Closing in accordance with Section 3.02(a). The Parties agree that the payment, issuance and/or redemption of the Purchase Price by the Company shall be subject to the terms and conditions of the LLC Agreement. The Parties agree that until the full Purchase Price has been paid, the Purchaser shall not move any or all of the Purchased Assets to any other location, whether inside the United States of America or otherwise without the express written consent of VAM. In the circumstance that Solargise UK wishes to do so, it shall provide VAM with at least 15 (fifteen) days' notice prior to such proposed relocation of the same and VAM shall at its sole discretion have the right to provide express written consent to the same.



**2.05 Assignment of Rights to the Land.** At the Effective Time, the Company shall assign its rights, title and interest in and to the Land, including all rights, title and interest under the Lease. To the extent any rights are not assignable, the Company shall pass through such rights to Purchaser. Since the Land is not currently owned by the Company, the Company hereby grants to Purchaser a credit of One Million Four Hundred Thousand Dollars (\$1,400,000), which shall be paid to the Company upon the exercise of Put Option A and Put Option B (each, as defined in the LLC Agreement) by the Purchaser.

**2.06 Treatment of Indebtedness.** All of the Extinguished Indebtedness of the Company at Closing shall be repaid in full at Closing by way of setting off of such Extinguished Indebtedness out of the Purchase Price in accordance with Section 3.02(a)(i).

### **ARTICLE III CLOSING**

**3.01 Closing Date.** The purchase and sale of the Purchased Assets is being consummated by the exchange of signatures by facsimile or other electronic transmission at a closing (the "Closing") held at the Mount Laurel NJ United States of America at 10:00 a.m. (Eastern Time) on the date of this Agreement (such date and time being herein referred to as the "Closing Date"). The parties may agree to deliver signature pages and other documents to be delivered at closing by electronic mail utilizing .pdf or similar format, and such delivery shall be conclusive, and such signature pages deemed to be originals, for all purposes hereof.

**3.02 Deliveries at Closing.** Subject to the terms and conditions of this Agreement, at the Closing, the following Persons shall deliver or cause to be delivered the following:

(a) Purchaser shall deliver the Purchase Price as follows:

(i) The Parties shall set off the Extinguished Indebtedness from the total Purchase Price and the Purchaser shall discharge the Company from its obligations towards the Solargise Debt (such designation to occur no less than two (2) Business Days prior to the Closing);

(ii) Subject to the terms of the LLC Agreement, the remaining Purchase Price, following the Closing Deductions (as defined below), shall be payable by Purchaser to the Company by way of issue of equity in the form of non – voting Class B Units of the Purchaser, at an aggregate unit value of Thirty Two Million Six Hundred and Seventy Two Thousand Two Hundred and Seventeen Dollars (\$32,672,217), in accordance with Exhibit – H of this Agreement and pursuant to the LLC Agreement and the Parties agree that the redemption of such Class B Units issued to the Company shall be done in accordance with the LLC Agreement. The Parties Agree that such Purchase Price shall constitute the full and final consideration payable under and in performance of this Agreement and the Company shall have no other right or claim to any further consideration for the same.

The amounts described in clauses (i) of Section 3.02(a) shall be referred to herein as the "Closing Deductions."

(b) Purchaser shall deliver, or cause to be delivered, to the Company the following deliveries:

(i) the LLC Agreement, duly executed by Solargise US, in substantially the form of Exhibit E;



(ii) the Naidu Indemnification Guaranty Agreement, substantially in the form of Exhibit F attached hereto, duly executed by Purchaser (the "Naidu Indemnification Guaranty Agreement");

(iii) UCC-1 financing statement related to the Class B Units shall have been filed by Solargise US; and

(iv) a certificate evidencing the Class B Units, duly endorsed and executed by Solargise US.

(c) The Company shall deliver, or cause to be delivered, to Purchaser, the following deliveries:

(i) the LLC Agreement, duly executed by the Company;

(ii) the Naidu Indemnification Guaranty Agreement, duly executed by K.V. Naidu and the Company;

(iii) payoff letters ("Payoff Letters") reasonably satisfactory to Purchaser evidencing that all Extinguished Indebtedness has been set off in full against the Purchase Price prior to the Closing Date in accordance with Section 3.02(a)(i);

(iv) evidence reasonably satisfactory to Purchaser that any and all Liens shall have been released (or committed to be released pursuant to payoff letters reasonably satisfactory to Purchaser) and completed copies of UCC-3 termination statements related to such Liens shall have been filed (or committed to be filed pursuant to payoff letters reasonably satisfactory to Purchaser);

(v) evidence reasonably satisfactory to Purchaser that all necessary Permits, licenses and Governmental approvals have been obtained;

(vi) all current valid insurance on the Plant and Land, original invoices of purchase, letters of warranties and guarantees received for the Existing Equipment from each of the equipment manufacturers;

(vii) a bill of sale and assignment with respect to the Purchased Assets substantially in the form of Exhibit E hereto (the "Bill of Sale"), duly executed by the Company;

(viii) (1) a properly completed and duly executed Internal Revenue Service Form W-9 of the Company and (2) a non-foreign affidavit of the Company dated as of the Closing Date, sworn under penalty of perjury and in form and substance required under the Treasury Regulations issued pursuant to Section 1445 of the Code, stating that the Company is not a "foreign person" as defined in Section 1445 of the Code;

(ix) A certificate of an officer of the Company certifying that each of the representations and warranties of the Company made in this Agreement are true and correct in all material respects (or, if any specific representation or warranty of the Company or the Members is expressly qualified by concepts of "materiality" or "Material Adverse Effect," then such representations and warranties are true and correct in all respects) as of the Closing; and

(x) a certificate of an officer of the Company certifying, (A) as complete, accurate and in effect as of the Closing, (1) attached copies of the Company's Organizational Documents,

and (2) all requisite resolutions or actions of the Company's directors approving the execution and delivery of this Agreement, the other Collateral Agreements and the consummation of the Contemplated Transactions (as applicable), and (B) as to the incumbency and signatures of the officers of the Company executing this Agreement and any other Collateral Agreement or other document, certificate or instrument relating to the Contemplated Transactions.

**ARTICLE IV**  
**REPRESENTATIONS AND WARRANTIES RELATING TO THE COMPANY**

The Company hereby represents and warrants to Purchaser, except as set forth in the disclosure schedule delivered by the Company to Purchaser on the date hereof (the "Disclosure Schedule"), as follows:

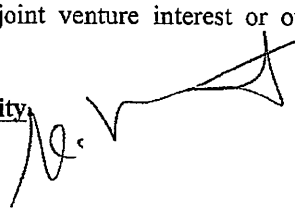
**4.01 Organization and Standing.** The Company is a limited liability company duly formed, validly existing and in good standing under the laws of the State of Idaho, and has all requisite limited liability company power and authority to own, lease and operate its properties and to carry on its business as now being conducted. The Company is duly qualified or licensed to do business and is in good standing (or the jurisdictional equivalent) in each jurisdiction set forth on Section 4.01 of the Disclosure Schedule, which are all the respective jurisdictions in which the property owned, leased or operated by the Company, or the nature of the business conducted by the Company, makes such qualification necessary, except in such jurisdictions where the failure to be so qualified or licensed and subsisting does not have, individually or in the aggregate, a Company Material Adverse Effect. The Company has made available to Purchaser prior to the date hereof complete and correct copies of the Organizational Documents of the Company, in each case as amended and in full force and effect as of the date hereof, including the Operating Agreement of the Company, attached hereto as Exhibit G (the "Company Operating Agreement").

**4.02 Capitalization; Subsidiaries.**

(a) The Membership Interests (i) have been duly authorized and validly issued and are fully paid and non-assessable, and (ii) have been issued in compliance with all applicable Laws, including securities Laws, and all applicable agreements, in each case free and clear of any Liens. Except as set forth on Section 4.02 of the Disclosure Schedule, there are no outstanding options, warrants, rights, calls, subscriptions, claims of any character, agreements, obligations, convertible or exchangeable securities or other commitments, contingent or otherwise, of any kind obligating the Company to issue, directly or indirectly, any additional membership units or other equity securities. The Membership Interests, all of which are owned by the Members, represent the only issued and outstanding equity securities of the Company. No former equity owner of the Company or any of its predecessors, and no former holder of any right to acquire any interest in the Company or any of its predecessors (whether by warrant, option, convertible instrument or otherwise) has any claim or rights against the Company. Except as set forth on Section 4.02 of the Disclosure Schedule, there are no Contracts relating to the issuance, sale, transfer or voting of any equity securities or other securities of the Company.

(b) The Company has no Subsidiaries and does not own, directly or indirectly, any capital stock, membership interest, partnership interest, joint venture interest or other equity interest in any other Person.

**4.03 Authority; Execution and Delivery; Enforceability.**



(a) The Company has full limited liability company power and authority to execute and deliver this Agreement and the Collateral Agreements to which it is or will be a party and to consummate the Contemplated Transactions.

(b) The execution and delivery by the Company of this Agreement and the Collateral Agreements to which it is or will be a party, and the consummation by the Company of the Contemplated Transactions, have been duly authorized by all necessary limited liability company action on the part of the Company, and no other action on the part of the Company is necessary to authorize the execution, delivery and performance of the Collateral Agreements to which it is or will be a party and the Contemplated Transactions.

(c) The Collateral Agreements to which the Company is or will be a party will be duly executed and delivered by the Company at or prior to the Closing. This Agreement and the Collateral Agreements to which the Company is or will be a party will, assuming due authorization with respect to the Company, and execution and delivery by the Company of this Agreement and each of the Collateral Agreements to which it is a party, by each of the other parties thereto, constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except to the extent that their enforceability may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and to general equitable principles.

**4.04 Noncontravention** . Except as set forth in Section 4.04 of the Disclosure Schedule, neither the execution and delivery of this Agreement, nor the consummation or performance of any of the Contemplated Transactions, will (a) contravene, conflict with or result in a violation of (i) any Applicable Law to which the Company is subject or by which any of its or their assets is bound; (ii) the provisions of any Material Contract or any Permit of the Company; or (iii) the provisions of any of the Organizational Documents of the Company; or (b) result in the creation of any Lien upon or with respect to any of the assets of the Company.

**4.05 Certain Assets**. The Company has good and marketable title to all the Purchased Assets owned by them, and valid and enforceable leasehold or licensed interests in all tangible assets leased or licensed by it. Such owned assets and leased or licensed assets are suitable for use in the Ordinary Course of Business, are in good and operable condition (ordinary wear and tear excepted) and constitute all of the assets necessary to enable the Company to conduct its business in the Ordinary Course of Business as of the date of this Agreement. All of such owned assets are owned, and such leased or license assets are leased or licensed, free and clear of all Liens.

**4.06 Real Property**. Section 4.06 of the Disclosure Schedule sets forth an accurate and complete list of the Land in which the Company has a leasehold interest, the address of the Plant and the amount of the lease payment for the Land for each period with respect to which such amount is due. Subject to the terms of the leases for Plant to which the Company is a party (as lessee, sublessee, sublessor or lessor) (collectively, the "Real Property Leases"), the Company has a valid and subsisting leasehold estate in and the right to quiet enjoyment of each of the Land for the full term of the Real Property Leases (including renewal periods) relating thereto, in each case free and clear of all Liens, except for the following Liens: (i) easements, covenants, rights-of-way and other similar restrictions of record, (ii) zoning, building and other similar restrictions, (iii) Liens that have been placed by any developer, landlord or other third party on property over which the Company has easement rights or on the Land and or the Plant and subordination or similar agreements relating thereto; (iv) unrecorded easements, covenants, rights-of-way and other similar restrictions; and (v) other restrictions that do not materially affect the usage or the value of the Plant or the Land (collectively, "Real Estate Liens"). The Company owes no brokerage commissions or finder's fees with respect to the Plant or the Land. The

Plant and the Land (including all structures and improvements located thereon), and the present uses of the Plant and the Land by the Company comply in all material respects with and are operated in all material respects in accordance with Applicable Laws and all applicable Real Estate Liens, Permits and Contracts related thereto, and all structures and improvements located on the Plant and Land are in all material respects in good operating condition and in a state of good maintenance and repair as may be necessary for their use as of the date hereof, ordinary wear and tear excepted, and such improvements are in all material respects adequate and suitable for the purposes for which they are presently being used. As of the date hereof, there is no condemnation or appropriation proceeding pending or, to the Knowledge of the Company, threatened against the Plant or the Land or any of the improvements thereon. As of the date hereof, there are no Contracts other than the Real Property Leases between the Company and any other Person or, to the Knowledge of the Company, by and among any other Persons, claiming an interest in the interest of the Company in the Plant or the Land or otherwise relating to the use and occupancy of the Plant.

