

BARNSTABLE COUNTY
In the Year Two Thousand Nineteen
Proposed Ordinance 20- __

To authorize the County of Barnstable to execute a lease agreement between Barnstable County and Main Street Solar Project 2020, LLC for Ground Mounted Dual Use Solar Photovoltaic Energy Facility, located at Barnstable County Farm, 3675 Main Street, Barnstable, MA 02630

The Cape Cod regional government, known as Barnstable County, hereby ordains;

Section 1. Source of Authority and General Purposes

In accordance with Article II, Section 2-8, (d) (vii) of the Barnstable County Home Rule Charter, Barnstable County hereby enters into a lease agreement between Barnstable County and Main Street Solar Project 2020, LLC for Ground Mounted Dual Use Solar Photovoltaic Energy Facility, located at Barnstable County Farm, 3675 Main Street, Barnstable, MA 02630

Section 2. Effective Date

The Ground Lease Ordinance shall take effect upon passage of the ordinance by the Barnstable County Assembly of Delegates and execution by the Barnstable County Commissioners, and Main Street Solar Project 2020, LLC

Section 3. Ground Lease Table of Contents

- Article I: Definitions
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- Article VIII: Termination; Default; Remedies; Purchase Options
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- Article X: Quiet Enjoyment
- Article XI: Assignment and Mortgage
- Article XII: Dispute Resolution
- Article XIII: Miscellaneous
- Memorandum of Lease Pursuant to M.G.L. c. 183, §4

Approved by the Board of County Commissioners on April 8, 2020 at 10:00 AM.
Date Time


Ronald Bergstrom, Chair

COMMONWEALTH OF MASSACHUSETTS

BANRSTABLE, SS.

At a regular meeting of the Barnstable County Board of Regional Commissioners on the eighth day of April, A.D. 2020, held through remote participation pursuant to Massachusetts Governor Charles D. Baker's Order Suspending Certain Provisions of the Open Meeting Law on March 12, 2020, motion by Commissioner Beaty to approve Item 8c through 8l as listed on the agenda for the Board of Regional Commissioners' Meeting on April 8, 2020, as presented, and introduce any required ordinances at the next meeting of the County Assembly of Delegates, pursuant to Section 2 – 8(e) of the Barnstable County Home Rule Charter:

- c. Authorizing the execution of an Inter-Governmental Net Energy Power Sales Agreement with the Cape & Vineyard Electric Cooperative, Inc. (CVEC) for Roof Mounted Solar Photovoltaic Energy Facility located at Barnstable County Deeds;
- d. Authorizing the execution of a Lease Agreement for Rooftop Mounted Solar Photovoltaic Energy Facility with Alliance CVEC V LLC located at Barnstable County Deeds;
- e. Authorizing the execution of an Inter-Governmental Services Agreement with CVEC for management of Solar Photovoltaic Dual Use Energy Facility located at Barnstable County Farm;
- f. Authorizing the execution of a Lease Agreement for Ground Mounted Dual Use Solar Photovoltaic Energy Facility with Main Street Solar Project 2020, LLC at Barnstable County Farm;
- g. Authorizing the execution of an Inter-Governmental Net Energy Power Sales Agreement with CVEC For Solar Canopy Photovoltaic Energy Facility located at Barnstable County Main Parking Lot;
- h. Authorizing the execution of a Lease Agreement for Canopy Solar Photovoltaic Energy Facility with Greenskies Clean Energy LLC at Barnstable County Main Parking Lot;
- i. Authorizing the execution of an Inter-Governmental Services Agreement with CVEC for management of Rooftop Solar Photovoltaic Energy Facility located at Rock Harbor Road Cy Solar Project 2020, LLC;
- j. Authorizing the execution of an Inter-Governmental Services Agreement with CVEC for management of Solar Canopy Photovoltaic Energy Facility located at Rock Harbor Road Cy Solar Project 2020, LLC;

- k. Authorizing the execution of a Lease Agreement for Roof Mounted Solar Photovoltaic Energy Facility with Rock Harbor Road RF Solar Project 2020, LLC located in the Town of Orleans; and
- l. Authorizing the execution of a Lease Agreement for Solar Canopy Photovoltaic Energy Facility with Rock Harbor Road Cy Solar Project 2020, LLC located in the Town of Orleans;

2nd by Commissioner Flynn, approved 3-0-0

Ronald Bergstrom, Chair: Y

Mary Pat Flynn, Vice-Chair: Y

Ronald R. Beaty, Commissioner: Y

A true copy, Attest, April 8, 2020

A circular seal with a scalloped border. The outer ring contains the text "BARNSTABLE COUNTY" at the top and "REGIONAL CLERK" at the bottom. The center features a stylized figure, possibly a Native American, holding a bow and arrow.
Janice O'Connell
Barnstable County Regional Clerk

COMMONWEALTH OF MASSACHUSETTS

BARNSTABLE, SS.

At a regular meeting of the Barnstable County Board of Regional Commissioners on the eighth day of April, A.D. 2020, held through remote participation pursuant to Massachusetts Governor Charles D. Baker's Order Suspending Certain Provisions of the Open Meeting Law on March 12, 2020, motion by Commissioner Flynn to authorize the Chair to execute agreements regarding the Cape and Vineyard Electric Cooperative (CVEC) Round 5 Photovoltaic/Storage Initiatives in Barnstable County after approval by the County Board of Regional Commissioners, as presented, 2nd by Commissioner Beaty, approved 3-0-0

Ronald Bergstrom, Chair: Y

Mary Pat Flynn, Vice-Chair: Y

Ronald R. Beaty, Commissioner: Y

A true copy, Attest, April 8, 2020


Janice O'Connell
Barnstable County Regional Clerk

LEASE AGREEMENT

FOR

GROUND MOUNTED DUAL USE SOLAR PHOTOVOLTAIC ENERGY FACILITY

BETWEEN

MAIN STREET SOLAR PROJECT 2020, LLC

AND

BARNSTABLE COUNTY, MASSACHUSETTS

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LEASE AGREEMENT FOR
GROUND MOUNTED DUAL USE SOLAR PHOTOVOLTAIC ENERGY FACILITY

BETWEEN
MAIN STREET SOLAR PROJECT 2020, LLC
AND
BARNSTABLE COUNTY, MASSACHUSETTS

STANDARD TERMS AND CONDITIONS

This Lease Agreement (the “Agreement” or “Lease”) is entered into this __ day of _____, 2020 (the “Effective Date”) and is by and between Main Street Solar Project 2020, LLC, a Delaware limited liability company (“Developer”), and Barnstable County, a Massachusetts municipal entity with an address of 3195 Main Street, Hyannis, MA 02630 (“Host”).

RECITALS

(a) Host wishes to lease an area of ground space described in Exhibit A (the “Premises”), which is a part of the Property located at Barnstable County Farm, 3675 Main Street, Barnstable, MA 02630 and owned by Host to the Developer to allow it to design, procure, install, test, commission, own, operate and maintain a solar photovoltaic system with agricultural use beneath solar modules and battery energy storage system (“PV System”), as defined in Article I (Definitions), on the Premises for beneficial public purposes;

(b) Developer wishes to lease the Premises in order to design, procure, install, test, commission, own, operate and maintain the PV System on the Premises for beneficial public purposes, subject to the terms and restrictions set forth in this Agreement; and

(c) Host has entered into a Services Agreement (the “Services Agreement”) with the Cape & Vineyard Electric Cooperative, Inc., a Massachusetts cooperative corporation with an address at 23H2 White’s Path, Suite 2, South Yarmouth, MA 02664 (“CVEC”) pursuant to which CVEC will provide consultation, management and oversight concerning the PV System on behalf of the Host, as set forth in that Services Agreement and as set forth in this Agreement.

NOW, THEREFORE, for consideration paid, the receipt and sufficiency of which are hereby acknowledged, the Parties to this Agreement hereby agree as follows.

ARTICLE I: DEFINITIONS

When used in this Agreement, the following terms shall have the meanings given, unless a different meaning is expressed or clearly indicated by the context. Words defined in this Article I which are capitalized shall be given their common and ordinary meanings when they

appear without capitalization in the text. Words not defined herein shall be given their common and ordinary meanings.

“Additional Exceptions” has the meaning set forth in Exhibit A-1 hereto.

“Affiliate” means, with respect to any Person, such Person’s general partner or manager, or any other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person.

“Alternative On-bill Credit” means the energy value of generation from an Alternative On-bill Generation Unit, as calculated in accordance with 225 CMR 20.08(1)(a)2.

“Alternative On-bill Generation Unit” has the meaning as set forth in in 225 CMR 20.02.

