

Pending Risk Management Approval on January 6, 2021
RECOMMENDATION TO THE EXECUTIVE COMMITTEE

FROM:

Risk Management Committee

RECOMMENDATION:

Approval of a revised Solar Addendum for release on or about February 1, 2022.

BACKGROUND:

The Risk Management Committee approved a member's request to update the current Solar Lien / Solar Loan Assumption Addendum dated October 2017. A workgroup was formed, chaired by Jon Kichen, and a revised draft of the Addendum was circulated to the Loop on October 13, 2021.

On January 6, 2022, the Risk Management Committee voted to approve for release the attached revised Solar Lien / Solar Loan Assumption Addendum with the name of the form being changed to Solar Addendum. The reason for the name change is that the Addendum now also addresses those instances in which the Solar System is owned by the seller or a utility company. A second important revision is that the form now allows the parties to identify which party will pay any Transfer Fees that may be imposed by the Lessor in conjunction with Buyer's assumption of the Solar System lease/loan. While transfer fees were not typically charged at the time the form was originally drafted, they have since become increasingly common.

In the event that the revised Addendum is approved, on its release date conforming changes will be made to ancillary forms that reference the Solar Lien / Solar Loan Assumption Addendum to ensure that the ancillary form contains the new name of the form, which is Solar Addendum.

BUDGET IMPACT:

None

MOTION:

TO APPROVE FOR RELEASE ON OR ABOUT FEBRUARY 1, 2022, THE ATTACHED REVISED SOLAR ADDENDUM.

FOR MORE INFORMATION CONTACT:

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SOLAR ADDENDUM

DRAFT

Document updated:
February 2022



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- 1. Seller: _____
- 2. Buyer: _____
- 3. Premises Address: _____
- 4. Date: _____

- 5. A solar photovoltaic ("PV") panel system ("Solar System") has been installed on the Premises. The Solar System shall convey with the
- 6. Premises pursuant to the terms set forth below and the following additional terms and conditions are hereby included as a part of the
- 7. Contract between Seller and Buyer for the above referenced Premises if marked by an "X" and initialed by Seller and Buyer. The terms
- 8. and conditions of the Contract are included herein by reference.

9. **INSTRUCTIONS:**

- 10. If the Solar System installed on the Premises is owned outright by Seller or utility owned and is not subject to a lease or unpaid loan,
- 11. mark the appropriate box on line 14 and complete only Sections 1 and 3.
- 12. If the Solar System installed on the Premises is subject to a lease or unpaid loan and Buyer's purchase of the Premises is contingent
- 13. on Buyer's assumption of the Solar System lease/loan, mark the box on line 23 and complete only Sections 2 and 3.

14. **1. Seller Owned or Utility Owned Solar System**

- 15. **Seller Disclosure:** Within three (3) days after Contract acceptance, Seller shall deliver to Buyer all documents in Seller's possession
- 16. pertaining to the Solar System installed on the Premises. The Solar System documents in Seller's possession are collectively hereinafter
- 17. referred to as the "Solar System Documents."
- 18. **Buyer Disapproval:** Buyer shall provide notice of any Solar System related items disapproved within the Inspection Period or five
- 19. (5) days after receipt from Seller of the Solar System Documents, whichever is later. Buyer's failure to deliver a signed notice of
- 20. cancellation within the specified time period shall conclusively be deemed Buyer's election to proceed with the transaction, subject to
- 21. the contingencies set forth in the Contract.

22. **If lines 14 - 21 apply: BUYER'S AND SELLER'S INITIALS REQUIRED** _____ / _____ / _____

BUYER



BUYER

SELLER

SELLER

23. **2. Solar System Lease/Loan**

- 24. **Lessor/Lien Holder:** The term "Lessor," as used herein, shall refer to the company that leases the Solar System to Seller, or the
- 25. servicer on the unpaid loan used by Seller to purchase the Solar System.
- 26. **Seller Disclosure:** Within three (3) days after Contract acceptance, Seller shall: (i) deliver to Buyer the most recent version of the
- 27. Solar System lease/loan; (ii) deliver to Buyer all other Solar System documents in Seller's possession; (iii) provide to Buyer the name
- 28. and phone number of Lessor; and (iv) notify Lessor of the sale, the name of Buyer, and the name of the Escrow Company as set forth
- 29. in Section 3a of the Contract. The Solar System lease/loan and other documents in Seller's possession are collectively hereinafter
- 30. referred to as the "Solar System Documents."
- 31. **Lease/Loan Assumption Contingency:** Buyer's obligation to complete this sale is contingent upon Buyer obtaining from Lessor
- 32. approval to assume the Solar System lease/loan under the existing terms and conditions no later than three (3) days prior to the
- 33. Close of Escrow date ("Assumption Approval").
- 34. **Buyer Disapproval:** Buyer shall provide notice of any Solar System related items disapproved within the Inspection Period or five (5) days
- 35. after receipt from Seller of the Solar System Documents, whichever is later. Buyer's failure to deliver a signed notice of cancellation

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36. within the specified time period shall conclusively be deemed Buyer's election to proceed with the transaction, subject to the other
37. contingencies set forth herein and in the Contract. Should Buyer elect to proceed with the transaction, Buyer shall immediately
38. apply for lease/loan Assumption Approval in the manner required by Lessor, and Seller and Buyer agree to cooperate fully with
39. Lessor and supply the necessary documentation to complete the assumption.