**4.07 Insurance.** The Company has taken necessary insurance on the Plant, the Land and equipment to insure the Plant, the Land and the Existing Equipment, including any and all underlying real property whether above or below ground, located in the Plant or on the Land, against any unforeseen and sudden physical Damage from any cause not specifically excluded in a manner necessitating repair or replacements, including, but not limited to, Damage due to electrical or mechanical breakdown, failure, breakage or derangement, freezing of coolant or other fluid, defective lubrication or lack of oil or coolant, but if as a consequence of such breakdown or derangement an accident occurs causing external Damage. A list of all claims under any of such policies of insurance made by the Company since January 1, 2014 is provided in Section 4.07 of the Disclosure Schedule.

**4.08 Absence of Certain Changes.** From the Effective Time until the Closing Date, the Company has not sold, leased, disposed of, mortgaged, pledged or subjected to any Lien, any of the Purchased Assets.

**4.09 Taxes.**

**(a)** The Company has filed or caused to be filed all Tax Returns that are required by Applicable Law to be filed by, or with respect to, the Company (taking into account any applicable extension of time within which to file) and all such Tax Returns were true, correct and complete in all material respects. All Taxes owed by the Company (whether or not shown on any Tax Return) have been timely paid, other than any Taxes being contested in good faith by appropriate proceedings and identified in Section 4.09(a) of the Disclosure Schedule.

**(b)** Except as set forth in Section 4.09(b) of the Disclosure Schedule, the Company is not currently the subject of an audit, administrative Tax proceedings, judicial proceedings or other examination of Taxes ("Tax Proceeding") by any Governmental Entity and no Tax Proceeding is pending or threatened. Company has not entered into a written agreement or waiver extending any statute of limitations relating to the payment or collection of Taxes of Company that has not expired nor is presently contesting any Tax liability before any Governmental Entity. The Company has not received any notice of deficiency or proposed adjustment for any amount of Tax proposed, asserted or assessed by any Governmental Entity against the Company that has not been fully resolved and paid in full.

**(c)** The Company has not received any notification from a Governmental Entity in a jurisdiction where the Company does not file Tax Returns that the Company is or may be subject to taxation by that jurisdiction.

(d) There are no Liens for Taxes upon the assets of the Company, other than Liens for Taxes not yet due and payable or liens identified on Section 4.09(e) of the Disclosure Schedule for Taxes being contested in good faith by appropriate proceedings and for which adequate reserves have been established clearly on the Company's financial statement in accordance with GAAP.

**4.10 Proceedings; Judgments.** Except as set forth in Section 4.10 of the Disclosure Schedule, the Company is not subject to any pending Proceeding, or to the Knowledge of the Company, threatened, against the Company, or any manager or officer of the Company, in such capacity as a manager or an officer. There is no outstanding Judgment to which the Company is a party or subject or by which the Company or its assets is bound. There is no Proceeding pending or, to the Knowledge of the Company, threatened against or by the Company (i) relating to or affecting the Plant, the Land, the Plant IP and/or the Existing Equipment, or (ii) that challenges or seeks to prevent, enjoin, or otherwise delay the performance of this Agreement.

**4.11 Compliance with Applicable Laws.** The Company conducts its business, and operates and uses all of its assets, in compliance in all material respects with all Applicable Laws. Since January 1, 2015, the Company has not received any written notice from any Governmental Entity or any other Person alleging the violation of, or failure to comply with, any Applicable Law.

**4.12 Environmental Matters.** Except as set forth on Section 4.12 of the Disclosure Schedule:

(a) The Company and its operations are, and for the past three (3) years have been, in compliance with all Environmental Laws in all material respects.

(b) The Company holds or possesses, and is in compliance with, all material Licenses required under Environmental Laws for the lawful conduct of the Business (the "Environmental Permits"). Section 4.12 of the Disclosure Schedule sets forth a true, complete and correct list of each Environmental Permit including the type of license, the license number, the Governmental Entity issuing such license and the expiration date of such license. Except as set forth on Section 4.12 of the Disclosure Schedule: (i) each Environmental Permit is valid and in full force and effect; (ii) the Company has not received any written notice from any Governmental Entity alleging, or is in, any material breach of or default under any Environmental Permit; and (iii) no Actions are pending or, to the Knowledge of the Company, threatened that if determined or resolved adversely would result in the revocation, cancellation, suspension or materially adverse modification of any Environmental Permit.

(c) During the Company's occupation of the Plant and the Land there has not been a release of any Hazardous Material on any of such premises.

**4.13 Sufficiency of Assets.** There are no other transactions other than those contemplated by this Agreement necessary or desirable to transfer all of the assets that are owned, leased or held for use in the Business by any Affiliate of the Company to Purchaser. Once the transactions contemplated by this Agreement are complete, Purchaser will own, lease or hold for use all assets, rights and properties that are necessary or desirable to permit the Purchaser to operate the Purchased Assets immediately after the Closing in substantially the same manner as the Purchased Assets are currently conducted by the Company. The Company has preserved and maintained the Existing Equipment so as to preserve the full functionality of the Existing Equipment as originally designed and specified by the manufacturer of such equipment, and the Existing Equipment is, and will be upon the consummation of the transactions

contemplated herein, in production at maximum capacity condition and fully operational without further action on Purchaser's part.

**4.14 Intellectual Property.** The GAP Assessment has been prepared by the Company and the technical team and sufficiently identifies the equipment required to allow the Plant to produce up to 15,000 MT/year of polysilicon at 9 N purity, and up to 10,000 MT/year of polysilicon at 11 N purity, as partially identified in the "Idaho Solar Basis of Evaluation" for the "IDS Debottleneck Process Study" report prepared by WorleyParsons at the Company's request, as described on Exhibit A hereto.

**4.15 Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company.

**4.16 Disclosure.** No representation or warranty of the Company set forth in this Article IV (including, but not limited to any statement contained in the Disclosure Schedule) contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

**ARTICLE V**  
**REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Purchaser hereby represents and warrants to the Company as follows:

**5.01 Organization and Standing.** Purchaser is a company duly incorporated and validly existing and in good standing under the laws of Delaware. Purchaser is duly qualified and in good standing to do business in each jurisdiction in which such qualification to carry on its business as presently conducted, and to hold its properties and assets, is necessary.

**5.02 Authority; Execution and Delivery; Enforceability.** Purchaser has full corporate power and authority to execute and deliver this Agreement and the Collateral Agreements to which Purchaser is or will be a party and to consummate the Contemplated Transactions. The execution and delivery by Purchaser of this Agreement and the Collateral Agreements to which Purchaser is or will be a party and the consummation by Purchaser of the Contemplated Transactions, have been duly authorized by all necessary corporate action, and no other action on the part of Purchaser is necessary to authorize the execution, delivery and performance of this Agreement and the Collateral Agreements to which Purchaser is or will be a party and the Contemplated Transactions. This Agreement has been, and each of the Collateral Agreements to which Purchaser is a party will be, duly executed and delivered. This Agreement constitutes, and each of the Collateral Agreements to which Purchaser is a party will constitute, the legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except to the extent that their enforceability may be subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and to general equitable principles.

**5.03 Noncontravention.** Neither the execution and delivery of this Agreement or the Collateral Agreements to which Purchaser is or will be a party, nor the consummation or performance of any of the Contemplated Transactions, will in any material respect contravene, conflict with or result in a violation of (a) any Applicable Law of which Purchaser is aware or any Judgment to which Purchaser is subject; (b) the provisions of any material Contract to which Purchaser is subject; or (c) the provisions of the Organizational Documents of Purchaser. Purchaser does not need to (i) give any notice to, make any filing with, or obtain any authorization, consent, or approval of any Governmental Entity, nor (ii) obtain

any third party consents in connection with entering into this Agreement or any of the Collateral Agreements or consummating the Contemplated Transactions.

## **ARTICLE VI COVENANTS**

**6.01 Publicity.** Purchaser, on the one hand, and the Company, on the other hand, shall consult with each other before issuing any press release or making any public statement with respect to this Agreement and shall not issue any such press release or make any such public statement without the prior written consent of the other Parties, which consent shall not be unreasonably withheld, conditioned or delayed, except as such release or announcement may be required by Applicable Law. Purchaser and its Affiliates may provide information about the subject matter of this Agreement in connection with their fundraising, marketing, informational or reporting activities of the kind customarily provided to investors and prospective investors with respect to investments of this kind by private equity fund sponsors.

### **6.02 Tax Matters.**

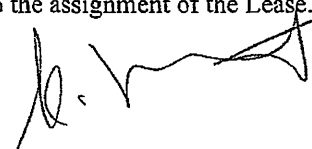
(a) All real, personal and intangible property Taxes and similar ad valorem obligations that are imposed on a periodic basis ("Property Taxes") levied with respect to the Purchased Assets for any Tax period that includes but does not end on the Closing Date shall be apportioned between the Company, on the one hand, and Purchaser, on the other, based on the number of days of such taxable period up to and including the Closing Date and the number of days of such taxable period after the Closing Date. The Company shall timely pay the proportionate amount of such Taxes that is attributable to the portion of the taxable period ending on the Closing Date, and Purchaser shall be liable for the proportionate amount of such Taxes that is attributable to the taxable period beginning after the Closing Date.

(b) Notwithstanding anything to the contrary, the Company shall timely pay all transfer, sales, documentary, use, excise, personal property, intangible, stamp, or similar Taxes (collectively, "Transfer Taxes"), if any, arising in connection with the consummation of the transactions contemplated under this Agreement (including those Transfer Taxes imposed on Purchaser). To the extent that any Transfer Taxes are imposed on Purchaser, the Company shall promptly pay such Transfer Taxes and indemnify and hold Purchaser harmless for such Transfer Taxes. The Company shall cooperate with Purchaser and make any filings reasonably requested by the Purchaser to obtain any available Tax clearance certificates in connection with the transactions contemplated pursuant to this Agreement.

**6.03 Lease.** Within sixty (60) days after Closing, with respect to the Lease, the Company shall either:

(a) release PDA from the Lease, including any and all obligations and liabilities thereunder, provide an indemnity to PDA with regards to the release of the Lease ("New Lease"), and have PDA enter into with Purchaser a new lease agreement with an option to purchase the Land on no less favorable terms as the Lease; or

(b) enter into an extension of the Lease for a period that shall not expire prior to June 30, 2019 and the Company, Purchaser and PDA shall execute an Assignment and Assumption Agreement, substantially in form attached hereto as Exhibit C, which shall (i) assign the Lease to Purchaser and (ii) provide an indemnity to PDA with regards to the assignment of the Lease.



(c) The Company shall inform and keep updated the Purchaser of its performance of this Article 6.03 and shall ensure that the rights over the Land, whether leasehold or otherwise, are confirmed in the name of the Purchaser within the time period specified.

**6.04 Further Cooperation.** From time to time after the Closing, the Company, at Purchaser's request and without further consideration, and without limiting the obligations hereunder of the Company at or prior to the Closing and any right Purchaser may otherwise have under this Agreement, agrees to execute and deliver or to cause to be executed and delivered such other instruments of transfer as Purchaser may reasonably request to transfer to Purchaser more effectively the right, title and interest in or to the Purchased Assets and to take or cause to be taken such further or other action as may reasonably be necessary or appropriate in order to effectuate the transactions contemplated by this Agreement.

**6.05 Expenses.** All Transaction Expenses shall be paid by the Party incurring such expense.

**6.06 Waiver of Bulk Sales Compliance.** Purchaser and the Company hereby waive compliance of bulk sales laws of any applicable jurisdiction, and the Company agrees to indemnify and hold harmless Purchaser and its Affiliates from and against any claims arising out of or due to the failure to comply with such bulk sales laws.

## **ARTICLE VII INDEMNIFICATION AND RELATED MATTERS**

**7.01 Indemnification by the Company.** Subject to the limitations set forth in this Article VIII and elsewhere in this Agreement, from and after the Closing Date, the Company shall indemnify Purchaser and its Affiliates, Representatives, directors, shareholders, customers, clients, successors and assigns (each a, "Purchaser Party" and collectively, the "Purchaser Parties") from and against any Damages that any Purchaser Party actually incurs as a direct result of:

- (a) any breach of any representation or warranty contained in Article IV;
  - (b) any breach by the Company of a covenant contained in this Agreement;
  - (c) any Extinguished Indebtedness of the Company not paid and discharged in full on or prior to the Closing Date or not otherwise taken into account in the determination of the Closing Deductions;
  - (d) the Land, including any assignment of the Lease or entering into a New Lease;
- or

(e) Any claims and any Proceeding that could affect or threaten to affect or actually affect the rights of the Purchaser over the Purchased Assets, including, but not limited to, Section 4.10 of the Disclosure Schedule.