“Applicable Legal Requirements” means any present and future law, act, rule, requirement, order, bylaw, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, and all licenses, permits, tariffs, and other governmental consents, which may at any time be applicable to a Party’s rights and obligations hereunder, including, without limitation, the design, procurement, construction, installation, operation, ownership, maintenance, repair, decommissioning and removal of the PV System on the Premises, as well as the selling and purchasing of power therefrom.

“Appraised Value” means the fair market value assigned to the PV System, as determined by the Independent Appraiser using customary and accepted appraisal methods in the energy and solar electricity industry, and to any emission trading agreements, renewable energy certificate sales agreements or revenue producing agreements in connection with the PV System to which Developer is a party and which are assignable to Host, but not including the Lease.

“Bankrupt” means that a Party or other entity (as applicable): (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger); (ii) becomes insolvent or is unable to pay its debts or fails (or admits in writing its inability) generally to pay its debts as they become due; (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors; (iv) has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor’s rights, or a petition is presented for its winding-up, reorganization or liquidation, which proceeding or petition is not dismissed, stayed or vacated within twenty (20) Business Days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets; (vii) has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; (viii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) inclusive;

or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

“Business Day” means a day on which Federal Reserve member banks in Boston are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time.

“Commercial Operation” means that the PV System is ready for regular, daily operation, has undergone testing and met Commissioning Requirements as set forth in the Common Technical Specifications, Exhibit E, has been accepted by Developer and Host (and to the extent required, the Distribution Company), is in compliance with Applicable Legal Requirements in all respects, including all final inspections, is capable of producing Energy and delivering it to the Point of Delivery, and all Training and Documentation Requirements, as required in Common Technical Specifications, Exhibit E, are complete and provided to Host.

“Commercial Operation Date” means the date that the Developer certifies in a written notice to the Host that Commercial Operation has been achieved in accordance with Section 5.19.

“Commercially Reasonable” means any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence, should have been known, at the time the decision was made, would have been expected in the industry to accomplish the desired result consistent with reliability, safety, expedition, project economics and regulations.

“Construction Commencement Date” means the date that the Developer (a) has secured all required permits and approvals from Governmental Authorities and the Distribution Company under Applicable Legal Requirements for the construction of the PV System and (b) has mobilized to commence work at the Premises, as certified in writing to the Host and CVEC.

“Contract Year” means the consecutive 12-month period commencing on the Commercial Operation Date.

“Distribution Company” means Eversource Electric Company or any successor thereto.

“Distribution Company System” means the electric distribution system operated and maintained by the Distribution Company.

“Effective Date” means the date set forth in the introductory paragraph of this Agreement.

“Energy” means the amount of electricity either used or generated over a period of time; expressed in terms of kilowatt hour (“kWh”) or megawatt hour (“MWh”). Energy shall not include renewable energy credits, or any investment or production tax credits under Section 45 of the Internal Revenue Code or otherwise, to the extent that the PV System receives or is entitled to receive any such credits.

“Environmental Attributes” means any credit, benefit, reduction, offset, financial incentive, tax credit and other beneficial allowance that is in effect as of the Effective Date or any expansion, reenactment, extension or replacement thereof that may come into effect in the future, including, to the extent applicable and without limitation, (i) greenhouse gas offsets under the Regional Greenhouse Gas Initiative, (ii) Class I Renewable Generation Attributes (as such term is defined at 225 C.M.R. 14.02) or any similar credits under the laws of the Commonwealth of Massachusetts or any other jurisdiction, (iii) tax credits, incentives or depreciation allowances established under any federal or state law, (iv) energy investment tax credits under Section 48 of the Internal Revenue Code of 1986, as amended, (v) incentives under the Solar Massachusetts Renewable (SMART) Program as provided in 225 CMR 20.00, and (vi) other allowances however named or referenced, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of solar energy generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Net Energy generated by the PV System during the Term and in which Developer has good and valid title.

“Environmental Claim” means causes of action, claims, fines, penalties, damages, demands, administrative or judicial proceedings, notices of noncompliance or violation, consent orders or consent agreements arising from activities conducted on or in connection with the Work which arise, or are alleged to have arisen, out of any (a) violation of any applicable Environmental Law, (b) action by a Governmental Authority for enforcement, cleanup, removal, response or remedial action or damages, pursuant to any Environmental Law, or (c) compensation, or injunctive relief resulting from injuries to persons or property due to (i) an alleged violation of any Environmental Law or (ii) any release of Hazardous Material.

“Environmental Law” means any and all existing and future Applicable Legal Requirements relating to human health, human safety or the environment.

“Event of Default” means any event of default as defined in Sections 8.2 and 8.3 of this Agreement.

“Event of Termination” means any event of termination as defined in Section 8.1 of this Agreement.

“Financier” means any individual or entity providing money or extending credit for the PV System to Developer or its Affiliates for: (1) the construction, term or permanent financing of the PV System; or (2) working capital or other ordinary business requirements for the PV System. “Financier” shall not include common trade creditors of Developer.

“Force Majeure” means any cause not within the reasonable control of the affected Party which precludes that Party from carrying out, in whole or in part, its obligations under this Agreement, including, but not limited to, Acts of God; extreme winds; hurricanes; tornadoes; fires; epidemics; landslides; earthquakes; floods; other natural catastrophes; strikes; lock-outs or other industrial disturbances; acts of public enemies; acts, failures to act or orders of any kind of any Governmental Authority acting in its regulatory or judicial capacity; insurrections; military action; war, whether or not it is declared; sabotage; riots; civil disturbances or explosions;

curtailments ordered by the Distribution Company, the independent electric system operator, or any Governmental Authority. Nothing in this provision is intended to excuse either Party from performing due to any governmental act, failure to act, or order, where it was reasonably within such Party's power to prevent such act, failure to act, or order. Notwithstanding anything in this Agreement to the contrary, Force Majeure shall not mean:

- A. Inclement weather affecting construction, start-up, operation, or decommissioning of the PV System, except to the extent weather conditions are extreme, unusual or create unsafe working conditions as reasonably determined by Developer.
- B. Unavailability of sun.
- C. Unavailability of equipment, repairs or spare parts for the PV System, except to the extent due to a qualifying event of Force Majeure.
- D. Inability to obtain, maintain or renew any Permit or any delay in obtaining, maintaining, or renewing any Permit, except that Developer shall be able to assert Host's governmental actions on Permits for the PV System as an event of Force Majeure.
- E. Any nonpayment under this Agreement or any third party agreement.
- F. Economic hardship of either Party.

“Good Engineering Practice” means any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known, or which in the exercise of due diligence, should have been known, at the time the decision was made, would have been expected to accomplish the desired result consistent with reliability, safety, expedition, project economics and Applicable Legal Requirements for similar facilities in the Commonwealth of Massachusetts. Good Engineering Practice is not intended to be limited to consideration of any one practice, method or act, to the exclusion of all others, but rather, is intended to require the consideration of a spectrum of possible practices, methods or acts.

“Governmental Authority” means the United States of America, the Commonwealth of Massachusetts, and any political or municipal subdivision thereof, and any agency, department, commission, board, bureau, independent electric system operator, or instrumentality of any of them, or any court or tribunal, including Host in its regulatory capacity but excluding Host as Lessor under this Agreement.

“Interest Rate” means a fluctuating interest rate per annum equal to the sum of (1) the Prime Rate as stated in the “Bonds, Rates & Yields” section of The Wall Street Journal on the Effective Date and thereafter on the first day of every calendar month, plus (2) two percentage points. (In the event that such rate is no longer published in The Wall Street Journal or such publication is no longer published, the Interest Rate shall be set using a comparable index or interest rate selected by Host Town and reasonably acceptable to Developer.) The Interest Rate hereunder shall change on the first day of every calendar month. Interest shall be calculated

daily on the basis of a year of 365 days and the actual number of days for which such interest is due.

“Leasehold Mortgage” has the meaning set forth in Section 11.4.

“Metering Device(s)” means any and all revenue quality meters installed by Developer or the Distribution Company at, before, or after the Point of Delivery necessary or appropriate for the delivery of Energy into the Distribution Company System, the calculation of Net Metering Credits, and the registration, recording, and transmission of information regarding the amount of Net Energy generated by the PV System and delivered to the Point of Delivery for sale.

“Net Energy” means the actual and verifiable amount of Energy generated by the PV System as metered in kWh at the Metering Device(s), and in conformance with Applicable Legal Requirements and the Tariffs.

“Net Metered Generation Unit” has the meaning set forth in 225 CMR 20.02.

