

**CASE NOS. 18-4150 and 18-4119**

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

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UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

RAPOWER-3, LLC, INTERNATIONAL AUTOMATED SYSTEMS, INC.,  
LTB1, LLC, R. GREGORY SHEPARD, NELDON JOHNSON,

Defendants – Appellants.

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On Appeal from the United States District Court  
For the District of Utah, Central Division  
The Honorable Judge David Nuffer  
D.C. No. 2:15-cv-00828-DN

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**APPELLANTS' APPENDIX VOL. III**

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Respectfully submitted,

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**VOL. III APPENDIX TABLE OF CONTENTS**

**Trial Exhibits**

22. PLEX 003.....317

23. PLEX 004.....319

24. PLEX 005.....324

25. PLEX 014.....326

26. PLEX 019.....328

27. PLEX 020.....331

28. PLEX 023A.....334

29. PLEX 027.....338

30. PLEX 074.....340

31. PLEX 094.....342

32. PLEX 095.....350

33. PLEX 103.....357

34. PLEX 104.....358

35. PLEX 105.....359

36. PLEX 119.....360

37. PLEX 174.....368

38. PLEX 313.....376

39.	PLEX 321.....	377
40.	PLEX 322.....	378
41.	PLEX 327.....	379
42.	PLEX 362.....	380



# SOLAR

IAUS expects its unique solar power technology to be the first to compete with gas and coal. Two primary issues have prevented solar power from replacing fossil fuels: the high cost of solar power equipment, and limited-volume manufacturing capabilities. In fact, even if today's solar power technologies were competitively priced, the manufacturing capabilities are so low it would take decades to barely make a dent in replacing fossil fuels.

Because of IAUS's other proprietary components such as its bladeless turbine and dynamic voltage controller, the company's solar product can operate as both solar thermal and concentrated photo voltaic (CPV). Combining the two not only lowers the cost, and adds peak-power stability, but it creates a system that can potentially achieve efficiencies above 60%-70%.



Being a thermal based system also allows IAUS's solar plant to function as a hybrid with other fuels such as biomass, and natural gas. In addition, it is capable of producing electricity and desalinated water simultaneously. So coastal areas that are short of fresh water can produce both electricity and desalinated water from the sun.

IAUS's new solar technology presents a breakthrough on both fronts. The company has been achieving manufacturing costs competitive with fossil fuels, and its annual production scalability, both cost wise and time wise, is off the charts compared to today's technologies. These two

<http://iaus.com/technology.html>



elements make it perhaps, the energy sector's holy grail in a market currently grossing more than \$3 trillion annually, but fueled by less than 1% solar.

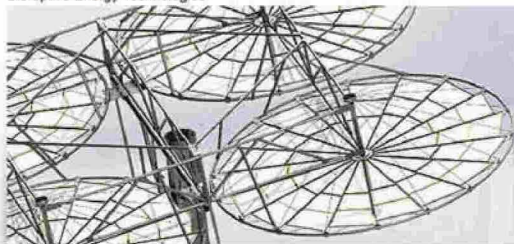


Technology	DVC Applications	DVC Applications	Company
<ul style="list-style-type: none"> <li>Solar</li> <li>Solar Panels</li> <li>Bladeless Turbine</li> <li>Dynamic Voltage Controller (DVC)</li> <li>DVC Prototype Videos</li> </ul>	<ul style="list-style-type: none"> <li>Instant Charge Batteries</li> <li>Wind Turbines</li> <li>PV Solar</li> <li>CPV Solar</li> <li>Ocean Wave Energy Generation</li> </ul>	<ul style="list-style-type: none"> <li>Electric Car Energy Capture</li> <li>Electric Motors/Generators</li> <li>Smart Grid</li> <li>Lithium Batteries</li> </ul>	<ul style="list-style-type: none"> <li>News</li> <li>About</li> </ul>

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## RaPower3 Technology

RaPower3 (Ra3) exclusively uses technology introduced by International Automated Systems, Inc. (IAS). Although Ra3 has contracted with operating and maintenance company LTB, LLC to utilize the full spectrum of IAS technologies in Ra3 projects only the RaPower3 Solar Concentration Lens is available to Ra3 members to purchase for use in these projects. Other technologies are forthcoming that should provide further opportunities for RP3 members.

IAUS solar technologies have been lab and field tested. Each part has been designed to meet functional standards and to be able to be assembled in the most cost effective way. The man hours used to construct the mechanical assembly have been thoroughly evaluated in order to insure the final cost of the system is within the targeted amount.

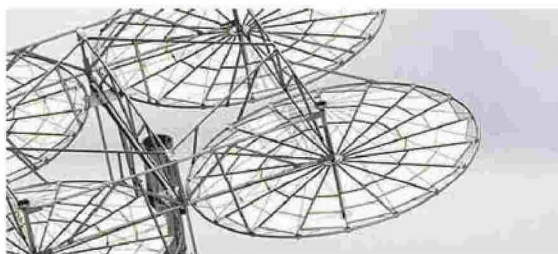


For more information on all IAUS technologies click [HERE](#).

For more information on IAUS solar technologies click [HERE](#).

For parties interested in utility-scale projects of any IAUS technology, please contact:

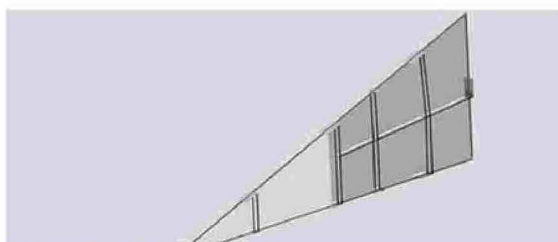
Greg Shepard  
801-699-2284  
greg@rapower3.com



### RaPower3 Solar Lenses

These special thin-film solar lenses are 92% efficient. They refract solar energy into a 2" focal point to generate temperatures well over 1,000 degrees F. They are constructed of extremely-durable, non-yellowing aviation-grade acrylic and can be mass-produced in quantities never seen in the solar industry. These solar lenses are what we use in RaPower3 Solar Plants. Our lenses are the first and only solar lenses in the world to be manufactured using the unmatched mass-production process of roller-mold manufacturing.

For more information on our Solar Lenses click [HERE](#).



### RaPower3 Solar Lens Bracing

These RaPower3 Solar Lenses are fitted with harmonics bracing that cuts down vibrations from wind activity. The bracing makes the lenses wind resistant for winds up to 100 mph. These lenses can be used with other RaPower3 technologies from IAS to produce electricity from steam or from concentrated photovoltaics (CPV), to distill water, or for other manufacturing processes that require high temperatures.

## Industry Comparison

### Lowest Cost of Operation!

Because of the nature of RaPower3 technology, our power plants have a far lower cost of operation than any other competing technology in the market today. This biggest costs saving can be attributed to our revolutionary bladeless propulsion micro-turbines, thin-film solar concentration lenses and pipeless heat exchangers. Our turbines can run off of low-grade steam and high-mineral content water without any damage and does not require a cooling tower allowing over 90% of the water to be instantly recaptured and recirculated. The solar lenses have permanent calibration with a focal point of 22 inches that reach temperatures well over 1,000 degrees. Our heat exchangers are 1,000 times smaller than our competitors and require very minimal maintenance.

### Most Sun Hours!

Our solar towers have a patented counter balanced dual-axis solar tracking system that allow us to have the maximum amount of solar hours per day and requires very little power to operate.

### Highest Wind Tolerance!

The solar lenses on our towers are rated to withstand up to 90 mph winds. And because our focal point is larger than any other company, vibrations due to wind do not affect our efficiencies.

### Easiest Operation!

Where it takes our competitors an entire room of computers and several highly



**RaPower3 Solar Concentrators and Heat Collectors**

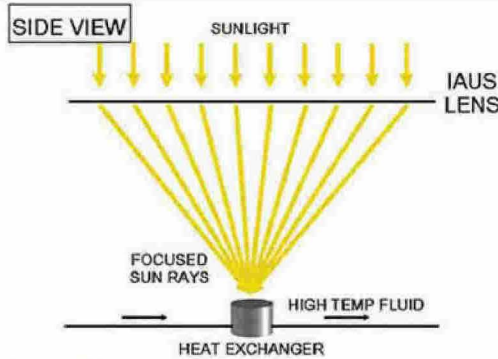
RaPower3's parabolic solar concentrators are adjustable in all directions for easy adjustment to focal point. Our solar lenses focus the sun's heat into the solar collector and the heat funnels down to the bottom where our sphere shaped heat collector captures the heat and subsequently pumps the heat to a heat-storage tank or to be used by our jet-propulsion turbines.

Using the heat concentrators with our solar lenses, we can get temperatures well over 2,000 degrees F.

utilized in the plants, it takes us a single computer to operate an entire field of our towers.

**The Most Environmentally Friendly!**

Every acre of land used by our competitors is permanently damaged. Since our technology is raised on towers, any land between the towers remains open for other uses such as grazing or farming and if the plant is ever moved, the land is easily restored. We also do not use up precious water to run and cool our plants as is needed with our competitors.



**Refractive Properties**

The diagram shows the sunlight refracting to a large 2" focal point. The reflecting technology of our competition requires a focal point less than a pin head. This requires intricate software technology in the solar field and considerably increases the cost of their operation.

Annual Efficiency Data	SEGS VI	Solar Tres	Dish 10	IAUS
Solar Field Optical Efficiency	53.30%	56.00%	85.00%	83.79%
Receiver thermal efficiency	72.90%	78.30%	90.00%	90.00%
Transient effects	100.00%	100.00%	92.00%	92.00%
Piping loss efficiency	96.10%	99.50%	96.10%	96.10%
Storage Efficiency	100.00%	98.30%	100.00%	100.00%
Turbine power cycle efficiency	35.00%	40.50%	35.00%	43.50%
Electric loss efficiency	82.70%	86.40%	86.00%	86.00%
Power plant availability	98.00%	92.00%	94.00%	96.00%
Annual Solar to Electric Eff	10.59%	13.81%	19.14%	23.94%

**Efficiency Comparison**

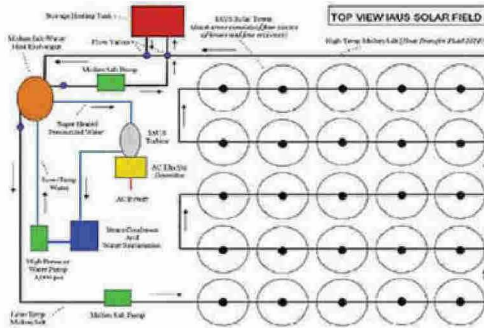
RaPower3 uses IAUS technology. The comparison chart to the left shows how RaPower3's solar systems stack up against other well known solar technologies from an efficiency stand point. RaPower3's "Annual Solar to Electric Efficiency" of 23.94% is significantly higher than competing technologies.

Download White Papers [HERE](#).



### Dual-Axis Tracking

Our dual-axis tracking system keeps our heliostats faced directly at the sun from sun up to sun set. This gives us 20% more sun hours than stationary systems. Our unique hydraulic tracking system has very little parasitic load and can be monitored remotely.



### Modular Design

Whether solar, biomass, geothermal, waste-to-energy or natural gas, RaPower3's designs are all modular. This makes it easy to build in stages and to add additional power in the future. It also makes scheduled maintenance much easier and with a lot less down time.



### Dynamic Voltage Control

RaPower3 uses the IAS Dynamic Voltage Control (DVC) with its power plants and other forthcoming technologies. The DVC allows us to take in a variable voltage input and set a constant voltage output eliminating the need for expensive coils and inverters. This is a huge breakthrough in the renewable energy industry as it has the potential to impact solar, wind, wave power, batteries and transmission as it is further developed for additional uses.

For more information on the DVC click [HERE](#).  
For videos on the DVC click [HERE](#).

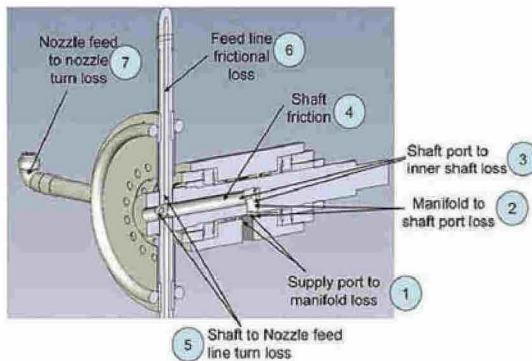




**Jet-Propulsion Turbine**

The RaPower3 Bladeless Jet-Propulsion Turbine and Heat Exchanger is designed to run off of any heat-source including geothermal, solar, methane, biomass, solid waste, natural gas, etc. It is 47% efficient and has only two moving parts. It is self-balancing and auto-synching. RaPower3 uses this Jet-Propulsion Turbine and Heat Exchanger in their solar projects.

For more information on the Bladeless Jet-Propulsion Turbine click [HERE](#).



**Jet-Propulsion Turbine**

Because it uses small jet-engines or nozzles instead of blades like traditional turbines, it can use impure hard-water without any issues. In fact, brackish water and other types of polluted water can be used in the turbine and as the heated water flashes to steam as it escapes through jet-engine the particulates fall down to the extraction chamber and the steam pushes forward through to the condensation chamber effectively making the turbine as a water distillation plant while it produces power.

<p>Make Payments To: RaPower3 LLC 4035 South 4000 West Deseret, UT 84624</p>	<p>PR Contact: Matthew Shepard <a href="mailto:matt@rapower3.com">matt@rapower3.com</a> 801-651-2183</p>	<p>Business Contact: Greg Shepard <a href="mailto:greg@rapower3.com">greg@rapower3.com</a> 801-699-2284</p>	<p>Technology: <a href="#">Technology Overview</a> <a href="#">Technology Videos</a> <a href="#">Disruptive Solutions</a> <a href="#">The Basics</a></p>	<p>Opportunity: <a href="#">Opportunity Overview</a> <a href="#">Payback</a> <a href="#">Calculate Lenses</a> <a href="#">Buy Leases and Join</a></p>	<p>Tax Info: <a href="#">General Tax Information</a> <a href="#">Tax Forms</a> <a href="#">CPA Information</a> <a href="#">How Depreciation Works</a></p>
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AGREEMENTS



Lens Purchase Agreement



Operations & Maintenance



Commission Agreement



Policies & Procedures



Distributor Application

DOCUMENTS



IAUS Tech White Papers



Tax Opinion Letter



Tax Memorandum



RaPower3 History



Millard County Permit

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## Opportunity Overview

Do you want to see America energy independent? Do you want to see the cost of power go down? All of the solar thermal lenses in RaPower3 grid-scale projects are owned by independent RaPower3 business owners who are making a difference and making money! Own your own RaPower3 business and join the RaPower3 Solar Revolution. Start your business here.



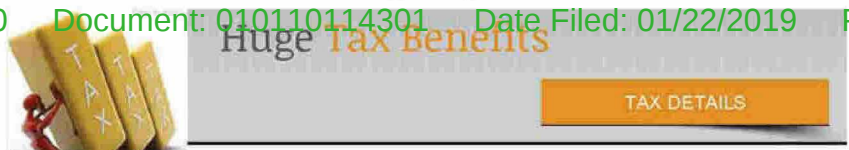
RaPower3's Solar Thermal Lenses are used for industrial applications only and designed to work exclusively on IAUS solar towers. The lenses generate process heat temperatures of over 1,000 degrees F and are used for a variety of industrial and commercial applications. This includes the generation of electricity. Every solar thermal lens purchased by RaPower3 members will be used in RaPower3 projects and operated by LTB, LLC



With the purchase of your RaPower3 lens(es), you are automatically enrolled as a RaPower3 **life-time team member** with all of its privileges, including distributor rights. This allows you to sell RaPower3 lenses and sponsor others to become team members as well. You can make great commissions on these sales. There are never any fees or sales quotas for your distributor and sponsorship rights.



All lenses come with an operating and maintenance (O&M) agreement with LTB, LLC that provides rental income to lens owners. Operation and maintenance under this agreement is at no cost and with no hassle to lens owners. Rental income, however, is not your only way to significantly improve your bottom line. Click the Quick Payback button below.



RaPower3 Solar Thermal Lens owners may qualify for the Federal 30% Investment Tax Credit (ITC) under the category of "solar thermal process heat" ([view here](#)). Companies and individuals with home businesses who qualify as active participants may also be entitled for a special 5-year depreciation with a 50% first-year bonus depreciation ([view here](#)). Owners may also qualify for certain state tax incentives. Always check with your CPA or qualified tax preparer.



Your success is very important to RaPower3 and to America's energy independence. Consequently, every solar thermal lens has a 35-year warranty as outlined in the signed agreements. This gives you peace of mind in your lens ownership and security in your solar business.

<p><b>Make Payments To:</b> RaPower3 LLC 4035 South 4000 West Deseret, UT 84624</p>	<p><b>PR Contact:</b> Matthew Shepard <a href="mailto:matt@rapower3.com">matt@rapower3.com</a> 801-651-2183</p>	<p><b>Business Contact:</b> Greg Shepard <a href="mailto:greg@rapower3.com">greg@rapower3.com</a> 801-699-2284</p>	<p><b>Technology:</b> <a href="#">Technology Overview</a> <a href="#">Technology Videos</a> <a href="#">Disruptive Solutions</a> <a href="#">The Basics</a> <a href="#">Patents</a></p>	<p><b>Opportunity:</b> <a href="#">Opportunity Overview</a> <a href="#">Payback</a> <a href="#">Calculate Lenses</a> <a href="#">Buy Lenses and Join</a></p>	<p><b>Tax Info:</b> <a href="#">General Tax Information</a> <a href="#">Tax Forms</a> <a href="#">CPA Information</a> <a href="#">How Depreciation Works</a></p>
<b>AGREEMENTS</b>					
Lens Purchase Agreement	Operations & Maintenance	Commission Agreement	Policies & Procedures	Distributor Application	
<b>DOCUMENTS</b>					
IAUS Tech White Papers	Tax Opinion Letter	Tax Memorandum	RaPower3 History	Millard County Permit	
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# News

12/1/2015

## IAUS Response to Department of Justice's Claims Against Its Technology

On November 23, 2015 the United States Department of Justice ("DOJ") filed a lengthy complaint which names IAUS as Defendant. The complaint is seeking to enjoin IAUS from operating its business. IAUS firmly and unequivocally denies the allegations made by the DOJ. The DOJ filed its request for injunction without having visiting our facilities or actually physically evaluating our technology. In our opinion this is unconscionable.

The Company intends to pursue every legal means possible to protect its rights, the rights of potential customers and its shareholders. IAUS views the DOJ's filed injunction and press release as a mechanism for intimidation and coercion. Congress, not IAUS, authorized tax benefits in the law to encourage investors and other stakeholders to further the use and production of solar energy. IAUS has consistently required every person with which it has done business to seek independent tax and legal advice as it relates to utilizing the tax benefits that are allowed by law. Despite the congressionally authorized incentives, and professional opinions and advice rendered, the DOJ has brought claims against the Company without having visited our facilities or actually evaluated our technology. However, IAUS refuses to be intimidated and intends to vigorously defend the allegations made by the DOJ.

If the DOJ would take the time view a 38 second video [click here](#) to see the video. they would see our technology producing heat.

They could also see our technology produce electricity by watching this short video [click here](#) to see the video.