For the avoidance of doubt, Purchaser may seek, as recourse against the Company for indemnification under Section 7.01, the transfer to Purchaser, on the books of Solargise US, of the Class B Units or any other interest held by the Company in Purchaser or its Affiliates, including any shares or Units in the Purchaser issued upon conversion of any or all Class B Units.

**7.02 Indemnification by Purchaser.** Subject to the limitations set forth in this Article VII and elsewhere in this Agreement, from and after the Closing Date, Purchaser shall indemnify the Company and its Affiliates, Representatives, successors and assigns (each, a "Company Party" and

collectively, the "Company Parties") from and against any Damages incurred as a direct result of any breach by Purchaser of (a) any representation or warranty contained in Article V or (b) any covenant in this Agreement.

**7.03 Expiration of Representations and Warranties and Covenants.**

(a) All representations and warranties contained in this Agreement are made as of the date of this Agreement and shall remain in full force and effect until the expiration of the relevant statute of limitations. The covenants contained in this Agreement shall survive the Closing until they are otherwise terminated by their respective terms (it being understood that any claims for breaches of such covenants may be made at any time prior to the expiration of the applicable statute of limitations).

(b) Notwithstanding anything in this Section 7.03 to the contrary, if, prior to the relevant survival period set forth in Section 7.03(a) (the "Claim Expiration Date"), a Purchaser Party or a Company Party, as applicable, shall have duly delivered in good faith a conforming Claim Notice to Purchaser or the Company, as applicable, then the specific indemnification claim set forth in such Claim Notice (to the extent of the matter specified in the Claim Notice) shall survive the Claim Expiration Date and shall not be extinguished thereby until resolution of the matter specified in the Claim Notice in accordance with this Agreement.

**7.04 Indemnification Claims.**

(a) If a Purchaser Party or Company Party (the "Claimant") wishes to assert an indemnification claim in accordance with this Article VII, then the Claimant shall deliver to Purchaser or the Company, as applicable, a "Claim Notice" setting forth:

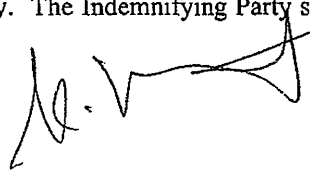
(i) the specific representation, warranty, or covenant alleged to have been breached by such other Party or other indemnifiable matter described in Section 7.01;

(ii) a reasonably detailed description of the facts and circumstances giving rise to the alleged breach of such representation, warranty or covenant or other indemnifiable matter described in Section 7.01; and

(iii) a reasonably detailed description of, and a reasonable estimate of the total amount of, the Damages actually incurred or expected to be incurred by the Claimant as a direct result of such alleged breach or other indemnifiable matter described in Section 7.01.

**7.05 Defense of Third Party Claims.**

(a) If either a Purchaser Party or a Company Party (the "Indemnified Party") receives notice or otherwise obtains knowledge of any Proceeding commenced or threatened by a third party (each, a "Third Party Claim") against the Indemnified Party that may give rise to an indemnification claim against the other Party (the "Indemnifying Party"), then the Indemnified Party shall promptly deliver to the Indemnifying Party a written notice (the "Third Party Claim Notice") describing the Third Party Claim in reasonable detail (including a reasonable description of the claim, the basis therefor and the amount thereof, if known). The failure to provide such notice timely shall not relieve the Indemnifying Party of its obligations hereunder unless and to the extent the Indemnifying Party is materially and actually prejudiced thereby. The Indemnifying Party shall have no right to assume the defense of any such Third Party Claim.



(b) The Indemnified Party shall proceed diligently to defend such Third Party Claim with the assistance of counsel reasonably satisfactory to the Indemnifying Party; *provided, however,* that the Indemnified Party shall not settle, adjust, or compromise such Third Party Claim, or admit any liability with respect to such Third Party Claim, without the prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld, conditioned or delayed; provided, that the Indemnified Party may settle such Third Party Claim if such settlement, adjustment or compromise includes a full and complete release of the Indemnified Party and the Third Party Claim is satisfied exclusively with money damages.

**7.06 Exclusive Remedy.** Except (a) in the case of fraud by the Company with respect to a representation or warranty in Article IV; or fraud of Purchaser with respect to a representation or warranty in Article V, (b) with respect to the right to specific performance in accordance with Section 8.12 in the event of a breach by any Party of a covenant under this Agreement, and (c) with respect to the rights and obligations of the Parties under Section 6.02 relating to Taxes, the right of each Party to assert indemnification claims and receive indemnification payments pursuant to this Article VII shall, from and after the Closing Date, be the sole and exclusive right and remedy exercisable by such Party with respect to any breach by any other Party of any covenant, representation, warranty, or otherwise under this Agreement, relating to this Agreement or relating to the Contemplated Transactions.

**7.07 Characterization of Indemnification Payment.** Any payment made pursuant to or in connection with this Article VII shall be deemed to be an adjustment to the Purchase Price payable under this Agreement to the extent permitted by Applicable Law.

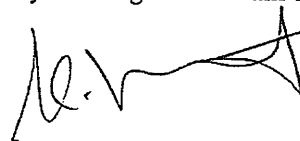
## **ARTICLE VIII GENERAL PROVISIONS**

**8.01 Disclosure Schedule.** Each section of the Disclosure Schedule qualifies the correspondingly numbered representation and warranty or covenant and any other representation or warranty, if it is reasonably apparent on the face of such disclosure that it likewise qualifies such other representation or warranty. The Disclosure Schedule is qualified in its entirety by reference to specific provisions of the Agreement, and is not intended to constitute, and shall not be construed as constituting, any representation or warranty or covenant of the Company, except as and to the extent expressly provided in the Agreement. Inclusion of information in the Disclosure Schedule shall not be construed as an admission that such information is material to the Company or its assets, liabilities, financial condition, results, business and/or operations. The fact that any item of information is contained in the Disclosure Schedule shall not be construed to mean that such information is required to be disclosed by the Agreement. Such information shall not be used as a basis for interpreting the term "material," "materially," "materiality" or "Material Adverse Effect" in the Agreement. References to any document in the Disclosure Schedule do not purport to be complete and are qualified in their entirety by the document itself. Capitalized terms used but not defined in the Disclosure Schedule shall have the same meanings given them in this Agreement.

### **8.02 Assignment.**

(a) This Agreement shall be binding upon and for the benefit of the Company and its respective successors and assigns (if any) and Purchaser and its successors and assigns (if any).

(b) Neither Purchaser nor the Company shall be permitted to assign any of its rights or delegate any of its obligations under this Agreement without the other Parties' prior written consent; *provided,* that Purchaser shall be permitted to assign any of its rights under this Agreement to



any Affiliate of Purchaser, to Purchaser's lenders, or to any third party in connection with the sale by Purchaser (or such transferee Affiliate) of all or substantially all of Purchaser's (or such transferee Affiliate's) assets.

**8.03 No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties and their successors and assigns and nothing herein expressed or implied shall give or be construed to give to any Person (other than the Parties and such successors and assigns) any legal or equitable rights hereunder, other than the persons intended to benefit from the provisions of Article VII, who shall be intended beneficiaries under this Agreement and have the right to enforce such provisions directly as specifically provided therein.

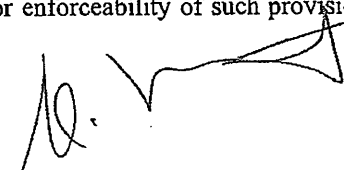
**8.04 Notices.** All notices and other communications pursuant to this Agreement shall be in writing and shall be deemed given if delivered personally, sent by e-mail, sent by nationally-recognized overnight courier or mailed by registered or certified mail (return receipt requested), postage prepaid, to the Parties at the addresses set forth on Schedule 8.04 or to such other address as the Party to whom notice is to be given may have furnished to the other Parties in writing in accordance herewith. Any such notice or communication shall be deemed to have been delivered and received (a) in the case of personal delivery, on the date of such delivery, (b) in the case of e-mail delivery, on the date of such delivery, (c) in the case of a nationally recognized overnight courier in circumstances under which such courier guarantees next Business Day delivery, on the next Business Day after the date sent, and (d) in the case of mailing, on the third (3<sup>rd</sup>) Business Day following that on which the piece of mail containing such communication is posted.

**8.05 Counterparts.** This Agreement may be executed in one or more counterparts, each of which when executed and delivered shall be an original, and all of which when executed shall constitute one and the same instrument. The exchange of copies of this Agreement and of signature pages by facsimile or other electronic transmission (including in "portable document format" or "PDF") shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes.

**8.06 Entire Agreement.** This Agreement and the other Collateral Documents together constitute the entire agreement among the Parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, both written and oral, among the Parties, or any of them, with respect to the subject matter hereof.

**8.07 Amendments.** This Agreement may not be amended except pursuant to the written agreement of each of Purchaser and the Company.

**8.08 Severability.** The provisions of this Agreement will be deemed severable and the invalidity or unenforceability of any provision will not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision will be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision, and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances will not be affected by such invalidity or unenforceability, nor will such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.



**8.09 Governing Law; Venue; and Arbitration.**

(a) This Agreement, and all claims of causes of action (whether in contract or tort) that may be based upon, arise out of, or relate to this Agreement or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), shall be governed solely by the internal laws of the State of Delaware, without regard to the conflict-of-law principles thereof.

(b) Subject to the express limitations contained elsewhere in this Agreement, any Proceeding or other legal action relating to this Agreement or the enforcement of any provision of this Agreement (including any Proceeding relating to a claim for indemnification in accordance with Article VII or for specific performance in accordance with Section 8.11) shall be brought or otherwise commenced in Delaware Court of Chancery. Each Party:

(i) expressly and irrevocably consents and submits to the exclusive jurisdiction of the Delaware Court of Chancery (and each appellate court located in the State of Delaware) in connection with any such Proceeding;

(ii) agrees that the Delaware Court of Chancery shall be deemed to be a convenient forum; and

(iii) agrees not to assert (by way of motion, as a defense or otherwise), in any such Proceeding commenced in the Delaware Court of Chancery, any claim that such Party is not subject personally to the jurisdiction of such court, that such Proceeding has been brought in an inconvenient forum, that the venue of such Proceeding is improper or that this Agreement or the subject matter of this Agreement may not be enforced in or by such court.

(c) In the event that the Delaware Court of Chancery does not accept jurisdiction in accordance with Section 8.09(b), each Party hereby expressly and irrevocably agrees that any Proceeding or other legal action relating to this Agreement or the enforcement of any provision of this Agreement shall be brought exclusively in the United States District Court for the District of Delaware.

(d) Notwithstanding the above, the Parties agree that all disputes arising out of or in relation to this Agreement shall be settled amicably by the Parties. In the event no amicable settlement is arrived at within a period of 15 (*fifteen*) days from the date of first initiation of the dispute by one Party to another, the Parties shall resolve the dispute by means of arbitration pursuant to the rules of the London Court of International Arbitration. The arbitration shall be conducted by an arbitral tribunal comprising of 3 (*three*) arbitrators. Each Party shall appoint 1 (*one*) arbitrator and the arbitrators so appointed shall appoint the third presiding arbitrator. The arbitration proceedings shall be conducted in English language only and the seat of arbitration shall be London, England. The award of the arbitral tribunal shall be final and binding on the Parties.

**8.10 Attorney's Fees.** If any Proceeding relating to this Agreement or any of the Contemplated Transactions or the enforcement thereof is brought against any Party, the prevailing Party, if any, shall be entitled to recover reasonable attorneys' fees, costs and disbursements (in addition to any other relief to which the prevailing Party may be entitled).

**8.11 Specific Performance.** The Company, on the one hand, and Purchaser, on the other hand, recognizes that in the event of any breach by the other of this Agreement (whether or not such

breach is material or willful), monetary damages alone would not be adequate to compensate the Company or Purchaser, as applicable, for their injuries. The Company and Purchaser shall therefore be entitled, in addition to any other remedies that may be available, to obtain specific performance of the terms of this Agreement. If any action is brought to enforce this Agreement, the Company and Purchaser shall waive the defense that there is an adequate remedy at law. The Company and Purchaser hereby waive any requirement for the securing or posting of any bond in connection with such remedy. The Company and Purchaser further agree that the only permitted objection that it may raise in response to any action for equitable relief by the other is that it contests the existence of a breach or threatened breach of this Agreement.