40. **Unfulfilled Lease/Loan Assumption Contingency:** This Contract shall be cancelled, and Buyer shall be entitled to a return of the
41. Earnest Money if, after diligent and good faith effort, Buyer is: (i) unable to obtain Assumption Approval from Lessor; and (ii) delivers
42. to Seller a signed notice of inability to obtain Assumption Approval no later than three (3) days prior to the Close of Escrow date.
43. If Buyer is unable to obtain Assumption Approval within the specified time period, but fails to deliver such notice, Seller may issue
44. a cure notice to Buyer as required by Section 7a of the Contract and, in the event of Buyer's breach, Seller shall be entitled to the
45. Earnest Money pursuant to Section 7b of the Contract. If, prior to expiration of the Cure Period, Buyer delivers notice of inability to
46. obtain Assumption Approval, Buyer shall be entitled to a return of the Earnest Money.

47. **Transfer Fees:** Unless required by Lessor, any mandatory Lessor fees associated with Buyer's assumption of the Solar System
48. lease/loan and/or the transfer of the Solar System to Buyer, including, but not limited to, document processing fees, shall be paid by:
49. Buyer Seller Other _____ at the time payment is required and is non-refundable.

50. **Credit Score Fee:** In the event Buyer does not meet the required credit score mandated by Lessor to assume the Solar System
51. lease/loan and a credit score fee is imposed by Lessor in exchange for issuing Assumption Approval, Buyer shall have the right
52. to provide notice of cancellation within the Inspection Period or five (5) days after receipt of notice from Lessor of the credit score
53. fee, whichever is later. Buyer's failure to deliver a signed notice of cancellation within the specified time period shall conclusively be
54. deemed Buyer's election to proceed with the transaction subject to the other contingencies set forth herein and in the Contract. Should
55. Buyer elect to proceed with the transaction and pay the credit score fee to Lessor in exchange for Assumption Approval, the fee shall
56. be paid by Buyer at the time payment is required and shall be non-refundable.

57. **Solar Tax Credit Loan Balance Reduction:** Seller shall be responsible for paying any required reduction in loan balance as it relates
58. to eligible solar tax credits that may be necessary for Buyer to assume the Solar System loan.

59. **If lines 23 - 58 apply: BUYER'S AND SELLER'S INITIALS REQUIRED** _____ / _____ / _____ / _____
BUYER BUYER SELLER SELLER

60. **3. Additional Terms and Conditions**

61. **THE FOLLOWING TERMS APPLY TO EITHER SECTION AGREED TO ABOVE:**

62. **BUYER: Any change in the current rate plan made by Buyer may result in increased rates or a plan that is less favorable to Buyer,**
63. **including, but not limited to, the loss of net metering billing status. If electric utilities are not on at the time of Contract Acceptance**
64. **or anytime thereafter, Buyer should investigate whether the current Solar System rate plan will change as a result. Buyer should**
65. **ensure that electric utilities are transferred into their name on the day of Close of Escrow. Failure to do so may result in increased**
66. **rates or a plan that is less favorable to Buyer, including, but not limited to, the loss of net metering billing status.**

67. **BUYER'S INITIALS REQUIRED** _____ / _____
BUYER BUYER

68. **SELLER: If electric utilities are on at the time of Contract Acceptance, Seller shall ensure they remain on through Close of Escrow.**
69. **Should Seller turn off electric utilities or change the existing rate plan at any time between the date of Contract Acceptance and**
70. **Close of Escrow and doing so results in increased rates or a plan that is less favorable to Buyer, including, but not limited to, the**
71. **loss of net metering billing status, it shall be deemed a change in the Premises under Section 4f of the Contract.**

72. **SELLER'S INITIALS REQUIRED** _____ / _____
SELLER SELLER

73. **Buyer Due Diligence:** Buyer is advised that if the cost, insurability, operation, or value of the Solar System is a material matter to Buyer,
74. it must be investigated within the allotted timeframe set forth in this Addendum. This may include, but is not limited to:

- 75. • Age
- 76. • Battery Storage
- 77. • End of lease/loan terms (if applicable)
- 78. • Grandfathered utility plan assumption
- 79. • Grid tie-in
- 80. • Homeowner's insurance coverage
- Maintenance
- Output and production guarantees
- Payment increases
- Roof integrity
- Taxes
- Utility and lessor fees (if applicable)
- Utility bills (note - past performance is not a guarantee of future results)
- Warranties (i.e. - panels, inverter, battery, installation, and other equipment)

Solar Addendum

81. **Acknowledgement:** Seller and Buyer recognize, acknowledge, and agree that Brokers are not qualified to advise on Solar Systems,
82. including, but not limited to, cost, insurability, operation, value, or transferability. Seller and Buyer are instructed to consult with
83. independent legal counsel and other qualified licensed professionals to assist in their due diligence efforts. **Because conducting due**
84. **diligence with respect to the Solar System is beyond the scope of Broker's expertise, Seller and Buyer expressly release and**
85. **hold harmless Broker(s) from liability for any defects, conditions or transferability problems pertaining to the Solar System.**

86. **BUYER'S INITIALS REQUIRED** _____ / _____ **SELLER'S INITIALS REQUIRED** _____ / _____
BUYER BUYER SELLER SELLER

87. **Additional Terms:** _____
88. _____
89. _____
90. _____
91. _____

92. **The undersigned agrees to the modified or additional terms and conditions set forth above and acknowledges receipt of a**
93. **copy hereof.**

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94. ^ BUYER'S SIGNATURE _____ MO/DA/YR ^ BUYER'S SIGNATURE _____ MO/DA/YR

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95. ^ SELLER'S SIGNATURE _____ MO/DA/YR ^ SELLER'S SIGNATURE _____ MO/DA/YR

For Broker Use Only:
Brokerage File/Log No. _____ Manager's Initials _____ Broker's Initials _____ Date _____
MO/DA/YR