Instead, the DOJ makes statements to the court that are not supported by any evidence and issues a press release to the public. They make their unsupported accusations because they enjoy sovereign immunity—meaning they cannot be sued (unless the law they create allows it). So they can freely make unsupported and hurtful accusations without fearing repercussions of a countersuit. In other words, it doesn't matter to them if they are wrong. As such, we invite the United States to waive its sovereign immunity so that its conduct might be made known to the public. If the assertions the DOJ makes are true the DOJ should have no concern about waiving sovereign immunity in this case.

Here is a partial list of due diligence IAUS has done with regards to its own solar technologies:

### IAUS Solar Lenses

- Three patents granted by United States Patent and Trademark Office
- Viability, energy temperature capabilities, and efficiency review by a third party expert having a background of 50 years of experience in the field of optics, 39 of which were with a leading international electronics corporation where he designed Fresnel lenses and lenticular lenses. He also designed asymmetrical, aspheric lenses and developed an electro photographic process to make color CRTs. He is responsible for 20 patents assigned to the above mentioned international electronics corporation.
- Lens manufacturing partner is a global leader in the design, development and manufacture of acrylic based products. They have over 14 manufacturing sites and 2,000 employees.
- Lenses have already been manufactured for all customers who have purchased them.

### IAUS Propulsion Turbine

- Three patents granted by the United States Patent and Trademark Office.
- Viability and efficiency review by third party experts having a background with the following experience:
  - The lead engineer is an expert in combustion stability, liquid rocket engine performance and injector design, and laser diagnostics. He received his B.S. degree in Chemical Engineering from M.I.T., his M.S. degree in Mechanical Engineering from the University of Miami, and his Ph.D. in Mechanical Engineering from U.C. Berkley.
  - The second engineer is an expert in system optimization, mechanical and fluid systems analysis, liquid rocket engine performance, solid and gel propellant performance, and component design. He received his B.S. degree in Mechanical Engineering from V.M.I. and his M.S. degree in Nuclear Engineering from M.I.T. Overall, these engineers are specialized in propulsion technology and have worked with government agencies such as NASA, U.S. Missile Defense Agency, U.S. Air Force, and Office of Secretary of Defense.
  - The third engineer is an expert in structural loads prediction, stress analysis and mechanical design; structural dynamics including rotating machinery and vibration; the use of finite element methods and computer analysis programs to solve stress and dynamic loading problems, including composite structures; and probabilistic and statistical design, analysis and data reduction. He received his B.S., M.S., and Ph.D. degrees in Mechanical Engineering from U.C. Davis. His Ph.D. dissertation was on practical nonlinear simulation of rotating machinery dynamics with application to turbine blade rubbing.

### IAUS Concentrated Photo Voltaic (CPV) Receiver

- One patent granted by the United States Patent and Trademark Office and several patents pending.
- Viability of the new voltage controller circuit (which makes a photovoltaic array for concentrated solar possible) was reviewed by an engineer whose background includes a PhD in Electrical Engineering, over thirty years of teaching experience as a professor at a well-respected, major university, a Dean of Engineering, a Department Chair, authored a number of text books on circuit design, and has been published numerous times in trade journals. In addition, he has worked as a consultant for IBM, Intel, and Lawrence Livermore Laboratories, and is a Fellow of IEEE.

### Tax Laws with Regards to IAUS Solar Technology

<http://iaus.com/news-dec-2015>

**Plaintiff  
Exhibit**

14

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**VOL III 326**

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• IAUS obtained two tax opinion letters to ascertain that a business structure with specific tax benefits is available and legal under the law. One is from the largest law firm in the State of Utah.

• Even with these two opinion letters IAUS contractually requires persons to seek independent legal and tax advice. IAUS does not provide legal or tax advice and is not a law firm, nor does it hold itself out as such.

IAUS is a small company, and at times, is both underfunded and understaffed. Yet, in a climate when over 112 solar companies in the past five years have failed, losing billions of government dollars, how is it that in light of supporting information given above, the DOJ and the IRS would attempt to intimidate one of the few who have weathered such economic storms.

IAUS would also like to address the allegations that our technology is in a state of "disrepair" and is in a condition that "energy could not be collected and used for any purpose that Congress intended to encourage." On the surface, if you look at our solar field, perhaps it is only mildly impressive to the untrained eye. Aesthetics is not among our first priorities at this time. In an attempt to be environmentally responsible and forward-thinking with regards to our carbon foot-print, the Company decided to construct its first generation towers using recycled, oil drill pipe, which in and of itself, is remarkable. In addition, during its first stage of commercialization, IAUS has put the customers' lenses through rigorous tests for structural integrity. After each test is complete, IAUS replaces the customer's lens for free. The lenses have also been used to assist in the refinement of IAUS' new, gearless, dual-axis tracking system, an unprecedented mechanism that trumps the accuracy, structural stability, durability and cost of gears.

Currently, renewable energy produced by the lenses is used for various commercial purposes. Additionally, the research and development and refinement of the Company's new solar thermal heat applications and solar thermal/photovoltaic receivers continues. These are tangible products that were always available for the DOJ or the IRS to view upon reasonable request. However, the DOJ or its agents involved showed no interest in conducting such a review before filing its request for an injunction.

IAUS believes the filing of the request for an injunction has unjustly harmed its reputation. IAUS is a small company. In the court of public opinion, it is near impossible for a small company to combat the deep pockets and media influence of the US Government. However, in spite of this, IAUS believes that, in the end, the truth will prevail.

Technology	DVC Applications	DVC Applications	Company
Solar Solar Panels Bladeless Turbine Dynamic Voltage Controller (DVC) DVC Prototype Videos	Instant Charge Batteries Wind Turbines PV Solar CPV Solar Ocean Wave Energy Generation	Electric Car Energy Capture Electric Motors/Generators Smart Grid Lithium Batteries	News About

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## Your BIG and Quick Payback

Starting a new business is usually hard and costly. Not with RaPower3. With the rental fees, bonuses, and tax incentives you have made your money back and more by tax time. Then, for the next 35 years your lenses are profit makers with no surprises. Plus, if you decide to sponsor anyone else into the program generous commissions make life pretty sweet!

### Payback Summary

- **Rental Income:** Payback of down payment is ten years with the next 25 years adding profit
- **Tax Benefits:** Payback is over 1.5 times the down payment; most coming in less than a year
- **Sponsor Commissions:** Commissions are available on sales made to those you sponsor into RaPower3

### Payback Details

**Rental Income:** The payback of the down payment of \$1,050 per solar lens takes only ten years just on the rental income alone. After these first ten years, the purchaser makes \$68 per solar lens every year for the next 25 years. That's \$1,700 over and above the payback of the original down payment.

Rental income details are specifically outlined in the Equipment Purchase Agreement along with the Operations and Maintenance Agreement. The Operations and Maintenance company agrees to rent your lenses for \$150 per lens per year for 35 years. The purchaser gets to keep all \$150 per lens for the first five years. Thereafter, the purchaser gets \$68 out of the \$150 and the remaining \$82 goes to pay off the rest of the total purchase price. Rental payments to the purchaser begin once LTB, LLC begins receiving revenue from the use of the lenses.

The Operations and Maintenance company can easily make the rental payments because the cost of operation is only a half cent per kilowatt hour.

**Bonus Income:** Bonus Referral Contracts were issued in the past relating to the purchase of solar lenses. Purchases before May 23, 2011 have a maximum payout of \$6,000 per lens based on .006% of the first billion dollars in gross sales of IAS (International Automated Systems). That's a payback of almost six times the down payment for use of the purchased lenses for advertising purposes when the bonus is fully paid out.

From May 24, 2011 to Feb. 29, 2012, the Bonus Referral Contract went to a maximum payout of \$2,000 for each solar lens purchased on .002% of the first billion dollars in gross sales of IAS (International Automated Systems). That's a payback of almost twice the down payment for use of the purchased lenses for advertising purposes when the bonus is fully paid out.

From March 1, 2012 through July 31, 2014, the Bonus Referral Contract went to a maximum payout of \$2,000 for each solar lens purchased on .002% of the 2nd billion dollars in gross sales of IAS (International Automated Systems). That's a payback of almost twice the down payment for use of the purchased lenses for advertising purposes when the bonus is fully paid out.



### 1. Rental Income

Every lens you purchase comes with rental agreement with our operation and maintenance company, LTB, LLC (LTB). Your lenses with their model and serial numbers will be installed on a tower in our solar fields to generate massive amounts of solar thermal heat. The rental term is 35 years. Since LTB installs, operates and maintains your lenses for you, having your own solar business couldn't be simpler or easier.



### 2. Tax Benefits

Tax incentives have never been better for renewable energy equipment purchases. And, there has never been better renewable energy technology than now with RaPower3. Put our technology with the government's tax incentives and you could make one and a half times your down payment back the first year. Please see our tax page [HERE](#) or request a free quote with financial projections [HERE](#).



### 3. Sponsoring and

**Plaintiff Exhibit**  
19  
328

Sponsors earn half the bonus monies paid to purchasers.

Commissions

Currently, there are no Bonus Referral Contracts available.

**Tax Benefits:** Please note that this is not an investment. It is simply a purchase of solar energy property in the form of solar lenses. Therefore, there is no K-1 form, prospectus or securities issue.

This is not a purchase of solar panels (photovoltaic) for a residence, but rather a purchase of Solar Lenses that will produce heat which could be used for a variety of purposes. These purposes could be to use the heat for a building or a greenhouse. The heat could also be used to heat water to create steam to turn a turbine and therefore be use to produce electricity. Taxpayers may be eligible for the 30% tax credit and the rapid 5-year depreciation available in 2015.

Each solar lens costs \$3,500 and thus a \$1,050 tax credit may be available (Use IRS tax forms 3468 and 3800). If so, the entire down payment could be paid back in less than a year.

A depreciation of \$2,975 per solar lens may also be available (Use IRS tax forms 4562 and Schedule C). If so, an in-pocket profit of another 50-65% could be realized on top of the tax credit. Typically, taxpayers may go back one year on the tax credit and forward twenty years on the tax credit. The depreciation and NOL (Net Operating Loss) is the same as any other business as far as going back and going forward. The generous tax benefits are part of the ARRA-American Recovery and Reinvestment Act meant to stimulate the solar energy industry along with much needed innovation.

Links:

1. Tax Forms: 3468, 3800, 4562, Schedule C. You can also go to [irs.gov](http://irs.gov)
2. Solar Energy Industries Association (SEIA) [seia.org](http://seia.org)
3. [FAQ for Tax Questions](#)

**Commissions:** RaPower3 also has a network marketing component built into its business model. Everyone who purchases lenses is automatically placed under their sponsor and becomes a RaPower3 Team Member. As a RaPower3 Team Member, you may introduce our program to others and help them purchase lenses online. Commissions of five to ten percent of the down payment and rental fee are paid on Level One. Commissions of one percent are paid from levels 2-6.

Some RaPower3 Team members have made many thousands of dollars through our commission program.

With the purchase of at least one solar thermal lens, you get full membership privileges with RaPower3 for free. This includes the ability to sponsor others into RaPower3. You get generous 5%-10% commissions on all purchases from those you sponsor into RaPower3. They are considered your 1st level downline. If they sponsor someone under them, you get a 1% commission from their purchases as a mentoring incentive. They are considered your second level downline. You will get a 1% commission on everything purchased by those on every level under you up to 6 levels deep..

DOWNLOAD COMPENSATION CONTRACT

Make Payments To:  
RaPower3 LLC  
4035 South 4000 West  
Deseret, UT 84624

PR Contact:  
Matthew Shepard  
[mail@rapower3.com](mailto:mail@rapower3.com)  
801-651-2183

Business Contact:  
Greg Shepard  
[greg@rapower3.com](mailto:greg@rapower3.com)  
801-699-2284

Technology:  
[Technology Overview](#)  
[Technology Videos](#)  
[Disruptive Solutions](#)  
[The Basics](#)  
[Patents](#)

Opportunity:  
[Opportunity Overview](#)  
[Payback](#)  
[Calculate Lenses](#)  
[Buy Lenses and Join](#)

Tax Info:  
[General Tax Information](#)  
[Tax Forms](#)  
[CPA Information](#)  
[How Depreciation Works](#)

AGREEMENTS



Lens Purchase Agreement



Operations & Maintenance



Commission Agreement



Policies & Procedures



Distributor Application



DOCUMENTS



IAUS Tech White Papers



Tax Opinion Letter



Tax Memorandum



RaPower3 History



Millard County Permit

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## Turn Your Tax Liabilities Into Assets Calculate How Many Lenses You Need

We recommend that you look at the taxes you paid last year and what you expect to pay this year in determining how many solar thermal lenses you should buy to maximize your profits. If you plan it right, you may be able to zero out your taxes while maximizing your solar business. In determining the number of lenses you should purchase, you may wish to consult your sponsor, use our free Lens Calculator, request a free quote, or do the math on your own as described at the bottom of this page.

*Note: To find out what your 2013 taxes were, go to line 61 of your 2013 1040 Form. Guidelines for 2014 expected taxes: Are you making about the same as last year, look at your YTD (Year to Date pay stub); or meet with your tax preparer.*

### Lens and Tax Benefit Calculator

Calculate your optimum number of lenses to purchase based on next year's tax refund or savings. Simply click on and change the three numbers in the white boxes in the far left column to reflect your personal circumstance:

RaPower3 Tax Benefit Calculator

<b>INPUTS</b>		
<b>\$10,000</b>	Your 2014 Projected Taxes	
<b>25.0%</b>	Your Tax Rate Bracket (Ex. 15%, 20%, 25%, 28%, 33%, 35%, 39.6%)	
You buy:	7	RaPower3 Solar Thermal Lenses
You pay:	\$7,350	(30% down payment)
YOU GET:	\$7,350	Business Energy Investment Tax Credit
YOU GET:	\$5,206	NOL Tax Savings over 5 years*
YOU GET:	\$1,050	In Annual Revenue for 35 years**

**Plaintiff Exhibit**  
20

**OVERALL STRATEGY:**

Our .00075 formula has been designed to give most taxpayers 1.5 times their money back in relation to their total down payment. For example, for a \$10K down payment following our formula, you may get back at least \$15K in tax benefits.

**FORMULA OVERVIEW:**

1. Current Year Purchase: Multiply what you expect to pay in taxes in 2013 by .00075
2. One-year carry back purchase: Add your 2012 & 2013 taxes & multiply by .00075

**The Current Year Purchase Option:**

**Objective:** To zero out your taxes for 2013 while maximizing your ability to bring clean, renewable energy to our country.

**Calculate Number of Systems to Purchase:** Take what you think your taxable liability will be and times that by .00075. (Round up)

**Example:** Taxable Liability is projected to be \$10,000. ( $10,000 \times .00075 = 8$  Systems)

**Purchase Price:** 8 systems  $\times$  \$3,500 = \$28,000

**Down Payment:** 8 systems  $\times$  \$1,050 = \$8,400

**Tax Credit:** \$28,000  $\times$  30% = \$8,400

**Depreciation (Net Operating Loss):** One half of the tax credit is \$4,200. Subtract that from the purchase price of \$28,000 = \$23,800. The 2014 Depreciation is 60% or \$14,280; the remaining 40% can be depreciated over the next four years.

**Effect in Dollars In-Pocket from Depreciation:** About \$2,900 and the \$1,900 in the following four years

**What Happens:** You get back or save all \$10,000 in your 2013 projected taxes plus, with some extra tax benefits to carry forward. In addition, there may be some state tax benefits on top of that. (Each state is different)

**Money Details:**

- A. You purchased 8 systems and paid \$8,400 as a down payment
- B. After your tax refund of \$10,000 in 2014, you will have put a nice percentage of profits in your pocket thanks to your RaPower3 purchase.
- C. Your profit is created by your depreciation.
- D. Don't forget the rental income of \$150  $\times$  8  $\times$  five years = \$6,000  
and \$68  $\times$  8  $\times$  30 years = \$16,320 (for a total of \$22,320)

\*\*\*Special Note: The greater one's taxable liability, the greater will be the depreciation benefit based on a percentage.

**The One-Year Carry Back Purchase Option:**

**Objective:** To zero out your taxes for 2013 & get everything back from 2012 while maximizing your ability to bring clean, renewable energy to our country.

**Calculate Number of Systems to Purchase:** Take what you think your taxable liability will be in 2013 plus what you paid in 2012 and times that by .00075. (Round up)

**Example:** Taxable 2013 Liability is projected to be \$10,000 plus there was \$10,000 paid in 2012 taxes. ( $10,000 + 10,000 \times .00075 = 15$ )

**Purchase Price:** 15 systems  $\times$  \$3,500 = \$52,500

**Down Payment:** 15 systems  $\times$  \$1,050 = \$15,750

**Tax Credit:** \$52,500  $\times$  30% = \$15,750

**Depreciation (Net Operating Loss):** One half of the tax credit is \$7,875. Subtract that from the purchase price of \$52,500 = \$44,625. The 2012 Depreciation 60% or \$26,775; the remaining 40% can be depreciated over the next four years

**Effect in Dollars In-Pocket from Depreciation:** About \$5,355 in the first year.

**What Happens:** You get back or save all \$10,000 in your 2013 projected taxes. Much of that will be the result of your Net Operating Loss. Use the tax credit to make up any difference in your 2013 taxes and then go back and get all of your 2012 taxes. (You are allowed to go back one year with tax credits) There may be several thousand left over in tax benefits so that amount can be carried forward. There may be some state tax benefits on top of that. (Each state is different)

**Money Details:**

- A. You purchased 15 systems and paid \$15,750 as a down payment
- B. After your tax refund in 2014, you get \$20,000 back and you will have put a nice percentage of profits in your pocket thanks to your RaPower3 purchase.

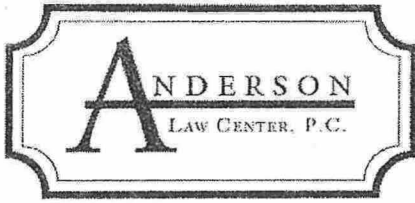
In addition, you will receive even more tax benefits over the next four years

- C. Your profit of \$4,250+ is created by your tax credit and depreciation.
- D. You part with \$15,750 for a few months. Then you get that back plus thousands more!
- E. You made \$4,250 ( $\$20,000 - 15,750 = \$4,250$ ) plus, whatever tax credits and depreciation that can be carried forward. (40% of your depreciation total)
- E. Don't forget the rental income of  $\$150 \times 15 \times \text{five years} = \$11,250$  and  $\$68 \times 15 \times 30 \text{ years} = \$30,600$  (for a total of \$41,850)

\*\*\*Special Note: The greater one's taxable liability, the greater will be the depreciation benefit based on a percentage.

\*\* Tax Law is extremely complex and each taxpayer has his/her own unique set of circumstances. Above, we have given general information we deem to be correct, but YOU SHOULD ALWAYS RELY ON ADVICE FROM YOUR OWN TAX ATTORNEY OR CPA.

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www.deltattorney.com  
andersonlawcenter@deltattorney.com

P.O. Box 183  
54 South 300 East  
Delta, UT 84624

P: 435. 864. 4357  
F: 435. 864. 4358

November 9, 2010

Re.: *Potential tax advantages.*

Dear Potential RaPower-3 Customer,

To help you, as a taxpayer, understand the possible tax saving benefits of purchasing energy equipment through RaPower-3, we have assembled the following information so that you can consult with your own tax professional about the potential tax advantages of entering the energy market by owning RaPower-3 energy equipment.

With the purchase of Rapower-3 Energy Equipment, there are four possible ways to reduce tax liability:

- energy credits;
- depreciation;
- § 179 costs,
- deductions and expenses.