**8.12 Waiver.**

(a) No failure on the part of any Person to exercise any power, right, privilege or remedy under this Agreement, and no delay on the part of any Person in exercising any power, right, privilege or remedy under this Agreement, shall operate as a waiver of such power, right, privilege or remedy; and no single or partial exercise of any such power, right, privilege or remedy shall preclude any other or further exercise thereof or of any other power, right, privilege or remedy.

(b) No Person shall be deemed to have waived any claim arising out of this Agreement, or any power, right, privilege or remedy under this Agreement, unless the waiver of such claim, power, right, privilege or remedy is expressly set forth in a written instrument duly executed and delivered on behalf of such Person; and any such waiver shall not be applicable or have any effect except in the specific instance in which it is given.

**8.13 Construction.**

(a) For purposes of this Agreement, whenever the context requires: the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neutral genders; the feminine gender shall include the masculine and neutral genders; and the neutral gender shall include the masculine and feminine genders.

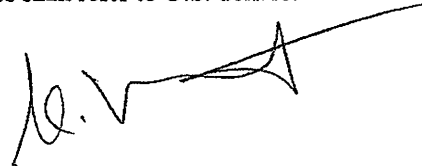
(b) Each Party acknowledges that it has participated in the drafting of this Agreement, and, as a result, the Parties agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be applied in the construction or interpretation of this Agreement.

(c) As used in this Agreement, the words "include" and "including," and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words "without limitation."

(d) Except as otherwise indicated, all references in this Agreement to "subsections," "Sections," "Schedules" and "Exhibits" are intended to refer to subsections and Sections of this Agreement, Schedules of this Agreement and Exhibits to this Agreement.

(e) The words "this Agreement," "hereby," "hereof," "herein," "hereunder," and comparable words refer to all of this Agreement, including the Appendices, Schedules, and Disclosure Schedule to this Agreement, and not to any particular Article, Section, preamble, recital, or other subdivision of this Agreement or Appendix, Schedule, or Disclosure Schedule to this Agreement.

(f) All references herein to "\$" or dollars shall refer to U.S. dollars.



The headings contained in this Agreement or Schedule hereto, the Disclosure Schedule and in the table of contents to this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. The Disclosure Schedule and all Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or in the Disclosure Schedule but not otherwise defined therein, shall have the meaning as defined in this Agreement.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first written above.


**PURCHASER:**

**SOLARGISE AMERICA, LLC**

By: \_\_\_\_\_  
Name: Rajdeep Basu  
Title: Manager

**COMPANY:**

**V.A. METALS, LLC**

By:  \_\_\_\_\_  
Name: KV Naidu  
Title: Manager and Sole Member

**WITNESS**

NAME:	
ADDRESS:	
OCCUPATION:	
DATE:	
SIGNATURE:	

**Schedule 8.04**

**Notice Addresses**

if to Purchaser, to:

Solargise America, LLC  
24 Fitzroy Square  
London, W1T 6EP, United Kingdom  
Attention: Rajdeep Basu  
Email: [rajbasu@mac.com](mailto:rajbasu@mac.com)

with a copy (which shall not constitute notice) to:

DLA Piper LLP (US)  
1650 Market Street  
Suite 4900  
Philadelphia, Pennsylvania 19103  
E-mail: [fahd.riaz@dlapiper.com](mailto:fahd.riaz@dlapiper.com)  
Attention: Fahd Riaz

if to the Company, to:

V.A. Metals, LLC  
1 Hoku Way  
Pocatello, Idaho 83204  
Attention: Kola Venkatrama Naidu  
E-mail: [kvr5housing@gmail.com](mailto:kvr5housing@gmail.com)

with a copy (which shall not constitute notice) to:

Zehn  
No. 21/1, 3rd Floor  
Haudin Road, Ulsoor,  
Bengaluru – 560 042  
Karnataka 560042, India  
Attention: Kartik Ravichander  
Email: [kartik.ravichander@zehn.in](mailto:kartik.ravichander@zehn.in)

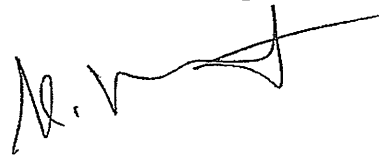


## EXHIBIT A

### **Purchased Assets**

The details of the Purchased Assets are as follows:

- All structures above Ground that are onsite at the Plant, including without limitation, the following:
  - Administration Building: The administrative building is an estimated 44,545 square feet plan. The building is a four-story, steel -braced frame and clad structure with a double- pitch roof. The building is designed as a climate controlled space and includes a number of internal enclosures/spaces for offices, conference rooms, lunch rooms, restrooms, apartments and related spaces.
  - Control / Maintenance Building: The control maintenance building is an approximately 60'-0" x 180\*-0" plan with an eave height of approximately 15'-3" over the control room area and portion of the warehouse and 23'-9" over the remaining portion of the warehouse. The building is a single story, steel braced frame and clad pre-engineered structure (Butler) with a double-pitch roof. The control room area Is a climate controlled space consisting primarily of a control room, computer room, locker room, restroom, offices and a kitchen/meeting room,
  - Post Processing Building: The post processing building is an approximately 308'-0" x plan with an additional approximately 53'-0" x 68'-0" truck loading dock plan area on the southwest corner. The majority of the building is approximately 21'-D" high, with portions extending up to approximately 30'-0". The building is a single story, steel braced frame and clad structure with a membrane roof. The building was designed to be a climate controlled space to include a number of internal enclosures/spaces including rod sizing/breaking room, sample preparation room, slim rod/analytic puller room, laboratories, break/lunch rooms, offices and restrooms. The building incorporates cleanroom enclosures with associated HVAC.
  - Reactor Building including Chiller Building: The reactor building is a multi-space enclosure. The building is a three-story, steel braced frame and clad structure with a double-pitch roof. The building was designed to be a climate controlled space and houses the reactors, reactor support electrical equipment, gas consoles, and wash facilities, and includes a number of Internal enclosures/spaces for offices.
  - Waste Treatment Building: The wastewater treatment building is an approximately 100'-0" 62'-0" plan with an cave height of approximately 34'-0". The building is a single story, steel braced frame and clad pre-engineered structure (Butler) with a double-pitch roof. The building includes heating and ventilation and consists primarily of an open plan space with one framed Interior enclosure.
  - Compressor Building
- All manuals, paperwork, drawings regarding equipment, building and structure both onsite at the Facility and in the electronic data room to which Buyer has been given access.
- Equipment as detailed In Hoku #3 Auction Catalog lot #2- 399 including A Lots.
- List of Equipment:



	Description of Equipment	
449	UNUSED ABB POWER DISTRIBUTION CENTER. WITH SWITCHGEAR. 3000 AMPS. 4.16 KV. WITH DIRECTIONAL OVERCURRENT RELAYS. UPS SYSTEM, TEMPERATURE CONTROLLED STEEL ENCLOSURE, STRUCTURAL STEEL FRAME. BUILT 2003.	1
460	UNUSED ABB POWER DISTRIBUTION CENTER. WITH 15 KV SWITCHGEAR, 3000 AMPS. MOTOR CONTROL CENTER, COMMUNICATION PROCESSORS, FEEDER RELAYS. UPS SYSTEM, TEMPERATURE CONTROLLED. ELEVATED ON STEEL STRUCTURE AND MEZZANINE. BUILT 2012.	1
468	UNUSED ASS MAXSG POWER DISTRIBUTION CENTER TYPE NEMA 1A. WITH 0.48 KV SWITCHGEAR. 4000 AMPS, 85 KA RMS. 480 VOLTS. UNITIZED IN TEMPERATURE CONTROLLED MODULE, STEEL CONSTRUCTION.	1
452	UNUSED ABB POWER DISTRIBUTION CENTER. WITH SWITCHGEAR, 3000 AMPS, 480 VOLTS. WITH DIRECTIONAL OVERCURRENT RELAYS, UPS SYSTEM, TEMPERATURE CONTROLLED STEEL ENCLOSURE, STRUCTURAL STEEL FRAME. BUILT 2009.	1
467	UNUSED PACIFIC SYSTEM ELECTRIC SWITCHGEAR & MOTOR CONTROL CENTER, ABB SWITCHGEAR, 480V INCOMING, TEMPERATURE CONTROLLED, ENCLOSURE, METAL ENCLOSED INTERRUPTER SWITCH. QUALITROL TEMPERATURE MONITOR, SCHWEITZER ENGINEERING LABORATORIES DIRECTIONAL OVERCURRENT RELAYS, ABB TYPE SACE E6 MCC DRIVES, ACCESS DOORWAYS & STAIRWAYS.	1
453	Remote Instrumentation Enclosure, Elevated Galvanized Steel Structure, Stairway, Handrails, Temperature Controlled, (8) Honeywell Instrumentation Cabinet, uninterruptible Power Supply, Remote Internet Uplink,	1
461	Remote Instrumentation Enclosure, Elevated Galvanized Steel Structure, Stairway, Handrails, Temperature Controlled, (4) Honeywell Instrumentation Cabinet, Uninterruptable Power Supply, Remote Internet Uplink.	1
462	Remote instrumentation Enclosure, Elevated Galvanized Steel Structure, Stairway, Handrails, Temperature Controlled, (5) Honeywell Instrumentation Cabinet, Uninterruptable Power Supply, Remote Internet Uplink.	1
21	UNUSED GERHARD RAUH TCS APPROXIMATELY 2,700 GALLON VERTICAL STAINLESS STEEL INJECTION TANK. 5' DIAMETER X 18' STRAIGHT SIDE. RATED 189 PSI @ 302°F. INSULATED, BUILT 2008	1

	Description of Equipment	
71	UNUSED 547 SQFT G & R GERHARD AND RAUH GMBH STAINLESS STEEL SHELL AND TUBE, U-TUBE TYPE HEAT EXCHANGED. 316L STAINLESS STEEL SHELL BUILT FOR 94PSI AT 356 DEGREES FAHRENHEIT. 316L STAINLESS STEEL TUBES BUILT FOR 94PSI AT 572 DEGREES FAHRENHEIT, BUILT 2008.	1
72	UNUSED S47 SQFT G & R GERHARD AND RAUH GMBH STAINLESS STEEL SHELL AND TUBE, U-TUBE TYPE HEAT EXCHANGER. 316L STAINLESS STEEL SHELL BUILT FOR 94PSI AT 386 DEGREES FAHRENHEIT. 316L STAINLESS STEEL TUBES BUILT FOR 94PSI AT 572 DEGREES FAHRENHEIT. BUILT 2008.	1
73	UNUSED S47 SQFT G & R GERHARD AND RAUH GMBH STAINLESS STEEL SHELL AND TUBE, U-TUQE TYPE HEAT EXCHANGER. 316L STAINLESS STEEL SHELL BUILT FOR 94PSI AT 356 DEGREES FAHRENHEIT. 316L STAINLESS STEEL TUBES BUILT FOR 94PSI AT 572 DEGREES FAHRENHEIT. BUILT 2008.	1
74	UNUSED 547 SQFT G & R GERHARD AND RAUH GMBH STAINLESS STEEL SHELL AND TUBE, U-TUBE TYPE HEAT EXCHANGER. 316L STAINLESS STEEL SHELL BUILT FOR 94PSI AT 355 DEGREES FAHRENHEIT. 316L STAINLESS STEEL TUBES BUILT FOR 94PSI AT 572 DEGREES FAHRENHEIT. BUILT 2008.	
173	UNUSED OHMSTEDE 1717.3 SQUARE FOOT HORIZONTAL CARBON STEEL SHELL AND TUBE HEAT EXCHANGER. 36" DIAMETER X 12' STRAIGHT SIDE. SHELL RATED 280 PSI @ 600°F. TUBES RATED 247 PSI @ 450°F. INSULATED. ON CONCRETE PIERS.	1
176A	UNUSED HARRIS THERMAL TRANSFER PRODUCTS APPROXIMATELY 8414 SQUARE FOOT HORIZONTAL SHELL AND TUBE HEAT EXCHANGER. CARBON STEEL SHELL RATED 150 PSIG @ 170°F. 316L STAINLESS STEEL TUBES RATED 170 PSIG @ 275°F. 316L STAINLESS STEEL HEADS. BUILT 2010.	
17GB	UNUSED HARRIS THERMAL TRANSFER PRODUCTS APPROXIMATELY 8414 SQUARE FOOT HORIZONTAL SHELL AND TUBE HEAT EXCHANGER. CARBON STEEL SHELL RATED 150 PSIG @ 170°F. 316L STAINLESS STEEL TUBES RATED 170 PSIG @ 275°F. 316L STAINLESS STEEL HEADS. BUILT 2010.	1
178	UNUSED SMITHCO ENGINEERING AIR COOLER/FIN FAN HEAT EXCHANGER, 9,441 BARE SQ.FT., SURFACE PER UNIT - FINNED TUBE 199,900 SQ.FT., MODEL 3 F42-140-3, CARBON STEEL 96,600,000 BTU PER HOUR, WATER INPUT AND OUTPUT RATED 4,800,000 LBS PER HOUR. CONSISTS OF (3) BAYS, EACH BUNDLE SIZE 14' WIDE X 42' LONG, SINGLE PASS. (286) 1" DIAMETER X 42' LONG CARBON STEEL TUBES IN EACH BUNDLE RATED 185 PSI	1

