

## ROAD IMPROVEMENT AGREEMENT

### Horseshoe Solar Project

THIS ROAD IMPROVEMENT AGREEMENT (this “**Agreement**”) is made and entered into this 9<sup>th</sup> day of July, 2020 (the “**Effective Date**”), by and between the County of Tooele, State of Utah, acting through its Board of County Commissioners, hereinafter called “**County**,” and Horseshoe Solar, LLC, a Delaware limited liability company, hereinafter called “**Project Company**.”

#### WITNESSETH:

WHEREAS, pursuant to that certain Development Lease Agreement No. 1139 dated as of January 1, 2018, between the State of Utah, acting by and through the School and Institutional Trust Lands Administration, as lessor, and Project Company as lessee, Project Company intends to develop, construct and operate a utility-scale solar energy generating facility (the “**Project**”) on certain real property in the County of Tooele, State of Utah, more particularly on Exhibit A attached hereto (the “**Project Site**”);

WHEREAS, two recognized County roads, known as Tooele County Road Nos. 02685 and 02693, currently cross the Project Site as shown on attached Exhibit B (the “**Official County Roads**”);

WHEREAS, two additional roads, known as Tooele County Road Nos. 02691 and 02692, which are not recognized by the County as County roads, also cross the Project Site as also shown on attached Exhibit B (collectively, the “**Unofficial Roads**”);

WHEREAS, in connection with Project Company’s development, construction and operation of the Project, Project Company has requested, and the County has agreed, to formally vacate the Official County Roads and to disclaim any interest in Unofficial Roads (referred to herein as the “**Vacation**”) so long as the Project Company agrees to make certain improvements to the portion of Tooele County Road 02698 depicted on attached Exhibit B (the “**Road 02698**”), subject to the terms and conditions set forth below.

#### AGREEMENT:

NOW, THEREFORE, for and in consideration of the foregoing recitals and the promises and covenants contained herein, the parties hereto hereby agree as follows:

#### 1. Road Improvements

a. Road Improvements Defined: For purposes hereof, “**Road Improvements**” means the blading of Road 02698 to a width of thirty (30) feet and otherwise to a condition that is substantially similar to the section of Tooele County Road 02698 located between Big Spring Road and Stansbury Gravel Pit Road.

b. Agreement regarding Road Improvements: Following the County's approval of the Vacation by County ordinance in accordance with applicable law and the expiration of all appeal periods relating to such approval such that the Vacation is final and unappealable (the "**Approval Date**"), Project Company agrees to undertake the Road Improvements within thirty (30) days after commencement of construction of the Project on the Project Site, and to diligently pursue the completion of the Road Improvements following the commencement of such work; provided, however, if the Project Company elects not to move forward with the construction of the Project on the Project Site, the Project Company will have no obligation to perform the Road Improvements.

c. Completion of Road Improvements: Project Company shall be solely responsible for completing the Road Improvements in accordance with the terms of this Agreement and for any costs and expenses associated therewith. Project Company shall furnish, at its own expense, all engineering and survey services, to the extent such services are necessary, in connection with the completion of the Road Improvements.

## 2. General Requirements

a. Conformance with Law: Project Company's completion of the Road Improvements shall be in conformance with this Agreement and with all applicable County laws and regulations.

b. Acceptance of Improvements by County: Upon completion of the Road Improvements, Project Company may request in writing that County inspect the Road Improvements. As soon as possible, but in any event within twenty-eight (28) days of receipt of any such request for inspection, the Community Development Department staff shall perform such inspection and notify Project Company in writing of any failure to comply with the requirements set forth herein for the completion of the Road Improvements or County will notify Project Company in writing that no inspection is needed. If no inspection is needed, Project Company's obligation to complete the Road Improvements shall be deemed satisfied in full. If any failures are discovered during an inspection and County has provided timely written notice thereof to Project Company, Project Company shall correct such failure within thirty (30) days of receipt of such notice (provided, however, if the work required to correct such failure requires more than 30 days to complete, Project Company shall have such time as is reasonably required to complete such work so long as Project Company commences such work within the initial 30 - day period). The Community Development Department staff shall reinspect the Road Improvements or applicable portion thereof after notification from Project Company that said failures have been corrected. If the Community Development Department staff find that such portion of the Road Improvements have been completed in accordance with the provisions of this Agreement, he or she shall confirm the same in writing to Project Company. In the event of any dispute arising hereunder regarding whether Project Company has failed to comply with the provisions of this Agreement when completing the Road Improvements, the parties agree to work in good faith to resolve such dispute in a timely manner.