Depending on your situation, all four approaches may apply to you. Below is a discussion regarding each possible benefit for you to review with your own tax professional and determine the applicability to your own unique financial situation.

**I. Energy credit -- Internal Revenue Code §§ 45 & 48**

Through tax code, the Federal Government has implemented several programs to incentivize renewable energy projects. One such program is found in IRC § 45 in conjunction with IRC § 48. Simply stated the sections provide for a credit of 30% the basis (essentially the purchase price) of energy equipment that is placed in service during the taxable year. For energy equipment that has not been placed in service, such as equipment still being manufactured, a taxpayer can elect to take a portion of the credit if the equipment is a Qualified Progress Expenditure Property ("QPEP"). QPEP is property being constructed by or for the taxpayer and which (a) has a normal



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Ra3 008255

construction period of two years or more, and (b) it is reasonable to believe that the property will qualify for the energy credit (from IRC § 48) once it is placed in service.

An owner of QPEP may claim the 30% credit on: (a) the amount paid towards the purchase (during the tax year) to another person for the construction of QPEP, or (b) an amount attributable to the portion of the QPEP that is completed (during the tax year); whichever is less.

Detailed language of this Energy Credit can be found in the United States Code, Title 26, §§ 45 through 48. Other considerations may apply, so be sure to talk to your tax professional about how you can personally qualify for this energy tax credit.

## II. Depreciation

Depreciation is an annual income tax deduction that could allow an owner of energy equipment to recover the purchase cost. The tax code acknowledges that hard assets such as energy equipment wear out and lose value over time. Thus, depreciations is an allowance that accrues over time for the wear and tear, deterioration, or obsolescence of the property. You can depreciate most types of tangible property, such as buildings, machinery, vehicles, and equipment.

To be depreciable, the property must meet all of the following requirements: it must be property you own; it must be used in your business or income-producing activity; it must have a determinable useful life; and it must be expected to last more than one year after being placed in service.

A taxpayer can start claiming depreciation of an asset as soon as his or her property is placed in service. Property is placed in service when it is ready and available for a specific use, whether in a business activity, an income-producing activity, a tax-exempt activity, or a personal activity. This does not mean you have to be using the property, just that it is ready and available for its specific use.

If the equipment is ready and available for ANY income producing activity, including leasing it out for advertising purposes, the owner may start claiming depreciation of the asset.

## III. Section 179 Expenses

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Ra3 008256

A qualifying taxpayer may treat the costs (such as maintenance, upkeep, and repairs) of his or her energy property as an expense beginning the year the property is placed in service. This is in addition to claiming the depreciation of the property as discussed above.

In 2010, the Federal Government through the Small Business Jobs Act (SBJA) increased the cap of Section 179 expenses so that certain business can claim up to \$500,000 beginning in the 2010 and 2011 tax years. To qualify for the section 179 deduction, your property must have been acquired for use in your trade or business. Property you acquire only for the production of income, such as investment property, rental property (if renting property is not your trade or business), and property that produces royalties, does not qualify.

#### **IV. Deductions and Losses**

So long as a taxpayer materially participates in a business activity, the taxpayer may deduct the losses from such activity against investment income. Moreover, even if the taxpayer does not materially participate, any losses may be deducted if the taxpayer has passive income from other sources to offset the passive losses.

For a taxpayer to materially participate in a business activity, the payer must work on a regular, continuous and substantial basis in the activity. *I.R.C. § 469 (h)(1)* lays out several tests to determine material participation and the taxpayer only has to meet one of the possible requirements. The tests are as follows:

- a. The taxpayer does substantially all the work in the activity.
- b. The taxpayer works more than 100 hours in the activity during the year and no one else works more than the taxpayer.
- c. The taxpayer works 500 hours or more during the year in the activity.
- d. Based on all of the facts and circumstances, the taxpayer participates in the activity on a regular, continuous, and substantial basis during such year. This test only applies if the taxpayer works at least 100 hours in the activity, no one else works more hours than the taxpayer in the activity, and no one else receives compensation for managing the activity.

Stated simply, if you do most of the work in the business using the RaPower-3 energy equipment, any losses associated with your business will be non-passive and can be deducted without limitation.

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Ra3 008257

Generally any work you do in connection with your business will be considered participation. In a multi-level marketing structure, participation would include any activity to increase the productivity of other individuals engaged in sales such as recruiting, training, motivating and counseling such individuals. Other ways to participate in your business would include meeting and counseling with the operator of the equipment, negotiating sale and distribution of energy, reviewing productivity and costs, among others.

## V. Conclusion

Right now, the government is enacting programs geared to foster and encourage development of energy sources. RaPower-3's equipment could allow you to enter the energy market and capitalize on those government incentives. This is only a brief overview of some of the possibilities that may be available to new owners of RaPower-3 energy equipment.

Although we have tried to ensure our information is accurate and useful, we are not acting as your attorney and the above is offered to you for informational purposes only. We recommend that you consult your own lawyer and tax professional for particularized assurance that the information applies to your situation.

Sincerely,

Anderson Law Center, P.C.

DISCLAIMER: Anderson Law Center, P.C. as an institution or its attorneys are not offering you advice on any personal income tax requirements or issues. The purpose of this communication for general information only and does not represent personal tax advice either expresses or implied. You are encouraged to seek professional tax advice for personal or corporate income tax questions and assistance.

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Ra3 008258

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Ra3 008258

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Buy Solar Lenses

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- Home
- Technology
- Start Your Business
- Opportunity Overview
- Tax Info**
- FAQ
- Tours
- News
- Learning Center
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### Tax Information

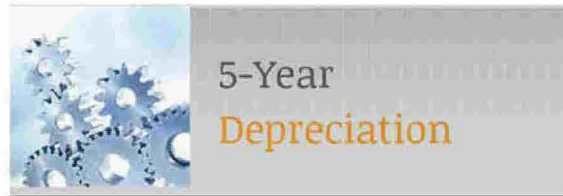
The U.S. government has made the advancement of renewable energy technologies and the production of renewable energy a national strategy priority. To encourage the free market congress has written into law substantial tax incentives to promote the advancement of renewable energy. These incentives may apply to your own RaPower3 solar business. Please consult a qualified tax advisor.

[Click here](#) to see our tax attorney letter for from Anderson Law Center, P.C.

[Click here](#) for our tax attorney memorandum from Kirton McConkie on "Tax Issues Relating to Purchase of Solar Lenses."



The American Recovery and Reinvestment Act of 2009 allows taxpayers to take the federal business energy investment tax credit (ITC) for eligible technologies. Solar Thermal Process Heat technologies qualify for a 30% ITC as explained by the U.S. Department of Energy ([click here to see official publication](#)).



Under the federal Modified Accelerated Cost-Recovery System (MACRS), businesses may recover investments in certain property through depreciation deductions. A number of renewable energy technologies, including solar thermal technologies, are classified as five-year property under the MACRS. Previously, the federal Economic Stimulus Act of 2008 included a 50% first-year bonus depreciation provision ([click here to see official publication](#)). However, Congress has not yet extended the 50% bonus depreciation program for this year, but the 5-year depreciation schedule program remains intact.



CPA Info

Depreciation Info

### 2014 TAX FORMS

**FORM 1040**  
[www.irs.gov/pub/irs-pdf/f1040.pdf](http://www.irs.gov/pub/irs-pdf/f1040.pdf)  
[www.irs.gov/pub/irs-pdf/f1040a.pdf](http://www.irs.gov/pub/irs-pdf/f1040a.pdf)

**FORM 1040SC**  
[www.irs.gov/pub/irs-pdf/f1040sc.pdf](http://www.irs.gov/pub/irs-pdf/f1040sc.pdf)  
[www.irs.gov/instructions/i1040sc/index.html](http://www.irs.gov/instructions/i1040sc/index.html)

**FORM 4562**  
[www.irs.gov/pub/irs-pdf/f4562.pdf](http://www.irs.gov/pub/irs-pdf/f4562.pdf)  
[www.irs.gov/instructions/i4562/index.html](http://www.irs.gov/instructions/i4562/index.html)

**FORM 3800**  
[www.irs.gov/pub/irs-pdf/f3800.pdf](http://www.irs.gov/pub/irs-pdf/f3800.pdf)  
[www.irs.gov/pub/irs-pdf/f3800.pdf](http://www.irs.gov/pub/irs-pdf/f3800.pdf)

**FORM 3468**  
[www.irs.gov/pub/irs-pdf/f3468.pdf](http://www.irs.gov/pub/irs-pdf/f3468.pdf)  
[www.irs.gov/pub/irs-pdf/f3468.pdf](http://www.irs.gov/pub/irs-pdf/f3468.pdf)

### ACCOUNTANTS

The following qualified CPA's are available for tax preparation and filing.

If you are a CPA and would like to find out how to be added to our list, please send inquiry to [info@rapower3.com](mailto:info@rapower3.com).

**Rick Jameson**  
Phone: 435-559-6802 or 435-669-9225  
Email: [rjameson08@gmail.com](mailto:rjameson08@gmail.com) or [rick@northstarttaxservices.com](mailto:rick@northstarttaxservices.com)  
Saint George, Utah

**Lori Gailey**  
Phone: 760-902-0777  
Email: [lori@northstarttaxservices.com](mailto:lori@northstarttaxservices.com)  
Palm Springs, California

**John Howell**  
Phone: 940-766-0981  
Wichita Falls, Texas [rockingh@wf.net](mailto:rockingh@wf.net)





Many states offer incentives for renewable energy purchases. Please consult a qualified CPA to see if state incentives are available to you.



## Maximizing Tax Benefits

Many choose to include tax benefits into their overall solar business strategy. Tax benefits from RaPower3 Solar Thermal Lens purchases may be considerable. Visit our "[Calculate Your Lenses](#)" page for help in projecting how your purchase of lenses may effect your tax returns.

**Make Payments To:**  
RaPower3 LLC  
4035 South 4000 West  
Deseret, UT 84624

**PR Contact:**  
Matthew Shepard  
[msh@rapower3.com](mailto:msh@rapower3.com)  
801-651-2183

**Business Contact:**  
Greg Shepard  
[gshe@rapower3.com](mailto:gshe@rapower3.com)  
801-699-2284

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[General Tax Information](#)  
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### DOCUMENTS



IAUS Tech White Papers



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Tax Memorandum

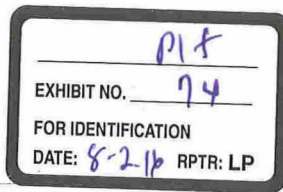


RaPower3 History



Millard County Permit

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ZELEZNIK, BJ <zeleznikb@leroyk12.org>

**RE: BJ Ra3 Account**

1 message

Greg Shepard <greg@rapower3.com>  
To: jessicawoodward@cpaauto.com  
Cc: BJ ZELEZNIK <ZELEZNIKB@leroyk12.org>, glendaejohnson@hotmail.com

Wed, Sep 11, 2013 at 12:47 PM

RESPONSES IN CAPS

Greg Shepard  
RaPower3  
4035 South 4000 West  
Deseret, UT 84624  
www.rapower3.com

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----- Original Message -----

From: Jessica Woodward [mailto:jessicawoodward@cpaauto.com]  
To: greg@rapower3.com  
Cc: zeleznikb@leroyk12.org  
Sent: Tue, 10 Sep 2013 10:26:49 -0500  
Subject:

Hi Greg

BJ Zeleznik and I had our audit phone interview.

The agent did not like that the 1099 was issued to BJ's kid's trust for 2011. THE TRUST EARNED THE MONEY

Technically, the 1099 should be issued to BJ. EXPLAIN-PLEASE

It is as if BJ received the funds and then deposited it into accounts for his kids. THAT'S NOT IN OUR CONTROL

Is there a way that RaPower can issue a 2011 1099 to BJ instead? I THINK WE SHOULD ELIMINATE THE RAPOWER3 TRUST ACCOUNT. BJ-YOU ARE THE ONLY ONE WE HAVE DONE THIS FOR. THE IRS WANTS THE TAXES PAID ON THE \$715 IN COMMISSION INCOME.

Please email us a copy after it is issued.

I attached the original 1099 is attached. Please note that the ID number form the trust is not right. SOMEONE MADE AN ERROR. BJ, GO ONLINE TO THE MEMBER LOGIN SITE FOR THE TRUST. CHECK TO SEE IF YOU ENTERED THE NUMBER CORRECTLY. IF IT'S INCORRECT, PLEASE EDIT IN THE CORRECT NUMBER. IF IT WAS IN THERE CORRECTLY, THEN WE MADE THE ERROR. LET ME KNOW.

Please make sure any future 1099s are issued to BJ. I'D RATHER ELIMINATE THE TRUST-IT OWNS NO LENSES. IF WE DO THAT, FUTURE 1099'S WOULD BE ISSUED TO BJ AUTOMATICALLY. BJ, LET ME KNOW.

Thanks

Jessica Woodward  
309-662-8797

--  
I am using the free version of SPAMfighter.  
SPAMfighter has removed 682 of my spam emails to date.  
Get the free SPAMfighter here: <http://www.spamfighter.com/len>

Do you have a slow PC? Try a Free scan  
<http://www.spamfighter.com/SLOW-PCfighter?cid=sigen>

### EQUIPMENT PURCHASE AGREEMENT

This Equipment Purchase Agreement ("Agreement") is made and entered into this 22 day of December, 2006 by and between International Automated Systems, Inc., a Utah corporation with offices at 326 North Highway 6, Salem, UT 84653, hereinafter referred to as "Seller", and MJM Holding, whose address is 843 West 2400 South, hereinafter referred to as "Purchaser".  
SLC, UT 84119

#### BACKGROUND

1. Seller is the owner of certain proprietary alternative energy technology, hereinafter "IAS Technology", which technology relates to solar energy collection and which technology is utilized for the design and fabrication of certain components which are identified below and which are hereinafter collectively referred to as the "Alternative Energy System".
2. Seller and Purchaser now desire to enter into an agreement whereby Seller will sell Purchaser the Alternative Energy System specifically described below.

#### AGREEMENT

NOW, THEREFORE, the parties hereto agree as follows:

1. Seller hereby sells to Purchaser and Purchaser hereby purchases from Seller the Alternative Energy System consisting of the system components identified on the attached Exhibit "A". Seller shall furnish, deliver, install and startup the Alternative Energy System, at a site provided by Purchaser at Delta, Utah, hereinafter referred to as the "Installation Site".
2. Seller agrees to complete the following for the Alternative Energy System in accordance with the schedule stated:
  - a. Seller shall furnish, deliver, install and startup the Alternative Energy System at the Installation Site, by Dec. 29, 2006, hereinafter referred to as the "Installation Date".
  - b. Seller shall provide to Purchaser all required documentation relating to the Alternative Energy System and its components as requested by Purchaser for federal, state and local review of the Alternative Energy System for potential tax benefits.
3. Purchaser shall pay to Seller the sum of \$30,000, hereinafter referred to as the "Purchase Amount" for the purchase of the Alternative Energy System. This includes the cost of delivery, installation and startup, as well as the cost of warranty work performed during the

EXHIBIT <u>94</u>
WIT: <u>Rowbotham</u>
DATE: <u>8-8-10</u>
Denise M. Thomas, CRR/RPR

warranty period described below. The Total Purchase Amount shall be paid in accordance with the following schedule:

- a. Initial Down Payment in the amount of \$9,000 (nine-thousand dollars), which shall be paid at the time that this Agreement is entered into.
- b. <sup>Seller  
G.S.</sup> Thirty Annual Installments in the amount of \$700.00 (seven-hundred dollars) hereinafter referred to as "Annual Installments," shall be paid to ~~Purchaser~~, the first Installment being due on or before five years following the Installation Date and the last Installment being due Twenty Nine years thereafter, the Thirty Five year period from the Installation Date to a date one year following the due date of the last Installment, shall be referred to hereinafter as the "Installment Period" and the schedule of Installment payments shall be referred to hereafter as the "Installment Schedule."

4. The Alternative Energy System shall be placed in operation only at and operated only at the Installation Site, and shall be operated and managed for the Installment Period by an independent Operations and Management Company, namely WTB LLC, with principal offices at Las Vegas, Nevada, hereinafter referred to as "Operations and Management Company". In the event that Operations and Management Company shall cease to operate and manage the Alternative Energy System for any reason during the Installment Period, a Substitute Operations and Management Company approved by Seller shall be employed to operate and manage the Alternative Energy System. The Substitute Operations and Management Company must be expressly approved by Seller.

5. In the event that Purchaser fails to pay any of the Annual Installments or any portion thereof, when due, interest shall accrue on the overdue amount at the rate of one and one-half percent (1-1/2 %) per month until paid. If Purchaser fails to pay any Annual Installment or any portion thereof when due or within a thirty (30) day grace period thereafter, Seller may immediately, upon written notice to Purchaser, enter the Installation Site and repossess the Alternative Energy System and any and all of the components thereof. In such event, Seller shall be entitled to recover its attorney fees, court costs, arbitration costs, collection costs, repossession fees and expenses incurred in repossessing the Alternative Energy System and any components thereof. In the event that Purchaser voluntarily relinquishes the Alternative Energy System to Seller, and thereby minimizes the expense to Seller in repossessing the Alternative Energy System, Seller agrees not to report Purchaser to any credit agencies for Purchaser's default, and Purchaser shall receive a credit against the balance owed under the Installment Schedule in an amount equal to the value of the Alternative Energy System as established by an independent, qualified appraiser approved by Purchaser and Seller. The credit for the value of the Alternative Energy System shall be given if Purchaser voluntarily relinquishes the Alternative Energy System, whether the Alternative Energy System is re-sold by Seller or not.

6. If Purchaser fails to pay any Annual Installment or any portion thereof when due or within the thirty (30) days grace period thereafter, or if Purchaser becomes subject to any state or

federal insolvency, bankruptcy, receivership, trusteeship or similar proceeding, or if Purchaser shall default in any other term of this Agreement, Seller may immediately terminate this Agreement by notice in writing to Purchaser and repossess the Alternative Energy System and all of the components thereof as stated above. In such event, Purchaser shall remain liable for all sums then due and unpaid, less the credit for the value of the repossessed Alternative Energy System as described above, plus a reasonable amount for attorneys' fees and such expenses as may be expended in the repossession of the Alternative Energy System.

7. If Seller shall fail, for any reason, to furnish, deliver, install and startup the Alternative Energy System at the Installation Site, by December 31, 2007, hereinafter referred to as the "Refund Date", Seller shall refund to Purchaser, within ninety (90) days following the Refund Date, the Initial Down Payment amount.

8. Seller hereby warrants, for the thirty five (35) year period from the Installation Date to the end of the Installment Period, hereinafter referred to as the "Warranty Period", that the Alternative Energy System shall remain in good operating condition. Seller shall initiate, within five (5) business days following the receipt of written notice that the Alternative Energy System is not operating properly or is not in good operating condition, either directly or through the use of one or more independent maintenance or repair entities, maintenance or repair of the malfunctioning or non-operating components of the Alternative Energy System. Seller shall complete such maintenance or repair work within a reasonable time thereafter. Seller shall be responsible for all material, equipment and labor costs incurred to complete such maintenance and repair work.

9. Seller hereby warrants, for the thirty five (35) year Warranty Period, the Alternative Energy System and each of the components thereof, from defects in materials and workmanship. Within five (5) business days following the receipt of written notice from Purchaser, Seller shall initiate reasonable efforts to ascertain repair or replacement requirements, to order replacement parts and equipment needed for repair, and to deploy qualified maintenance personnel. The cost of warranty parts, replacement equipment and labor shall be borne by Seller.