	Description of Equipment	
	AT -30 TO 345 DEGREES F. EACH BAY HAS (3) 11' DIAMETER, 6-BLADE FANS, DRIVEN BY A 30 HP, 3/60/460 VOLT, 1750 RPM MOTOR, WITH REDUCER, 7.12:1 RATIO.MOUNTED ON A GALVANIZED FRAME.	
179	UNUSED SMITHCO ENGINEERING AIR COOLER/FIN FAN HEAT EXCHANGER, 9,441 BARE SQ.FT., SURFACE PER UNIT - FINNED TUBE 199,900 SQ.FT., MODEL 3 F42-140-3, CARBON STEEL. 96,600,000 BTU PER HOUR, WATER INPUT AND OUTPUT RATED 4,800,000 LBS PER HOUR. CONSISTS OF (3) BAYS, EACH BUNDLE SIZE 14' WIDE X42' LONG, SINGLE PASS. (286) 1" DIAMETER X 42' LONG CARBON STEEL TUBES IN EACH BUNDLE RATED 185 PSI AT -30 TO 345 DEGREES F. EACH BAY HAS (3) 11' DIAMETER, 6-BLADE FANS, DRIVEN BY A30 HP, 3/50/460 VOLT, 1750 RPM MOTOR, WITH REDUCER, 7.12:1 RATIO.MOUNTED ON A GALVANIZED FRAME.	1
191	UNUSED PERRY PRODUCTS SINGLE PASS SHELL AND TUBE HEAT EXCHANGER, 4,143 SQ.FT., MODEL FTS-48-4143, VERTICAL. CARBON STEEL SHELL RATED 183 PSI/FULL VACUUM AT -20 TO 300 DEGREES F. (2110) 3/4" DIAMETER X 10' LONG SEAMLESS CARBON STEEL TUBES RATED 150 PSI/FULL VACUUM AT -20 TO 300 DEGREES F. OPENINGS SHELL: (2) 8" DIAMETER, TUBES: (2) 10" DIAMETER, CARBON STEEL DOUBLE TUBESHEET DESIGN, CARBON STEEL HEADS.	1
192	UNUSED STEELTEK 1GG SQUARE FOOT HORIZONTAL 304L STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. 12" DIAMETER X 15' LONG. RATED 150 PSI @ 400'F/-50'F SHELL AND TUBE SIDES. INSULATED. BUILT 2009.	1
193	UNUSED STEELTEK 1225 SQUARE FOOT HORIZONTAL 304L STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. SHELL RATED 324 PSI @ 300'F, TUBES RATED 262 PSI @ 300' F. BUILT 2009.	1
194	UNUSED STEELTEK APPROXIMATELY 1355 SQUARE FOOT HORIZONTAL 304L STAINNESS STEEL SHELL AND TUBE HEAT EXCHANGER. SHELL RATED 356F/V PSI @ 400' F. TUBES RATED 317F/V PSI @ 400' F. BUILT 2009.	1
195	UNUSED STEELTEK 157 SQUARE FOOT U-TUBE HORIZONTAL 304L STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. TYPE BXU 15" DIAMETER X11' LONG. SHELL RATED 350F/V PSI @ 400'F/-50'F MAXIMUM WORKING PRESSURE. TUBES RATED 150F/V PSI @ 400'F/- 50'F. INSULATED. BUILT 2009.	
197	UNUSED PERRY 1753 SQUARE FOOT HORIZONTAL 304L STAINLESS STEEL U-TUBE SHELL AND TUBE HEAT	1

	Description of Equipment	
	EXCHANGER. SHELL RATED 350F/V PSI @ 150F/-55F. TUBES RATED 150F/V PSI @ 150F/55F. WITH FLANGED OUTLETS. INSULATED.	
199	UNUSED STEELTEK 2311 SQUARE FOOT HORIZONTAL CARBON STEEL SHELL AND TUBE HEAT EXCHANGER. 26" DIAMETER X 25' LONG. SHELL RATED 312 PSI/FULL VACUUM @ 400F, TUBES RATED 307 PSI/FULL VACUUM @ 400F. INSTALLED ON CONCRETE FOOTING. BUILT 2009.	1
205	UNUSED 1231 SQUARE FOOT PERRY HORIZONTAL 304 STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. 22" DIAMETER X 22' LONG. RATED 300 PSI @ 300F/-50F SHELL AND TUBE SIDES. INSULATED. BUILT 2009.	1
206	UNUSED 1231 SQUARE FOOT PERRY HORIZONTAL 304 STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. 22" DIAMETER X 22' LONG. RATED 300 PSI @ 300F/-50F SHELL AND TUBE SIDES. INSULATED. BUILT 2009.	1
207	UNUSED 1231 SQUARE FOOT PERRY HORIZONTAL 304 STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. 22" DIAMETER X 22' LONG. RATED 300 PSI @ 300F/-50F SHELL AND TUBE SIDES. INSULATED. BUILT 2009.	1
208	UNUSED 1231 SQUARE FOOT PERRY HORIZONTAL 304 STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. 22" DIAMETER X 22' LONG. RATED 300 PSI @ 300 F/-50' F SHELL AND TUBE SIDES. INSULATED. BUILT 2009.	1
209	UNUSED 1231 SQUARE FOOT PERRY HORIZONTAL 304 STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. 22" DIAMETER X 22' LONG. RATED 300 PSI @ 300F/-50F SHELL AND TUBE SIDES. INSULATED. BUILT 2009.	1
210	UNUSED STEELTEK U-TUBE HEAT EXCHANGER, APPROXIMATELY 253 SQ.FT., HORIZONTAL. CARBON STEEL SHELL RATED 550 PSI AT -20 TO 300 DEGREES F. (32) 3/4" DIAMETER X 20' LONG CARBON STEEL TUBES RATED 550 PSI AT -20 TO 300 DEGREES F. INSULATED, TWO-PASS. OPENINGS SHELL: (2) 2", TUBES: (2) 3". SADDLE MOUNTED.	1
234	UNUSED PERRY 1783 SQUARE FOOT HORIZONTAL 304L STAINLESS STEEL U-TUBE SHELL AND TUBE HEAT EXCHANGER. 4' DIAMETER X 22' LONG. SHELL RATED 350 PSI @ 150' F/- 55F. TUBES RATED 212 PSI @ 150F/55F.	1
242	UNUSED STEELTEK 1355 SQUARE FOOT HORIZONTAL 304 STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. SHELL RATED 350 PSI @ 400F/-50F. TUBES RATED 300 PSI @ 400F/-50F. BUILT 2009.	1

	Description of Equipment	
243	UNUSED STEELTEK 3058 SQUARE FOOT 304L STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. 60" DIAMETER X 20' LONG SHELL RATED 350 PSI @ 150°F/-55°F MAXIMUM WORKING PRESSURE. TUBES RATED 260 PSI @ 150°F/-55°F. INSULATED. BUILT 2009	1
246	UNUSED STEELTEK U-TUBE HEAT EXCHANGER, APPROXIMATELY 2,311 SQ.FT., HORIZONTAL. CARBON STEEL SHELL RATED 312 PSI/FV AT -20 TO 400 DEGREES F. (302) 3/4" DIAMETER X 20' LONG CARBON STEEL TUBES RATED 307 PSI/FV AT -20 TO 400 DEGREES F. TWO-PASS. OPENINGS SHELL: (2) 12", TUBES: (2) 8". SADDLE MOUNTED.	1
253	UNUSED PERRY 331 SQUARE FOOT CARBON STEEL SHELL AND TUBE HEAT EXCHANGER- 12" DIAMETER X 20' LONG. SHELL RATED 240 PSI @ 480°F/-20°F. TUBE RATED 340 PSI @ 480°F/-20°F.	1
254	UNUSED PERRY 1231 SQUARE FOOT STAINLESS STEEL SHELL AND TUBE HEAT EXCHANGER. RATED 300 PSI @ 300' F/-50' F SHELL AND TUBE SIDES. INSULATED. BUILT 2009.	1
266	UNUSED FABSCO APPROXIMATELY 3177 SQFT CARBON STEEL SHELL AND TUBE HEAT EXCHANGER. SHELL RATED 350 PSI @ 250°F/-30°F. TUBES RATED 150 PSI @ 200°F/-30°F. BUILT 2008.	1
317	UNUSED HARRIS THERMAL TRANSFER PRODUCTS APPROXIMATELY 2,500 GALLON STAINLESS STEEL STORAGE VESSEL. 6' DIAMETER X 12' STRAIGHT SIDE. WITH FLANGED OUTLETS. ON CARBON STEEL SKIRT. BUILT 2011.	1
318	UNUSED HARRIS THERMAL TRANSFER PRODUCTS APPROXIMATELY 740 GALLON STAINLESS STEEL STORAGE VESSEL. 4' 6" DIAMETER X 6' 6" STRAIGHT SIDE. WITH FLANGED OUTLETS. ON CARBON STEEL SKIRT. BUILT 2011.	1
418	UNUSED APPROXIMATELY 496 SQFT 304L STAINLESS STEEL STEELTEK SHELL AND TUBE HEAT EXCHANGER. RATED FOR 150PSI @ 250 DEGREES FAHRENHEIT SHELL SIDE AND TUBE SIDE. BUILT 2010.	1
459	UNUSED ABB POWER DISTRIBUTION CENTER. WITH SWITCHGEAR. 3000 AMPS. 480 VOLTS. WITH DIRECTIONAL OVERCURRENT RELAYS, UPS SYSTEM, TEMPERATURE CONTROLLED STEEL ENCLOSURE, STRUCTURAL STEEL FRAME. BUILT 2009	1
366	UNUSED SIEMENS 30 KVA TRANSFORMER. DRY TYPE. CLASS AA. 3 PHASE, 60 HZ	1
356a	UNUSED SIEMENS 30 KVA TRANSFORMER. DRY TYPE. CLASS AA. 3 PHASE, 60 HZ	1
425	UNUSED EATON 30 KVA TRANSFORMER. DRY TYPE, BUILT 2011	1

	Description of Equipment	
5000	100 gallon steel gas tank	1
5001	(2) 2' x 8' diameter steel water troughs	1 set of 2 pieces
	500 gallon steel gas tank	1
5003	Misc. (30) 2" steel piping	1 set of 30 pieces

*10-1-11*

**EXHIBIT B**

**Lease**

(See attached)

**EXHIBIT C**

**Form of Assignment and Assumption Agreement**

(See attached)

**EXHIBIT D**

**Form of LLC Agreement of Purchaser**

(See attached)

**EXHIBIT E**

**Form of Bill of Sale**

(See attached)

**EXHIBIT F**

**Form of Naidu Indemnification Guaranty Agreement**

(See attached)

**EXHIBIT G**

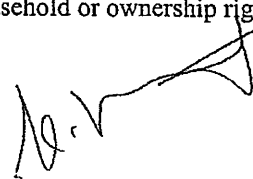
**Company Operating Agreement**

(See attached)

EXHIBIT - H

Payment of Purchase Price in accordance with Article 3.02(a)(ii)

- a) **Put Option A:** On the Effective Date, the Purchaser shall issue to the Company and the Company shall subscribe to 1,500,000/- (*One Million and Five Hundred Thousand*) Class B Units having book value per Unit of USD 1/- (United States Dollars One only) for an aggregate value of USD 1,500,000/- (United States Dollars One Million and Five Hundred Thousand only).
- b) **Put Option B:** On the Effective Date, the Purchaser shall issue to the Company and the Company shall subscribe to 1,000,000 [*One Million*] Class B Units having book value per Unit of USD 1/- (United States Dollars One only) for a aggregate value of USD 1,000,000/- (United States Dollars One Million only).
- c) **Put Option C:** On the Effective Date, he Purchaser shall issue to the Company and the Company shall subscribe to 1,000,000 [*One Million*] Class B Units having book value per Unit of USD 1/- (United States Dollars One only) for an aggregate value of USD 1,000,000/- (United States Dollars One Million only).
- d) **Put Option D:** On the Effective Date, the Purchaser shall issue to the Company and the Company shall subscribe to 2,000,000 [*Two Million*] Class B Units having book value per Unit of USD 1/- (United States Dollars One only) for an aggregate value of USD 2,000,000/- (United States Dollars Two Million only).
- e) **Put Option E:** On the Effective Date, the Purchaser shall issue to the Company and the Company shall subscribe to 2,172,217 [*Two Million One Hundred and Seventy Two Thousand Two Hundred and Seventeen only*] Class B Units having book value per Unit of USD 1/- (United States Dollars One only) for an aggregate value of USD 2,172,217/- (United States Dollars Two Million One Hundred and Seventy Two Thousand Two Hundred and Seventeen only).
- f) **Put Option F:** On the Effective Date, the Purchaser shall issue to the Company and the Company shall subscribe to 25,000,000 (twenty five million) Class B Units having book value per Unit of USD 1/- (United States Dollars One only) for an aggregate value of USD 25,000,000/- (United States Dollars Twenty Five Million). The Parties agree that the redemption of this option in accordance with the LLC Agreement, shall be permitted to be done solely upon the Purchaser procuring either leasehold or ownership rights as specified in accordance with Article 6.03 of this Agreement.



