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January 10, 2022

**BY ELECTRONIC FILING**

Adam Teitzman, Commission Clerk  
Room 152, Gunter Building  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

Re: Docket No.  
Board of County Commissioners, Indian River County, Florida  
EcoSmart Solution, LLC, Petition for Declaratory Statement

Dear Mr. Teitzman:

On behalf of EcoSmart Solutions, L.L.C., (“EcoSmart”) attached for filing and the initiation of a new docket is the electronic copy of EcoSmart’s Petition for Declaratory Statement. If there are any questions regarding this matter, or if I may provide additional information, please contact me at 813-318-5728.

Thank you for your assistance with this filing.

Sincerely yours,

/s/ Michael G. Cooke  
Michael G. Cooke, Of Counsel  
Counsel for EcoSmart

MGC:mn  
Enclosures



Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

2. The name and address of the Petitioner are:

EcoSmart Solution, LLC  
2 International Place, Suite 2710  
Boston, MA 02110

3. All notices, pleadings, documents, and other communications filed in this docket are to be directed to:

Michael Cooke  
Greenberg Traurig, P.A.  
101 E. Kennedy Blvd., Suite 1900  
Tampa, FL 33602  
(813) 318-5728  
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**I. DESCRIPTION OF ECOSMART**

EcoSmart is a limited liability corporation with its principal office located at 2 International Place, Suite 2710, Boston, MA 02110. EcoSmart is an experienced renewable energy service provider, specializing in integrating sustainable infrastructure in real estate developments. In particular, EcoSmart designs and provides geothermal infrastructure that is integrated with other energy resources to maximize energy efficiency and conservation. EcoSmart works with developers to design and install the renewable systems used in the developments, and EcoSmart operates the systems once installed.

**II. DECLARATORY STATEMENT REQUESTED**

Section 120.565, F.S., states:

Any substantially affected person may seek a declaratory statement regarding an agency's opinion as to the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the petitioner's particular set of circumstances.

Under this provision, EcoSmart is seeking confirmation that the geothermal system it plans to use in two buildings, to be constructed at a multifamily residential development in Florida, meet the requirement of Rule 25-6.049(5), F.A.C. In this petition, EcoSmart will describe the segmentation of the geothermal system load from the individual apartment loads. Electricity used to operate the geothermal system will be included as part of the common electricity load in each of the buildings while electricity used to operate lighting, appliances, and other devices in each apartment unit will be separately measured by a separate utility meter for each apartment.

EcoSmart also seeks confirmation that, without being deemed to be a public utility under Florida law, the cost of the electricity used to operate the geothermal system for each building may be recovered from tenants within each building using allocation methods consistent with the methods authorized by subrule 25-6.049(9)(a) and (b), F.A.C.

In addition, Rule 28-105.001, F.A.C., which implements Section 120.565, F.S., provides that:

A declaratory statement is a means for resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the agency has authority. A petition for declaratory statement may be used to resolve questions or doubts as to how the statutes, rules, or orders may apply to the petitioner's particular circumstances. A declaratory statement is not the appropriate means for determining the conduct of another person.

Prior to constructing its geothermal system in Florida, EcoSmart is requesting the Commission to resolve questions about the applicability of Rule 25-6.049(5)(b), F.A.C. to its system design and to resolve questions of Florida law regarding the recovery of fees expected to be charged for the geothermal services provided to individual tenants.

Based on its need to have these questions addressed, EcoSmart is a “substantially affected person” and has standing to bring this petition. Therefore, EcoSmart respectfully requests that the Commission make the following affirmative declarations:

- a. That the geothermal and solar photovoltaic system that EcoSmart will install at the Apopka, Florida, multifamily tenant development, as described herein, meets the requirement of Rule 25-6.049(5)(b), F.A.C.; and,
- b. That the service charges and allocation methods described herein that will be used to recover the cost of providing the service will not render EcoSmart or the landlord to be deemed an electric or public utility as those terms are used in 366.02, Florida Statutes.