10. Seller and Purchaser acknowledge that the Target Production Rate from the Alternative Energy System is 250,000,000 (Two-Hundred and Fifty Million) British Thermal Units ("BTU's") per year and the Warranty Production Rate is seventy-five percent (75%) of the Target Production Rate per year. Seller hereby warrants that for the initial five year period from the Installation Date to a date five years following the Installation Date, the energy production for the Alternative Energy system, shall be no less than five times the Warranty Production Rate. However, if the average cloud cover for the initial five year period exceeds by more than ten percent (10%) the ten year average cloud cover for the Installation Site as measured at the nearest weather station maintaining cloud cover records for the ten calendar year period immediately preceding the year of the Installation Date, the Warranty Production rate, for the initial five year period, shall be reduced to the ratio of the ten year average cloud cover to the actual average cloud cover for the initial five year period, multiplied times the Warranty

**Production Rate.** This reduced production rate shall be referred to hereafter as the Adjusted Warranty Production Rate.

In the event that the actual energy production rate from the Alternative Energy System during the initial five year period is less than the Warranty Production Rate, or the Adjusted Warranty Production Rate if an adjustment is made as described above, Purchaser shall have the option terminate this Agreement and relinquish the Alternative Energy System to Seller. Purchaser shall thereafter have no further obligation under this Agreement to make any further payment or to perform any other obligation to Seller arising under this Agreement, except to cooperate with and assist Seller in obtaining possession of the Alternative Energy System. If Purchaser elects to terminate this Agreement as provided above, Purchaser shall not be entitled to a reimbursement of any portion of the Initial Down Payment. The foregoing option to terminate must be exercised within sixty (60) calendar days following the expiration of the initial five year period and must be exercised by Purchaser providing written notice to Seller.

11. Purchaser hereby waives any and all claims against Seller for delays, including but not limited to claims for damages due to delays in preparing plans; delays in applying for or obtaining approvals or permits; delays in the delivery, installation, or start-up; or delays in performing warranty work. This waiver includes any and all direct, indirect or consequential damages.

12. Neither of the parties shall have liability for consequential damages to the other arising out of this agreement or the transactions, events or occurrences related thereto and each hereby waives any and all such claims for consequential damages against the other. Seller's liability for any breach under this agreement shall be limited to any amounts actually paid by Purchaser and received by Seller under this Agreement.

13. Purchaser agrees to require Operations and Management Company to maintain property damage insurance on the Alternative Energy System.

14. Purchaser agrees to require Operations and Management Company to maintain liability insurance to insure against bodily injury, property damage, product liability or other claims related to the design, manufacture, delivery, installation, start-up, operation or maintenance of the Alternative Energy System.

15. This Agreement shall not be assigned by Purchaser without the express written consent of Seller. Seller may assign its rights and obligations under this Agreement but Seller shall remain liable to Purchaser for the failure of its assignee to perform the obligations of Seller under this Agreement.

16. This Agreement shall be binding upon the successors and assigns of each of the parties.



17. Seller makes no representations or warranties, expressed or implied, including the implied warranty of merchantability and fitness, except as expressly stated in this Agreement.

18. Purchaser shall not repair, modify or adjust the Alternative Energy System or any component thereof and Purchaser agrees to prohibit anyone other than Seller's authorized personnel to repair, modify or adjust the Alternative Energy System or any component thereof.

19. Purchaser shall notify Seller immediately of accidents, disabilities, failures or like information concerning the Alternative Energy System.

20. In the event the Alternative Energy System becomes inoperable for any reason, except as otherwise provided under the warranty during the Warranty Period, Seller shall not be obligated to furnish a substitute Alternative Energy System or any component thereof. In any event, Seller shall not be liable for any special or consequential damages of any nature resulting from such inoperability.

21. Purchaser agrees that the Alternative Energy System shall be used and operated only at the Installation Site and in accordance with the "Safety and Operating Guidelines" which shall be written and set forth by Seller. Purchaser agrees that the Alternative Energy System shall not be relocated by Purchaser without the written consent of Seller.

22. Any notice under this Agreement shall be deemed sufficient if it is in writing and it is delivered to Purchaser, personally or sent by mail addressed to Purchaser at the address set forth above.

23. Nothing herein conveys to Purchaser any right, title or interest in or to the Alternative Energy System or any component thereof, except as a Purchaser. Seller reserves the right to file or record such documents and instruments as it may deem necessary from time to time to protect its rights, liens, title and interest in the Alternative Energy System. Purchaser agrees to cooperate with Seller and to execute such documents as may be required or requested by Purchaser to assist Seller in protecting its rights, liens, title and interest in the Alternative Energy System.

24. In the event of the breach of this Agreement by either party, the injured party shall be entitled to recover its costs, attorney fees, arbitration costs and arbitration fees incurred in enforcing the agreement and in pursuing appropriate remedies.

25. Seller and Purchaser acknowledge that they each understand that the Alternative Energy System may qualify for certain tax incentives and benefits under the 2005 Energy Policy Act and other statutes. Purchaser agrees to obtain the evaluation and opinion of its own tax attorney or accountant as to any tax matters relating to this Agreement and to the Alternative Energy System. Seller does not guarantee any tax incentive or benefit to Purchaser. Seller hereby transfers to Purchaser any and all energy tax credits, if any, related to the Alternative Energy System. Seller shall not claim any such energy tax credits. Seller and Purchaser agree

that the respective initial values of the components of the Alternative Energy System are listed on the attached Exhibit "A".

The following information is provided for use by Purchaser in claiming tax credits as advised by Purchaser's tax attorney or accountant:

- a. Taxpayer I.D. account number:  
 Seller: [REDACTED] 7580  
 Purchaser: [REDACTED] 36921
- b. IRS District Director's office where tax return is filed:  
 Seller: Ogden, Utah  
 Purchaser: Ogden, Utah
- c. Date the property is to be transferred to Purchaser: Installation Date  
 (Installation Date is defined above)
- d. Estimated useful life of Alternative Energy System and components: Fifteen (15) years  
 Class life IRC 168(e)(3)(B)(vi): Four(4) to ten(10) years

25. In the event of a dispute arising out of this Agreement or the transactions, events or occurrences related thereto, Seller shall have the sole option of electing to have such disputes resolved by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association with all hearings and other proceedings in that arbitration being conducted in Salt Lake City, State of Utah. Seller shall have the right to elect arbitration at any time up to and including the time that either party files an Answer in pending litigation between the parties relating to such disputes.

26. This Agreement shall be construed in accordance with the laws of the State of Utah.

27. This is the entire agreement between the parties. This agreement shall not be modified except by written amendment signed by Purchaser and Seller.

**PURCHASER**

By:


R. Gregory Shepard  
(Signature)

Title: Partner - MJM Holding

**INTERNATIONAL AUTOMATED SYSTEMS, INC.**

**SELLER**

By: Neldon P. Johnson

A handwritten signature in black ink, appearing to read "Neldon P. Johnson", is written over a horizontal line.

(Signature)

Title: President

EXHIBIT A

ALTERNATIVE ENERGY SYSTEM COMPONENT LIST

<u>Quantity</u>	<u>Description of Component</u>	<u>Model No.</u>	<u>Serial No.'s</u>	<u>Value</u>
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**EQUIPMENT PURCHASE AGREEMENT**

This Equipment Purchase Agreement ("Agreement") is made and entered into this 30 day of September, 2008 by and between International Automated Systems, Inc., a Utah corporation with offices at 326 North Highway 6, Salem, UT 84653, hereinafter referred to as "Seller", and KBK, whose address is 4579 So. Wallace Lane, Salt Lake City, UT 84117, hereinafter referred to as "Purchaser".

**BACKGROUND**

1. Seller is the owner of certain proprietary alternative energy technology, hereinafter "IAS Technology", which technology relates to solar energy collection and which technology is utilized for the design and fabrication of certain components which are identified below and which are hereinafter collectively referred to as the "Alternative Energy System".
2. Seller and Purchaser now desire to enter into an agreement whereby Seller will sell Purchaser the Alternative Energy System specifically described below.

**AGREEMENT**

NOW, THEREFORE, the parties hereto agree as follows:

1. Seller hereby sells to Purchaser and Purchaser hereby purchases from Seller the Alternative Energy System consisting of the system components identified on the attached Exhibit "A". The number of Alternative Energy Systems purchased by Purchaser from Seller under this Agreement shall be one. Seller shall furnish, deliver, install and startup the Alternative Energy System, at a site provided by Seller at Delta, Utah, hereinafter referred to as the "Installation Site".
2. Seller agrees to complete the following for the Alternative Energy System in accordance with the schedule stated:
  - a. Seller shall furnish, deliver, install and startup the Alternative Energy System at the Installation Site, by Dec. 31, 2008, hereinafter referred to as the "Installation Date".
  - b. Seller shall provide to Purchaser all required documentation relating to the Alternative Energy System and its components as requested by Purchaser for federal, state and local review of the Alternative Energy System for potential tax benefits.
3. Purchaser shall pay to Seller the sum of \$30,000 for each Alternative Energy System purchased, hereinafter referred to as the "Purchase Amount" for the purchase of the Alternative Energy System. This includes the cost of delivery, installation and startup, as well as

EXHIBIT	<u>95</u>
WIT:	<u>Rowbotham</u>
DATE:	<u>8-8-16</u>
Denise M. Thomas, CRR/RPR	

the cost of warranty work performed during the warranty period described below. The Total Purchase Amount shall be paid in accordance with the following schedule:

- a. Initial Down Payment in the amount of \$9,000 (nine-thousand dollars) for each Alternative Energy System purchased, which shall be paid at the time that this Agreement is entered into.
- b. Thirty Annual Installments in the amount of \$700.00 (seven-hundred dollars) for each Alternative Energy System purchased, hereinafter referred to as "Annual Installments," shall be paid to Seller, the first Installment being due on or before five years following the Installation Date and the last Installment being due Twenty Nine years thereafter, the Thirty Five year period from the Installation Date to a date one year following the due date of the last Installment, shall be referred to hereinafter as the "Installment Period" and the schedule of Installment payments shall be referred to hereafter as the "Installment Schedule."

4. The Alternative Energy System shall be placed in operation only at and operated only at the Installation Site, and shall be operated and managed for the Installment Period by an independent Operations and Management Company, namely LTSB LLC, with principal offices at Las Vegas, NV, hereinafter referred to as "Operations and Management Company". In the event that Operations and Management Company shall cease to operate and manage the Alternative Energy System for any reason during the Installment Period, a Substitute Operations and Management Company approved by Seller shall be employed to operate and manage the Alternative Energy System. The Substitute Operations and Management Company must be expressly approved by Seller.

5. In the event that Purchaser fails to pay any of the Annual Installments or any portion thereof, when due, interest shall accrue on the overdue amount at the rate of one and one-half percent (1-1/2 %) per month until paid. If Purchaser fails to pay any Annual Installment or any portion thereof when due or within a thirty (30) day grace period thereafter, Seller may immediately, upon written notice to Purchaser, enter the Installation Site and repossess the Alternative Energy System and any and all of the components thereof. In such event, Seller shall be entitled to recover its attorney fees, court costs, arbitration costs, collection costs, repossession fees and expenses incurred in repossessing the Alternative Energy System and any components thereof. In the event that Purchaser voluntarily relinquishes the Alternative Energy System to Seller, and thereby minimizes the expense to Seller in repossessing the Alternative Energy System, Seller agrees not to report Purchaser to any credit agencies for Purchaser's default, and Purchaser shall receive a credit against the balance owed under the Installment Schedule in an amount equal to the value of the Alternative Energy System as established by an independent, qualified appraiser approved by Purchaser and Seller. The credit for the value of the Alternative Energy System shall be given if Purchaser voluntarily relinquishes the Alternative Energy System, whether the Alternative Energy System is re-sold by Seller or not.

6. If Purchaser fails to pay any Annual Installment or any portion thereof when due or within the thirty (30) days grace period thereafter, or if Purchaser becomes subject to any state or federal insolvency, bankruptcy, receivership, trusteeship or similar proceeding, or if Purchaser shall default in any other term of this Agreement, Seller may immediately terminate this Agreement by notice in writing to Purchaser and repossess the Alternative Energy System and all of the components thereof as stated above. In such event, Purchaser shall remain liable for all sums then due and unpaid, less the credit for the value of the repossessed Alternative Energy System as described above, plus a reasonable amount for attorneys' fees and such expenses as may be expended in the repossession of the Alternative Energy System.

7. If Seller shall fail, for any reason, to furnish, deliver, install and startup the Alternative Energy System at the Installation Site, by December 31, 2008, hereinafter referred to as the "Refund Date", Seller shall refund to Purchaser, within ninety (90) days following the Refund Date, the Initial Down Payment amount.

8. Seller hereby warrants, for the thirty five (35) year period from the Installation Date to the end of the Installment Period, hereinafter referred to as the "Warranty Period", that the Alternative Energy System shall remain in good operating condition. Seller shall initiate, within five (5) business days following the receipt of written notice that the Alternative Energy System is not operating properly or is not in good operating condition, either directly or through the use of one or more independent maintenance or repair entities, maintenance or repair of the malfunctioning or non-operating components of the Alternative Energy System. Seller shall complete such maintenance or repair work within a reasonable time thereafter. Seller shall be responsible for all material, equipment and labor costs incurred to complete such maintenance and repair work.

9. Seller hereby warrants, for the thirty five (35) year Warranty Period, the Alternative Energy System and each of the components thereof, from defects in materials and workmanship. Within five (5) business days following the receipt of written notice from Purchaser, Seller shall initiate reasonable efforts to ascertain repair or replacement requirements, to order replacement parts and equipment needed for repair, and to deploy qualified maintenance personnel. The cost of warranty parts, replacement equipment and labor shall be borne by Seller.

10. Seller and Purchaser acknowledge that the Target Production Rate from the Alternative Energy System is 250,000,000 (Two-Hundred and Fifty Million) British Thermal Units ("BTU's") per year and the Warranty Production Rate is ninety-five percent (95%) of the Target Production Rate per year. Seller hereby warrants that for the initial five year period from the Installation Date to a date five years following the Installation Date, the energy production for the Alternative Energy system, shall be no less than five times the Warranty Production Rate. However, if the average cloud cover for the initial five year period exceeds by more than ten percent (10%) the ten year average cloud cover for the Installation Site as measured at the nearest weather station maintaining cloud cover records for the ten calendar year period immediately preceding the year of the Installation Date, the Warranty Production rate, for the initial five year period, shall be reduced to the ratio of the ten year average cloud cover to the

actual average cloud cover for the initial five year period, multiplied times the Warranty Production Rate. This reduced production rate shall be referred to hereafter as the Adjusted Warranty Production Rate.

In the event that the actual energy production rate from the Alternative Energy System during the initial five year period is less than the Warranty Production Rate, or the Adjusted Warranty Production Rate if an adjustment is made as described above, Purchaser shall have the option to terminate this Agreement and relinquish the Alternative Energy System to Seller. Purchaser shall thereafter have no further obligation under this Agreement to make any further payment or to perform any other obligation to Seller arising under this Agreement, except to cooperate with and assist Seller in obtaining possession of the Alternative Energy System. If Purchaser elects to terminate this Agreement as provided above, Purchaser shall not be entitled to a reimbursement of any portion of the Initial Down Payment. The foregoing option to terminate must be exercised within sixty (60) calendar days following the expiration of the initial five year period and must be exercised by Purchaser providing written notice to Seller.

11. Purchaser hereby waives any and all claims against Seller for delays, including but not limited to claims for damages due to delays in preparing plans; delays in applying for or obtaining approvals or permits; delays in the delivery, installation, or start-up; or delays in performing warranty work. This waiver includes any and all direct, indirect or consequential damages.

12. Neither of the parties shall have liability for consequential damages to the other arising out of this agreement or the transactions, events or occurrences related thereto and each hereby waives any and all such claims for consequential damages against the other. Seller's liability for any breach under this agreement shall be limited to any amounts actually paid by Purchaser and received by Seller under this Agreement.

13. Purchaser agrees to require Operations and Management Company to maintain property damage insurance on the Alternative Energy System.

14. Purchaser agrees to require Operations and Management Company to maintain liability insurance to insure against bodily injury, property damage, product liability or other claims related to the design, manufacture, delivery, installation, start-up, operation or maintenance of the Alternative Energy System.

15. This Agreement shall not be assigned by Purchaser without the express written consent of Seller. Seller may assign its rights and obligations under this Agreement but Seller shall remain liable to Purchaser for the failure of its assignee to perform the obligations of Seller under this Agreement.

16. This Agreement shall be binding upon the successors and assigns of each of the parties.



17. Seller makes no representations or warranties, expressed or implied, including the implied warranty of merchantability and fitness, except as expressly stated in this Agreement.

18. Purchaser shall not repair, modify or adjust the Alternative Energy System or any component thereof and Purchaser agrees to prohibit anyone other than Seller's authorized personnel to repair, modify or adjust the Alternative Energy System or any component thereof.

19. Purchaser shall notify Seller immediately of accidents, disabilities, failures or like information concerning the Alternative Energy System.

20. In the event the Alternative Energy System becomes inoperable for any reason, except as otherwise provided under the warranty during the Warranty Period, Seller shall not be obligated to furnish a substitute Alternative Energy System or any component thereof. In any event, Seller shall not be liable for any special or consequential damages of any nature resulting from such inoperability.

21. Purchaser agrees that the Alternative Energy System shall be used and operated only at the Installation Site and in accordance with the "Safety and Operating Guidelines" which shall be written and set forth by Seller. Purchaser agrees that the Alternative Energy System shall not be relocated by Purchaser without the written consent of Seller.

22. Any notice under this Agreement shall be deemed sufficient if it is in writing and it is delivered to Purchaser, personally or sent by mail addressed to Purchaser at the address set forth above.

23. Nothing herein conveys to Purchaser any right, title or interest in or to the Alternative Energy System or any component thereof, except as a Purchaser. Seller reserves the right to file or record such documents and instruments as it may deem necessary from time to time to protect its rights, liens, title and interest in the Alternative Energy System. Purchaser agrees to cooperate with Seller and to execute such documents as may be required or requested by Purchaser to assist Seller in protecting its rights, liens, title and interest in the Alternative Energy System.

24. In the event of the breach of this Agreement by either party, the injured party shall be entitled to recover its costs, attorney fees, arbitration costs and arbitration fees incurred in enforcing the agreement and in pursuing appropriate remedies.

25. Seller and Purchaser acknowledge that they each understand that the Alternative Energy System may qualify for certain tax incentives and benefits under the 2005 Energy Policy Act and other statutes. Purchaser agrees to obtain the evaluation and opinion of its own tax attorney or accountant as to any tax matters relating to this Agreement and to the Alternative Energy System. Seller does not guarantee any tax incentive or benefit to Purchaser. Seller hereby transfers to Purchaser any and all energy tax credits, if any, related to the Alternative Energy System. Seller shall not claim any such energy tax credits. Seller and Purchaser agree

that the respective initial values of the components of the Alternative Energy System are listed on the attached Exhibit "A".