c. Ongoing Road Maintenance: Following Project Company's completion of the Road Improvements in accordance with the provisions of this Agreement and the County's



confirmation (or deemed confirmation) of the same in accordance with the provisions of Section 1(b), the County acknowledges and agrees that Project Company shall have no further obligation, liability, or responsibility for any additional or future improvements to, or any ongoing maintenance of, Road 02698.

### 3. Miscellaneous

a. Release of Liability: Each party to this Agreement (the “**Indemnifying Party**”) shall indemnify and hold harmless the other party (the “**Indemnified Party**”) from any and all liability, loss and damage, including reasonable attorneys’ fees and costs, that the Indemnified Party may suffer as a result of all suits, actions or claims of every nature and description caused by, arising from, or on account of the negligent or intentional act of the Indemnifying Party or its officers, agents, employees, or otherwise except for the liability, loss, or damage arising from the negligent or intentional act of the Indemnified Party. All contractors and other employees engaged by Project Company in the completion of the Road Improvements shall maintain adequate worker’s compensation insurance and public liability insurance coverage, and shall operate in accordance with the laws and regulations of the State of Utah.

b. Successors and Assigns: Except as specified below, this Agreement may not be delegated or assigned in whole or in part by either party hereto without the express written consent of the other party and the written agreement of the party to whom the obligations under this Agreement are assigned. Consent to a delegation or an assignment will not be unreasonably withheld. Notwithstanding the previous two sentences, Project Company’s rights and obligations under this Agreement may be delegated and assigned to a purchaser of a portion or all of the Project or business operation conducted thereon without the consent of County, provided that Project Company shall continue to be liable for any breach of this Agreement arising prior to such conveyance or transfer unless otherwise agreed to by County. Notwithstanding any other provisions of this Agreement or of this paragraph, County may delegate or assign its rights and obligations under this Agreement without the consent of Project Company (or its assigns, delegates or successors in interest) to another governmental entity which by annexation or agreement has assumed jurisdiction over the roads affected by this Agreement. This Agreement shall be binding upon the heirs, executors, personal representatives, successors and assigns of Project Company, and upon recording by County, shall be deemed a covenant running with the land herein described.

c. Default: If either party to this Agreement violates any of the terms of this Agreement, the non-defaulting party shall notify the defaulting party of the alleged violation and shall state with specificity the facts and circumstances which the non-defaulting party believes constitute the violation. The defaulting party shall have thirty (30) days within which to either cure the violation or to commence compliance or to contest the violation. If, after thirty (30) days have elapsed, the non-defaulting party continues to believe that there has been a violation of the terms of this Agreement, the non-defaulting party shall have the right to initiate proceedings at law or in equity to enforce this Agreement. Any damages to either party for a breach of this Agreement shall be limited to actual damages, and neither party shall be liable to the other for any consequential, incidental, punitive or indirect damages.

d. Notices: For the purposes of this Agreement, the addresses of the parties are, and all notices required or permitted hereunder shall be given to:

If intended for County, to:

Tooele County Commission  
47 South Main  
Tooele, Utah 84074

With a copy to:

Tooele County Attorney  
74 South 100 East  
Tooele, Utah 84074

If intended for Project Company, to:

Horseshoe Solar, LLC  
c/o D.E Shaw Renewable Investments, L.L.C.  
1166 Avenue of the Americas  
New York, New York 10036  
Attn: Liz Peyton, Laura Klein,  
Hy Martin, General Counsel

With a copy to:

Holland & Hart LLP  
222 South Main Street  
Salt Lake City, Utah 84101  
Attention: Adrienne Bell, Esq.

All notices shall be given by certified mail, postage prepaid, return receipt requested, or by overnight express delivery by a nationally recognized overnight courier. Such notice delivered by (i) certified mail shall be deemed to have been duly given three business days after such notice is deposited with the United States Post Office, or (ii) overnight express delivery shall be deemed to have been duly given one business day after such notice is deposited with such overnight courier with instructions to deliver such notice the next following business day. Business day as used herein means any calendar day other than a Saturday, Sunday, or official holiday of the State of Utah.

