

23-0915

**FIRST AMENDMENT TO ESCROW AGREEMENT**  
*(United Security Bank)*

THIS FIRST AMENDMENT TO ESCROW AGREEMENT (“First Amendment”), dated this 22 day of August, 2023 (“Effective Date of First Amendment”), is entered into by and among RE Scarlet LLC, a Delaware limited liability company (“Applicant”), the County of Fresno, a political subdivision of the State of California (“County”), and United Security Bank, a state chartered bank in California, whose headquarters are at 2126 Inyo Street, Fresno, CA 93721, as the escrow agent hereunder (“Escrow Agent”), and amends that certain Escrow Agreement (“Escrow Agreement”) entered into among the Applicant, the County and the Escrow Agent. The County and Applicant together are the “Parties,” and individually, the Applicant or the County each is a “Party.” Capitalized terms used but not defined herein have their respective meanings set forth in the Escrow Agreement.

**RECITALS**

The Parties represent that they entered into that certain Reclamation Agreement, effective August 23, 2022, for that certain Scarlet Solar Energy Project; and

On September 2, 2022, the Parties and Escrow Agent entered into the Escrow Agreement, providing for the Applicant’s irrevocable deposit and the Escrow Agent’s maintenance of Escrow Funds for the sole benefit of the County, which Escrow Agreement the Parties required under the Reclamation Agreement; and

The Escrow Agreement provides that the Escrow Funds may include additional cash deposits required by the Reclamation Agreement, which additional cash deposits shall be US Currency for the exclusive purposes of the Escrow Agreement, and which additional cash deposits are deemed irrevocable once increased or deposited, as applicable, all as held on deposit by the Escrow Agent for the sole benefit of the County under the Escrow Agreement, less any County drawings of the Escrow Funds under the Escrow Agreement; and

The Parties represent to the Escrow Agent that the Parties entered into that certain First Amendment to Solar Project Reclamation Agreement, effective August 22, 2023, amending the Reclamation Agreement (collectively, the Reclamation Agreement and First Amendment to Solar Project Reclamation Agreement are the “Amended Reclamation Agreement”), which among other things, makes a second phase of the of the Scarlet Solar Energy Project subject to the requirements of the Amended Reclamation Agreement, and requires the Applicant to increase the amount of Escrow Funds held with the Escrow Agent under the Escrow Agreement to secure the Applicant’s faithful performance of its obligations under the Amended Reclamation Agreement for such second phase; and

The Applicant now desires to secure its faithful performance of its obligations under the Amended Reclamation Agreement on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the promises and agreements of the Parties and the Escrow Agent, set forth herein, the Parties and the Escrow Agent agree as follows:

**FIRST AMENDMENT**

1. Within three (3) business days following the Parties’ and the Escrow Agent’s execution of this First Amendment, the Applicant shall irrevocably deliver to the Escrow Agent the amount of **Nine-Million, Four-Thousand, Five-Hundred, Forty-One and 74/100 Dollars (\$9,004,541.74)** in immediately available United States currency (“US Currency”) for the exclusive purposes of the Escrow Agreement (“First Additional Increase to the Escrow Funds”).

Upon and after such irrevocable delivery of the First Additional Increase to the Escrow Funds by the Applicant to the Escrow Agent, the Escrow Funds together with the First Additional Increase to the Escrow Funds shall constitute the “Escrow Funds.”