“Net Metering” means the process of measuring the difference between electricity delivered by a local electric distribution company and electricity generated by a Net Metering facility and fed back to the local electric distribution company, as set forth under M.G.L. c. 164, §§ 138 – 140 and 220 CMR 18.00, as may be amended from time to time by a Governmental Authority, and pursuant to the Distribution Company’s Tariffs.

“Net Metering Credits” has the meaning set forth in 220 CMR 18.00, as may be amended from time to time by a Governmental Authority, as implemented by the Tariffs.

“Outside Construction Commencement Date” means the later of ninety (90) days after the Effective Date or ninety (90) days after the PV System has received a “Statement of Qualification” pursuant to and as defined in the SMART Program or ninety (90) days after PV System has received all permits or approvals from the distribution company or approval board or any governmental authority.

“Outside Commercial Operation Date” means two hundred forty (240) days after the Outside Construction Commencement Date.

“Parties” means Host and Developer collectively, and their respective successors and permitted assignees.

“Party” means Host or Developer individually, and their respective successors and permitted assignees.

“Permits” means all state, federal, county, and local authorizations, certificates, permits, licenses and approvals required by any Governmental Authority for the construction, operation and maintenance of the PV System.

“Permitted Use” means the use, occupation, and enjoyment of the Premises by Developer to design, procure, install, test, commission, own, operate, maintain, expand and remove the PV System, all of which are designed and intended for the purpose of producing solar-generated electricity in accordance with Applicable Legal Requirements.

“Person” means an individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trusts, unincorporated association, joint venture, Governmental Authority, or other entity.

“Point of Delivery” means the agreed location or locations on the Premises where Net Energy is to be delivered and received, as further set forth in Exhibit A attached hereto.

“Premises” means the portion of the Property on which the PV System will be installed and operated, which is more specifically identified in Exhibit A to this Agreement.

“Property” means the real property owned by the Host upon which the Premises is located.

“PV System” means the solar electric generating facility, including, but not limited to, the PV System Assets, which produces the Net Energy as further identified in Exhibit B attached hereto. The PV System may (or may not include) a Battery Energy Storage System, as specified in Exhibit B.

“PV System Assets” means each and all of the assets of which the PV System is comprised, including the solar energy panels, mounting systems, tracking devices, inverters, integrators, Battery Energy Storage Systems, if any, and other related equipment and components installed on the Premises, electric lines and conduits required to connect such equipment to the Point of Delivery, protective and associated equipment, improvements, Metering Device(s), and other tangible and intangible assets, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the PV System.

“Services Agreement” has the meaning set forth in the recitals, a form of which is attached hereto as Exhibit G.

“SMART Program” means the Solar Massachusetts Renewable Target (SMART) Program as established in 225 CMR 20.

“SMART Tariff” has the meaning set forth in 225 CMR 20.02, as may be amended from time to time by a Governmental Authority.

“Solar Net Metering Facility” has the meaning set forth in 220 CMR 18.00, as may be amended from time to time by a Governmental Authority.

“Solar Tariff Generation Unit” has the meaning set forth in 225 CMR 20.02, as may be amended from time to time by a Governmental Authority.

“**Term**” has the meaning set forth in Section 3.1.

“**Termination Date**” means the earlier to occur of: (1) the last day of the Term; or (2) the date of termination.

ARTICLE II: LEASE OF PREMISES

2.1 Leased Premises.

(a) Host, in consideration of the covenants and agreements on the part of the Developer, hereby leases to Developer, and Developer accepts and takes from Host, the possession, use, enjoyment, and control of the Premises (as described in Exhibits A and A-1) for the sole and exclusive purpose of conducting the Permitted Use, as set forth below, subject to the conditions in this Agreement and the Host’s reserved uses as set forth in Article X (Quiet Enjoyment).

(b) As shown in Exhibit A, Host also grants to Developer a non-exclusive easement for reasonable pedestrian and vehicular access to and egress from the Premises plus the right and sufficient space for the installation, operation and maintenance, and access to, electric lines, cables, conduits and related equipment necessary to operate the PV System and interconnect the PV System to the building owned by Host and located on the Premises, which is interconnected with the local electric distribution system operated by the Distribution Company such that the PV System qualifies as a Solar Net Metering Facility. In the event that the PV System is required to be connected directly to the distribution system operated by the Distribution Company, Host hereby grants to Developer a non-exclusive easement on, under, and across the Property to install, construct, operate and maintain electric lines, cables, poles, conduits and related equipment necessary to interconnect the PV System to the local electric distribution system operated by the Distribution Company such that the PV System qualifies as a Solar Net Metering Facility or otherwise meet the requirements of the SMART Program.

(c) Host also grants Developer the exclusive right to receive sunlight at the Premises during every hour of each day that sunlight reasonably could be received by the PV System, and Host shall not create or install vegetation or structures that will obstruct the passage of sunlight to the Premises occupied by the PV System.

(d) To the extent requested by Developer and reasonably necessary, and subject to Applicable Legal Requirements and available space, as determined in Host’s sole discretion, Host shall provide necessary space on the Property at locations and for such time as specified by Host (such locations, the “Construction Laydown Area”) for temporary (i) storage and staging of tools, materials and equipment, (ii) construction laydown, (iii) parking of construction crew vehicles, (iv) vehicular and pedestrian access and access for rigging and material handling, and other temporary facilities reasonably necessary to construct, erect, install and remove the System. The foregoing notwithstanding, Developer shall not obstruct access to the Property, or interfere with or disrupt Host’s use thereof or operations therein. Following temporary use thereof, the Developer shall immediately restore the Construction Laydown Area

and such other areas of the Property used by the Developer, but not included in the Premises, to their condition prior to Developer's use.

(e) The Premises are demised subject to the following:

(1) any encumbrances shown on the survey of the Premises;

(2) covenants, restrictions, easements, agreements, and reservations, as set forth in Exhibit A-1;

(3) present and future zoning laws, ordinances, bylaws, resolutions, and regulations of the municipality in which the land lies, and all present and future ordinances, laws, regulations, and orders of all boards, bureaus, commissions, and bodies of any municipal, county, state, or federal authority, now or hereafter having jurisdiction, so long as they permit or otherwise regulate the use of the Premises for the Permitted Use;

(4) the condition and state of repair of the Premises as the same may be on the Effective Date;

(5) all electric and telecommunication cable or wireless services charges, accrued or unaccrued, fixed or not fixed, from and after the Effective Date arising as a result of the construction and operation of the PV System or any appurtenant facilities or improvements associated with the Permitted Use;

(f) full compliance by the Developer with all Applicable Legal Requirements;

and

(g) Host's reserved uses, as provided in Article X (Quiet Enjoyment) and set forth in the Additional Exceptions, attached hereto as Exhibit A-1, or Special Terms and Conditions, attached hereto as Exhibit D.

2.2 As-Is Condition of the Premises. Developer accepts the Premises in the condition or state in which the Premises now are, and except as expressly provided herein, without any representation or warranty, express or implied in fact or by law, by Host and without recourse to Host, as to the title thereto, the nature, condition or usability thereof or the use or uses to which the Premises or any part thereof may be put, subject to Developer's right to terminate this Agreement for failure of conditions precedent to construction set forth in Section 5.2.

2.3 Ownership of the PV System. Host shall have no ownership interest in the PV System or any of the products or services attributable to the PV System, except for any ownership interest Host may have by exercising its purchase option in accordance with Section 8.11 or by virtue of being a CVEC Member in the event that CVEC purchases the PV System. Developer and Host acknowledge and agree that Host shall not be required to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection

with the ownership, construction, operation, maintenance, repair, or removal of the PV System unless and until Host exercises the purchase option in accordance with Section 8.11 and purchases the PV System.

2.4 Net Lease. Except as expressly set forth herein, the Parties acknowledge and agree that Host shall not be required prior to or during the Term to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with this Agreement or the ownership, installation, operation, maintenance, repair reconstruction or removal of the PV System, subject to the Additional Exceptions set forth in Exhibit A-1.

2.5 Purpose. The Premises shall be used for the sole and exclusive purpose of conducting the Permitted Use. Except with the prior express written consent of Host Town, Developer shall not use the Premises for any use other than the Permitted Use.