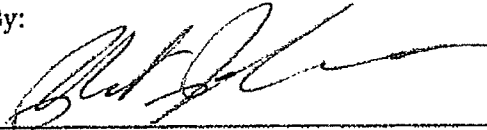
26. In the event of a dispute arising out of this Agreement or the transactions, events or occurrences related thereto, Seller shall have the sole option of electing to have such disputes resolved by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association with all hearings and other proceedings in that arbitration being conducted in Salt Lake City, State of Utah. Seller shall have the right to elect arbitration at any time up to and including the time that either party files an Answer in pending litigation between the parties relating to such disputes.

27. This Agreement shall be construed in accordance with the laws of the State of Utah.

28. This is the entire agreement between the parties. This agreement shall not be modified except by written amendment signed by Purchaser and Seller.

**PURCHASER**

By:



(Signature)

Title: member

**INTERNATIONAL AUTOMATED SYSTEMS, INC.**

**SELLER**

By: Neldon P. Johnson



(Signature)

Title: President

EXHIBIT A

ALTERNATIVE ENERGY SYSTEM COMPONENT LIST

<u>Quantity</u>	<u>Description of Component</u>	<u>Model No.</u>	<u>Serial No.'s</u>	<u>Value</u>
	Solar Lens Concentrators to Produce 250 Million BTUs per Year.			



KBR Investments ,Lc  
4579 S.Wallace Ln.  
Salt Lake City, Utah 84117

December 30, 2008

Purchase price \$30K

Dear Sir:

This letter is regarding the "Alternative Energy Systems" that you purchased from International Automated Systems, Inc. (IAS). IAS put into service your equipment on or before December 24, 2008. This will qualify you for the Internal Revenue Services solar energy tax credit.

*(However for your personal information, Section 103 Div.B Energy Credit (code Sec.48), "For projects whose construction time is expected to equal or exceed two years, the Credit may be claimed as is placed in service.")*

We appreciate your business and look forward to the opportunity to work with you to help solve our nation's energy needs. If you have any questions you may correspond with us at the above address.

Respectfully Yours,

International Automated Systems, Inc.

Neldon P. Johnson  
President & CEO

**International Automated Systems, Inc.**  
326 North Highway 6  
Salem, Utah 84653  
Phone: (801) 423-8132  
FAX: (801) 423-4104

EXHIBIT 103  
WIT: Rowbotham  
DATE: 8-8-16  
Denise M. Thomas, CRR/RPR



Robert Rowbotham  
4579 South Wallace Lane  
Salt Lake City, UT. 84117

Thursday, February 02, 2012

Dear Robert,

This letter is regarding the "Alternative Energy Systems" that you purchased from RaPower3 LLC. RaPower3 put into service your equipment on or before December 31, 2011. This will qualify you for the Internal Revenue Services solar energy tax credit.

*(However for your personal information, Section 103 Div.B Energy Credit (code Sec.48), "For projects whose construction time is expected to equal or exceed two years, the Credit may be claimed as is placed in service.")*

We appreciate your business and look forward to the opportunity to work with you to help solve our nation's energy needs. If you have any questions you may correspond with us at the below address.

Respectfully Yours,

A handwritten signature in cursive script, appearing to read "Greg Shepard".

Greg Shepard,  
Director of Operations

---

RaPower3 4035 S. 4000 W. Deseret, Utah 84624

EXHIBIT	104
WIT:	Rowbotham
DATE:	8-8-16
Denise M. Thomas, CRR/RPR	



Robert Rowbotham  
4579 South Wallace Lane  
Salt Lake City UT. 84444

Friday, January 28, 2011

Dear Robert,

This letter is regarding the "Alternative Energy Systems" that you purchased from RaPower3 LLC. RaPower3 put into service your equipment on or before December 31, 2010. This will qualify you for the Internal Revenue Services solar energy tax credit.

*(However for your personal information, Section 103 Div.B Energy Credit (code Sec.48), "For projects whose construction time is expected to equal or exceed two years, the Credit may be claimed as is placed in service.")*

We appreciate your business and look forward to the opportunity to work with you to help solve our nation's energy needs. If you have any questions you may correspond with us at the below address.

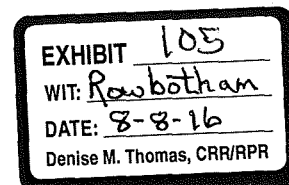
Respectfully Yours,

A handwritten signature in cursive script, appearing to read "Greg Shepard".

Greg Shepard,  
Director of Operations

---

RaPower3 4035 S. 4000 W. Deseret, Utah 84624





**RaPower-3 Equipment Purchase Agreement**

This Equipment Purchase Agreement (the "Agreement") is entered into this day  
12/20/2012 4:57:46 PM

by and between RaPower-3 LLC (the "Operator"), with principal offices at 4035 South 4000 West, Deseret, UT 84624, hereinafter referred to as "Seller", and

Preston Olsen on behalf of PFO Solar LLC  
whose address is 957 Bryanston Cr Murray, UT. 123456  
5819 S. Meadowcrest Dr, Murray UT 84107  
hereinafter referred to as "Purchaser".

**BACKGROUND**

1. Seller is the licensee of certain proprietary alternative energy technology, which technology relates to solar energy collection and which technology is utilized for the design and fabrication of certain components which are identified below and which are hereinafter collectively referred to as the "Alternative Energy System(s)".
2. Seller and Purchaser now desire to enter into an agreement whereby Seller will sell Purchaser the Alternative Energy System specifically described below.

**AGREEMENT**

NOW, THEREFORE, the parties hereto agree as follows:

1. Systems Purchased. Seller hereby sells to Purchaser and Purchaser hereby purchases from Seller the Alternative Energy System(s). The number of Alternative Energy Systems purchased by Purchaser from Seller under this Agreement shall be

13

Seller shall furnish, deliver, install and startup the Alternative Energy System(s), at a site yet to be determined. When a site is selected, it shall be referred to as the "Installation Site".

2. Documentation for Potential Tax Benefits. Seller shall provide to Purchaser all required documentation relating to the Alternative Energy System and its components as requested by Purchaser for federal, state and local review of the Alternative Energy System for

EXHIBIT 119  
 WIT: Olsen  
 DATE: 8-10-16  
 Denise M. Thomas, CRR/RPR



### **RaPower-3 Equipment Purchase Agreement**

potential tax benefits. However, Purchaser hereby expressly acknowledges that neither Seller nor any other person or entity affiliated with Seller has made representations to Purchaser regarding potential tax benefits of this Agreement to Purchaser and Purchaser has relied entirely on hi/her own analysis of potential tax benefits. Purchaser hereby waives any and all claims against Seller and its employees, agents, officers, affiliates and representatives relating to Purchaser's failure to receive any anticipated tax benefit.

**3. Payment Terms.** Purchaser shall pay to Seller the sum of \$3,500 for each Alternative Energy System purchased, hereinafter referred to as the "Purchase Amount" for the purchase of the Alternative Energy System. This includes the cost of delivery, installation and startup, as well as the cost of warranty work performed during the warranty period described below. The Total Purchase Amount shall be paid in accordance with the following schedule:

**Option 1:**

Initial Down Payment in the amount of \$1,050 (one thousand fifty dollars) for each Alternative Energy System purchased, which shall be paid at the time this agreement is entered into.

**Option 2:**

Initial Down Payment in the amount of \$1,050 (one thousand fifty dollars) for each Alternative Energy System purchased, which shall be paid with a one-time payment of \$105 (equal to 10% of the down payment) at the time this Agreement is entered into. The balance of \$945 for each Alternative Energy System is to be paid on or before June 30, 2012.

**Option 3:**

Initial Down Payment in the amount of \$1200 (One Thousand Two Hundred Dollars) for each Alternative Energy Systems purchased, which shall be paid in monthly installments of \$100 (One Hundred Dollars) per system purchased.

The Installation Date shall be defined as the date the Alternative Energy Equipment has been installed and begins to produce revenue. After the Alternative Energy Equipment has been installed and producing revenue for a five (5) year period, annual payments will begin. The annual payment will be as follows. Thirty Annual Installments in the amount of \$82.00 (Eighty-two dollars) for each Alternative Energy System purchased, hereinafter referred to as "Annual Installments," shall be paid to Seller, the first Installment being due five years following the Installation Date and the last Installment being due Twenty-Nine years thereafter,





## RaPower-3 Equipment Purchase Agreement

the Thirty-Five year period from the Installation Date to a date one year following the due date of the last Installment, shall be referred to hereinafter as the "Installment Period" and the schedule of Installment payments shall be referred to hereafter as the "Installment Schedule."

**4. Operations and Management Company.** The Alternative Energy System shall be placed in operation only at and operated only at the Installation Site, and shall be operated and managed for the Installment Period by an independent Operations and Management Company hereinafter referred to as "Operations and Management Company". In the event that Operations and Management Company shall cease to operate and manage the Alternative Energy System for any reason during the Installment Period, a Substitute Operations and Management Company approved by Buyer shall be employed to operate and manage the Alternative Energy System. The Substitute Operations and Management Company must be expressly approved by Buyer.

**5. Failure to Pay.** In the event that Purchaser fails to pay any of the Annual Installments or any portion thereof, when due, interest shall accrue on the overdue amount at the rate of one and one-half percent (1-1/2%) per month until paid. If Purchaser fails to pay any Annual Installment or any portion thereof when due or within a thirty (30) day grace period thereafter, Seller may immediately, upon written notice to Purchaser, enter the Installation Site and repossess the Alternative Energy System and any and all of the components thereof. In such event, Seller shall be entitled to recover its attorney fees, court costs, arbitration costs, collection costs, repossession fees and expenses incurred in repossessing the Alternative Energy System and any components thereof. In the event that Purchaser voluntarily relinquishes the Alternative Energy System to Seller, and thereby minimizes the expense to Seller in repossessing the Alternative Energy System, Seller agrees not to report Purchaser to any credit agencies for Purchaser's default, and Purchaser shall receive a credit against the balance owed under the Installment Schedule in an amount equal to the value of the Alternative Energy System as established by an independent, qualified appraiser approved by Purchaser and Seller. The credit for the value of the Alternative Energy System shall be given if Purchaser voluntarily relinquishes the Alternative Energy System, whether the Alternative Energy System is re-sold by Seller or not.

**6. Seller's Rights upon Default.** If Purchaser fails to pay any Annual Installment or any portion thereof when due or within the thirty (30) days grace period thereafter, or if Purchaser becomes subject to any state or federal insolvency, bankruptcy, receivership, trusteeship or similar proceeding, or if Purchaser shall default in any other term of this Agreement, Seller may immediately terminate this Agreement by notice in writing to Purchaser and repossess the Alternative Energy System and all of the components thereof as stated above. In such event, Purchaser shall remain liable for all sums then due and unpaid, less the credit for the value of the repossessed Alternative Energy System as described above, plus a reasonable amount for attorneys' fees and such expenses as may be expended in the repossession of the



## RaPower-3 Equipment Purchase Agreement

Alternative Energy System.

**7. Right to Reduce Purchase Amount.** If changes are made to the Internal Revenue Code after the date of this Agreement and prior to January 31, 2012, which materially reduce any tax benefit of this agreement anticipated by the Purchaser, Purchaser may elect to reduce the number of Alternative Energy Systems purchased and the Seller agrees to accept the reduced amount, provided that the reduced amount is not less than the total amount already paid as a down payment or one-time payment. Any notice stating that Buyer wishes to elect a reduction must be emailed (with confirmation of delivery) or must arrive to the Seller via hand delivery, as set forth in this paragraph, on or before Jan 31, 2012.

**8. Warranty.** Seller hereby warrants, for the thirty five (35) year period from the Installation Date to the end of the Installment Period, hereinafter referred to as the "Warranty Period" that the Alternative Energy System shall remain in good operating condition. Seller shall initiate, within five (5) business days following the receipt of written notice that the Alternative Energy System is not operating properly or is not in good operating condition, either directly or through the use of one or more independent maintenance or repair entities, maintenance or repair of the malfunctioning or non-operating components of the Alternative Energy System. Seller shall complete such maintenance or repair work within a reasonable time thereafter. Seller shall be responsible for all material, equipment and labor costs incurred to complete such maintenance and repair work. Seller shall not be responsible for or liable for loss of revenue or other consequential damages sustained by Purchaser due to the failure of the Alternative Energy System to remain in good operating condition. Seller's obligations shall be limited to the maintenance and repair obligations stated herein.

**9. Seller's Warranty Obligations.** Seller hereby warrants, for the thirty five (35) year Warranty Period, the Alternative Energy System and each of the components thereof, from defects in materials and workmanship. Within five (5) business days following the receipt of written notice from Purchaser, Seller shall initiate reasonable efforts to ascertain repair or replacement requirements, to order replacement parts and equipment needed for repair, and to deploy qualified maintenance personnel. The cost of warranty parts, replacement equipment and labor shall be borne by Seller. Seller shall not be responsible for or liable for loss of revenue or other consequential damages sustained by Purchaser due to defects in materials or workmanship. Seller's obligations shall be limited to the parts, equipment replacement, and repair obligations stated herein.

**10. Target Production Rate.** Seller and Purchaser acknowledge that the Target Production Rate from one Alternative Energy System is 600 peak watts, rated for clear sky conditions at noon, local time, June 21, at a latitude of forty degrees (40 degrees) North (the "Rating Conditions"), and the Warranty Production Rate is ninety-five percent (95%) of the Target Production Rate. Seller hereby warrants that for the initial five year period from the Installation Date to a date five years following the Installation Date, the Warranty Energy



## RaPower-3 Equipment Purchase Agreement

Production for the Alternative Energy system, shall be no less than 570 peak watts, at the Rating Conditions.

In the event that the actual peak energy production, at the Rating Conditions, from the Alternative Energy System during the initial five year period is less than the Warranty Energy Production, Purchaser shall have the option to terminate this Agreement and relinquish the Alternative Energy System to Seller. Purchaser shall thereafter have no further obligation under this Agreement to make any further payment or to perform any other obligation to Seller arising under this Agreement, except to cooperate with and assist Seller in obtaining possession of the Alternative Energy System. If Purchaser elects to terminate this Agreement as provided above, Purchaser shall not be entitled to a reimbursement of any portion of the Initial Down Payment. The foregoing option to terminate must be exercised within sixty (60) calendar days following the expiration of the initial five year period and must be exercised by Purchaser providing written notice to Seller.

**11. Waiver for Delays.** Purchaser hereby waives any and all claims against Seller for delays, including but not limited to claims for damages due to delays in preparing plans; delays in applying for or obtaining approvals or permits; delays in the delivery, installation, or start-up; or delays in performing warranty work. This waiver includes any and all direct, indirect or consequential damages.

**12. Limitation of Liability.** Neither of the parties shall have liability for consequential damages to the other arising out of this agreement or the transactions, events or occurrences related thereto and each hereby waives any and all such claims for consequential damages against the other. Seller's liability for any breach under this agreement shall be limited to any amounts actually paid by Purchaser and received by Seller under this Agreement.

**13. Property Insurance.** Purchaser agrees to require Operations and Management Company to maintain property damage insurance on the Alternative Energy System.

**14. Liability Insurance.** Purchaser agrees to require Operations and Management Company to maintain liability insurance to insure against bodily injury, property damage, product liability or other claims related to the design, manufacture, delivery, installation, start-up, operation or maintenance of the Alternative Energy System.

**15. Assignment of Agreement.** This Agreement shall not be assigned by Purchaser without the express written consent of Seller. Seller may assign its rights and obligations under this Agreement but Seller shall remain liable to Purchaser for the failure of its assignee to perform the obligations of Seller under this Agreement.

**16. Binding Agreement.** This Agreement shall be binding upon the successors and assigns of each of the parties.

**17. No Additional Warranties.** Seller makes no representations or warranties,



## **RaPower-3 Equipment Purchase Agreement**

expressed or implied, including the implied warranty of merchantability and fitness, except as expressly stated in this Agreement.

**18. Authorized Personnel.** Purchaser shall not repair, modify or adjust the Alternative Energy System or any component thereof and Purchaser agrees to prohibit anyone other than Seller's authorized personnel to repair, modify or adjust the Alternative Energy System or any component thereof.

**19. Notification to Seller.** Purchaser shall notify Seller immediately of accidents, disabilities, failures or like information concerning the Alternative Energy System.

**20. Warranty Limitations.** In the event the Alternative Energy System becomes inoperable for any reason, except as otherwise provided under the warranty during the Warranty Period, Seller shall not be obligated to furnish a substitute Alternative Energy System or any component thereof. In any event, Seller shall not be liable for any special or consequential damages of any nature resulting from such inoperability.

**21. Operating Site and Guidelines.** Purchaser agrees that the Alternative Energy System shall be used and operated only at the Installation Site and in accordance with the "Safety and Operating Guidelines" which shall be written and set forth by Seller. Purchaser agrees that the Alternative Energy System shall not be relocated by Purchaser without the written consent of Seller.

**22. Written Notice.** Any notice under this Agreement shall be deemed sufficient if it is in writing and it is delivered to Purchaser, personally or sent by mail addressed to Purchaser at the address set forth above.

**23. Rights, Liens, Title, and Interest.** Nothing herein conveys to Purchaser any right, title or interest in or to the Alternative Energy System or any component thereof, except as a Purchaser. Seller reserves the right to file or record such documents and instruments as it may deem necessary from time to time to protect its rights, liens, title and interest in the Alternative Energy System. Purchaser agrees to cooperate with Seller and to execute such documents as may be required or requested by Purchaser to assist Seller in protecting its rights, liens, title and interest in the Alternative Energy System.

**24. Breach of Agreement.** In the event of the breach of this Agreement by either party, the injured party shall be entitled to recover its costs, attorney fees, arbitration costs and arbitration fees incurred in enforcing the agreement and in pursuing appropriate remedies.

**25. Potential Tax Benefits Responsibility of Purchaser.** Seller and Purchaser acknowledge that they each understand that the Alternative Energy System may qualify for certain tax incentives and benefits under the 2005 Energy Policy Act and other statutes. Purchaser agrees to obtain the evaluation and opinion of its own tax attorney or accountant as to



## **RaPower-3 Equipment Purchase Agreement**

any tax matters relating to this Agreement and to the Alternative Energy System. Seller does not guarantee any tax incentive or benefit to Purchaser. Seller hereby transfers to Purchaser any and all energy tax credits, if any, related to the Alternative Energy System. Seller shall not claim any such energy tax credits. Seller and Purchaser agree to the respective initial values of the components of the Alternative Energy System.

**26. Dispute Resolution.** In the event of a dispute arising out of this Agreement or the transactions, events or occurrences related thereto, Seller shall have the sole option of electing to have such disputes resolved by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association with all hearings and other proceedings in that arbitration being conducted in Salt Lake City, State of Utah. Seller shall have the right to elect arbitration at any time up to and including the time that either party files an Answer in pending litigation between the parties relating to such disputes.


**27. Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Utah.

**28. Entire Agreement.** This is the entire agreement between the parties. This agreement shall not be modified except by written amendment signed by Purchaser and Seller.



**RaPower-3 Equipment Purchase Agreement**

29. **Right of Revocation.** Purchaser understands and acknowledges that s/he may revoke this Agreement for a period of up to 14 days after s/he signs it and delivers payment (counting the day it was signed and/or payment received) and that the Agreement will not become effective or enforceable until the 14-day revocation period has expired. To revoke this Agreement, Purchaser must give written notice stating that s/he wishes to revoke to the Seller's authorized sales representative or to the Seller via email to "[cancel@rapower-3.com](mailto:cancel@rapower-3.com) <<mailto:cancel@rapower-3.com>>". Any notice stating that Purchaser wishes to revoke this Agreement must be emailed (with confirmation of delivery) or must arrive to the Seller via hand delivery, as set forth in this paragraph, on or before the expiration of the 14-day revocation period.