**EXHIBIT D**  
**DEMAND LETTERS OF VA METALS**  
**[see attached]**



**V A Metals LLC** One HOKU Way • Pocatello, ID 83204 • 208.680.2736 • USA

Date: 28<sup>th</sup> March 2019

To,  
The Manager,  
Solargise America LLC,  
21/1, 3<sup>rd</sup> Floor, Haudin Road,  
Ulsoor, Bengaluru - 560042

Dear Sir/Ma'am,

**Ref: Amended and Restated Operating Agreement dated 6<sup>th</sup> June 2018**

**In re: Notice for Redemption of 1,000,000 (One Million) Class B Member Units held in Solargise America LLC**

In pursuance to Article 8.3 (g) of the Amended and Restated Operating Agreement dated 06<sup>th</sup> June 2018 ("Agreement") executed between Solargise America LLC, (the "Company"), Solargise UK Limited and VA Metals LLC, ("We/Our/Us"), we hereby give Notice to the Company as follows:


1. We hereby exercise our right under Article 8.3 (c) of the Agreement for the redemption and repurchase of 1,000,000 (One Million) Class B Member Units of the Company of face value USD 1/- (United States Dollars One only) by the Company ("Option C Units").
2. We hereby call upon and instruct the Company to redeem and repurchase the Option C Units for a consideration of USD 1/- (United States Dollars One only) per Option C Unit, amounting to a total consideration of USD 1,000,000/- (United States Dollars One Million only).
3. The Company is directed to ensure that no part of the consideration payable to Us as above may be allocated for or applied any costs, including but not limited to any and all legal costs and land purchase costs payable as indicated under the Agreement since the option to perform the same has lapsed.

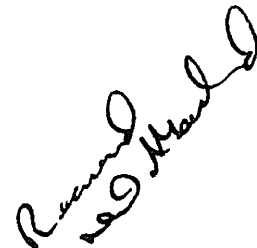
We hereby instruct the Company to take any and all actions necessary for the redemption and repurchase of the Option C Units and reflect the same with the relevant authorities, including but not limited to the performance of any and all obligations by the Company under Article 8.3(h) of the Agreement.

Thanking you,

Yours Sincerely,

For and on behalf of VA Metals LLC

  
Name: KOLA VENKAT RAMANANDU  
Designation: MEMBER





**V A Metals LLC** One HOKU Way • Pocatello, ID 83204 • 208.680.2736 • USA

Date: 28<sup>th</sup> March 2019

To,  
The Manager,  
Solargise America LLC,  
21/1, 3<sup>rd</sup> Floor, Haudin Road,  
Ulsoor, Bengaluru - 560042

Dear Sir/Ma'am,

**Ref: Amended and Restated Operating Agreement dated 6<sup>th</sup> June 2018**

**In re: Notice for Redemption of 2,000,000 (Two Million) Class B Member Units held in Solargise America LLC**

In pursuance to Article 8.3 (g) of the Amended and Restated Operating Agreement dated 06<sup>th</sup> June 2018 ("Agreement") executed between Solargise America LLC, (the "Company"), Solargise UK Limited and VA Metals LLC, ("We/Our/Us"), we hereby give Notice to the Company as follows:

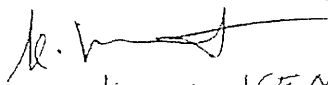
1. We hereby exercise our right under Article 8.3 (d) of the Agreement for the redemption and repurchase of 2,000,000 (Two Million) Class B Member Units of the Company of face value USD 1/- (United States Dollars One only) by the Company ("Option D Units").
2. We hereby call upon and instruct the Company to redeem and repurchase the Option D Units for a consideration of USD 1/- (United States Dollars One only) per Option D Unit, amounting to a total consideration of USD 2,000,000/- (United States Dollars Two Million only).
3. The Company is directed to ensure that no part of the consideration payable to Us as above may be allocated for or applied any costs, including but not limited to any and all legal costs and land purchase costs payable as indicated under the Agreement since the option to perform the same has lapsed.

We hereby instruct the Company to take any and all actions necessary for the redemption and repurchase of the Option D Units and reflect the same with the relevant authorities, including but not limited to the performance of any and all obligations by the Company under Article 8.3(h) of the Agreement.

Thanking you,

Yours Sincerely,

For and on behalf of VA Metals LLC

  
Name: KOLA VENKAT RAMANAIIDU  
Designation: MEMBER





**V A Metals LLC** One HOKU Way • Pocatello, ID 83204 • 208.680.2736 • USA

Date: 28<sup>th</sup> March 2019

To,  
The Manager,  
Solargise America LLC,  
21/1, 3<sup>rd</sup> Floor, Haudin Road,  
Ulsoor, Bengaluru - 560042

Dear Sir/Ma'am,

**Ref: Amended and Restated Operating Agreement dated 6<sup>th</sup> June 2018**

**In re: Notice for Redemption of 2,172,217 (Two Million One Hundred and Seventy Two Thousand Two Hundred and Seventeen) Class B Member Units held in Solargise America LLC**

In pursuance to Article 8.3 (g) of the Amended and Restated Operating Agreement dated 06<sup>th</sup> June 2018 ("Agreement") executed between Solargise America LLC, (the "Company"), Solargise UK Limited and VA Metals LLC, ("We/Our/Us"), we hereby give Notice to the Company as follows:

1. We hereby exercise our right under Article 8.3 (c) of the Agreement for the redemption and repurchase of 2,172,217 (Two Million One Hundred and Seventy Two Thousand Two Hundred and Seventeen) Class B Member Units of the Company of face value USD 1/- (United States Dollars One only) by the Company ("Option E Units").
2. We hereby call upon and instruct the Company to redeem and repurchase the Option E Units for a consideration of USD 1/- (United States Dollars One only) per Option E Unit, amounting to a total consideration of USD 2,172,217 (United States Dollars Two Million One Hundred and Seventy Two Thousand Two Hundred and Seventeen).
3. The Company is directed to ensure that no part of the consideration payable to Us as above may be allocated for or applied any costs, including but not limited to any and all legal costs and land purchase costs payable as indicated under the Agreement since the option to perform the same has lapsed.

We hereby instruct the Company to take any and all actions necessary for the redemption and repurchase of the Option E Units and reflect the same with the relevant authorities, including but not limited to the performance of any and all obligations by the Company under Article 8.3(h) of the Agreement.

Thanking you,

Yours Sincerely,

**For and on behalf of VA Metals LLC**

Name: KOLAVENKAT RAMANAI DU

Designation: MEMBER



V A Metals LLC One HOKU Way • Pocatello, ID 83204 • 208.680.2736 • USA

Date: 28<sup>th</sup> March 2019

To,  
The Manager,  
Solargise America LLC,  
21/1, 3<sup>rd</sup> Floor, Haudin Road,  
Ulsoor, Bengaluru - 560042

Dear Sir/Ma'am,

**Ref: Amended and Restated Operating Agreement dated 6<sup>th</sup> June 2018**

**In re: Notice for Redemption of 25,000,000 (Twenty Five Million) Class B Member Units held in Solargise America LLC**

In pursuance to Article 8.3 (g) of the Amended and Restated Operating Agreement dated 06<sup>th</sup> June 2018 ("Agreement") executed between Solargise America LLC, (the "Company"), Solargise UK Limited and VA Metals LLC, ("We/Our/Us"), we hereby give Notice to the Company as follows:

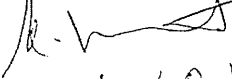
1. We hereby exercise our right under Article 8.3 (f) of the Agreement for the redemption and repurchase of 25,000,000 (Twenty Five Million) Class B Member Units of the Company of face value USD 1/- (United States Dollars One only) by the Company ("Option F Units").
2. We hereby call upon and instruct the Company to redeem and repurchase the Option F Units for a consideration of USD 1/- (United States Dollars One only) per Option F Unit, amounting to a total consideration of USD 25,000,000 (United States Dollars Twenty Five Million).
3. The Company is directed to ensure that no part of the consideration payable to Us as above may be allocated for or applied any costs, including but not limited to any and all legal costs and land purchase costs payable as indicated under the Agreement since the option to perform the same has lapsed.

We hereby instruct the Company to take any and all actions necessary for the redemption and repurchase of the Option F Units and reflect the same with the relevant authorities, including but not limited to the performance of any and all obligations by the Company under Article 8.3(h) of the Agreement.

Thanking you,

Yours Sincerely,

For and on behalf of VA Metals LLC

  
Name: KOLA VENKAT RAMA NAIDU  
Designation: MEMBER





V A Metals LLC One HOKU Way • Pocatello, ID 83204 • 208.680.2736 • USA

Date: 28<sup>th</sup> March 2019

To,  
The Manager,  
Solargise America LLC,  
21-1, 3<sup>rd</sup> Floor, Haudin Road,  
Ulsoor, Bengaluru - 560042

Dear Sir/Ma'am,

**Ref: Amended and Restated Operating Agreement dated 6<sup>th</sup> June 2018**

**In re: Notice for Redemption of 1,000,000 (One Million) Class B Member Units held in Solargise America LLC**

In pursuance to Article 8.3 (g) of the Amended and Restated Operating Agreement dated 06<sup>th</sup> June 2018 ("Agreement") executed between Solargise America LLC, (the "Company"), Solargise UK Limited and VA Metals LLC, ("We/Our/Us"), we hereby give Notice to the Company as follows:


1. We hereby exercise our right under Article 8.3 (b) of the Agreement for the redemption and repurchase of 1,000,000 (One Million) Class B Member Units of the Company of face value USD 1/- (United States Dollars One only) by the Company ("Option B Units").
2. We hereby call upon and instruct the Company to redeem and repurchase the Option B Units for a consideration of USD 1/- (United States Dollars One only) per Option B Unit, amounting to a total consideration of USD 1,000,000/- (United States Dollars One Million only).
3. The Company is directed to ensure that no part of the consideration payable to Us as above may be allocated for or applied any costs, including but not limited to any and all legal costs and land purchase costs payable as indicated under the Agreement since the option to perform the same has lapsed.

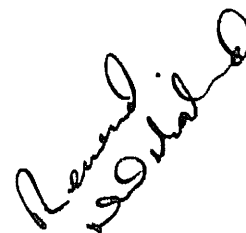
We hereby instruct the Company to take any and all actions necessary for the redemption and repurchase of the Option B Units and reflect the same with the relevant authorities, including but not limited to the performance of any and all obligations by the Company under Article 8.3(h) of the Agreement.

Thanking you,

Yours Sincerely,

For and on behalf of VA Metals LLC

  
Name: K O LAKSHMINARAYANA MURTHY  
Designation: MEMBER



**EXHIBIT E**  
**VA METALS ACCEPTANCE LETTER**  
**[see attached]**



**V A Metals LLC** One HOKU Way • Pocatollo, ID 83204 • 208.680.2736 • USA

Date: 4<sup>th</sup> April 2019

To,  
The Manager,  
Solargise America LLC,  
21/1, 3rd Floor, Haudin Road,  
Ulsoor, Bengaluru – 560042

Dear Sir/Ma'am

**Ref: Amended and Restated Operating Agreement dated 6<sup>th</sup> June 2018, Redemption Notice dated 28<sup>th</sup> March 2019 and Solargise Waiver Letter dated 1<sup>st</sup> April 2019**

**In re: Notice of Conversion of 31,172,217 (Thirty one million one hundred and seventy two thousand two hundred and seventeen) Class B Units held in Solargise America LLC**

We are in receipt of your waiver letter dated 1<sup>st</sup> April 2019 (“Solargise Waiver Letter”). It is unfortunate that you are unable to perform your duties and obligations under our previous contractual arrangements under the Amended and Restated Operating Agreement dated 6<sup>th</sup> June 2018 (“Operating Agreement”) and the Asset Purchase Agreement dated 6<sup>th</sup> June 2018 (“APA”).