### **III. STATUTES AND RULES GOVERNING DECLARATORY STATEMENTS**

The statutory provisions and Commission rules or orders applicable to the jurisdictional question raised in this petition are:

- a. Sections 120.565, 366.02, 366.05(1), and 366.06(1), Florida Statutes;
- b. Rule 25-6.049, F.A.C.;
- c. Rule 25-6.065, F.A.C.—Interconnection and Net Metering of Customer-owned Renewable Generation; and
- d. *In Re: Petition of PW Ventures, Inc. for Declaratory Statement in Palm Beach County, “Order Denying Declaratory Statement,” PSC Docket No. 870446-EU (Fla. Pub. Serv. Comm’n, October 22, 1987) (“PW Ventures”), aff’d sub nom., PW Ventures v. Nichols, 533 So. 2d 281 (Fla. 1988).*

### **IV. DESCRIPTION OF PROJECT AND GEOTHERMAL DESIGN**

A geothermal system will be used to provide heating, including heating of domestic hot water, and cooling in residential units of two buildings that will be constructed as part of a multifamily development in Apopka, Florida. Each of the two buildings will have its own integrated geothermal system. Electricity used by the geothermal system will be measured by separate master meters located in each of the two buildings. Each of the master meters will be interconnected with a solar photovoltaic system that will provide net-metering of the electricity

used.

- a. Description of geothermal system, including the Geothermal System Heat Pumps (“GSHP”) and Domestic Water Heaters, as interconnected components of the Geothermal system all deriving the ability to function from the geothermal service provided by EcoSmart’s GeoGrid system.

As illustrated in Exhibit “A,” the main components of the integrated geothermal system consist of:

- 1) deep water wells that pump groundwater from a deep aquifer;
- 2) an energy center heat exchanger that receives the groundwater and absorbs the thermal value of the water before reinjecting the groundwater, otherwise unchanged, to the deep aquifer;
- 3) an interconnected system of heat pumps that receive and return water to the energy center heat exchanger;
- 4) Domestic Water Heaters (“DWH”), each with an integrated storage tank, that receive and return water to the heat pumps.

Each apartment’s GSHP and DWH is an integral component of the central EcoSmart Geothermal System. The GSHP is directly connected to the EcoSmart geothermal grid called the “district loop.” It is connected via piping into a valve manifold which combines all of the GSHPs in the building and runs the heated water from the GSHP into Energy Center heat exchangers. These heat exchangers reject heat into the Floridan aquifer through EcoSmart’s system of heat exchangers and wells. This ensures separation between water and heat exchange preventing contamination or consumption of aquifer water.

The heat exchangers remove heat using the constant water temp of the aquifer via a pump in the Energy Center to be cooled and recirculated back into the heat pump to be heated again, starting the cycle over. If the heat pumps require more heat exchange, the Building Management System (“BMS”) will automatically adjust the district pump flow to provide needed cooling capacity. Similarly, the DWH units in each apartment are directly connected to the Geothermal

system via the GSHPs. Each GSHP contains a Desuperheater to provide preheating of domestic hot water from the heat generated by the GSHP.

Therefore, the GSHPs as well as the DWH units in each apartment are an integral part of the geothermal system and are controlled by a central BMS. The BMS is a computerized system of control that includes temperature and pressure sensors in the district piping, and sensors built into the GSHPs, to monitor temperatures and the operation of circulator pumps within the heat pump to allow district water to circulate as needed to each of the apartments. All of these components are interconnected and are monitored by the BMS.

- b. Description of the electrical interconnection of the Geothermal components to common building meters or energy center meters.

As illustrated in Exhibit “B,” the open loop geothermal systems in buildings 3 and 5 will be interconnected through submeters with a house panel in each of the buildings that is served by a utility meter. The submeter will measure the energy load of the geothermal components in the building. Other common energy use within each of the two buildings, such as hallway lights, will be connected by a separate submeter to the house panel. The electric load within each residential unit in the two buildings, such as the load for cooking, lighting, appliances, and other electronic equipment used in the unit, will be separately metered by the utility. The house panel in buildings 3 and 5 also will be integrated with solar panels and the utility meter connected to the house panel will be net metered.