Either party may, by written notice to the other party, change its notice person(s) or designated representative(s) or the address to which written notices and communications are to be sent.

e. Attorneys' Fees: If any action or proceeding is instituted by either party for enforcement or interpretation of any term of this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, together with reasonable costs and expenses incurred by the prevailing party in said action and any appeal therefrom.

f. Severability: If any provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement and the application of such provision to persons or situations other than those to which it shall have been held invalid or unenforceable, shall not be affected thereby, but shall continue to be valid and enforceable to the fullest extent permitted by law.

g. Counterparts: This Agreement may be executed in counterparts, each of which shall constitute an original and together which shall constitute one and the same document. Facsimile signatures shall be accepted as originals.

h. Recording: Upon mutual execution of this Agreement, Project Company may record a memorandum summarizing the material terms of this Agreement in the real property records of Tooele County, Utah.

i. Choice of Laws/Entire Agreement: This Agreement shall be governed by the laws of the State of Utah.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the day and year first above written.

**PROJECT COMPANY:**

Horseshoe Solar, LLC,  
a Delaware limited liability company

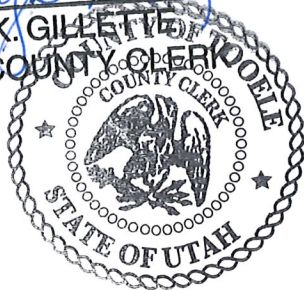
By: \_\_\_\_\_

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

Title: \_\_\_\_\_

**ATTEST:**

*Marilyn K. Gillette*  
\_\_\_\_\_  
MARILYN K. GILLETTE  
TOOELE COUNTY CLERK



APPROVED AS TO FORM:

*Scott Broadhead*  
\_\_\_\_\_  
Scott Broadhead, County Attorney

**COUNTY:**

BOARD OF COUNTY COMMISSIONERS  
TOOELE COUNTY, UTAH

*Tom Tripp*  
\_\_\_\_\_

Tom Tripp, Chairman



Exhibit A

Legal Description of the Project Site

The real property referenced in the foregoing instrument located in Tooele County, Utah is more particularly described as:

Parcels 1 and 2:

The Southwest  $\frac{1}{4}$  and the Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 8, Township 1 South, Range 7 West, SLB&M, less and excepting:

Beginning at the Southwest corner of the Northwest Quarter of the Southeast Quarter of Section 8, Township 1 South, Range 7 West, said corner being North  $00^{\circ}01'36''$  West 1325.17 feet along the West line of said Southeast Quarter from the South Quarter corner of said Section 8; said corner being the Southwest corner of a parcel recorded in the office of the Tooele County Recorder as Entry Number 015370, and running thence North  $89^{\circ}52'33''$  West 1082.82 feet; thence North  $00^{\circ}04'50''$  East 458.13 feet; thence South  $89^{\circ}52'33''$  East 1081.96 feet; thence South  $00^{\circ}01'36''$  East 458.13 feet to the point of beginning.

Parcel 3:

All of Section 17, Township 1 South, Range 7 West, SLB&M.

Parcel 4:

The West  $\frac{1}{2}$  of the East  $\frac{1}{2}$  and the West  $\frac{1}{2}$  of Section 20, Township 1 South, Range 7 West, SLB&M.

Parcel 5:

The West  $\frac{1}{2}$  of the Northeast  $\frac{1}{4}$  and the West  $\frac{1}{2}$  of Section 29, Township 1 South, Range 7 West, SLB&M, less and excepting the following well site encompassed within Special Use Lease Agreement 1350:

Beginning at a point North 1726.02 feet and East 143.33 feet from the Southwest Corner of Section 29, Township 1 South, Range 7 West, Salt Lake Base & Meridian; and running thence N  $12^{\circ}30'$  E 169.00 feet along the East right-of-way line of the Skull Valley Road; thence East 293.42 feet; thence South 330 feet; thence West 366.58 feet to the East right-of-way line of the County Road; thence N  $12^{\circ}30'$  E 169.00 feet along said right-of-way line to the point of beginning. Containing 2.50 acres, more or less.

Containing 1,705.83 Acres



# Exhibit B

## Depiction of Roads