In pursuance to the rights available to us under Article 8.3 (h) read with Article 8.3 (a) of the Operating Agreement executed between Solargise America LLC, (the “Company”), Solargise UK Limited and VA Metals LLC, (“We/Our/Us”), the APA, the Redemption Notice dated 28<sup>th</sup> March 2019 and the Solargise Waiver Letter, we hereby give notice to the Company as follows:

1. We are exercising our rights under Article 8.3(h) of the Agreement to convert 31,172,217 (Thirty one million one hundred and seventy two thousand two hundred and seventeen) non – voting Class B Member Units having face value of USD 1/- (United States Dollars One only) per Class B Member Unit (“Class B Units”) held by us in the Company to 31,172,217 (Thirty one million one hundred and seventy two thousand two hundred and seventeen) Voting Class A Common Units of the Company having face value of USD 1/- (United States Dollars One only) per Class A Common Unit (“Class A Units”).



**V A Metals LLC** One HOKU Way • Pocatello, ID 83204 • 208.680.2736 • USA

2. We hereby instruct the Company to take any and all actions necessary for the conversion of the Class B Units held by us in the Company to Class A Units and reflect the same with the relevant authorities, including but not limited to the performance of any and all obligations by the Company under Article 8.3(h) of the Agreement.

Please note that Mr. K.V Naidu is hereby authorised by Us to execute and do any and all acts as may be necessary in this regard.

Thanking you,

Yours Sincerely,

For and on behalf of VA Metals LLC

Name: KOLA VENKAT RAMA NAIDU

Designation: MEMBER

EXHIBIT F  
CELTIC LIFE LETTER TO PDA  
[see attached]

Celtic Life Sciences, LLC  
2861 N. Marburg Avenue  
Meridian, ID 83646-8281

January 7, 2019

Melanie Gygli  
Director, Planning & Development Services  
City of Pocatello  
P.O. Box 4169  
Pocatello, ID 83205

Dear Ms. Gygli:

This letter is intended to serve as public comment to the Pocatello Development Authority's Request for Proposal and executed Disposition and Development Agreement with Solargise America, LLC ("Solargise"), and to explain why Celtic Life Sciences, LLC ("Celtic") is in the best position to develop the former "Hoku Property."

Celtic finds itself in a unique position, unlike any other potential developer, including Solargise. Celtic was formed on August 19, 2016, with the purpose of being the entity that would develop the Hoku Property following the sale of the equipment that is still on the property. Celtic's vision for the property will be described in more detail below. Celtic also has legal ownership of all of the buildings and improvements on the Hoku Property, purchasing these from V.A. Metals, LLC ("V.A. Metals") on January 19, 2017. Payment was made to V.A. Metals and a Bill of Sale was executed between the parties. In addition, V.A. Metals assigned all of its rights and interest in the lease with the Pocatello Development Authority ("Agency").

For whatever reason, the Agency chose to ignore Celtic's ownership of the buildings and improvements, and the assignment of the lease, and negotiated a secret deal with Solargise. As part of the secret agreements between the Agency and Solargise, V.A. Metals assigned all of its interests in the lease to Solargise so that Solargise could cancel the lease. The only problem is that V.A. Metals had no interest in the lease at the time of assignment, as it had already assigned it to Celtic. The Agency was well aware of these facts, but seems to have believed or been advised that V.A. Metals had reacquired the rights to the building and lease. The Agency failed to conduct any due diligence on the matter, despite receiving inquiries from Celtic about the status of the property. Instead, the Agency and its board members simply lied to representatives of Celtic, and to the public, about the status of the secret negotiations with Solargise. Despite the Agency making no assertion as to the ownership of the buildings, leaving that item unresolved will create an issue for any future developer of the property that is not Celtic.

Solargise has no real interest in developing the Hoku Property – its only interest is purchasing and removing the equipment from the property and relocating it to Canada. While Solargise may be telling the Agency of its interests in developing the property, in other circles principals of Solargise are representing that there is no interest in ever purchasing or owning the property. That is what you will get with Solargise – lies and deception. By contrast, Celtic's sole purpose was to acquire the land, which together with the buildings owned by Celtic would provide an opportunity for Celtic to develop a life sciences and technology park, as will be explained further below.

While Celtic will outline its position as to the Hoku Property, its opposition to the Solargise Disposition and Development Agreement ("DDA"), and its proposal for development, Celtic believes that it is in the best interests of all parties to withhold any decision on the DDA or development of the Hoku Property for a 90-day period. During this period, the Agency, V.A. Metals, Solargise, and Celtic can work in good faith to resolve these issues and avoid a more-costly form of resolution. That said, if the Agency continues to desire to defend its secretive actions, Celtic will have no choice but to expand the litigation to defend its ownership and rights in the Hoku property, or to be paid the fair market value of the property that the Agency is taking from Celtic.

#### Celtic's Ownership of the Buildings

Celtic purchased the buildings from V.A. Metals on January 19, 2017, evidenced by a Bill of Sale acknowledged by K.V. Naidu on behalf of V.A. Metals. This transfer was made so that Celtic could move forward with plans to develop the Hoku Property following V.A. Metals' sale of the equipment. In December 2017, Kola Innovative Technologies Design LLP ("KITD"), a company owned by K.V. Naidu, signed a term sheet with Global Horizons Capital Ltd with respect to an attempt to gain financing to assist Celtic in purchasing the Hoku Property (land) from the Agency pursuant to an option to purchase in the land lease. The term sheet states:

"GHC confirms that both KITD and Celtic have disclosed that the buildings have been purchased by Celtic and there exists a land lease with a purchase option, GHC confirms and acknowledges that it is aware of this and has agreed to extend the loan with the first payment being made directly to the PDA authority, for Celtic to exercise the land purchase option."

K.V. Naidu, Habibulla Syed, and Prosenjit Purkayaska, all principals and equity holders of V.A. Metals signed this acknowledgement almost one year following Celtic's acquisition of the buildings. It was known by all involved with V.A. Metals and Celtic, and Solargise and the Agency had also been put on notice of this assignment. Despite this knowledge, or possibly because of this knowledge, the Agency worked in secret with Solargise to negotiate the DDA and the termination of the land lease. The Agency then entered into a License Agreement with Solargise. Celtic was unaware of the extent of these negotiations until the Agency issued its public notice on October 18, 2019 requesting public comment on its arrangement with Solargise and Celtic was later able to obtain documents in public record requests to begin to piece together the secretive deal. Such actions have forced Celtic to take action against the Agency by filing a complaint in Magistrate Court alleging that all actions taken by the Agency in violation of Idaho's open meeting laws are null and void – this would include all arrangements and agreements between the Agency and Solargise. While the Agency's counsel has requested that this complaint be dismissed based on a 30-day provision in the statute, Celtic brought the action within 30 days of discovering the extent of the Agency's cover up. Celtic has valid arguments and case law supporting its position that an agency should not be allowed to cover up a decision that should have been public and then rely on a 30-day window for a party to have to discover the secret decision. Once the decision comes to light, a party has 30 days to bring an action to declare the decision null and void. This was done by Celtic.

Celtic's complaint against the Agency provided the Agency with an opportunity to self correct the secretive actions that violated the open meeting laws. It appears the Agency is not willing to admit to its mistakes and the fact that it has been duped by Solargise. While Celtic only brought the initial action against the Agency, it may have been more appropriate to also bring actions against the individual board members who seem to have openly engaged in secretive negotiations that may not have been known to the entire board or to the Agency as a whole. Celtic will be reviewing such claims.

The Agency based its agreements with Solargise on information that was not true – in fact, it based its decisions on intentionally misleading representations by Solargise and V.A. Metals. The Agency then engaged in deception of the general public and of Celtic, by failing to bring the negotiations and the agreements into the public eye where Celtic would be able to assert its rights to the Hoku properties. Once the Agency entered into the fraudulent license agreement with Solargise, access to the property was limited and could not be obtained without the consent of Solargise. Despite a number of attempts, Celtic has been unable to gain access to the property. Together with the Agency, V.A. Metals and Solargise have effectively taken Celtic's rights to its buildings resulting in damages to Celtic.

#### Celtic's Ownership of Leasehold Interest

Celtic not only acquired the buildings on the Hoku Property but also acquired the lease rights held by V.A. Metals under the original lease between the City of Pocatello and JH Kelly dated January 17, 2014, as amended and extended ("Land Lease"). V.A. Metals assigned all its rights under the Land Lease to Celtic on January 19, 2017, in connection with the purchase of the buildings. Mr. Naidu signed this notarized agreement on behalf of V.A. Metals. Between V.A. Metals and Celtic, the assignment of the Land Lease occurred on January 19, 2017, and Mr. Naidu personally benefitted from the proceeds of that transaction.

On September 18, 2018, V.A. Metals attempted to once again assign the Land Lease, this time to Solargise America, LLC. Mr. Naidu again signed on behalf of V.A. Metals. This second assignment provides that "VA Metals wishes to assign any interest it may have in the Lease to Solargise." At the time of this assignment, V.A. Metals had no interest in the Lease, so V.A. Metals assigned nothing to Solargise. It is interesting to note that Celtic requested the Agency to approve the assignment between V.A. Metals and Celtic, such request being sent to Scott Smith in May 2018. The Agency never formally provided consent to the transfer and never provided any reason for its failure to provide such consent, which cannot be unreasonably withheld. Instead, the Agency ignored this request and moved forward in secret during July, August, and September to provide consent to the assignment from V.A. Metals to Solargise, which assignment conferred no rights to Solargise.

All parties involved in this second assignment knew of Celtic's earlier acquisition of the leasehold interest in the Land Lease. V.A. Metals, Mr. Naidu, Solargise, Mr. Basu, and the Agency all misrepresented facts to the general public in executing this second assignment, which is completely fraudulent. It is also been made known to Celtic that V.A. Metals received no consideration for such transfer and that Solargise is in fact in default with respect to its obligations to V.A. Metals. Interestingly enough, the other owners of V.A. Metals have openly contested the authority of Mr. Naidu to act on behalf of V.A. Metals, and have even provided such notice to Solargise. Those issues are part of a lawsuit that was filed in May 2018 in Bannock County, to which the parties are aware. Despite this, Solargise has continue to orchestrate deception with the Agency and V.A. Metals to attempt to deprive Celtic of its property rights.

Celtic has ownership of the leasehold interest in the Hoku Property pursuant to the Land Lease. Any actions taken by the Agency, V.A. Metals, or Solargise asserting that Celtic has no rights in the Land Lease are effectively a taking without providing Celtic with any consideration.

#### Celtic's Development Plan

Celtic's vision for the property following removal of the equipment was to immediately finish certain improvements in the administration building that would allow for leasing opportunities for science, technology, and research firms. Celtic has connections with a variety of prospective tenants, who were interested in the facility, but Celtic has been denied access to its own buildings. Celtic has a desire to development the Hoku Property into something positive for Pocatello.

Solargise has provided absolutely no detail in the proposed DDA other than it will magically develop the property by putting \$150,000,000 into it and creating 50-60 jobs paying \$80,000 to \$100,000 annually. This is unrealistic, although not surprising from Solargise. Mr. Basu and his Solargise entities struggle to keep commitments and frequently default on obligations. Another Solargise entity entered into negotiations with V.A. Metals back in 2016, only to default on its obligations and be unable to move forward. Solargise is only concerned about the equipment on the Hoku Property. Once the equipment is off, Solargise will be gone and operating in Canada. There will be no investment in the Hoku Property and Solargise will either leave the property dilapidated or will raze the buildings and ruin opportunity for real investment in the property. The current buildings provide a great base of opportunity for a tech and life sciences park, if in the right hands. Solargise has no interest in that direction.

The Agency should not accept the vague and misleading DDA with Solargise without specifics as to what will be developed on the property. Celtic was founded with the vision from Irfan Sharief, the mastermind behind V.A. Metals and the one who has the dream of turning the Hoku Property into a life science park. The Agency should select a developer who has integrity and who will not simply abandon the project in two years when the equipment is removed.

The entire process of the Agency receiving development proposals is a complete sham. Any potential developer cannot gain access to the property without the consent of Solargise under the license agreement Solargise secured with the Agency. The license agreement was executed outside the public eye with the intent to eliminate the competitive nature of the proposal process.

Celtic is not officially able to submit a development proposal because Celtic cannot sign Attachment 4 providing the Agency with a release and waiver at this time. Once issues are resolved with the Land Lease and ownership of the buildings, Celtic is prepared to purchase the Hoku Property and enter into a specific and realistic DDA with the Agency that will be of long-term benefit to the City of Pocatello.