2.6 Subordination. Developer acknowledges and understands that this Agreement and all rights of Developer are subject and subordinate to all existing leases, easements, rights of way, declarations, restrictions, permits, or other matters of record. Developer acknowledges and understands that the Host reserves the right to grant additional leases, easements, or rights of way, whether recorded or unrecorded, as may be necessary, which do not interfere with Developer's use of the Premises, the exercise of Developer's other rights hereunder and the operation of the PV System, and provided that each third party to which such grant is made acknowledges in writing Developer's rights under this Agreement. Host shall provide Developer with reasonable notice in the event that Host grants such additional rights on the Premises to a third party. Notwithstanding any term to the contrary contained herein, Host shall provide Developer with a Commercially Reasonable Subordination, Non-Disturbance and Attornment Agreement for any and all existing and future mortgagees and tenants of the Property.

2.7 No Interference. Developer shall operate, maintain and repair the PV System in a manner that will not obstruct or interfere with other uses of the Property, as identified in Exhibit A-1 to this Lease. In the event interference occurs, Developer agrees to take all Commercially Reasonable steps necessary to eliminate such interference promptly, but no later than thirty (30) days from notification by the Host. Notwithstanding the foregoing, if the PV System is a ground-mounted system, Developer may implement reasonable security measures to control and monitor access to the Premises, which may include posting warning signs, lighting, cameras, installing fencing, and securing access points.

Host may make alterations to the Premises that do not substantially impair the installation and operation of the PV System. The Developer acknowledges and agrees that Host may have continued operation or maintenance responsibilities at the Premises to be conducted at the sole expense of the Host, and Developer will use Commercially Reasonable efforts to cooperate with Host's prosecution and completion of such work.

2.8 Use of the Premises. Developer and its subcontractors, agents, consultants, and representatives shall have reasonable access at all reasonable times, subject to any Special Conditions in Exhibit D (including under emergency conditions) to the necessary portion of the Property for the purpose of construction, interconnection, operation, inspection, maintenance,

repair and removal of the PV System, and to any documents, materials and records of Host relating to the Premises that Developer reasonably requests in conjunction with these activities. Developer shall provide Host with reasonable notice of all activities conducted by or on behalf of Developer on the Premises relating to the PV System. During any such activities, Developer, and its subcontractors, agents, consultants and representatives shall comply with Host's reasonable safety and security procedures (as may be promulgated from time to time) and Developer and its subcontractors, agents, consultants and representatives shall conduct such activities in such a manner and such a time and day as to cause minimum interference with Host's activities.

2.9 Notice of Lease. Developer shall use Commercially Reasonable efforts to cause a Notice of Lease to be properly recorded, and Host shall provide Commercially Reasonable assistance as necessary for Developer to do so, with the applicable land registry that in each case includes all information as may be required pursuant to M.G.L. c. 183, §4 with respect to the real property rights described in the Lease, as applicable. Developer shall be responsible for all reasonable documented costs of recording the Notice of Lease in a form attached hereto as Exhibit H.

ARTICLE III: TERM

3.1 Term. The term of this Agreement (the "Term") commences on the Effective Date of this Agreement and ends at the earlier of 11:59 PM on the day preceding the twentieth (20th) anniversary of the Commercial Operation Date (the "Termination Date") or such date as of which this Agreement may be earlier terminated pursuant to the provisions of this Agreement. The Term may be extended upon mutual agreement of the Parties and in conformance with all Applicable Legal Requirements, for one five (5) year period, with such modifications to the provisions hereto as may be appropriate to such extension and which are mutually agreed upon in writing. A Party seeking to extend the Term of this Agreement shall send written notice of such intent to the other Party no later than two (2) months prior to the Termination Date.

3.2 Holdover. If Developer or any party claiming by, through or under Developer, retains possession of the Premises or any part thereof for longer than one hundred twenty (120) days after the expiration or earlier termination of this Lease, then Host may, at its option, serve written notice upon Developer that such holding over constitutes (i) a month-to-month tenancy, upon the terms and conditions set forth in this Lease, or (ii) the creation of a tenancy-at-sufferance, and in either event such possession shall be upon the terms and conditions set forth in this Lease. Developer shall also pay to Landlord all damages sustained by Host resulting from retention of such possession by Developer including but not limited to court costs and attorney's fees. Developer hereby agrees that the provisions of this Section shall not constitute a waiver by Host of any right of re-entry as set forth in this Lease or otherwise; and that the receipt of any Rent or any other act in apparent affirmance of the tenancy shall not operate as a waiver of Host's right to terminate this Lease for Developer's breach of the Lease. For greater clarity, the 120-day period mentioned in this section is the period afforded to Developer for removal of the PV System pursuant to Section 8.9 of this Agreement.

ARTICLE IV: RENT

4.1 Rent. Commencing on the Commercial Operation Date until the end of the Term, Developer shall pay to Host an annual rental payment in the amount set forth in Exhibit A-2, to be paid to the Town on a lump sum basis beginning on or before the Commercial Operation Date and on each anniversary of the Commercial Operation Date until the end of the Term. The amount of the rent payment shall be pro-rated for the last calendar year of Commercial Operation. If Developer shall fail to pay Host any sum required to be paid by Developer to Host within ten (10) Business Days after such payment is due, interest on the unpaid amount shall accrue at the Interest Rate from and including the date such payment is due but excluding the date the payment is received.

4.2 Taxes. Developer shall be responsible for and pay to the applicable Governmental Authority all ad valorem real and personal property taxes, if any, assessed by the local Governmental Authority, with respect to the leasehold or the PV System, as may be further set forth in Exhibit D (Special Terms and Conditions). The Parties acknowledge and agree that within thirty (30) days of Developer's payment of such charges and fees to the Host, the Host will have ninety (90) days to reimburse Developer for such charges and fees. In the event any of the sales of Net Energy are to be exempted from or not subject to one or more Governmental Charges, the applicable Party shall, promptly upon the other Party's request therefor, provide the other Party with all necessary documentation to evidence such exemption or exclusion.

ARTICLE V: DESIGN, INSTALLATION AND OPERATION OF PV SYSTEM

5.1 General Description. Except as otherwise specified herein, the PV System shall consist of the equipment and property described in Exhibit B.

5.2 Conditions Precedent to Commencement of Construction. Developer's obligations under this Agreement are subject to the fulfillment or waiver by the applicable Party of each of the following conditions precedent:

(a) Developer shall have obtained financing on terms acceptable to Developer in its sole discretion. For the purposes of this subparagraph, financing may include debt financing, equity financing, tax equity financing, loan and credit agreements, notes, bonds, indentures, security agreements, lease financing agreements, mortgages, interest rate exchanges, or swap agreements, and any other documents relating to the development, bridge construction or the permanent financing for the construction and operation of the PV System;

(b) Developer shall have obtained all permits, licenses and other approvals required by Applicable Legal Requirements and from the Distribution Company for construction and installation of the PV System, and agree to follow the requirements of Section 5.3, below (Governmental Permits);

(c) Developer shall have determined that no features of the Premises will substantially impair the installation and operation of the PV System, and that the Premises has

sufficient space to accommodate the installation, operation and maintenance of the PV System along with the operation and maintenance of existing facilities;

(d) Developer shall have determined that it is feasible to make related improvements as necessary on the Premises to install, operate, and interconnect the PV System to existing infrastructure, it being acknowledged by both Parties that neither Party shall be under any obligation to pay for any required upgrades, but that this condition may be satisfied if either Party agrees to implement any necessary upgrades at its own cost, or if the Parties agree to share the costs of such upgrades;

(e) Distribution Company shall not require any material changes in plans and/or specifications to the PV System or its interconnection that require additional costs or fees, in excess of \$10,000 in the aggregate, or such greater amount as Developer and Host may agree or such greater amount as Developer and Host may agree (including agreement as to allocation of costs) pursuant to Section 8.1;

(f) The Interconnection Agreement, in form and substance satisfactory to Developer and Host, in each of its reasonable discretion, is finalized and executed within one-hundred eighty (180) days of Developer's submission of the interconnection application, as such deadline may be extended pursuant to Section 8.1;

(g) Developer shall have determined to its satisfaction that the PV System is eligible to receive the investment tax credit of thirty percent (30%) of eligible costs pursuant to Section 48 of the Internal Revenue Code;

(h) Developer shall have received a Statement of Qualification (as defined in 225 CMR 20.02) under the SMART Program;

(i) Host, in its regulatory capacity as a Governmental Authority, and Developer shall have reached agreement on the liability of Developer for ad valorem property taxes, if any are to be assessed; and

(j) Host shall have approved the final design of the PV System and its integration into the Host's Property, in accordance with Section 5.4 hereof.