  
PRESTON OLSEN , for PFO Solar LLC

Signature

RaPower3 Windows Utility

IP Digital Signal

**Seller**

By: Neldon Johnson - RaPower-3

Neldon Johnson - Director

12/20/2012 4:57:46 PM

Signature



### RaPower-3 Equipment Purchase Agreement

This Equipment Purchase Agreement (the "Agreement") is entered into this day  
12/30/2010 8:05:24 PM

by and between RaPower-3 LLC (the "Operator"), with principal offices at 4035 South 4000 West, Deseret, UT 84624, hereinafter referred to as "Seller", and

whose address is 2068 Summerwood Dr Layton, UT, USA 84040

hereinafter referred to as "Purchaser".

#### BACKGROUND

1. Seller is the licensee of certain proprietary alternative energy technology, which technology relates to solar energy collection and which technology is utilized for the design and fabrication of certain components which are identified below and which are hereinafter collectively referred to as the "Alternative Energy System(s)".
2. Selier and Purchaser now desire to enter into an agreement whereby Seller will sell Purchaser the Alternative Energy System specifically described below.

#### AGREEMENT

NOW, THEREFORE, the parties hereto agree as follows:

1. Systems Purchased. Seller hereby sells to Purchaser and Purchaser hereby purchases from Seller the Alternative Energy System(s). The number of Alternative Energy Systems purchased by Purchaser from Seller under this Agreement shall be

10

Seller shall furnish, deliver, install and startup the Alternative Energy System(s), at a site yet to be determined. When a site is selected, it shall be referred to as the "Installation Site".

2. Documentation for Potential Tax Benefits. Seller shall provide to Purchaser all required documentation relating to the Alternative Energy System and its components as requested by Purchaser for federal, state and local review of the Alternative Energy System for

EXHIBIT	174
WIT:	Otto
DATE:	8-11-16
Denise M. Thomas, CRR/RPR	



## RaPower-3 Equipment Purchase Agreement

potential tax benefits. However, Purchaser hereby expressly acknowledges that neither Seller nor any other person or entity affiliated with Seller has made representations to Purchaser regarding potential tax benefits of this Agreement to Purchaser and Purchaser has relied entirely on hi/her own analysis of potential tax benefits. Purchaser hereby waives any and all claims against Seller and its employees, agents, officers, affiliates and representatives relating to Purchaser's failure to receive any anticipated tax benefit.

**3. Payment Terms.** Purchaser shall pay to Seller the sum of \$3,500 for each Alternative Energy System purchased, hereinafter referred to as the "Purchase Amount" for the purchase of the Alternative Energy System. This includes the cost of delivery, installation and startup, as well as the cost of warranty work performed during the warranty period described below. The Total Purchase Amount shall be paid in accordance with the following schedule:

**Option 1:**

Initial Down Payment in the amount of \$1,050 (one thousand fifty dollars) for each Alternative Energy System purchased, which shall be paid at the time this agreement is entered into.

**Option 2:**

Initial Down Payment in the amount of \$1,050 (one thousand fifty dollars) for each Alternative Energy System purchased, which shall be paid with a one-time payment of \$105 (equal to 10% of the down payment) at the time this Agreement is entered into. The balance of \$945 for each Alternative Energy System is to be paid on or before June 30, 2012.

**Option 3:**

Initial Down Payment in the amount of \$1200 (One Thousand Two Hundred Dollars) for each Alternative Energy Systems purchased, which shall be paid in monthly installments of \$100 (One Hundred Dollars) per system purchased.

The Installation Date shall be defined as the date the Alternative Energy Equipment has been installed and begins to produce revenue. After the Alternative Energy Equipment has been installed and producing revenue for a five (5) year period, annual payments will begin. The annual payment will be as follows. Thirty Annual Installments in the amount of \$82.00 (Eighty-two dollars) for each Alternative Energy System purchased, hereinafter referred to as "Annual Installments," shall be paid to Seller, the first Installment being due five years following the Installation Date and the last Installment being due Twenty-Nine years thereafter,





## RaPower-3 Equipment Purchase Agreement

the Thirty-Five year period from the Installation Date to a date one year following the due date of the last Installment, shall be referred to hereinafter as the "Installment Period" and the schedule of Installment payments shall be referred to hereafter as the "Installment Schedule."

**4. Operations and Management Company.** The Alternative Energy System shall be placed in operation only at and operated only at the Installation Site, and shall be operated and managed for the Installment Period by an independent Operations and Management Company hereinafter referred to as "Operations and Management Company". In the event that Operations and Management Company shall cease to operate and manage the Alternative Energy System for any reason during the Installment Period, a Substitute Operations and Management Company approved by Buyer shall be employed to operate and manage the Alternative Energy System. The Substitute Operations and Management Company must be expressly approved by Buyer.

**5. Failure to Pay.** In the event that Purchaser fails to pay any of the Annual Installments or any portion thereof, when due, interest shall accrue on the overdue amount at the rate of one and one-half percent (1-1/2%) per month until paid. If Purchaser fails to pay any Annual Installment or any portion thereof when due or within a thirty (30) day grace period thereafter, Seller may immediately, upon written notice to Purchaser, enter the Installation Site and repossess the Alternative Energy System and any and all of the components thereof. In such event, Seller shall be entitled to recover its attorney fees, court costs, arbitration costs, collection costs, repossession fees and expenses incurred in repossessing the Alternative Energy System and any components thereof. In the event that Purchaser voluntarily relinquishes the Alternative Energy System to Seller, and thereby minimizes the expense to Seller in repossessing the Alternative Energy System, Seller agrees not to report Purchaser to any credit agencies for Purchaser's default, and Purchaser shall receive a credit against the balance owed under the Installment Schedule in an amount equal to the value of the Alternative Energy System as established by an independent, qualified appraiser approved by Purchaser and Seller. The credit for the value of the Alternative Energy System shall be given if Purchaser voluntarily relinquishes the Alternative Energy System, whether the Alternative Energy System is re-sold by Seller or not.

**6. Seller's Rights upon Default.** If Purchaser fails to pay any Annual Installment or any portion thereof when due or within the thirty (30) days grace period thereafter, or if Purchaser becomes subject to any state or federal insolvency, bankruptcy, receivership, trusteeship or similar proceeding, or if Purchaser shall default in any other term of this Agreement, Seller may immediately terminate this Agreement by notice in writing to Purchaser and repossess the Alternative Energy System and all of the components thereof as stated above. In such event, Purchaser shall remain liable for all sums then due and unpaid, less the credit for the value of the repossessed Alternative Energy System as described above, plus a reasonable amount for attorneys' fees and such expenses as may be expended in the repossession of the



## RaPower-3 Equipment Purchase Agreement

Alternative Energy System.

**7. Right to Reduce Purchase Amount.** If changes are made to the Internal Revenue Code after the date of this Agreement and prior to January 31, 2012, which materially reduce any tax benefit of this agreement anticipated by the Purchaser, Purchaser may elect to reduce the number of Alternative Energy Systems purchased and the Seller agrees to accept the reduced amount, provided that the reduced amount is not less than the total amount already paid as a down payment or one-time payment. Any notice stating that Buyer wishes to elect a reduction must be emailed (with confirmation of delivery) or must arrive to the Seller via hand delivery, as set forth in this paragraph, on or before Jan 31, 2012.

**8. Warranty.** Seller hereby warrants, for the thirty five (35) year period from the Installation Date to the end of the Installment Period, hereinafter referred to as the "Warranty Period" that the Alternative Energy System shall remain in good operating condition. Seller shall initiate, within five (5) business days following the receipt of written notice that the Alternative Energy System is not operating properly or is not in good operating condition, either directly or through the use of one or more independent maintenance or repair entities, maintenance or repair of the malfunctioning or non-operating components of the Alternative Energy System. Seller shall complete such maintenance or repair work within a reasonable time thereafter. Seller shall be responsible for all material, equipment and labor costs incurred to complete such maintenance and repair work. Seller shall not be responsible for or liable for loss of revenue or other consequential damages sustained by Purchaser due to the failure of the Alternative Energy System to remain in good operating condition. Seller's obligations shall be limited to the maintenance and repair obligations stated herein.

**9. Seller's Warranty Obligations.** Seller hereby warrants, for the thirty five (35) year Warranty Period, the Alternative Energy System and each of the components thereof, from defects in materials and workmanship. Within five (5) business days following the receipt of written notice from Purchaser, Seller shall initiate reasonable efforts to ascertain repair or replacement requirements, to order replacement parts and equipment needed for repair, and to deploy qualified maintenance personnel. The cost of warranty parts, replacement equipment and labor shall be borne by Seller. Seller shall not be responsible for or liable for loss of revenue or other consequential damages sustained by Purchaser due to defects in materials or workmanship. Seller's obligations shall be limited to the parts, equipment replacement, and repair obligations stated herein.

**10. Target Production Rate.** Seller and Purchaser acknowledge that the Target Production Rate from one Alternative Energy System is 600 peak watts, rated for clear sky conditions at noon, local time, June 21, at a latitude of forty degrees (40 degrees) North (the "Rating Conditions"), and the Warranty Production Rate is ninety-five percent (95%) of the Target Production Rate. Seller hereby warrants that for the initial five year period from the Installation Date to a date five years following the Installation Date, the Warranty Energy



## RaPower-3 Equipment Purchase Agreement

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**11. Waiver for Delays.** Purchaser hereby waives any and all claims against Seller for delays, including but not limited to claims for damages due to delays in preparing plans; delays in applying for or obtaining approvals or permits; delays in the delivery, installation, or start-up; or delays in performing warranty work. This waiver includes any and all direct, indirect or consequential damages.

**12. Limitation of Liability.** Neither of the parties shall have liability for consequential damages to the other arising out of this agreement or the transactions, events or occurrences related thereto and each hereby waives any and all such claims for consequential damages against the other. Seller's liability for any breach under this agreement shall be limited to any amounts actually paid by Purchaser and received by Seller under this Agreement.

**13. Property Insurance.** Purchaser agrees to require Operations and Management Company to maintain property damage insurance on the Alternative Energy System.

**14. Liability Insurance.** Purchaser agrees to require Operations and Management Company to maintain liability insurance to insure against bodily injury, property damage, product liability or other claims related to the design, manufacture, delivery, installation, start-up, operation or maintenance of the Alternative Energy System.

**15. Assignment of Agreement.** This Agreement shall not be assigned by Purchaser without the express written consent of Seller. Seller may assign its rights and obligations under this Agreement but Seller shall remain liable to Purchaser for the failure of its assignee to perform the obligations of Seller under this Agreement.

**16. Binding Agreement.** This Agreement shall be binding upon the successors and assigns of each of the parties.

**17. No Additional Warranties.** Seller makes no representations or warranties,



## RaPower-3 Equipment Purchase Agreement

expressed or implied, including the implied warranty of merchantability and fitness, except as expressly stated in this Agreement.

18. **Authorized Personnel.** Purchaser shall not repair, modify or adjust the Alternative Energy System or any component thereof and Purchaser agrees to prohibit anyone other than Seller's authorized personnel to repair, modify or adjust the Alternative Energy System or any component thereof.

19. **Notification to Seller.** Purchaser shall notify Seller immediately of accidents, disabilities, failures or like information concerning the Alternative Energy System.

20. **Warranty Limitations.** In the event the Alternative Energy System becomes inoperable for any reason, except as otherwise provided under the warranty during the Warranty Period, Seller shall not be obligated to furnish a substitute Alternative Energy System or any component thereof. In any event, Seller shall not be liable for any special or consequential damages of any nature resulting from such inoperability.

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22. **Written Notice.** Any notice under this Agreement shall be deemed sufficient if it is in writing and it is delivered to Purchaser, personally or sent by mail addressed to Purchaser at the address set forth above.

23. **Rights, Liens, Title, and Interest.** Nothing herein conveys to Purchaser any right, title or interest in or to the Alternative Energy System or any component thereof, except as a Purchaser. Seller reserves the right to file or record such documents and instruments as it may deem necessary from time to time to protect its rights, liens, title and interest in the Alternative Energy System. Purchaser agrees to cooperate with Seller and to execute such documents as may be required or requested by Purchaser to assist Seller in protecting its rights, liens, title and interest in the Alternative Energy System.

24. **Breach of Agreement.** In the event of the breach of this Agreement by either party, the injured party shall be entitled to recover its costs, attorney fees, arbitration costs and arbitration fees incurred in enforcing the agreement and in pursuing appropriate remedies.

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## RaPower-3 Equipment Purchase Agreement

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**26. Dispute Resolution.** In the event of a dispute arising out of this Agreement or the transactions, events or occurrences related thereto, Seller shall have the sole option of electing to have such disputes resolved by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association with all hearings and other proceedings in that arbitration being conducted in Salt Lake City, State of Utah. Seller shall have the right to elect arbitration at any time up to and including the time that either party files an Answer in pending litigation between the parties relating to such disputes.

**27. Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Utah.

**28. Entire Agreement.** This is the entire agreement between the parties. This agreement shall not be modified except by written amendment signed by Purchaser and Seller.



**RaPower-3 Equipment Purchase Agreement**

29. **Right of Revocation.** Purchaser understands and acknowledges that s/he may revoke this Agreement for a period of up to 14 days after s/he signs it and delivers payment (counting the day it was signed and/or payment received) and that the Agreement will not become effective or enforceable until the 14-day revocation period has expired. To revoke this Agreement, Purchaser must give written notice stating that s/he wishes to revoke to the Seller's authorized sales representative or to the Seller via email to "[cancel@rapower-3.com](mailto:cancel@rapower-3.com)" <<mailto:cancel@rapower-3.com>>. Any notice stating that Purchaser wishes to revoke this Agreement must be emailed (with confirmation of delivery) or must arrive to the Seller via hand delivery, as set forth in this paragraph, on or before the expiration of the 14-day revocation period.

**SAMUEL J OTTO**

Signature

**174.23.84.159**

IP Digital Signal

**Seller**

By: Neldon Johnson - RaPower-3

Neldon Johnson - Director

12/30/2010 8:05:24 PM

Signature



Peter C Gregg  
38490 Bickford St  
Sandy, OR. 97055

Thursday, February 02, 2012

Dear Peter,

This letter is regarding the "Alternative Energy Systems" that you purchased from RaPower3 LLC. RaPower3 put into service your equipment on or before December 31, 2011. This will qualify you for the Internal Revenue Services solar energy tax credit.

*(However for your personal information, Section 103 Div.B Energy Credit (code Sec.48), "For projects whose construction time is expected to equal or exceed two years, the Credit may be claimed as is placed in service.")*

We appreciate your business and look forward to the opportunity to work with you to help solve our nation's energy needs. If you have any questions you may correspond with us at the below address.

Respectfully Yours,

A handwritten signature in blue ink that reads "Greg Shepard".

Greg Shepard,  
Director of Operations

---

RaPower3 4035 S. 4000 W. Deseret, Utah 84624





Peter C Gregg  
38490 Bickford Street  
Sandy, OR. 97055

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Respectfully Yours,

Greg Shepard,  
Director of Operations

---

RaPower3 4035 S. 4000 W. Deseret, Utah 84624







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38490 Bickford Street  
Sandy, OR. 97055

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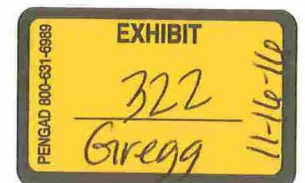
Respectfully Yours,

A handwritten signature in cursive script, appearing to read "Greg Shepard".

Greg Shepard,  
Director of Operations

---

RaPower3 4035 S. 4000 W. Deseret, Utah 84624





Peter C Gregg  
38490 Bickford St  
Sandy OR. 97055

Saturday, May 18, 2013

Dear Peter,

This letter is regarding the "Alternative Energy Systems" that you purchased from RaPower3 LLC. RaPower3 put into service your equipment on or before December 31, 2011. This will qualify you for the Internal Revenue Services solar energy tax credit.

*(However for your personal information, Section 103 Div.B Energy Credit (code Sec.48), "For projects whose construction time is expected to equal or exceed two years, the Credit may be claimed as is placed in service.")*

We appreciate your business and look forward to the opportunity to work with you to help solve our nation's energy needs. If you have any questions you may correspond with us at the below address.

Respectfully Yours,

A handwritten signature in blue ink, appearing to read "Greg Shepard".

Greg Shepard,  
Director of Operations

---

RaPower3 4035 S. 4000 W. Deseret, Utah 84624



Ken Birrell

From: Ken Birrell  
Sent: Wednesday, October 31, 2012 9:50 AM  
To: 'jason@orangeinsure.com'  
Subject: RE: Generlized Documents  
Attachments: Tax Issues Relating to Purchase of Solar Lenses Memo.pdf

Jason,

Please see the attached memo, which contains a generalized analysis of the tax consequences relating to purchasing the solar lenses. Please note that this analysis is limited to C corporations – there would be different issues for an individual, partnership or S corporation purchaser.

Thanks,  
Ken

Kenneth W. Birrell  
KIRTON | M<sup>o</sup>CONKIE  
P: 801-321-4826  
F: 801-321-4893  
[kbirrell@kmclaw.com](mailto:kbirrell@kmclaw.com)

From: [jason@orangeinsure.com](mailto:jason@orangeinsure.com) [mailto:[jason@orangeinsure.com](mailto:jason@orangeinsure.com)]  
Sent: Tuesday, October 30, 2012 3:52 PM  
To: Ken Birrell  
Subject: RE: Generlized Documents

Great. I look forward to it.

Could you also include the opinion letter executive summary?

The end of the letter has a pretty good summary that could be edited for that purpose if you wanted.

The front of a page document that sums up the basics points of the letter would be great.

Thanks,

Jason

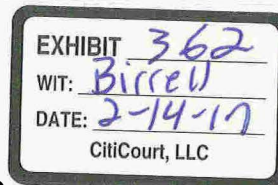
----- Original Message -----

Subject: Re: Generlized Documents  
From: Ken Birrell <[kbirrell@kmclaw.com](mailto:kbirrell@kmclaw.com)>  
Date: Tue, October 30, 2012 11:04 am  
To: "[jason@orangeinsure.com](mailto:jason@orangeinsure.com)" <[jason@orangeinsure.com](mailto:jason@orangeinsure.com)>

Yes, I will have it to you first thing tomorrow morning

On Oct 30, 2012, at 11:31 AM, "[jason@orangeinsure.com](mailto:jason@orangeinsure.com)" <[jason@orangeinsure.com](mailto:jason@orangeinsure.com)> wrote:

Ken,



KM00148

Are you close on the opinion letter/reasoned analysis?

Thanks,

Jason

----- Original Message -----

Subject: Generalized Documents  
From: Ken Birrell <[kbirrell@kmclaw.com](mailto:kbirrell@kmclaw.com)>  
Date: Tue, October 30, 2012 9:28 am  
To: "'[jason@orangeinsure.com](mailto:jason@orangeinsure.com)'" <[jason@orangeinsure.com](mailto:jason@orangeinsure.com)>

Jason,

Attached are generalized versions of the Purchase Agreement (including a Promissory Note for the Installment Payments – it will be the Promissory Note rather than the Purchase Agreement that varies as the applicable federal rate fluctuates) and the Operation and Maintenance Agreement. As before the Operation and Maintenance Agreement basically states that the Operator is required to provide the services detailed in the Operation and Maintenance Guidelines. If we don't actually have such Guidelines to attach, then we will need to instead explain the services to be provided in the Operation and Maintenance Agreement itself.

