

**OPTION TO LEASE AGREEMENT**

**(ImMODO Solar)**

**THIS OPTION TO LEASE REAL PROPERTY AGREEMENT** ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_ 2011 (the "Effective Date") by and between the City of Lemoore, a California municipal corporation, having an address of 119 Fox Street, Lemoore, California 93245 ("Owner"), and ImMODO California 1 LLC, a California limited liability corporation, having an address at 600 South Meyer Avenue, Ste 110, Tucson, AZ 85701, its successors or assigns, ("ImMODO" and, together with Owner, each, a "Party" and together, the "Parties"). Owner represents it has sole and exclusive authority for all matters concerning the Property and sole and exclusive authority to enter into this Agreement.

RECITALS:

**WHEREAS**, Owner owns real property consisting of a portion of the Lemoore Industrial Park (the "Property") in the City of Lemoore, State of California, as described in Exhibit A attached hereto and incorporated herein by reference; and

**WHEREAS**, Owner desires to grant to ImMODO, and ImMODO desires to accept from Owner, an option to lease the Property.

**NOW, THEREFORE**, in consideration of the foregoing mutual promises of the Parties herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**1. Terms of Option.**

Owner hereby grants to ImMODO an option (the "Option") to enter into a Lease Agreement ("Lease") attached hereto and incorporated herein as Exhibit B.

a. The Option may be exercised by ImMODO from the Effective Date to and including the day that is twelve (12) months from the Effective Date ("Option Period").

b. The Parties may extend the Option Agreement for an additional six (6) months ("Extended Option Period"). In no event shall the Option extend beyond eighteen (18) months from the Effective Date. For ease of reference, the Option Period and the Extended Option Period shall collectively be referred to as the "Option Periods."

c. ImMODO agrees to pay the Owner five thousand dollars (\$5,000.00) at the commencement of the Option Period. The payment shall be used to defray the costs incurred of attorneys fees by the City and related staff time. If ImMODO desires to extend the Option per section 1.b., it shall pay an additional five thousand dollars (\$5,000.00) to the City. All payments are nonrefundable.

d. During the "Option Periods", Owner shall not sell, lease, develop, offer to sell or lease nor otherwise encumber the Property as described in Exhibit "A".

e. The Extended Option Period shall be exercisable pursuant to section 4 below.

f. ImMODO may unilaterally terminate this Option, at any time, for any reason or no reason, with written notice to the Owner. In the event of termination or lapse of the Option Periods, there shall be no refund of the consideration paid to the City.

g. During the Option Periods, ImMODO shall have the right to conduct activities as set forth in section 3 below. ImMODO shall not place any equipment or materials on the Property, except for Tests and Investigations as set forth in Section 2, until it exercises its Option rights to enter into the Lease. After the Tests and Investigations are completed, any such equipment or materials are to be removed from the Property until ImMODO exercises its Option rights to enter into the Lease.

**2. Scope of Option Rights; Right of Entry.**

a. During the Option Periods, ImMODO, its employees, agents and independent contractors shall have full and complete access to the Property to evaluate, conduct, perform field inspections, invasive soil and water testing, environmental audits, engineering and boundary surveys, topographical, structural and geo-technical tests, and such other tests and inspections (collectively "Tests and Investigations") of the Property which ImMODO may deem necessary or advisable in its sole discretion. However, ImMODO shall provide Owner or Owner's Agent at least twenty-four (24) hours advance notice of same. For purposes of this Section 2.a, electronic written notice shall be sufficient. ImMODO has the right, but not the obligation, to perform Tests and Investigations.

b. Upon request, and with prior consent and direction of Owner or Owner's agent, not to be unreasonably withheld, conditioned or delayed, ImMODO shall have the right to access the Property from 19th Avenue by way of the approximate 84' dirt corridor south of the Olam Property.

c. With respect to this right of entry to the Property, the Parties agree as follows:

ImMODO and ImMODO's employees, agents and independent contractors shall (i) have access to the Property twenty-four (24) hours a day, seven (7) days a week at no additional charge, and (ii) ImMODO may make and file applications, at ImMODO's sole cost and expense, on Owner's behalf to such local, state and federal governmental entities whose approval may be necessary or advisable to enter the Property to perform Tests and Investigations, and to take any actions in furtherance of ImMODO's ability to proceed with timely implementation of a photovoltaic/ground mounted solar ray system (the "System"). Owner shall promptly execute any such application or other documentation, and take any other actions reasonably necessary at ImMODO's sole cost, as required by said governmental entity or as would reasonably assist ImMODO.

**3. Indemnification.**

ImMODO shall defend, indemnify and hold Owner harmless from and against any and all liabilities, damages, losses, costs or expenses (including, without limitation, reasonable attorney fees and court costs) arising from the entry upon, or any inspections, tests or examinations performed on the Property by ImMODO, its employees or agents in connection with any Tests and Investigations.

**4. Notice of Exercise of Option.**

The Option to lease the Property may be exercised by ImMODO, in its sole discretion, during the Option Periods. ImMODO shall give Owner thirty (30) days' written notice of its intention to exercise this

Option at any time during the Option Periods ("Option Notice"). Such Option Notice shall: a) state that ImMODO is exercising its Option to enter into the Lease; b) be sent to Owner at:

The City of Lemoore  
119 Fox Street  
Lemoore, CA 93245  
Attn: City Manager  
Phone: (559) 924-6700  
Facsimile: (559) 924-9003

or at such other address as shall be designated by Owner in writing by notice to ImMODO.

Notices to ImMODO shall be delivered to ImMODO at:

ImMODO California 1 LLC  
600 South Meyer Avenue, Suite 110  
Tucson, AZ 85701  
Attention: VP Operations

or at such other address as shall be designated by ImMODO in writing by notice to Owner.

Unless otherwise provided for herein, any other notices provided for in this Agreement shall be in writing, hand delivered, sent by registered or certified U.S. Mail, postage prepaid, with return receipt requested, or by commercial overnight delivery service and shall be deemed delivered to the addressee or its office when received at the address for notice specified above when hand delivered, and on the business day after being sent when sent by overnight delivery service (Saturdays, Sundays and legal holidays excluded), or five (5) business days after deposit in the mail when sent by U.S. mail.

**5. Owner Representations.**

ImMODO is relying upon its own due diligence studies pursuant to section 2 above in its determination of whether to exercise its Option rights to enter into the Lease. Owner represents and warrants the following:

a. Other than Owner, there are no other persons or entities having legal or beneficial title or ownership interests or possessor rights to the Property. Owner has the full legal right, power and authority, without the consent of additional parties or party, to enter into this Agreement and to perform, its obligations hereunder and the execution and delivery of this Agreement and the consummation of all transactions contemplated hereby have been duly authorized and will not result in a breach or violation of, or a default under, any lease (or other document) by which Owner or its properties are bound, or any law, administrative regulation, or court decree in a manner which could materially and adversely affect the rights of Owner hereunder. The person executing this Agreement on behalf of Owner has full power and authority to bind Owner to the obligations of Owner set forth herein, and upon execution and delivery of the same, this Agreement will constitute valid and binding instruments enforceable in accordance with their terms. The entry into and performance of Owner's obligations under this Agreement will not violate or result in a breach of any contract or agreement by which Owner is bound, the consequence of which

violation would be to prevent the performance of Owner's obligations under this Agreement. No consent of any other party is required for the performance by Owner of its obligations hereunder.

b. Owner is a California municipal corporation duly formed and validly existing under the laws of the State of California. There is no litigation or injunctive action or proceeding pending or, to the best of Owner's knowledge, threatened against Owner which would prevent the performance of Owner's obligations under this Agreement.

c. Owner is not bankrupt or insolvent under any applicable federal or state standard, and Owner has not filed for protection or relief under any applicable bankruptcy or creditor protection statute and has not been threatened by creditors with an involuntary application of any applicable bankruptcy or creditor protection statute.

d. Owner (i) has not received notice of or been served with any pending or threatened litigation, condemnation, foreclosure, or sale in lieu thereof with respect to any portion of the Property relating to or arising out of the ownership of the Property by any person, company or governmental instrumentality; and (ii) the Property has lawful and valid access as set forth in section 2.b. ImMODO shall satisfy itself as to the suitability of the Property for the System.