Either Party may waive any condition precedent applicable to it as set forth in this Section 5.2. Without limitation of Section 8.1(a), either Party may terminate this Agreement as the result of the non-fulfillment or failure of any of the above-referenced conditions precedent applicable to it and shall give the other Party written notice of the notifying Party's intent to terminate this Agreement due to non-fulfillment or failure of any such foregoing conditions, and shall include in such notice a detailed description of the efforts undertaken by the notifying Party to satisfy such condition or conditions (which efforts need only be Commercially Reasonable) and the reasons why such condition or conditions have not been satisfied. In the event either Party terminates this Agreement pursuant to this Section 5.2, the Parties shall have no further obligations hereunder except those which survive expiration or termination of this Agreement.

5.3 Governmental Permits. Developer shall obtain at its sole cost all Permits required for Developer's use of the Premises, the Permitted Use, and the PV System from any and all Governmental Authorities having jurisdiction in the matter. Developer shall promptly inform Host of all significant developments relating to the issuance of such Permits. Host shall reasonably cooperate with Developer in procuring such Permits. If any changes in plans and/or specifications for the Project are required by any Governmental Authority, then Developer shall submit such changes, if any, to Host for its approval, which shall not be unreasonably withheld.

5.4 Design and Installation. Developer shall design the PV System in accordance with Good Engineering Practice, shall consult with and receive input from Host with respect to integration of the PV System with the Host's facilities and submit the final design for Host's approval, not to be unreasonably withheld or delayed, with a copy to CVEC. In the case of a Battery Energy Storage System, Developer shall submit a fire prevention plan to Host's fire chief and obtain his or her approval. Developer shall furnish all supplies, materials, labor, tools, equipment and other services necessary for installation of the PV System. As soon as practicable after the Effective Date, Developer shall provide Host and CVEC an updated schedule for design, permitting, equipment procurement, commencement of construction and commissioning of the PV System, indicating milestones and durations of activities. Subject to delays excused hereunder, or the failure of the Host to comply with its obligations hereunder, Developer shall commence construction of the PV System no later than the Outside Construction Commencement Date and will proceed diligently and continuously thereafter until completion, but in no event shall the installation be completed later than the Outside Commercial Operation Date. Developer shall install the PV System in accordance with Good Engineering Practice, all Applicable Legal Requirements, applicable contractor, subcontractor and vendor warranties or guarantees, manufacturer's warranties, instruction and specifications, as further identified in the Common Technical Specifications set forth in Exhibit E, applicable requirements of the insurance policies maintained by Host with respect to the PV System, and the terms of this Agreement.

5.5 Interconnection with Electric Distribution Grid. Developer shall obtain at its sole cost all Permits and agreements required for Developer's interconnection of the PV System to the electric distribution grid maintained by the Distribution Company. Developer shall promptly inform Host and CVEC of all significant developments relating to such interconnection matters. Host shall provide Developer with such information as Developer may reasonably request in connection with Developer's procurement of such Permits and agreements. If any material changes in plans and/or specifications to the PV System are required by the applicable electric distribution company, then Developer shall submit such changes, if any, to Host for its approval, which shall not be unreasonably withheld, with a copy to CVEC.

5.6 Access to and Use of the Premises. During construction and the operation of the PV System, including, but not limited to, all pre-construction activities, Developer and its contractors or agents shall have access to the Premises in accordance with Exhibit D (Special Terms and Conditions).

5.7 Plans and Specifications. Installation of the PV System shall be completed in accordance to plans approved by Host, which approval shall not be unreasonably withheld, with a copy to CVEC. Prior to the Commercial Operation Date, Developer shall provide Host and CVEC with documentation as set forth in the Common Technical Specifications, Exhibit E, including as-built plans, permission to Operate from local distribution company, and specifications of the PV System installed on the Premises which show the actual location of the PV System.

5.8 Maintenance Responsibilities. Developer shall properly maintain the PV System, conduct all required maintenance, and make all repairs thereto in accordance with Good Engineering Practice. Developer shall take all measures necessary to maximize production of the PV System throughout the Term. Such obligations shall include, but not be limited to, maintaining the PV System in a condition of Commercial Operation, and taking all actions necessary to comply with the Applicable Legal Requirements. The Developer shall deliver a maintenance report annually to the Host and CVEC. Developer shall be responsible for all costs related to the PV System, including, but not limited to, those costs necessary to construct, operate, maintain, repair, and remove the PV System. Host shall have no duty or liability to Developer with respect to maintenance, repair or security of the PV System.

5.9 Manufacturer and Installer Warranties. All manufacturer and installer warranties shall run to the benefit of the Developer.

5.10 Use of Installation and/or Maintenance Subcontractors. Developer may use qualified subcontractors to install and/or maintain the PV System, provided that Developer shall at all times remain fully responsible for the acts and omissions of such subcontractors. Installation and maintenance subcontractors shall be required to meet the insurance requirements set forth in Exhibit C, provided, however, that satisfaction of such requirements shall not relieve Developer of its responsibilities for such subcontractors as set forth in this Section 5.10.

5.11 Alterations. Developer shall have the right from time to time both before and after the completion of the PV System and at Developer's sole cost and expense to make additions, alterations and changes, structural or otherwise in or to the PV System, subject, however, in all cases to the following:

(a) No alteration shall be made which would tend to (i) materially change the general design, use, character or structure of the PV System, or (ii) increase, reduce or impair, to any material extent, the use of the PV System for the generation of electricity, subject to Applicable Legal Requirements (any such alteration, a "Substantial Alteration");

(b) No Substantial Alteration shall be commenced except after prior written notice to and consent from Host, which consent shall not be unreasonably withheld;

(c) Any alteration or Substantial Alteration shall be made with reasonable dispatch, in accordance with Good Engineering Practice, and in compliance with all Applicable Legal Requirements; and

(d) No later than completion of any alteration or Substantial Alteration, Developer will provide Host with complete copies of all final plans and specifications therefor not previously provided; and

(e) No alteration shall be made that conflicts with the Host's existing and future uses enumerated in Exhibits A-1 and D to this Lease.

5.12 Host Cooperation. Host shall have the following duties under this Agreement:

(a) to act expeditiously, and in good faith in supporting application for and facilitating any Permits necessary for the construction and operation of the PV System. Notwithstanding anything to the contrary herein, the execution of this Lease does not authorize a waiver of any permit or approval the Developer may require from the Host acting in its regulatory capacity, nor require the Host, acting in its regulatory capacity, to expedite its review of the Developer's Permit application in the Host's normal course of business;

(b) to cooperate with Developer to the extent reasonable and appropriate given the particular use of the Property on issues regarding access, construction, on-site electrical metering and consumption, and interconnection.

5.13 Emergencies. The Parties agree that Host shall have the right, but not the obligation, to respond to any emergency involving the PV System if necessary to protect the Property, including the Premises, or to protect public health or safety, and to effectuate any necessary repairs or take corrective action.

5.14 Damage. Any damage done to the Premises or other property not belonging to Developer during installation or during operations which is directly caused by Developer shall be repaired at Developer's expense as soon as practicable, but no later than thirty (30) days after notification of damage, or sooner if immediate repair is required to prevent further damage to such property.

5.15 Payment and Performance Bonds. Prior to the Commencement Construction Date, the Developer shall provide Host with a performance bond from an issuer with a Best's rating of not less than "A", and from a surety company licensed to do business in the Commonwealth of Massachusetts whose name appears on U.S. Treasury Dept. Circular 570, in a form reasonably acceptable to Host (the "Performance Bond"), which Performance Bond shall be in an amount sufficient to secure 100% of Developer's obligations with respect to the construction of the PV System under this Agreement or, prior to completion of construction and commissioning of the System. The Performance Bond shall name Host as obligee. The Performance Bond shall remain in effect until sixty (60) days after delivery by Developer to Host of the Notice of Commercial Operation, unless (a) fully drawn upon earlier by Host, (b) Host has provided notice to Developer of a dispute regarding the completion of the PV System in accordance with the provisions of this Agreement, in which case the Performance Bond shall remain in effect until the resolution of such dispute, (c) Host provides the issuer of the Performance Bond written notice authorizing the expiration of the Performance Bond, or (d) this Agreement is terminated pursuant to the provisions hereof and Developer has fulfilled its

removal and restoration obligations under this Agreement. In addition, at least fifteen (15) days prior to the Construction Commencement Date, Developer shall provide Host with a payment bond from an issuer with a Best's rating of not less than "A" in a form and amount reasonably acceptable to Host (the "Payment Bond"). The Payment Bond shall name Host as obligee. The Payment Bond shall be released upon the later of: (a) receipt by Host of satisfactory evidence that all subcontractors, laborers, have been paid in full; or (b) the Commercial Operation Date.