#### Conclusion

The Agency is in a position to help fashion a remedy that allows Solargise to continue with its purchase of the equipment at the Hoku site while also respecting the ownership interests of Celtic in the buildings. In the alternative, the Agency can continue to defend its secretive deal, which will only lead to more discovery of what really happened in the negotiations with the Agency and Solargise, with Agency members and representatives of Solargise, and what benefits may have been promised or paid outside of the public eye. The City of Pocatello deserves better than this – it deserves something positive at the Hoku facility. The actions of the Agency are however leading the City into years of litigation that may threaten any deal to revitalize the property. It is time for the Agency to take appropriate steps to correct its illegal actions, or be forced to do so publicly.

Sincerely,



Webb Moulton

# SOLARGISE AMERICA LLC

( A Delaware Limited Liability Company )

August 20<sup>th</sup>, 2019

To:

The Board Members,

Pocatello Development Authority

911 N 7<sup>th</sup> Avenue, Pocatello City,

IDAHO.

Dear Sirs,

We learnt that since past few months, various persons, firms, companies, with false claims of ownership, have approached Pocatello Development Authority ( PDA ) with the sole aim of acquiring the HOKU Polysilicon Production Plant along with the land admeasuring 67 acres located in Pocatello city, Idaho State.

We submit that VA Metals LLC , owned by the undersigned ( Mr. Kola Venkat Rama Naidu ) is the holder of 93.35% of the shares ( \$32,672,217 ) and Solargise ( UK ) Ltd holds just 6.65% shares ( \$2,327,783 ) in Solargise America LLC., a company registered in the State of Delaware and which is presently on the record of PDA as the prospective purchaser of the HOKU property. In this regard we would like to mention that approaching by any person, firm or company claiming the ownership and authority to negotiate with PDA is unwarranted and illegal and hence we request the Board of PDA not to entertain any such claims and not to hold discussions with such person , firm or company.

We understand that the Board of PDA had discussions about the HOKU subject in the previous meetings and likely to takeup the subject again in the meeting scheduled on August 21st, 2019.

### ***Correspondence:***

*16102, Coastal Highway, Lewes, Delaware -19958, USA.*

*13, 4<sup>th</sup> Cross, RMI 2<sup>nd</sup> Stage, Dollars Colony, Bengahuru - 560094, India.*

*Email: venkatkola9999@gmail.com ; Mobile: + 91 990 243 6666*

# SOLARGISE AMERICA LLC

*( A Delaware Limited Liability Company )*

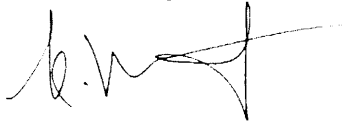
The undersigned, as the major share holder of Solargise America LLC, now requests the Board of PDA to grant us 15 days time to personally clarify all the points that may arise and to come to an amicable understanding with PDA regarding the HOKU property. We seek your support and cooperation for our takeover of the HOKU Production Plant along with the land property which will benefit the city of Pocatello and also the State of Idaho in creating more jobs.

We further submit that we are very keen to reopen the plant, make all the payments that are due to the City of Pocatello, PDA etc., and take all necessary steps to start the production at the earliest with needed funds and thereby sincerely participate in the economic development of the Pocatello City.

We fervently request the Board of PDA to afford us an opportunity of making our submissions based on the facts and for this purpose we seek an appointment with the Board of PDA on any day after 28<sup>th</sup> of August, 2019 as may be convenient to the Board Members.

Hoping that our request would be considered positively and thanking you all, We remain.

With Warm Regards



( Kola Venkat Rama Naidu )

## ***Correspondence:***

*16102, Coastal Highway, Lewes, Delaware -19958, USA.*

*13, 4<sup>th</sup> Cross, RMI' 2<sup>nd</sup> Stage, Dollars Colony, Bengaluru - 560094, India.*

*Email: venkatkola9999@gmail.com ; Mobile: + 91 990 243 6666*

Date: 20<sup>th</sup> August 2019

Bangalore

**From:**

Zehn Advocates  
No. 21/1, Haudin Road  
Ulsoor  
Bangalore – 560 042

**To:**

Raj Basu  
Solargise America LLC

Dear Raj,

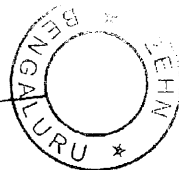
We are pleased to inform you that we are holding the sum of \$115,000/- in Solargise UK Ltd's client account with us. This amount is towards the payment of back taxes for the year 2015 owed to the Bannock County Treasurer.

We can make this payment to or on behalf of Solargise America LLC as soon as we get confirmation that (1) We have until 13th September to pay \$400,000/- to the Pocatello Development Authority (PDA) and (2) We have until 30th September to pay the remaining sum to close the purchase of the One Hoku Way property from the PDA.

The above timelines can be adhered to if the PDA accepts our request at the 21st August 2019 meeting.

Please note that it will take us up to one week from the date of your confirmation of the above to process the payment of \$115,000/- out of India.

Yours truly,



**Kartik Ravichander**

# PROOF OF PUBLICATION

STATE OF IDAHO  
County of Bannock

LN26417

KAREN MASON

being first duly sworn on oath deposes and says:  
that SHE was at all times herein mention a citizen  
of the United States of America more than 21  
years of age, and the Principal Clerk of the Idaho  
State Journal, a daily newspaper, printed and  
published at Pocatello, Bannock County Idaho and  
having a general circulation therein.

That the document or notice, a true copy of  
which is attached, was published in the said  
IDAHO STATE JOURNAL, on the following  
dates, to-wit

Aug. 13 2019 Aug. 20 2019  
Aug. 27 2019 Aug. 3 2019  
Aug. 10 2019 Aug. 17 2019  
Aug. 24 2019 Aug. 31 2019

That said paper has been continuously and  
uninterruptedly published in said County for a  
period of seventy-eight weeks prior to the  
publication of said notice of advertisement and is a  
newspaper within the meaning of the laws of  
Idaho.

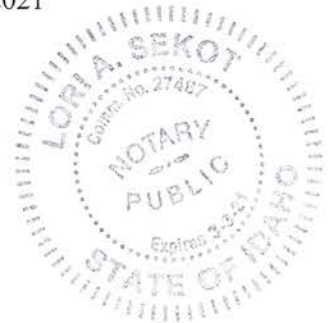
STATE OF IDAHO  
COUNTY OF BANNOCK

*K. Mason*

On this 20th of Aug. in the year of 2019, before me, a  
Notary Public, personally appeared KAREN MASON  
Known or identified to me to be the person whose name  
subscribed to the within instrument, and being by me  
first duly sworn declared that the statements therein are  
true, and acknowledge to me that he executed the same.

Notary of Public

*Lori A. Sekot*  
Residing at Arimo exp. 3/3/2021



**NOTICE OF PUBLIC HEARING**  
**POCATELLO DEVELOPMENT AUTHORITY, POCATELLO, IDAHO BUDGET FOR FISCAL YEAR 2019-2020 (FY 2020)**

Notice is hereby given that the Board members for the Pocatello Development Authority will hold a public hearing for consideration of a proposed budget for the fiscal period October 1, 2019 - September 30, 2020; all pursuant to the provisions of Section 50-1002, I. C. and Section 63-802, I.C., said hearing to be held at the City of Pocatello Paradise Conference Room at 911 North 7th Avenue, Pocatello, Idaho, at 11:00 a.m. on August 21, 2019. At said hearing all interested persons may appear and show cause, if any they have, why the proposed budget should not be adopted.

Fund Name	FY 2018 Actual Expenditures	FY 2018 Actual Revenue	FY 2019 Budgeted Expenditures	FY 2019 Budgeted Revenue	FY 2020 Proposed Expenditures	FY 2020 Proposed Revenue
<b>GENERAL FUND</b>	\$ 1,747,950	\$ 177,897	\$ 1,545,393	\$ 186,828	\$ 697,043	\$ 39,236
North Yellowstone District	\$ 822,127	\$ 1,556,202	\$ 5,737,997	\$ 1,501,658	\$ -	\$ -
Naval Ordinance District	\$ 24,482	\$ 249,424	\$ 1,127,195	\$ 234,790	\$ 1,260,010	\$ 255,989
North Portneuf District	\$ 54,830	\$ 48,331	\$ 310,893	\$ 140,432	\$ 376,320	\$ 37,951
Pocatello Airport District	\$ -	\$ 109,140	\$ 545,164	\$ 96,092	\$ 706,205	\$ 97,116
Northgate District	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
<b>TAX DISTRICTS</b>	<b>\$ 901,439</b>	<b>\$ 1,963,097</b>	<b>\$ 7,721,249</b>	<b>\$ 1,972,972</b>	<b>\$ 2,342,535</b>	<b>\$ 391,056</b>
<b>GRAND TOTAL:</b>	<b>\$ 2,649,389</b>	<b>\$ 2,140,994</b>	<b>\$ 9,266,642</b>	<b>\$ 2,159,800</b>	<b>\$ 3,039,578</b>	<b>\$ 430,292</b>

I, Ashley Linton-Welsh, Interim Treasurer of the Pocatello Development Authority, do hereby certify that the above is a true and correct statement of the proposed expenditures and revenues for Fiscal Year 2019-2020 (FY 2020).

Dated this 7th day of August, 2019.

Published: **August 13, 2019** and **August 20, 2019** in the Idaho State Journal

# PROOF OF PUBLICATION

STATE OF IDAHO  
County of Bannock

LN26470

KAREN MASON

being first duly sworn on oath deposes and says:  
that SHE was at all times herein mention a citizen  
of the United States of America more than 21  
years of age, and the Principal Clerk of the Idaho  
State Journal, a daily newspaper, printed and  
published at Pocatello, Bannock County Idaho and  
having a general circulation therein.

That the document or notice, a true copy of  
which is attached, was published in the said  
IDAHO STATE JOURNAL, on the following  
dates, to-wit

Aug. 27 2019 Aug. 2019  
Aug. 2019 Aug. 2019  
Aug. 2019 Aug. 2019  
Aug. 2019 Aug. 2019

That said paper has been continuously and  
uninterruptedly published in said County for a  
period of seventy-eight weeks prior to the  
publication of said notice of advertisement and is a  
newspaper within the meaning of the laws of  
Idaho.

*K. Mason*

STATE OF IDAHO  
COUNTY OF BANNOCK

On this 27th of Aug. in the year of 2019, before me, a  
Notary Public, personally appeared KAREN MASON  
Known or identified to me to be the person whose name  
subscribed to the within instrument, and being by me  
first duly sworn declared that the statements therein are  
true, and acknowledge to me that he executed the same.

Notary of Public

*Lori A. Sekot*  
Residing at Arimo exp. 3/3/2021



Pocatello Development Authority - Budget 2019-2020 fiscal year

	General Fund	Naval		North		Total
		Ordinance	Portneuf	Airport	Northgate (2)	
Beginning Cash Balance July 31, 2019	\$657,806.73	\$1,004,020.97	\$338,369.43	\$609,088.74	\$0.00	\$2,609,285.87
<b>INCOME:</b>						
Administrative fees - estimated	38,736.00					38,736.00
Property taxes		255,389.00	34,951.00	97,016.00		387,356.00
Interest Income	500.00	600.00	3,000.00	100.00		4,200.00
<b>Total Projected Income:</b>	<b>39,236.00</b>	<b>255,989.00</b>	<b>37,951.00</b>	<b>97,116.00</b>	<b>0.00</b>	<b>430,292.00</b>
<b>EXPENSE:</b>						
Contingency (3)	666,609.73	1,234,470.97	355,084.43	696,502.74		2,952,667.87
City payment for HOKU land purchase (1)			17,741.00			17,741.00
Administrative expense - estimated		25,539.00	3,495.00	9,702.00		38,736.00
Luncheon costs	2,000.00					2,000.00
Office expenses	300.00					300.00
Dues and memberships	1,750.00					1,750.00
Errors and omission insurance	6,383.00					6,383.00
Banking and Professional services	20,000.00					20,000.00
<b>Total Projected Expense:</b>	<b>697,042.73</b>	<b>1,260,009.97</b>	<b>376,320.43</b>	<b>706,204.74</b>	<b>0.00</b>	<b>3,039,577.87</b>
<b>CALCULATED ENDING BALANCE</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>

1. Scheduled to payoff on October 31, 2030
  2. The Northgate TIF district is open, but will not start collecting tax money until FY 2021. It is listed on the budget for transparency.
  3. The General fund contingency covers the Northgate project and potential unplanned projects.
- The remaining contingencies in the other districts are for potential unplanned projects.