Without warranty, guarantee or covenant, Owner believes, to the best of its knowledge, that:

e. No underground storage tanks for petroleum or any other substance, or underground piping or conduits are or have previously been located on the Property, and no asbestos-containing thermal insulation or products containing PCB, formaldehyde, chlordane, or heptachlor or other Hazardous Materials have been placed on or in any structure on the Property by Owner or, to the knowledge of Owner, by any prior Owner or user of the Property, and there have been no release of or contamination by Hazardous Materials on the Property. Owner has offered to provide ImMODO with all environmental studies, records and reports in its possession or control conducted by independent contractors, or Owner and all correspondence with any governmental entities concerning environmental conditions of the Property, or which identify underground storage tanks or otherwise relate to contamination of the soil or groundwater of the Property or effluent into the air. As used herein, "Hazardous Materials" means any substance designated as being under any applicable federal, state or local statutes, ordinances, codes, regulations, decrees, orders, laws, rulings, judgment, or other governmental or judicial requirements.

f. Owner has no current knowledge: (i) that any of the Property is within any area determined to be flood prone or within a flood zone under Federal designation; (ii) of the severance of any mineral rights and access rights related thereto; or (iii) of the existence of any archeological materials, graves, burial sites, buildings, foundations, wetlands or endangered or protected species.

As for sections e. and f., ImMODO must rely on its own due diligence pursuant to section 2.

## **6. ImMODO Representations.**

ImMODO hereby represents, warrants, agrees and covenants to Owner that to the best of its knowledge:

a. ImMODO is a limited liability company duly formed, validly existing in California and is in good standing with the State of California. ImMODO has the full legal right, power and authority, without the consent of additional parties or party, to enter into this Agreement and to perform, its obligations

hereunder and the execution and delivery of this Agreement and the consummation of all transactions contemplated hereby have been duly authorized.

b. ImMODO is not bankrupt or insolvent under any applicable federal or state standard, and ImMODO has not filed for protection or relief under any applicable bankruptcy or creditor protection statute and has not been threatened by creditors with an involuntary application of any applicable bankruptcy or creditor protection statute.

c. ImMODO shall, at all times, conduct its activities at the Property in a lawful manner and in compliance with all laws, statutes, codes, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits and licenses which now or at any time hereafter may be applicable to the Property, or any part thereof, any of the adjoining sidewalks, streets or ways, any condition of the Property, or any part thereof, or the operation or use of the Property, or any part thereof (collectively, the "Legal Requirements").

## **7. Insurance.**

a. ImMODO shall maintain Commercial General Liability Insurance with limits of not less than \$2,000,000 general aggregate, \$1,000,000 per occurrence in full force and effect throughout the term of this Agreement either through insurance policies or acceptable self-insured retentions.

b. ImMODO shall carry adequate liability and workers' compensation insurance with an insurance company admitted to do business in the State of California, covering all persons employed by ImMODO in connection with the permitted activities of ImMODO under this Agreement at the Property. ImMODO may, at its option, bring its obligations to insure under this section within the coverage of a "blanket" policy of insurance which it may now or hereafter carry, by appropriate amendment, rider, endorsement, or otherwise. ImMODO shall name Owner as an additional insured on all insurance policies maintained in accordance with this Agreement.