5.16 Mechanics Liens. Developer shall not file any mechanics liens against Host for its work performed in accordance with this Agreement and this requirement shall flow down to all of Developer's contractors. If any mechanic's, laborer's or materialman's lien shall at any time be filed against the Property, the Premises or the PV System, Developer, within ten (10) days after notice to Developer of the filing thereof, shall cause such lien to be discharged of record by payment, deposit, bond, insurance, order of court of competent jurisdiction or otherwise. If Developer shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Host may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding. Any amount so paid by Host and costs and expenses, including court costs and attorney's fees reasonably incurred by Host in connection therewith, together with interest thereon at the Interest Rate from the respective dates of Host's making of the payment of the cost and expenses, shall be paid by Developer to Host within ten (10) Business Days of Host's invoice therefor.

5.17 Utilities. Developer shall make all arrangements for and pay directly to the entity providing the service, before delinquent, all electricity consumed by the Developer on the Premises; provided that the Host shall make available to Developer throughout the Term, and Developer may use in connection with the Permitted Use, all electricity, water, and internet service located on the Premises. For avoidance of doubt, Host shall have no obligation to provide new utility interconnections on the Premises. Host shall keep electric transmission and distribution facilities on the Property in good working order, and work in good faith with Developer to resolve any service issues on the Property promptly. Except as provided herein, and without limitation of the obligations of the Host in the preceding sentence, Host shall have no duty or liability to Developer with respect to the maintenance, repair, upgrade, replacement or security of any other utilities, nor shall Host have any liability to Developer (including, without limitation, liability for lost revenue) arising from Host's actions or omissions with respect to such maintenance, repair, upgrade, replacement or security. In the event that Developer desires to undertake maintenance, repair, upgrade, replacement or security activities with respect to electrical transmission or distribution lines owned by Host, Developer may do so at Developer's expense subject to notice to CVEC and the Host and the approval of Host, which shall not be unreasonably withheld.

5.18 Operations and Maintenance Manual; Training. Prior to the Commercial Operation Date, the Developer shall deliver a set each to Host and CVEC an operations and maintenance manual covering the PV System in accordance with the Common Technical Specifications set forth in Exhibit E. In addition, Developer will train Host's representative(s), including employees or contractors of Host on basic principles of operation and maintenance of

the PV System and on emergency preparedness and response. Developer shall also provide an online portal or other tool sufficient to allow the Host to monitor activity at the PV System without operation of PV System. Notwithstanding the foregoing, Host shall have no right to perform any maintenance or repair on the PV System without Developer's prior written consent, except in the case of an emergency where immediate action on the part of Host is reasonably necessary for safety reasons.

5.19 Notice of Commercial Operation. Subject to the provisions of this Agreement, Developer shall notify and represent to Host and CVEC when the PV System has achieved Commercial Operation ("Notice of Commercial Operation"), and shall in such notice certify to Host and CVEC the Commercial Operation Date.

5.20 Late Completion. If the commencement of construction does not occur on or before the Outside Construction Commencement Date and/or Commercial Operation does not occur on or before the Outside Commercial Operation Date for any reason other than Host's failure to perform its obligations hereunder or as set forth in Section 5.21, Developer shall pay to Host all lost rent revenue (prorated by day) for the duration between: (a) the Outside Construction Commencement Date and the date of actual Construction Commencement Date; (b) the Developer's anticipated Commercial Operation date, and the date of actual Commercial Operation; or (c) if the actual Construction Commencement Date or Commercial Operation Date are not achieved, such Delay Liquidated Damages shall continue until twelve (12) months following the Outside Commercial Operation date, at which point this Agreement shall terminate ("Delay Liquidated Damages").

5.21 Notwithstanding the foregoing, Developer shall not be obligated to commence payment of the annual rent as provided in Section 5.20 in the event that Developer cannot satisfy the Outside Construction Commencement Date and/or Outside Commercial Operation Date milestone due to delays caused by the Host, CVEC, the local electric utility, governmental authorities or an event of Force Majeure and the Developer is utilizing Commercially Reasonable efforts to overcome such delays.

5.22 Maintenance; Repairs.

(a) Developer shall take good care of the Premises and the PV System, conduct all required maintenance and make all repairs to the PV System, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep Premises and the PV System in good condition, and in compliance with all Applicable Legal Requirements and Good Engineering Practice.

(b) Host shall have no duty or liability to Developer with respect to the maintenance and repair of the PV System.

(c) Any damage caused by Developer or its subcontractors to the Premises or other property not belonging to Developer or its subcontractors shall be repaired at Developer's expense within thirty (30) days after notification of damage, or sooner if immediate repair is required to prevent further damage to such property.

(d) Host shall maintain the Building in good repair that is sufficient to support operation of the PV System. However, nothing in this Agreement shall limit Host's ability to maintain the Premises in a reasonable manner consistent with Host's current and past practices, the Additional Exceptions set forth in Exhibit A-1, and any other conditions imposed by a Governmental Authority that are applicable to the Premises.

5.23 Host's Maintenance. Developer acknowledges that Host may need to temporarily remove or relocate all or a portion of the PV System in order to perform routine or necessary maintenance. Unless such maintenance is necessitated as a result of installation or operation of the PV System (in which case the Developer shall be solely responsible):

(a) Host will provide Developer with at least thirty (30) days prior written notice of its intent to temporarily relocate (except in the case of an Emergency, in which case notice shall be given as soon as practical and may be after some emergency response work has occurred);

(b) In such notice, Host will certify that Host's requested removal or relocation of the PV System is required to perform routine or necessary maintenance (except that, in the case of an Emergency, such certification may be provided after some emergency response work has occurred) and Developer will have no obligation to temporarily remove or relocate all or a portion of the PV System unless the Host provides such certification;

(c) Host will be responsible for any and all actual, documented, reasonable costs incurred in the relocation of all or a portion of the PV System to and from the temporary location, including any temporary storage costs;

(d) any such relocation shall be performed by Developer (except that, in the case of an Emergency, Host may perform such activities as are reasonably necessary in light of such Emergency);

(e) Host may not request more than one relocation or temporary removal during the Term, which shall not be of a duration longer than thirty (30) days unless otherwise agreed by the Parties; and

(f) in the event that other than temporary removals or relocations that are an "Emergency" (i) the PV System is temporarily removed or relocated for longer than thirty (30) days or if there has already been at least one relocation during the Term, or (ii) there is more than one relocation or temporary removal during the Term, Host shall promptly pay Developer for any lost revenue (including lost revenue attributable to the sale of electricity, environmental attributes, and any incentives related to or attributes of the operation or ownership of the PV System) for the duration of the temporary removal or relocation in excess of thirty (30) days.

Such lost revenue shall be based on Net Energy that would have been produced during the time period of the relocation or temporary removal as estimated by PVWatts Calculator, or similar recognized method using accurate data inputs for the parameters of the PV System and its location. Host agrees to work in good faith to minimize the timing and the operational and

economic impacts on Developer of a temporary removal or relocation of the PV System. For purposes of this Section 5.22, “Emergency” shall mean any *Force Majeure* event, condition or circumstance at or affecting the Premises that would, in the reasonable opinion of Host, materially and substantially harm life or property on the Premises without immediate preventative or remedial action. The Host shall not be responsible in any way for lost revenue that is the result of an Emergency.

5.24 Project Relocation. Host may request to move the PV System to another location on the Property or to another site owned by Host, but any such relocation shall be subject to the approval of Developer and Financier, not to be unreasonably withheld provided the alternate location or site is suitable for the PV System without increasing the development, construction, interconnection or operating costs of the PV System, and the PV System is capable of generating substantially equivalent amounts of electric energy when installed at the alternate site. In connection with such relocation, Host shall execute an amendment to this Agreement reflecting the new location of the PV System but otherwise continuing all the terms and conditions of this Agreement for the remaining term of this Agreement. Host shall also provide any consents or releases required by Developer in connection with the new location. Host shall pay all costs associated with the removal and relocation of the PV System, including design, permitting, site investigations, installation, and testing costs and interconnection study and costs.

In addition, starting at the shutdown of the PV System pursuant to such relocation, and ending at the Commercial Operation of the PV System when such relocated PV System is reinstalled at a new location (the “Relocation Event”), Host will pay Developer an amount equal to the sum of (i) payments that Host would have made to Developer hereunder for electric energy that would have been produced by the PV System following the Relocation Event; (ii) revenues that Developer would have received with respect to the PV System under applicable solar programs and any other assistance program with respect to electric energy that would have been produced following the Relocation Event; and (iii) revenues from Environmental Attributes that Developer would have received with respect to electric energy that would have been produced by the PV System following the Relocation Event. Determination of the amount of energy that would have been produced following the Relocation Event shall be based, during the first Contract Year, on the estimated levels of production and, after the first Contract Year, based on actual operation of the PV System in the same period in the previous Contract Year, unless Developer and Host mutually agree to an alternative methodology.