2. As provided by Section 2.2(a) of the Escrow Agreement, the Escrow Agent shall receive, and upon receipt immediately deposit, and hold the First Additional Increase to the Escrow Funds only in the separate savings deposit account of the Escrow Agent, established by the Escrow Agent, for the exclusive purposes of this Escrow Agreement. The Escrow Agent shall use the Escrow Agent’s separate savings account, number 001520054, which separate savings account Escrow Agent represents to the Parties has been established under Section 2.2(a) of the Escrow Agreement. The First Additional Increase to the Escrow Funds shall be treated the same in all respects as the Escrow Funds, and as a result thereof, shall be subject to all of the terms and conditions of the Escrow Agreement, as amended by this First Amendment.
3. Within two (2) business days following Escrow Agent’s receipt of the First Additional Increase to the Escrow Funds, the Escrow Agent shall provide notice to the County acknowledging the Escrow Agent’s receipt and deposit of the First Additional Increase to the Escrow Funds in the savings deposit account referenced in Section 2.2(a) of the Escrow Agreement.
4. The Escrow Agreement and this First Amendment shall together constitute the Escrow Agreement, as amended by this First Amendment.
5. The Escrow Agreement, as amended by this First Amendment, is ratified and continued according to its terms and conditions. All provisions of the Escrow Agreement not amended by this First Amendment remain in full force and effect.
6. The Parties and the Escrow Agent hereby acknowledge that they and their respective counsel have cooperated in the drafting and preparation of this First Amendment, for which reason this First Amendment shall not be construed against any party as the drafter hereof.
7. Each Party and the Escrow Agent represent and warrant to the other parties that such party is duly authorized and empowered to execute, enter into, and perform its obligations set forth in this First Amendment, and that the individual signing this First Amendment on behalf of such party has been duly authorized to execute this First Amendment on behalf of such party, and will, by signing this First Amendment on such party’s behalf, legally bind such party to the terms, covenants, and conditions of this First Amendment. Each party further represents and warrants to the other parties that no other person or entity is required to give its approval or consent to this First Amendment in order for such party to authorize, enter into, and perform its obligations under this First Amendment, or that if such approval or consent to this First Amendment is required, that such approval or consent has been obtained.
8. The Parties and the Escrow Agent agree that this First Amendment may be executed by electronic signature as provided in this section 8.
  - a. An “electronic signature” means any symbol or process intended by an individual signing this Amendment to represent their signature, including but not limited to (1) a digital signature; (2) a faxed version of an original handwritten signature; or (3) an electronically scanned and transmitted (for example by PDF document) of a handwritten signature.
  - b. Each electronic signature affixed or attached to this First Amendment (1) is deemed equivalent to a valid original handwritten signature of the person signing this First Amendment for all purposes, including but not limited to evidentiary proof in any



administrative or judicial proceeding, and (2) has the same force and effect as the valid original handwritten signature of that person.

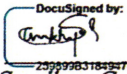
- c. The provisions of this section 8 satisfy the requirements of California Civil Code section 1633.5, subdivision (b), in the Uniform Electronic Transaction Act (California Civil Code, Division 3, Part 2, Title 2.5, beginning with section 1633.1).
  - d. Each party using a digital signature represents that it has undertaken and satisfied the requirements of California Government Code section 16.5, subdivision (a), paragraphs (1) through (5), and agrees that each other party may rely upon that representation.
  - e. This First Amendment is not conditioned upon the parties conducting the transactions under it by electronic means and either party may sign this First Amendment with an original handwritten signature.
9. This First Amendment may be executed in one or more original counterparts, all of which together shall constitute one and the same agreement.
10. This First Amendment is effective as of the Effective Date of First Amendment.

**(Signature page follows.)**

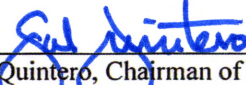
IN WITNESS WHEREOF, this First Amendment Escrow Agreement has been duly executed as of the date first written above.

**APPLICANT: RE SCARLET LLC**

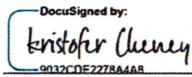
**COUNTY OF FRESNO**

By   
229998318527E  
Sandhya Ganapathy,  
Chief Executive Officer  
RE Scarlet LLC

Date: August 15, 2023

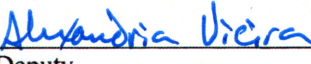
By   
Sal Quintero, Chairman of the  
Board of Supervisors of the County  
of Fresno

Date: 8/22/23

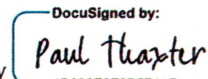
By   
9032CDE2728A4A8  
Kris Cheney, Executive Vice President,  
West, Central, and Environmental Affairs  
RE Scarlet LLC

Date: August 15, 2023

**Attest:**  
Bernice E. Seidel,  
Clerk of the Board of Supervisors  
County of Fresno, State of  
California

By   
Alexandria Vicira  
Deputy

  
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**ESCROW AGENT: UNITED SECURITY BANK**

By   
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Paul Thaxter  
First Vice President

Date: August 15, 2023