## **8. Preservation of Positions.**

During the Option Periods, Owner shall operate and maintain the Property in the manner in which it is currently operated and maintained. Owner shall not take any action or enter into any contract affecting the Property without ImMODO's consent, which consent ImMODO may withhold in ImMODO's sole discretion for any reason. Loss or damage to the Property, if any, during the Option Periods by fire or an act of God shall be at the risk of Owner.

## **9. Assignment.**

ImMODO may assign this Agreement, with the express prior written consent of Owner, which consent shall not be unreasonably withheld. Owner shall have thirty (30) days within which to approve or disapprove any assignment requiring Owner's approval as set forth herein, and the failure of Owner to approve or disapprove within said period shall be deemed a disapproval of the assignment. Any such assignment may be denied by the Owner unless it is established that ImMODO's successor has the equivalent or superior qualifications, experience, and assets as ImMODO and ImMODO is not in breach of the Agreement. Any successor in interest shall assume all of the rights, duties and obligations of the Agreement. Notwithstanding the foregoing, ImMODO may, without the prior consent of Owner, assign this Agreement to any other company directly or indirectly controlling, controlled by or under common

control with ImMODO or to an affiliate, subsidiary or parent of ImMODO or a subsidiary or affiliate of ImMODO's parent.

**10. Counterparts; Facsimile Signature.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. For purposes of this Agreement, a facsimile or photocopy signature shall be deemed as valid and enforceable as an original.

**11. Governing Law.**

This Agreement shall be governed by the laws of the State of California. The Parties agree that in the event of a dispute in connection with this Agreement, the courts of Kings County shall have jurisdiction.

**12. Representation on Authority of Parties.**

Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each Party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such Party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such Party and enforceable in accordance with its terms.

**13. Waivers.**

Any waiver by any Party shall be in writing and shall not be construed as a continuing waiver. No waiver will be implied from any delay or failure to take action on account of any default by any Party. Consent by any Party to any act or omission by another Party shall not be construed to be a consent to any other subsequent act or omission or to waive the requirement for consent to be obtained in any future or other instance.

**14. Construction of Agreement.**

Each Party acknowledges that it is freely and voluntarily entering into this Agreement, uncoerced by any other person and that it has been afforded the opportunity to obtain the advice of legal counsel of its choice with regard to this Agreement in its entirety and understands the same. Each Party and attorneys for each Party have had the opportunity to participate in the drafting and preparation of this Agreement. Therefore, the provisions of this Agreement shall not be construed in favor of or against either Party, but shall be construed as if both Parties equally prepared this Agreement.

**15. Headings.**

The paragraph headings herein are used for the purpose of convenience only and shall not be deemed to limit or enlarge the subject of the sections or paragraphs of this Agreement or to be considered in their construction.

**16. Severability.**

If any provision of this Agreement shall become illegal, null or void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void or against public

policy, the remaining provisions of this Agreement shall not be affected thereby and shall remain in force and effect to the full extent permissible by law.

**17. Entire Agreement.**

This Agreement, with exhibits, constitutes the entire agreement between the Parties pertaining to the subject matter hereof and shall supersede all prior and contemporaneous agreements, representations, negotiations and understandings of the Parties, oral or written. The foregoing sentence shall in no way affect the validity of any instrument executed by the Parties in the form of the exhibits attached to this Agreement. This Agreement shall not be modified or amended unless such modification and/or amendment is in writing and signed by both Parties.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the Effective Date.

**OWNER:**

City of Lemoore, a California municipal corporation

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

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

**IMMODO:**

ImMODO California 1 LLC, a California limited liability company

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

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

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF PROPERTY**

**The lease property shall include 25-35 acres which is a portion of APN 024-051-031. The general leased area shall be identified prior to execution of the Lease Option. During the Option Periods, the Owner and ImMODO shall determine the exact legal description of the leased property, at ImMODO's expense, upon further site analysis which shall be included in Exhibit "A" of the Option to Lease Agreement and Exhibit 1 of the Lease Agreement.**

**EXHIBIT "B"**  
**LEASE AGREEMENT**