Thanks,  
*Ken*

**Kenneth W. Birrell**  
<[image003.jpg](#)>  
P: 801-321-4826  
F: 801-321-4893  
[kbirrell@kmclaw.com](mailto:kbirrell@kmclaw.com)  
[www.kmclaw.com](http://www.kmclaw.com)

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**IRS CIRCULAR (230) DISCLOSURE:** To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice contained in this communication, unless expressly stated otherwise, was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any tax-related matter(s) addressed herein.

KIRTON | McCONKIE

MEMORANDUM

DATE: October 31, 2012
TO: SOLCO I, LLC
Attn: Neldon Johnson
FROM: Kenneth W. Birrell
SUBJECT: Tax Issues Relating to Purchase of Solar Lenses

INTRODUCTION

This memorandum is in response to your request for our analysis of certain tax consequences for the buyers (the "Buyers") of solar lenses from SOLCO, I, LLC (the "Seller") based on factual circumstances that are substantially similar in all material respects to the Facts (as such term is defined below). Please note that the analysis in this memorandum is based upon the existing provisions of the Internal Revenue Code of 1986, as amended (the "Code") and regulations thereunder (including final, temporary and proposed) and upon current Internal Revenue Service ("Service") published rulings and existing court decisions, any of which could be changed at any time. Any such changes may be retroactive and could significantly modify the analysis set forth herein. Similarly, any change in the Facts or the assumptions stated below, upon which our analysis is based, could modify our conclusions.

EXECUTIVE SUMMARY

The solar lenses that Buyers purchase from Seller (the "Solar Lenses") will qualify as "energy property" that is eligible for the energy tax credit under Code Section 48. For purposes of calculating the energy credit, the basis of each Solar Lens will be Three Thousand Five Hundred Dollars (\$3,500) and the energy percentage will be thirty percent (30%) so long as the energy credit is claimed prior to January 1, 2017 (and will be ten percent (10%) if claimed after that date). Buyers will be able to claim the energy credit in the year that the Solar Lenses are placed into service.

The Solar Lenses will be eligible for depreciation under Code Section 168(a) as 5-year property. In addition, Solar Lenses acquired by a Buyer and placed in service before January 1, 2013, will also be eligible for additional first-year depreciation under Code Section 168(k).

ATTORNEYS AT LAW
www.kirtomc.com

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801.328.3600 ext 801.321.4893 fax
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801.426.2100 ext 801.426.2101 fax

KM00150

FACTUAL BACKGROUND

The Solar Lenses will be purchased by Buyers that are (i) corporations or limited liability companies organized in the United States, (ii) neither tax-exempt nor governmental entities and (iii) taxed as subchapter C corporations for federal income tax purposes. The Solar Lenses will be purchased pursuant to a Solar Lenses Purchase Agreement that is substantially similar to the agreement set forth in Exhibit A hereto (the "Purchase Agreement"). The Solar Lenses were manufactured by International Automated Systems or one of its affiliates and consist of thin-film solar lenses that focus the sun's energy, which energy is collected and transmitted to produce heated steam for power generation and other uses. The Treasury Department has made a grant under Section 1603 of the American Recovery & Reinvestment Act of 2009 with respect to the same model of solar lenses as the Solar Lenses and related equipment, which grant required a finding by the Treasury Department that such solar lenses and related equipment constituted property described in Code Section 48(a)(3)(A)(i) or (ii).

According to the Purchase Agreement, the purchase price ("Purchase Price") for each Solar Lens shall be Three Thousand Five Hundred Dollars (\$3,500). Buyer shall pay thirty percent (30%) of the Purchase Price upon execution of the Purchase Agreement and provide Seller with a Promissory Note that is substantially similar to the promissory note set forth in Exhibit B hereto (the "Promissory Note") for the remaining balance of the Purchase Price. The Promissory Note provides for payment of the remaining balance of the Purchase Price in substantially equal annual installment payments over a period of thirty (30) years (the "Installment Payments") with interest at a rate equal to the long-term applicable federal rate determined in accordance with Code Section 1274 as such rate is in effect for the month in which the Solar Lenses are acquired.

All of the Solar Lenses will be new at the time of their purchase by the Buyer. No person will have put the Solar Lenses to any type of use prior to the Buyer's purchase of the Solar Lenses. No person will have claimed any credits under Code Section 45 or 48 or received a Section 1603 grant with respect to the Solar Lenses prior to the Buyer's purchase of the Solar Lenses. All of the Solar Lenses will be installed at projects located within the United States.

The Buyer will enter into an Operation and Maintenance Agreement that is substantially similar to the agreement attached hereto as Exhibit C (the "O&M Agreement") with LTB, LLC, a Nevada limited liability company (the "Operator") to oversee the operation and maintenance of the Solar Lenses. The Operator is a for-profit commercial enterprise that is not related to either Buyer or Seller through common ownership. The Operator will also lease from Seller or an affiliate of Seller the towers in which the Solar Lenses will be installed, receivers to collect the energy from the Solar Lenses and certain other equipment relating thereto. The Operator shall be responsible for performing the services described in the O&M Agreement, including the collection of all income generated from the operation of the Solar Lenses, including any revenue generated from the use or sale of thermal energy or electric power generated using the Solar Lenses (the "Gross Revenue"). As compensation for its services, the Operator shall be entitled to retain an amount equal to the Gross Revenue minus an annual rental payment as set forth in the O&M Agreement (the "Rental Payment"). The Rental Payment shall be a fixed amount and shall not be a function of the net profits generated by the Solar Lenses.

The Purchase Agreement, Promissory Note and O&M Agreement are referred to herein as the "Transaction Documents." The factual matters set forth above along with the Transaction Documents shall be referred to collectively herein as the "Facts."

#### EXPLANATION OF THE LAW AND APPLICATION OF THE FACTS TO THE LAW

##### I. Sale vs. Lease

The Buyer's tax treatment with respect to the Solar Lenses depends in part upon whether the overall transaction constitutes a sales transaction in which the Buyer becomes and remains the owner of the Solar Lenses for tax purposes and therefore is the party entitled to claim the energy tax credits and depreciation deductions relating to the Solar Lenses. Although there is no bright-line test for determining whether a transaction constitutes a sale or a lease for tax purposes, the Service and the courts have developed various factors that they use to guide this determination. For example, in Rev. Rul 55-540 the Service stated that the determination of whether a transaction constitutes a sale or a lease "depends upon the intent of the parties as evidenced by the provisions of the agreement, read in light of the facts and circumstances existing at the time the agreement was executed." The Service noted that although "no single test, or any special combination of tests, is absolutely determinative," it provided a list of several conditions that, if present, "in the absence of compelling persuasive factors of contrary implication [evidence] an intent warranting treatment of a transaction for tax purposes as a purchase and sale rather than as a lease or rental agreement."

One of the conditions indicating a sale is that "[p]ortions of the periodic payments are made specifically applicable to an equity to be acquired by the lessee." Rev. Rul. 55-540, citing *Truman Bowen v. Commissioner*, 12 T.C. 446, acquiescence, C.B. 1951-2. The Purchase Agreement specifies that the Promissory Note represents payment of the Purchase Price that remains due after receipt of the Down Payment. Conversely, no part of the Rental Payment due under the O&M Agreement is specifically applicable to the Operator acquiring an equity interest in the Solar Lenses since the parties do not anticipate the Operator ever acquiring such an equity interest.

Another and related condition indicating a sale is that "[s]ome portion of the periodic payments is specifically designated as interest or is otherwise readily recognizable as the equivalent of interest." Rev. Rul 55-540, citing *Judson Mills v. Commissioner*, 11 T.C. 25, acquiescence, C.B. 1949-1. As noted above, the Purchase Agreement and Promissory Note specifically designate a portion of the Installment Payments as interest, but there is no corresponding specific designation of interest within the O&M Agreement. Moreover, no portion of the Rental Payments appear to be readily recognizable as the equivalent of interest.

A third condition indicating a sale is that "[t]he lessee will acquire title upon the payment of a stated amount of 'rentals' which under the contract he is required to make." Rev. Rul. 55-540, citing *Hervey v. Rhode Island Locomotive Works*, 93 U.S. 664 (1876); *Taft v. Commissioner*, 27 B.T.A. 808; *Truman Bowen v. Commissioner*, 12 T.C. 446, acquiescence, C.B. 1951-2. Under the terms of the Purchase Agreement and the O&M Agreement, the Buyer will receive title to the Solar Lenses from Seller and not pass that title to the Operator under any conditions. Therefore, the Buyer will hold title to the Solar Lenses throughout the term of both agreements.

In general, courts look to whether the benefits and burdens of ownership have passed to the purported buyer/lessor when determining how to classify sale-leaseback transactions for tax purposes. One important factor has been whether the buyer-lessor truly had an economic investment that would be meaningful if it abandoned the property. For example, in *Frank Lyon Co v. United States*, 435 U.S. 561 (1978), a key factor in the Supreme Court's decision to uphold a sale-leaseback transaction was the substantial economic investment made by the buyer/lessor. The buyer/lessor purchased a building for \$7.64 million with a \$500,000 down payment (representing 6.5% of the purchase price) and took out a mortgage for the remaining purchase price. The buyer/lessor then leased the building back to the seller/lessee with the annual rent exactly equal to the buyer/lessor's annual mortgage payments. The seller/lessee had options to purchase the building at various times at a price equal to the sum of the unpaid mortgage plus the buyer/lessor's \$500,000 plus 6% interest. The Supreme Court's decision to uphold the sale-leaseback transaction was based in large measure the significance of the buyer/lessor's economic investment, with the court finding that the buyer/lessor's financial position was substantially affected due to the \$500,000 investment and long-term debt and the buyer/lessor was exposed to real and substantial risk. Conversely, sale-leaseback transactions that have not been upheld by the courts typically involve minor down payments, nonrecourse financing and inflated sales prices. See e.g., *Franklin Estate v. Commissioner*, 64 T.C. 752 (1975), *aff'd*, 544 F.2d 1045 (9th Cir. 1976). Here, the Buyer will make a substantial economic investment in the Solar Lenses. For example, the Buyer's down payment is thirty percent (30%) of the Purchase Price, nearly five times as large as the down payment in *Frank Lyon*, and the financing on the remainder of the Purchase Price is fully recourse.

Another important factor for the courts is the existence of repurchase options at favorable prices, which indicate that the seller/lessee has not truly relinquished its interest in the property. See e.g., *Sowerby v. Commissioner*, 47 T.C.M. 897 (1984). Here, neither the Seller nor the Operator will have an option to purchase the Solar Lenses at any price, let alone a favorable price.

Another important factor for the courts has been the relative cash flows, such as situations where the rental income stream is tailored to match the debt payments without any significant positive cash flow for the buyer/lessor. See e.g., *Larsen v. Commissioner*, 89 T.C. 1229 (1987). Here, it is anticipated that the annual revenue stream (from the Rental Payments) will be substantially greater than the annual debt payments (the Installment Payments), which means that the Buyer should have substantial positive cash flows.

Finally, the Purchase Agreement provides that all parties shall, for tax purposes, report the transactions provided for in the Purchase Agreement and O&M Agreement as a sale of the Solar Lenses to the Buyer followed by a thirty (30) year operating lease of the Solar Lenses to the Operator. Thus, the parties clearly intend for the transactions to constitute a sale of the lenses to Buyer with the Buyer bearing the economic benefits and burdens of ownership of the Solar Lenses. Given the substantial economic investment being made by the Buyer, the specific designation of principal and interest payments by the Buyer to Seller and no such designation of with respect to payments by the Operator to the Buyer, the fact that the Buyer will have title to the Solar Lenses, the fact that neither the Seller nor the Operator will have an option to acquire the Solar Lenses from the Buyer and the fact that the Buyer will recognize substantial positive cash flow from the Solar Lenses, we believe that the transactions should be treated as a sale of the Solar Lenses to Buyer for tax purposes. Accordingly, the Buyer should be the person entitled to claim the energy credit and depreciation deductions relating to the Solar Lenses.



## II. Energy Tax Credit

Code Section 38 provides as a credit against a taxpayer's federal income taxes an amount equal to various credits, including "the investment credit determined under section 46." Code Section 46 defines the investment credit as the sum of various credits, including "the energy credit." Code Section 48(a) provides that, subject to certain exceptions not applicable to the Solar Lenses, that "the energy credit for any taxable year is the energy percentage of the basis of each energy property placed in service during such taxable year."

### A. Energy Property

Code Sections 48(a)(3) and 50(b) contain six (6) requirements that property must satisfy in order to qualify as "energy property." As summarized below, the Solar Lenses satisfy each of these requirements.

#### 1. Solar Energy Property

First, the property must consist of property described in Code Section 48(a)(3)(A). Among the types of property described therein is "equipment which uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat, excepting property used to generate energy for the purposes of heating a swimming pool" Code Section 48(a)(3)(A)(i). Such solar energy property includes equipment and materials, as well as parts related to the function of that equipment, that use solar energy directly to perform these functions, generally through the use of equipment such as collectors (to absorb sunlight and create hot liquids or air), storage tanks (to store hot liquids), rockbeds (to store hot air), thermostats (to activate pumps or fans that circulate the hot liquids or air) and heat exchangers (to utilize hot liquids or air to create hot air or water). See Treas. Reg. Section 1.48-9(d)(1). Solar energy property includes equipment that uses solar energy to generate electricity, and includes storage devices, power conditioning equipment, transfer equipment, and parts related to the functions of those items, which are part of the process involving the transformation of sunlight into electricity through the use of such devices as solar cells or other collectors so long as such equipment is used up to (but not including) the state that transmits or uses electricity. See Treas. Reg. Section 1.48-9(d)(3). Equipment that uses solar energy beyond the distribution stage is eligible only if specially adapted to use solar energy. See Treas. Reg. Section 1.48-9(d)(5).

It is not necessary for solar energy property to comprise a completely functional solar system in order to qualify for the energy credit. In *Cooper v. Commissioner*, 88 T.C. 84 (1987), the Tax Court held that property within the meaning of Code Section 48(a)(3)(A)(i) is any equipment that uses solar energy to generate electricity, to heat, cool, or provide hot water for use in a structure, or to provide solar process heat, and includes parts solely related to the functioning of such equipment; the court found that an incomplete system made up of qualifying parts, such as collectors, storage tanks, thermostats, heat exchangers, etc. can qualify for the credit.

The Solar Lenses will be capable of using solar energy to generate electricity and/or solar process heat once they have been properly installed in a tower and otherwise incorporated into a larger solar energy system. As explained by the Tax Court in *Cooper v. Commissioner*, 88 T.C. 84 (1987), the fact that the Solar Lenses must be installed and incorporated into a larger solar

energy system does not prevent them from qualifying as energy property. Finally, it is our understanding that the Solar Lenses will not be used for the purposes of heating a swimming pool except to the extent that electricity generated by the Solar Lenses is sold to an end-user who uses such electricity to heat a swimming pool. Therefore, the Solar Lenses are described in Code Section 48(a)(3)(A)(i) and thereby satisfy this first requirement to being classified as energy property.

## 2. Acquisition and Original Use

Second, the Property must either be (i) constructed, reconstructed or erected by the taxpayer or (ii) acquired by the taxpayer if the original use of such property commences with the taxpayer. Code Section 48(a)(3)(B). Treas. Reg. Section 1.48-2(b)(6) provides that property is deemed to be acquired when reduced to physical possession or control. Treas. Reg. Section 1.48-2(b)(7) provides that original use means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer.

The Buyer will not construct, reconstruct or erect any of the Solar Lenses itself. However, the Buyer will acquire control of the Solar Lenses pursuant to the terms of the Purchase Agreement. Therefore, the Buyer will have acquired all of the Solar Lenses within the meaning of Code Section 48(a)(3)(B) and Treas. Reg. 1.49-2(b)(6). As noted in the Facts, none of the Solar Lenses will have been put to any use by any other person prior to their acquisition by the Buyer. Therefore, the original use of the Solar Lenses will commence with the Buyer within the meaning of Code Section 48(a)(3)(B) and Treas. Reg. 1.49-2(b)(6). Accordingly, the Solar Lenses satisfy this second requirement to being classified as energy property.

## 3. Qualify for Depreciation

Third, the property must qualify for depreciation (or amortization in lieu of depreciation). Code Section 48(a)(3)(C). Treas. Reg. Section 1.48-1(b)(1) provides that property qualifies for depreciation within the meaning of Code Section 48(a)(3) "if the property is of a character subject to the allowance for depreciation under section 167 and the basis (or cost) of the property is recovered through a method of depreciation, including, for example, . . . methods of depreciation which measure the life of the property in terms of years."

As summarized in greater detail in Section III.A below, the Solar Lenses are of a character subject to allowance for depreciation under Code Section 167 and the Buyer's basis in the Solar Lenses will be recovered through a method of depreciation. Therefore, the Solar Lenses satisfy this third requirement to being classified as energy property.

## 4. Satisfy Performance Standards

Fourth, the property must satisfy the performance standards, if any, which the Service has prescribed by regulation and are in effect at the time of the acquisition of the property. Code Section 48(a)(3)(D). However, taxpayers need not wait for issuance of performance standards before proceeding with the acquisition of the property or the claiming of the energy credit. See Information Release 2134, 1979-28 I.R.B. 36.

To date the Service has not published any performance standards that would apply to the Solar Lenses. Because a Buyer need to wait until performance standards are issued, until such

time as the Service publishes performance standards, the Solar Lenses will satisfy this fourth requirement to being classified as energy property.

**5. No Claiming of Code Section 45 Credit**

Fifth, taxpayer cannot have claimed a renewable electricity production credit under Code Section 45 for the taxable year or any prior taxable year with respect to the property. Code Section 48(a)(3). Code Section 45 provides a credit to certain facilities that use renewable resources, such as solar energy, to produce electricity. However, Code Section 45(d)(4) provides that such a facility "shall not include any property described in section 48(a)(3) the basis of which is taken into account by the taxpayer for purposes of determining the energy credit under section 48." In essence, the taxpayer has to choose between claiming a tax credit under Code Section 48 (which is based upon the basis of the property) or Code Section 45 (which is based upon the amount of electricity sold).

No person has claimed a credit under Code Section 45 with respect to the Solar Lenses. So long as the Buyer does not attempt to claim such a credit in the future, the Solar Lenses will satisfy this fifth requirement to being classified as energy property.

**6. No Disqualifying Use**

Property does not qualify as energy property if it is used (i) predominantly outside of the United States, (ii) predominantly to furnish lodging or in connection with the furnishing of lodging, (iii) by certain tax-exempt organizations, (iv) a governmental entity or (v) a foreign person or entity. Code Section 50(b).

The Solar Lenses will all be installed in projects located within the United States; therefore the Solar Lenses will not be predominantly outside of the United States. Given the nature of the Solar Lenses, they are not capable of furnishing lodging within the meaning of Code Section 50(b), therefore their use will not be predominantly to furnish lodging or in connection with the furnishing of lodging. Neither the Buyer nor the Operator is a tax-exempt organization, governmental entity or foreign person. Moreover, under the terms of the O&M Agreement the Operator is not permitted to sublet any of the Solar Lenses or assign any of its rights or obligations under such agreement without the prior written consent of the Buyer, so the Operator cannot cause the Solar Lenses to be used by a tax-exempt organization, governmental entity or foreign person or entity without the Buyer's consent. Therefore, so long as the Solar Lenses are subject to the O&M Agreement, they will not be used by a tax-exempt organization, governmental entity or foreign person or entity without the Buyer's prior consent. Accordingly, the Solar Lenses satisfy this sixth and final requirement to being classified as energy property.