The energy measured by the geothermal system submeters in buildings 3 and 5 will be allocated to residential individual units within buildings 3 and 5 through appropriate apportionment and allocation measures such as those outlined in subrule 25-6.049(9)(a) and (b), F.A.C.

V. **HOW THE STATUTES, RULES, AND ORDERS MAY SUBSTANTIALLY AFFECT THE PETITIONER'S INTERESTS**

Pursuant to Rule 28-105.002(5), F.A.C., the following outlines how the above-cited statutes, rules, and orders may substantially affect the interested of the Petitioner.

Requirement for Individual Metering by the Utility—Rule 25-6.049(5), F.A.C., requires that, with limited exceptions, metering by the utility must be provided for individual residential units within a multifamily residential building. This allows individual residents the ability to exercise a certain measure of control over the amount of electricity used within the residence. In accordance with Rule 25-6.049(5), each individual apartment in this project will have a utility meter that measures all of the electricity used in the individual apartment—such as electricity used in the apartment for cooking, lighting, appliances, and personal electronic items.

Subrule 25-6.049(c), F.A.C., however, recognizes that the goals of having individual control over electricity use cannot be attained where centralized systems are involved and centralized systems using electricity are not required to be individually metered under the rule. The geothermal systems will be efficiently and effectively controlled by interconnecting them to a central meter in each of the buildings they serve. The central meter will measure the geothermal system's electricity use as well as other common area electricity used in the building.

Requirement to only pass-through actual costs—Section 366.02(1), F.S., defines as a “public utility” every person, corporation, partnership, or other legal entity supplying electricity to or for the public. Public utilities are under the jurisdiction of the Commission. Under Section 366.02(1), F.S., and orders interpreting it, the Commission has held that no jurisdictional question arises, however, unless the supply or sale of electricity to a third party occurs. See, e.g., *In re: Petition of Monsanto Company for a declaratory statement concerning the lease financing of a*

*cogeneration facility*, Order No. 17009, issued December 22, 1986 (holding that no sale to an unrelated entity would occur where a party simply used electricity generated with equipment leased from a third party).

Moreover, as noted in Subrule 25-5.049(9)(a), F.A.C., where individual metering is not required, the cost of providing electricity may be recovered by “the customer of record or owner of . . . a facility” using reasonable apportionment methods that allocate only the cost of the electricity billed by the utility. In this case, a geothermal system will be used to provide heating and cooling to common areas and individual apartments within two buildings. The costs of operating the geothermal system, including the cost of any electricity it uses, will be recovered. But no more than the actual cost of electricity used by the system, as measured at the building meter, will be recovered. Therefore, no sale of electricity to the public will occur.

## **VI. ANALYSIS**

Rule 25-6.049, F.A.C., was originally adopted in 1969. In November 1980, it was amended in response to the federal Public Utilities Regulatory Policies Act,<sup>1</sup> which required state regulatory commissions and regulated utilities to implement measures to conserve electricity. The 1980 rule amendments established the requirement for individual utility metering for each separate occupancy unit of "new commercial establishments, residential buildings, condominiums, cooperatives, marinas, and trailer, mobile home and recreational vehicle parks for which construction is commenced after January 1, 1981." The 1980 rule amendments made clear, however, that certain loads of electricity, such as electricity used for central heating, ventilating

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<sup>1</sup> 16 U.S.C. §§2601-2645. The rule also implements the conservation policies in the Florida Energy Efficiency and Conservation Act. *See*, Section 366.81, F.S. The rule is based on the Commission’s authority under Sections 366.05(1) and 366.06(1), F.S., to prescribe rate classifications and service rules for investor-owned electric utilities.

and air conditioning systems, or for electric back up service to storage heating and cooling systems, are not required to be individually utility metered. See, 25-6.049(5)(b), F.A.C.