5.25 No Voiding of Existing Warranties. Developer shall ensure that the PV System is designed and constructed so that no existing warranties that apply to the Premises are voided because of the installation of the PV System. Developer shall consult, as may be necessary, with any company that has provided such warranty.

5.26 Use of Hazardous Materials Prohibited. Developer shall not use at nor transport to the Property, including the Premises, any hazardous materials, including any substances defined, classified, or otherwise denominated as a “hazardous substance”, “toxic substance”, “hazardous material”, “hazardous waste”, “hazardous pollutant”, “toxic pollutant” or oil by the Applicable Legal Requirements, unless specifically authorized by Host. Developer

shall have no liability concerning the release of hazardous materials on or from the Premises other than liability arising from or related to any hazardous materials brought to the Premises at the direction of Developer. The Developer shall fully indemnify the Host for any release of hazardous materials brought to the Property by Developer (or its contractors) and caused by the Developer (or its contractors) including all court costs, attorney's fees, damages and liabilities as a result thereof. The provisions of this Section 5.25 shall survive the expiration or earlier termination of the Agreement.

ARTICLE VI: DEVELOPER'S REPRESENTATIONS, WARRANTIES, AND ADDITIONAL COVENANTS

6.1 Developer's Representations and Warranties. As of the Effective Date of this Agreement, Developer represents and warrants to Host as follows:

- (a) Developer has full legal capacity to enter into this Agreement;
- (b) The execution of this Agreement has been duly authorized, and each person executing this Agreement on behalf of Developer has full authority to do so and to fully bind Developer;
- (c) Developer knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Developer or its properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Agreement or Developer's ability to carry out its obligations under this Agreement; and
- (d) None of the documents or other written or other information furnished by or on behalf of Developer to Host or its agents pursuant to this Agreement contains any knowingly untrue statement of a material fact or knowingly omits to state any material fact required to be stated therein or necessary to make the statements contained herein or therein, in the light of the circumstances in which they were made, not misleading.

6.2 Developer's Covenants. In addition to the other covenants set forth in this Agreement, Developer covenants to Host as follows:

- (a) Developer shall promptly inform Host and CVEC of the occurrence of any event that may reasonably be expected to materially adversely affect the operation of the PV System or the performance of Developer's obligations under this Agreement (including, but not limited to, any notices of default under any third party contract and the occurrence of any event that may result in the imposition of material liability or obligations on Developer or Host); and
- (b) Developer shall provide Host or CVEC such other information as Host or CVEC may reasonably request in order to review Developer's compliance with the terms of this Agreement.

ARTICLE VII: HOST'S REPRESENTATIONS, WARRANTIES, AND ADDITIONAL COVENANTS

7.1 Host's Representations and Warranties. As of the Effective Date of this Agreement, Host represents and warrants the following to Developer:

- (a) Host has full legal capacity to enter into this Agreement;
- (b) Host has the power to perform all of its obligations hereunder and the right to grant Developer rights provided under this Lease;
- (c) The execution of this Agreement has been duly authorized in accordance with open meeting laws, and each person executing this Agreement on behalf of Host has full authority to do so and to fully bind Host;
- (d) Host knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Host or its properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the validity or enforceability of this Agreement or Host's ability to carry out its obligations under this Agreement;
- (e) Host has delivered to Developer a true, correct and complete copy of warranties in effect with respect to the Premises; and
- (f) Host warrants that it holds sufficient title in the Premises to authorize the completion of activities in this Lease, except those listed in the Additional Exceptions set forth in Exhibit A-1.

7.2 Host's Covenants. In addition to the other covenants set forth in this Agreement, Host covenants to Developer that throughout the Term and any extensions thereof, Host shall not interfere or allow a third party to interfere with the sun affecting the PV System.

ARTICLE VIII: TERMINATION; DEFAULT; REMEDIES; PURCHASE OPTIONS

8.1 Termination. Subject to Section 8.4 (Force Majeure), this Agreement shall not be subject to termination, except for the following Events of Termination:

- (a) Any applicable party may terminate this Agreement prior to the Construction Commencement Date for failure to achieve a condition precedent to construction, pursuant to Section 5.2.
- (b) The non-defaulting party may terminate this Agreement in the event a material Event of Default pursuant to Section 8.2 (Events of Default by Host) or 8.3 (Events of Default by Developer) prevents operation of the PV System for twelve (12) months, except with respect to Force Majeure events.

(c) Subject to Section 5.20, unless the Developer is paying Delay Liquidated Damages, Host may terminate this Agreement in the event that Commercial Operation is not achieved by the Outside Commercial Operation Date unless the Developer cannot satisfy the Outside Commercial Operation Date milestone because Developer lacks a permit, approval or Interconnection Agreement necessary to commence Commercial Operation of the PV System, and Developer is utilizing Commercially Reasonable efforts to secure such permit, approval or Interconnection Agreement, because of Force Majeure as provided in Section 8.4, or because of Host's failure to comply with its obligations under this Agreement.

(d) Host may terminate this Agreement upon ten (10) Business Days written notice to the Developer, in the event that Developer's material breach of this Agreement, including but not limited damage to the Premises or its occupants, and such damage is not cured within cure periods set forth in Section 8.3.

(e) Host may terminate this Agreement upon five (5) Business Days written notice, in the event Developer fails to cure an Event of Default under Section 8.3(c);

(f) Either Party may terminate this Agreement prior to the Construction Commencement Date by written notice to the other Party given not later than twenty (20) Business Days following the applicable related event specified below, but before the Construction Commencement Date (if possible, and unless otherwise provided):

(1) in the event that during the interconnection process the Distribution Company imposes a cost for utility upgrades necessary to interconnect the PV System in excess of \$10,000, the Parties agree that for each \$10,000 in excess of the initial threshold of a cost of \$10,000 for utility upgrades to be paid solely by the Developer, the Developer may decrease the annual rent payment by the amount specified in Exhibit A-2, and Host shall determine in its sole discretion whether to accept such decrease in annual rent, in which case this condition shall be deemed satisfied; or

(2) in the event that the Interconnection Agreement, in form and substance satisfactory to Developer and Host, in each of its reasonable discretion, is not finalized and executed within one-hundred eighty (180) days of Developer's submission of the interconnection application, provided, however, that Host will extend the deadline for compliance with this subsection in thirty (30) day increments, upon Host's determination, in its reasonable discretion, that Developer is using Commercially Reasonable efforts to secure such Interconnection Agreement, and further that said deadline will be automatically extended to the extent that achievement of the same is delayed while awaiting utility action.

(f) Subject to Section 8.11(1), this Agreement shall terminate at such time as Host purchases the PV System pursuant to the exercises of its Purchase Option in accordance with the terms of Section 8.11, or otherwise.

8.2 Events of Default by Host. The following shall each constitute an Event of Default by Host:

(a) Host breaches any material obligation under this Agreement, and fails to cure such breach within sixty (60) Business Days after notification by Developer of the breach.

(b) If any material representation or warranty made by Host in Article VII of this Agreement (Host's Representations, Warranties, and Additional Covenants) proves to have been misleading or false in any material respect when made and as such has had a material adverse effect on the Developer, and Host does not cure the underlying facts so as to make such representation or warranty correct and not misleading within ten (10) Business Days of written notice from Developer.

(c) Host fails to carry out its obligations and duties pursuant to Article X (Quiet Enjoyment).

(d) Any other material breach of this Agreement, or the Intergovernmental Power Sale Agreement, which proves to have a material adverse effect on the Developer, not specifically enumerated above.

Events of Default in this Section 8.2 are subject to specific performance and monetary damages pursuant to Section 8.5 (Remedies).

8.3 Events of Default by Developer. It shall constitute an Event of Default by Developer if Developer:

(a) breaches any material obligation under this Agreement that proves to have a material adverse effect on Host and fails to cure the breach within thirty (30) days after notification by Host of the breach; provided, however, no Event of Default shall occur if the nature of such breach is such that it cannot reasonably be cured within thirty (30) days and Developer commences remedying the breach within said thirty (30) day period and actually remedies the breach with ninety (90) days after notification by Host of the breach;

(b) makes any material representation or warranty made by Developer in Article VI (Developer's Representations, Warranties and Additional Covenants) proves to have been misleading or false in any material respect when made and to have a material adverse effect on the Host, and Developer does not cure the underlying facts so as to make such representation or warranty correct and not misleading within ten (10) Business Days of written notice from Host; or

(c) fails to provide or maintain in full force and effect any required insurance or bond or other surety, if such failure is not remedied within five (5) Business Days after receipt of written notice from the Host, or the occurrence of a default by the insurer of such Developer under any insurance policy provided hereunder.