**B. Energy Percentage**

Code Section 48(a)(2)(A)(i)(II) provides that the energy percentage is thirty percent (30%) for various types of properties, including energy properties described in Code Section 48(a)(3)(A)(i) for periods ending before January 1, 2017 and ten percent (10%) for periods beginning on January 1, 2017. As summarized in Section II.A.1 above, the Solar Lenses are described in Code Section 48(a)(3)(A)(i). Therefore, so long as the energy credit is claimed before January 1, 2017, the energy percentage for the Solar Lenses will be thirty percent (30%).

If the energy credit is claimed on or after January 1, 2017, then the energy percentage will be ten percent (10%).

**C. Basis**

**1. In General**

The basis of the Solar Lenses for purposes of the energy credit will initially be determined in accordance with Code Section 1012(a), which provides that basis of the Solar Lenses is their cost. Because the Purchase Price for each Solar Lens will be Three Thousand Five Hundred Dollars (\$3,500), such amount will be the cost basis of each Solar Lens for purposes of Code Section 1012(a).

**2. At-Risk Limitation**

For purposes of calculating the amount of the energy tax credit under Code Section 48(a), the cost basis amount determined in accordance with Code Section 1012 must be reduced to the extent required by the at-risk rules of Code Section 49. Code Section 49(a)(1)(A) provides that in computing the investment credit amount, the basis of property placed in service by a taxpayer described in Code Section 465(a)(1) and used in an activity with respect to which any loss is subject to limitation under Code Section 465 must be reduced by the amount of nonqualified nonrecourse financing relating to such property as of the close of the tax year in which the property is placed in service.

Taxpayers described in Code Section 465(a)(1) include individuals and subchapter C corporations with respect to which the stock ownership requirement of Code Section 542(a)(2) are met. The stock ownership requirement of Code Section 542(a)(2) is met if more than fifty percent (50%) of the corporation's stock is owned, directly or indirectly, by not more than five (5) individuals. Code Section 544 includes various attribution rules for determining stock ownership for purposes of Code Section 542(a)(2) which, among other things, deem an individual to hold all of the stock held by various members of the individual's family (including brothers, sisters, spouse, ancestors and lineal descendants) and various corporations, partnerships, estates and trusts. In terms of the type of activity requirement, if a corporation satisfies the ownership requirements of Code Section 542(a)(2), then essentially all of its activities are activities with respect to which losses are subject to limitation under Code Section 465. Thus, whether a Buyer will be described in Code Section 465(a)(1) will depend upon the Buyer's ownership structure. If a Buyer's stock is widely held, then it will not be subject to the at-risk limitations of Code Section 49; if a Buyer's stock is closely held (as defined in Code Section 542(a)(2)), then the Buyer will be subject to Code Section 49.

However, even if a Buyer is described in Code Section 542(a)(2) and therefore subject to Code Section 49, the amount of its basis in the Solar Lenses will not be reduced. Code Section 49(a)(1)(F) provides that the at-risk rules of Code Section 49 do not apply to qualified energy property as such term was defined for purposes of Code Section 46(c)(8) as such was in effect prior to the enactment of the Revenue Reconciliation Act of 1990 ("RRA-1990") on November

5, 1990. Qualified energy property is any property that satisfies each of the four (4) conditions summarized in the following sections.<sup>1</sup>

**a. At-Risk Limitations Would Otherwise Apply**

First, the property must be energy property to which the at-risk limitation on the investment credit would otherwise apply. Pre-1990 RRA Code Section 46(c)(8)(F). As described above, the at-risk limitation rules generally apply to property that is placed in service by a taxpayer that is described in Code Section 465(a)(1) and is used in connection with an activity with respect to which losses are subject to limitation under Code Section 465. Whether the Solar Lenses are qualified energy property is only an issue if they would otherwise be subject to the at-risk limitation, so the Solar Lenses will satisfy this first requirement for being qualified energy property.

**b. Energy Percentage Greater than Zero**

Second, the energy percentage for the property must be more than zero at the time it is placed in service. Pre-1990 RRA Code Section 46(c)(8)(F)(ii). As noted in Section II.B. above, the energy percentage for the Solar Lenses will be either thirty percent (30%) or ten percent (10%). Therefore, the Solar Lenses satisfy this second requirement for being qualified energy property.

**c. No More Than 75% Qualified Nonrecourse Financing**

Third, as of the close of the tax year in which the property is placed in service, no more than seventy-five percent (75%) of the basis of the property may be attributable to nonqualified nonrecourse financing. Pre-1990 RRA Code Section 46(c)(8)(F)(ii). To be nonqualified nonrecourse financing, the financing must, among other things, be nonrecourse financing. Code Section 49(a)(1)(D)(i). Financing is "nonrecourse financing" if (i) the borrower/taxpayer is protected against loss through guarantees, stop-loss agreements or other similar arrangements or (ii) any amount borrowed from a person who has an interest (other than as a creditor) in the activity in which the property is used or from a person related to such a person. Code Section 49(a)(1)(D)(iii). A person has an interest other than as a creditor only if the person has either a capital interest in the activity or an interest in the net profits of the activity. Treas. Reg. Section 1.465-8(b)(1). For this purpose, a capital interest means an interest in the assets of the activity that is distributable to the owner of the capital interest upon liquidation of the activity. Treas. Reg. Section 1.465-8(b)(2).

The Buyer is not protected against loss through guarantees, stop-loss agreements or other similar arrangements – the Buyer is the only person that is liable with respect to the Installment Payments. Thus, the Buyer is not protected against loss through guarantees, stop-loss agreements or other similar arrangements within the meaning of such terms for purposes of Treas. Reg. Section 1.465-8(b)(2).

<sup>1</sup> Note: The rules set forth in pre-1990 RRA Code Section 46(c)(8)(F) included a fifth condition that precluded exclusion from applying to all energy property. Pre-1990 RRA Code Section 46(c)(8)(F)(ii)(I). However, the repeal of pre-1990 RRA Code Section 46(c)(8)(F) was accompanied by a narrowing of eligible energy property, with the result that property that qualifies for the energy credit necessarily satisfies the fifth condition in all events. Pre-1990 RRA Code Section 46(c)(8)(F)(iii).

Likewise, Seller, the person providing the financing for the Solar Lenses, will not have an interest other than as a creditor in the activity in which the Solar Lenses will be used. Seller will not have a capital interest in such activity since it will not be entitled to receive any portion of the Solar Lenses in the event the Buyer decides to liquidate the activity. For example, if the Buyer decides to sell the Solar Lenses and liquidate, the Seller would not be entitled to a portion of the sale or liquidation proceeds except that Seller would be entitled to payment of the remaining balance of the Purchase Price, which right is consistent with the interests of a creditor. Similarly, Seller will not have an interest in the net profits of the activity since the amounts that it receives, both from Buyer in the form of Installment Payments and from Operator in the form of rental payments for the solar towers, receivers and other equipment, is not a function of the net profits, as opposed to the gross receipts, from the activity. Therefore, the Installment Payments do not constitute either nonrecourse financing or nonqualified nonrecourse financing and the Solar Lenses satisfy this third requirement for being qualified energy property.

**d. Level Payment Loan**

Fourth, any nonqualified nonrecourse financing in connection with the property must consist of a loan in which each installment is substantially equal, a portion of each installment must be attributable to the repayment of principal, and that portion must be increased commensurately with decreases in the portion of the payment attributable to interest. Pre-1990 RRA Code Section 46(c)(8)(F)(ii)(II). Because the Installment Payments do not constitute nonqualified nonrecourse financing, there is no nonqualified nonrecourse financing with respect to the Solar Lenses. Therefore, the Solar Lenses satisfy this fourth requirement for being qualified energy property. Accordingly, Code Section 49 does not require any reduction in the basis of the Solar Lenses as determined in accordance with Code Section 1012 irrespective of whether the Buyer is described in Code Section 465(a)(1).

**D. Placed in Service**

Property is placed in service when it is "placed in a condition or state of readiness and availability for a specifically assigned function." Treas. Reg. Section 1.46-3(d)(1)(ii). However, the Tax Court has held that for property purchased for lease to others to be placed in service, "it is not necessary that the property actually be used during the taxable year in the taxpayer's profit-motivated venture. It is sufficient that the property be available for use." *Waddell v. Commissioner*, 86 T.C. 848 (1986), citing *Sears Oil Co. v. Commissioner*, 359 F.3d 191, 198 (2d Cir. 1966) and *Grow v. Commissioner*, 80 T.C. 314, 326-327 (1983). An important factor in the court's decision in *Waddell* was the fact that the taxpayers executed distribution agreements simultaneously with the purchase, thereby showing that the equipment was actually available for lease at the time of purchase even though it was not actually leased until more than a year later.

The Buyer will enter into the O&M Agreement, which effectively leases the Solar Lenses to the Operator, simultaneously with the execution of the Purchase Agreement. Thus, the Solar Lenses will be available for use in the Buyer's leasing operations as soon as they are manufactured and Buyer acquires them. Therefore, given the holdings in *Waddell* and the cases cited therein, the Solar Lenses will be considered to have been placed in service as soon as they are acquired by the Buyer even though they will not be installed and actually used by the Operator to generate electricity or solar process heat until some later date.

### III. Depreciation

#### A. In General

Code Section 167(a) permits taxpayers to claim a depreciation deduction with respect to certain types of property used in a trade or business or held for the production of income. Code Section 168(a) provides that the depreciation deduction authorized by Code Section 167(a) for any tangible personal property is determined by using (i) the applicable depreciation method, (ii) the applicable recovery period and (iii) the applicable convention.

Code Section 168(b)(1) provides that the applicable depreciation method for property generally is the double declining balance method. There are exceptions to this general rule for various types of properties listed in Code Section 168(b)(2) and (3), but the Solar Lenses would not fall into any of the listed property types. Therefore, unless the Buyer elects otherwise, the applicable depreciation method for the Solar Lenses will be the double declining balance method.

Code Section 168(c) provides that the applicable recovery period for a property is determined by the recovery class of the property. Code Section 168(e)(B)(vi) provides that the 5-year recovery class includes property that is described in Code Section 48(a)(3)(A). Code Section 168(c) provides that the applicable recovery period for 5-year property is five (5) years. Therefore, the applicable recovery period for the Solar Lenses will be five (5).

Code Section 168(d) provides that the applicable convention for tangible personal property such as the Solar Lenses is generally the half-year convention. However, the applicable convention becomes the mid-quarter convention if the aggregate bases of depreciable property placed in service during the final three (3) months of the taxable year exceed forty percent (40%) of the aggregate bases of all depreciable property placed in service during such taxable year. Therefore, the applicable convention for the Solar Lenses will be either the half-year or the mid-quarter convention.

Code Section 167(c) provides that the basis for depreciation purposes is the property's adjusted basis determined in accordance with Code Section 1011 for purposes of determining the gain on the sale or other disposition of the property. Code Section 1011 provides that such basis is the basis as determined under Code Section 1012 and adjusted as provided in Section 1016 (and certain other provisions not applicable to the Solar Lenses). As noted above, Code Section 1012 provides that the basis of property is the cost of such property. Code Section 1016 provides that the cost basis must be adjusted by certain amounts, including the adjustment required by Code Section 50(c) for investment credit property. Code Section 50(c) provides that if an investment credit (including the energy credit) is claimed with respect to a property, that the basis of such property shall be reduced by an amount equal to fifty percent (50%) of the credit.

As noted above, the Buyer's cost basis in each Solar Lens will be the Purchase Price of Three Thousand Five Hundred Dollars (\$3,500). Assuming the Buyer claims the energy tax credit prior to January 1, 2017, such that the energy credit would be equal to thirty (30%) of such basis amount, the reduction to basis required by Code Section 50(c) would be an amount equal to fifteen percent (15%). Therefore, the basis of each Solar Lens would be reduced Two Thousand Nine Hundred Seventy-Five Dollars (\$2,975) for purposes of calculating its depreciation deductions under Code Section 168(a).

**B. Additional First-Year Depreciation**

Code Section 168(k) permits taxpayers to deduct, rather than capitalize and recover through depreciation deductions, fifty percent (50%) of the adjusted basis of "qualified property" during the first year in which the property is placed in service. In order to constitute qualified property for this purpose, the property must satisfy each of the four (4) conditions summarized below.

First, the property must have an applicable recovery period of twenty (20) years or less or certain other types of property. Code Section 168(k)(2)(A)(i)(I). Because the Solar Lenses will have an applicable recovery period of five (5) years, they will satisfy this first requirement for being qualified property.

Second, the property's original use must begin with the taxpayer after December 31, 2007. Code Section 168(k)(2)(A)(ii). Because the Buyer will acquire all of the Solar Lenses after December 31, 2007, they will satisfy this second requirement for being qualified property.

Third, the property must be acquired by the taxpayer either (i) after December 31, 2007 and before January 1, 2013 or (ii) pursuant to a binding written contract entered into after December 31, 2007 and before January 1, 2013. Code Section 168(k)(2)(A)(iii). A contract is binding only if it is enforceable under state law against the taxpayer and does not limit damages to a specified amount. Treas. Reg. 1.168(k)-1(b)(4)(ii)(A). The Purchase Agreement will be enforceable against the Buyer under state law and does not limit damages to a specified amount. Therefore, any Purchase Agreement that is entered into before January 1, 2013, will satisfy this third requirement for being qualified property.

Fourth, the property must be placed in service by the taxpayer before January 1, 2013. Code Section 168(k)(2)(A)(iv). As summarized in Section II.D. above, Solar Lenses that have been acquired by a Buyer will be considered placed in service upon the simultaneous execution of the Purchase Agreement and O&M Agreement. Therefore, Solar Lenses will satisfy this fourth requirement for being qualified property if they are acquired by a Buyer prior to January 1, 2013.

**IV. Limitations upon Use of Credits and Depreciation Deductions**

**A. At-Risk Limitations**

Code Section 465(a) provides that the losses (in this case, depreciation deductions in excess of the Rental Payments) of certain taxpayers from certain activities are only allowed to the extent of the aggregate amount with respect to which the taxpayer is at risk with respect to such activity. The taxpayers subject to Code Section 465(a) include a subchapter C corporation that meets the ownership requirements of Code Section 542(a)(2), which are summarized above.

For purposes of Section 465(a), a taxpayer is considered to be at risk for an activity in amount equal to the sum of the amount of money or property contributed to the activity and certain amounts borrowed with respect to the activity. Code Section 465(b)(1). Taxpayers are considered to be at risk for borrowed amounts only if the taxpayer is personally liable for the repayment of such amounts or has pledged property (other than property used in such activity) as security for such borrowed amounts; provided that a taxpayer will not be considered to be at risk



with respect to borrowed amounts to the extent such amounts are borrowed from a person who has an interest in the activity (other than as a creditor) or from a person who is related to such a person. Code Section 465(b)(2) and (b).

Whether an obligation constitutes debt for tax purposes ultimately depends upon whether there was “a genuine intention to create a debt, with a reasonable expectation of repayment, and did that intention comport with the economic reality of creating a debtor-creditor relationship.” *Jensen v. Commissioner*, 208 F.2d 226 (10th Cir. 2000) (citing *Dixie Dairies Corp. v. Commissioner*, 74 T.C. 476, 494 (1980)). Courts consider a variety of factors in making this determination, including (i) whether the promise to repay was evidenced by a written agreement, (ii) interest was charged, (iii) a fixed maturity date and/or a fixed schedule for repayments was set forth in the instrument or by agreement, (iv) security or other collateral was given to ensure repayment, (v) repayments were made, (vi) the borrower was not insolvent at the time of the advance and (vii) the parties otherwise acted consistently with such transfer being a loan. See e.g., *Fisher v. United States*, 54 T.C. 905 (1970) and *Miller v. Commissioner*, T.C. Memo 1982-629. Of course, not every factor is relevant in every situation, and the weight assigned to each factor varies from situation to situation. As noted by the Supreme Court, “[t]here is no one characteristic . . . which can be said to be decisive in the determination of whether the obligations are . . . debts” for tax purposes.” *John Kelley Co. v. Commissioner*, 326 U.S. 521, 530 (1946).

It is our understanding that the parties genuinely intend to create a debt in the form of the Promissory Note and Buyer’s obligation to make the Installment Payments and that the parties intend for the Installment Payments to be made. Similarly, the economic relationship between the Buyer and Seller appears to comport with the economic reality of creating a debtor-creditor relationship. For example, the Buyer and Seller have evidenced their intent for the Buyer to make the Installment Payments in both the Purchase Agreement and the Promissory Note; they have agreed that the Installment Payments will bear interest at the long-term applicable federal rate; they have agreed upon a fixed schedule for repayments; the Buyer’s obligation to make the Installment Payments is secured by the Solar Lenses, which the Seller may repossess in the event the Buyer fails to make the Installment Payments when due; the Buyer will not be insolvent when it enters into the Purchase Agreement and is expected to have sufficient cash flow to make the Installment Payments; and the parties have acted consistently with treating the Installment Payments as a loan. Therefore, the Installment Payments appear to be a bona fide debt for tax purposes.

As discussed in Section II.C.2.c above, the Buyer is personally liable for the Installment Payments and such amounts are not borrowed from a person who has an interest in the activity (other than as a creditor) in which the Solar Lenses will be used or from a person who is related to such a person. Therefore, the Buyer’s amount at risk with respect to the Solar Lenses for purposes of Code Section 465 shall be an amount equal to the aggregate Purchase Price for the Solar Lenses.

#### **B. Passive Activity Limitations**

Code Section 469(a) provides that certain losses (in this case, depreciation deductions in excess of the Rental Payments) and credits associated with passive activities of certain taxpayers are only allowed to the extent of the taxpayer’s income from passive activities. The taxpayers subject to Code Section 469 include closely-held subchapter C corporations. Code Section 469(a)(2). However, Code Section 469(e)(2) provides that a closely held subchapter C

corporation that is not a personal service corporation can offset active income with passive activity losses and credits. Code Section 269A(b)(1) defines a personal service corporation as a corporation the principal activity of which is the performance of personal services and such services are substantially performed by employee-owners. Code Section 269A(b)(3) provides that all related persons, within the meaning of Code Section 144(a)(3), are treated as a single entity. Code Section 144(a)(3) defines a related person as anyone described in Code Sections 267, 707(b) or 1563(a) (except that 80% is substituted for 50% everywhere it appears in Code Section 1563(a)).

So long as a Buyer's principal activity is something other than the performance of personal services, the Buyer will be able to use the credits and losses attributable to the Solar Lenses to offset active income from other sources.

#### CIRCULAR 230 DISCLOSURE

The analysis set forth in this memorandum was not intended or written to be used, and it cannot be used, by any taxpayer for the purpose of avoiding United States federal tax penalties that may be imposed on the taxpayer. The analysis was written to support the promotion or marketing of the transactions or matters addressed in this memorandum. Each taxpayer should seek advice based upon the taxpayer's particular circumstances from an independent tax advisor. The foregoing language is intended to satisfy the requirements under the regulations in Section 10.35 of Circular 230.