As described in Section IV of this Petition, electric loads in the individual apartments in buildings 3 and 5 will be directly metered by a utility meter. These utility meters will measure the electricity used for lighting, cooking, powering electronic equipment, and similar end uses that occur in the apartment. As is also described in Section IV, the geothermal system heat pumps and domestic hot water heaters are fully interconnected with one another, such that all of the individual residential units share the central service that is provided by the single geothermal system for the building. Therefore, the electricity used to operate the geothermal system will be interconnected with a common building or energy center meter in each building that will separately measure electricity used by the geothermal system supplying each building. The use of master meters to measure electricity used by the central geothermal system is authorized by Rule 25-6.049, F.A.C., and meets the intent of the rule.

As also is described in Section IV of the Petition, the cost of the electricity measured by the master meters will be allocated to individual residential units on an actual cost recovery basis.<sup>2</sup> The costs will be allocated using methods authorized by subrule 25-6.049(9), F.A.C.

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<sup>2</sup> As used in the Rule, the term “costs” means: “only those charges specifically authorized by the electric utility’s tariff, including but not limited to the customer, energy, demand, fuel, conservation, capacity and environmental charges made by the electric utility plus applicable taxes and fees to the customer of record responsible for the master meter payments. The term does not include late payment charges, returned check charges, the cost of the customer-owned distribution system behind the master meter, the customer of record’s cost of billing the individual units, and other such costs.” See, 25-6.049(9)(a), F.A.C.

## VII. CONCLUSION

For the reasons described above, EcoSmart respectfully requests that the Commission make the following affirmative declarations and enter its order finding that:

- a. That the geothermal and solar photovoltaic system that EcoSmart will install at the Apopka, Florida, multifamily tenant development as described herein meets the requirements of Rule 25-6.049(5), F.A.C.; and,
- b. That the service charges and allocation methods described herein that will be used to recover the cost of providing the service are consistent with the requirements of Rule 25-6.049, F.A.C., and do not render EcoSmart or the landlord to be deemed an electric or public utility as those terms are used in 366.02, Florida Statutes.

Respectfully submitted,

/s/ Michael G. Cooke

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*Attorneys for EcoSmart Solution, LLC.*

January 10, 2022

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to the following by electronic mail on January 10, 2022:

Keith Hetrick  
General Counsel  
Florida Public Service Commission  
Office of the General Counsel  
2540 Shumard Oak Blvd. Tallahassee, Florida 32399  
Email: [khetrick@psc.state.fl.us](mailto:khetrick@psc.state.fl.us)

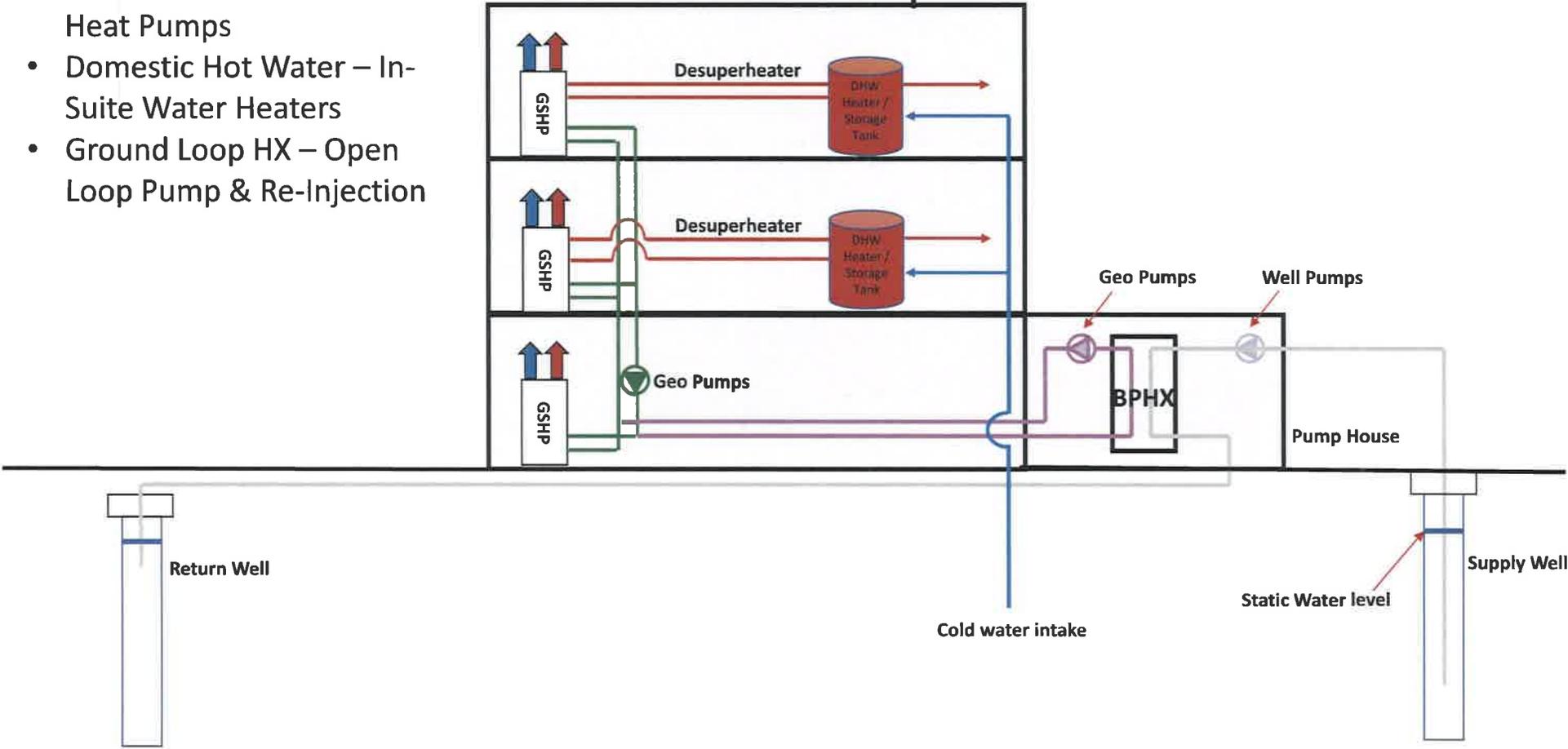
/s/ Michael Cooke

## Exhibit A

# Open Loop Geothermal Concept



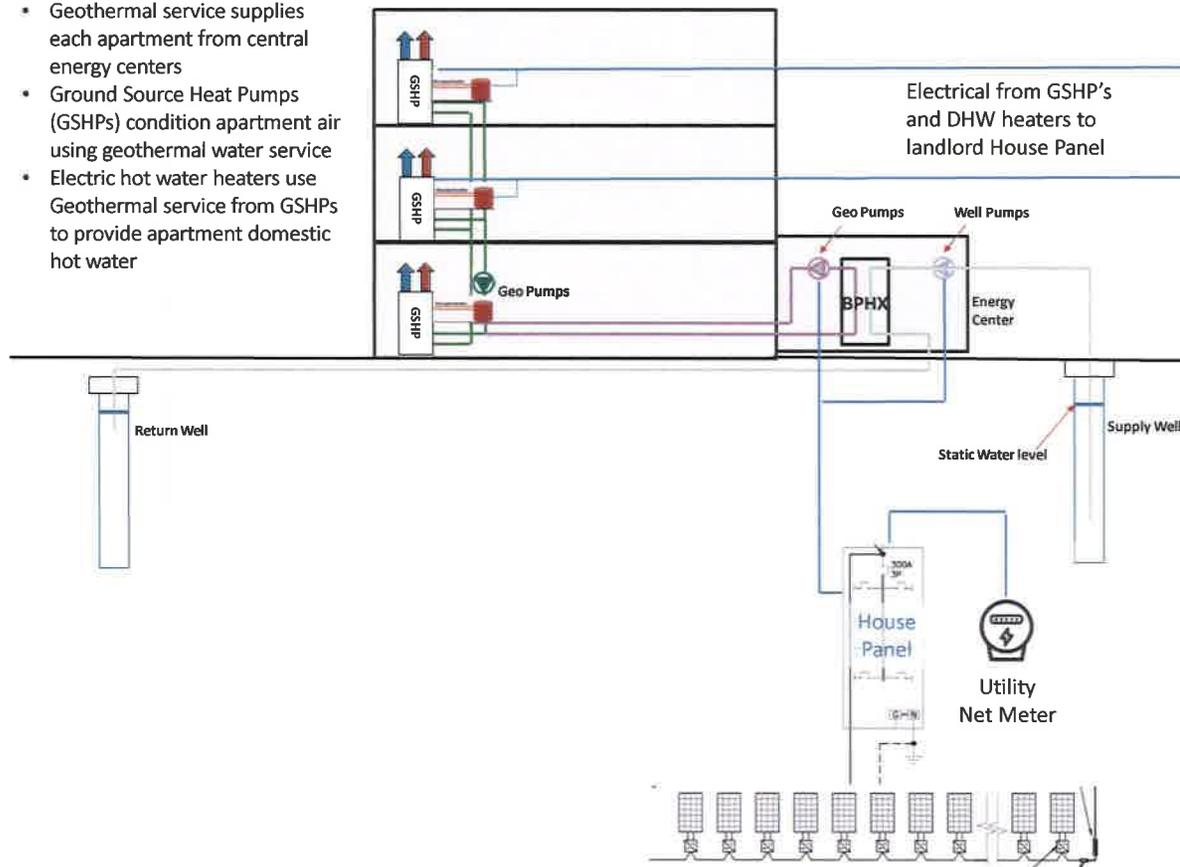
- Building Type – Apartments/Condos
- In-Suite – Water to Air Heat Pumps
- Domestic Hot Water – In-Suite Water Heaters
- Ground Loop HX – Open Loop Pump & Re-Injection



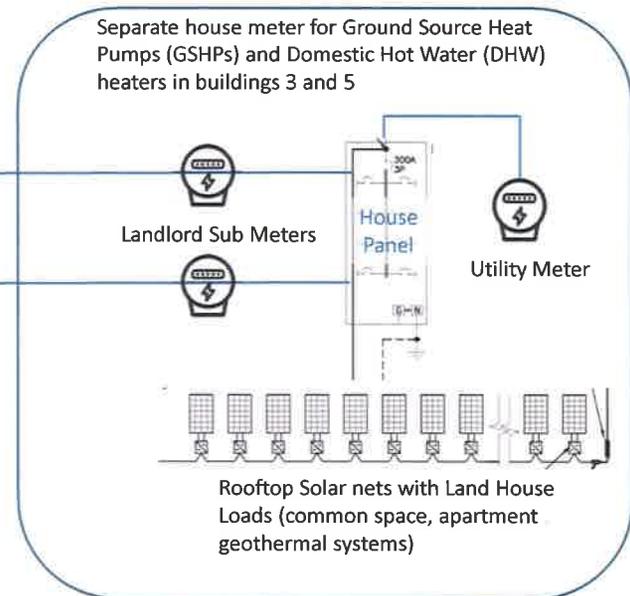
## Exhibit B

# Geothermal System (Buildings 3 and 5)

- Geothermal service supplies each apartment from central energy centers
- Ground Source Heat Pumps (GSHPs) condition apartment air using geothermal water service
- Electric hot water heaters use Geothermal service from GSHPs to provide apartment domestic hot water



Rooftop solar to offset Geothermal District loads (Geo pumps and Well Pumps)  
 Separate landlord house meters in 2 energy centers



Electrical for GSHP's and DHW heaters on buildings 3 and 5 connected to landlord house meters