8.4 Force Majeure. Notwithstanding Sections 8.1 (Termination), 8.2 (Events of Default by Host) and 8.3 (Events of Default by Developer), if by reason of Force Majeure either Party is unable to carry out, either in whole or in part, its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability, provided that: (a)

the suspension of performance be of no greater scope and of no longer duration than is required by the Force Majeure event; (b) no obligations of the Party which were to be performed prior to the occurrence causing the suspension of performance shall be excused as a result of the occurrence; and (c) the non-performing Party shall use Commercially Reasonable efforts to remedy with all reasonable dispatch the cause or causes preventing it from carrying out its obligations. The affected Party shall, as soon as practicable, give the other Party hereto written notice describing the particulars of the occurrence of the Force Majeure event. If an event of Force Majeure continues for a period of one hundred eighty (180) days or longer, either Party may treat such an event as an Event of Termination and may immediately terminate this Agreement by sending the non-performing Party a written termination notice setting forth the Termination Date, and neither Party shall have liability by reason of such termination. In the Event of Termination under this Section 8.4, Financier shall have step-in rights as provided in Section 8.6.

8.5 Remedies.

(a) In the event the defaulting Party fails to cure the Event of Default within the period for curative action under Sections 8.2 (Events of Default by Host) or 8.3 (Events of Default by Developer), as applicable, the non-defaulting Party may seek specific performance and/or monetary damages.

(b) So long as an Event of Default has occurred and has not been cured, the non-defaulting Party may terminate this Agreement subject to the limitations and under the provisions of Section 8.1.

(c) In the event of an Event of Default by Host requiring the permanent removal of the PV System from the Premises, and provided that the Host designates an alternative location at which the PV System is able to produce substantially equivalent amounts of Electricity, the Developer shall mitigate any damages by removing, storing and re-installing the PV System at the alternative location, all such costs to be borne by Host as damages.

(d) [Reserved].

For breach of any provision for which an express remedy, other than termination, or express measure of damages is provided, such express remedy or measure of damages will be the sole and exclusive remedy, the obligor's liability will be limited as set forth in such provision and all other remedies or damages at law or in equity are waived. If no remedy or measure of damages is expressly provided herein, the obligor's liability will be limited to direct actual damages only, such direct and actual damages will be the sole and exclusive remedy and all other remedies or damages at law or in equity are waived.

UNLESS OTHERWISE SPECIFICALLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES, LOST PROFITS, OR BUSINESS INTERRUPTION DAMAGES OF ANY CHARACTER, RESULTING FROM, ARISING OUT OF, IN CONNECTION WITH OR

IN ANY WAY INCIDENT TO ANY ACT OR OMISSION OF EITHER PARTY RELATED TO THE PROVISIONS OF THIS AGREEMENT, IRRESPECTIVE OF WHETHER CLAIMS OR ACTIONS FOR SUCH DAMAGES ARE BASED UPON CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR EQUITY. DEVELOPER'S AGGREGATE LIABILITY HEREUNDER SHALL NOT IN THE AGGREGATE EXCEED AN AMOUNT EQUAL TO THE AMOUNT SET FORTH IN EXHIBIT A-3, WHICH EXCLUDES THIRD PARTY INDEMNIFICATION OBLIGATIONS.

8.6 Step-in Rights of Financier.

(a) Host agrees to give written notices to any Financier, of which Host has written notice, upon the occurrence of any Event of Default hereunder, the failure of Developer to cure any Event of Default in accordance with the terms of this Agreement, or an Event of Termination on account of Force Majeure, and Financier shall have a period of thirty (30) days after receipt of notice of failure of Developer to cure any Event of Default in accordance with the terms of this Agreement, provided however, that Financier shall have an additional reasonable period of time thereafter, not to exceed an additional ninety (90) days, to cure the Event of Default or Event of Termination on account of Force Majeure if Financier uses Commercially Reasonable efforts to cure such Event of Default or Event of Termination during the initial ninety (90) days after notice aforesaid, and Financier provides reasonable written assurances that it will be able to cure such Event of Default within such a reasonable period of time thereafter.

(b) Host agrees that, prior to termination pursuant to Section 8.1 (Termination), Host shall give written notice to any Financier of which Host has written notice upon the occurrence of any Event of Termination hereunder, and Financier shall have a period of one hundred eighty (180) days after receipt of said notice to cure such Event of Termination.

(c) Host also agrees that, in the event that Host terminates this Agreement pursuant to Section 8.1 (Termination), and Financier agrees in writing to assume all liabilities and obligations of the Developer, then a new agreement shall be executed by Host with Financier to assume the Developer's place, upon the same terms and conditions as are contained in this Agreement; provided, however, that any such new agreement will be for the unexpired term of this Agreement and provided further, nothing herein shall be construed to alter any substantive terms which would expand the rights of Financier or extend or expand Host's obligations hereunder.

8.7 Damage or Destruction of PV System.

(a) Developer shall bear the risk of loss to the PV System (including casualty, condemnation or Force Majeure), except to the extent that such loss results from the gross negligence of the Host or Host's agents, representative, customers, vendors, employees, or contractors.

(b) In the event of any PV System loss, Developer shall, at its sole cost and expense either (i) repair or replace the PV System, or (ii) elect to terminate this Agreement in

which case Developer shall remove the PV System and promptly restore the Premises to substantially the same condition as existed prior to the Effective Date in accordance with Section 8.8 (Site Restoration).

(c) In the event of a total or partial PV System loss because of casualty loss of the all of part of the Premises, and the Host elects not to repair or replace the Premises, the Developer shall be limited to recovery of proceeds from its insurance coverage. In the event of a total or partial PV System loss because of casualty loss of the all of part of the Premises, and the Host elects to repair or replace the Premises, the Developer may exercise either of its options under Section 8.7(b).

8.8 Site Restoration. On the Termination Date, Developer shall peaceably and quietly leave, surrender and yield up unto Host the Leased Premises, provided however that following the Termination Date of this Agreement, Developer shall have one hundred eighty (180) days to remove the PV System from the Leased Premises, and to restore the Leased Premises to a neat and orderly condition, reasonable wear and tear excepted, or such additional time as may be necessary after Host has declined to exercise a Purchase Option pursuant to this Lease. Developer and Host shall agree upon whether supports, anchors, penetrations, conduits, or other similar ancillary equipment will be removed, considering whether such removal would cause harm or damage to the Premises.

8.9 Abandonment of PV System. Notwithstanding anything to the contrary contained in this Agreement, any waiver in whole or in part of the requirement to remove the PV System shall require the written approval of Host. Any of the PV System left on the Premises after the passage of one hundred twenty (120) days after the Termination Date shall be deemed abandoned. Host shall provide written notice to the Developer within thirty (30) days of the expiration of such one hundred twenty (120) day period, of its election to retain all or any of the PV System as its property, or dispose of all or any of the PV System in such reasonable manner as Host may see fit and at Developer's sole cost; provided, however, that Host's election to retain the PV System as its property shall relieve Developer from any liability for its failure to remove such PV System; and provided further, however, that the foregoing shall not apply to any of the PV System that is not timely removed if the failure to remove is caused by an event of Force Majeure or the negligent acts or omissions of Host (in which in either case the time period for removal shall be extended on a day for day basis).

8.10 Decommissioning Assurance. Upon the issuance of the Notice of Commercial Operation, Developer shall establish and maintain thereafter adequate financial assurance in the amount specified in Exhibit D, to fully cover the cost of decommissioning the PV System and restoring the Premises as specified in this Agreement (such assurance, the "Decommissioning Assurance"). Depending on the circumstances, and subject to Host's approval, appropriate forms of financial assurance may include, without limitation, an escrow fund, irrevocable letter of credit, surety bond or third party guaranty; provided, however, that any form of financial assurance must provide Host with adequate rights to access the Decommissioning Assurance in the event of Developer's failure to comply with its PV System removal and Premises restoration obligations under the Agreement.

8.11 Purchase Options.

(a) Grant of Purchase Option to Host. For and in consideration of the agreement of Host to enter into this Lease, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, Developer hereby grants to Host the right and option to purchase all of Developer's right, title and interest in and to the PV System and the Environmental Attributes on the terms set forth in this Lease (the "Host Purchase Option"). Host, in its sole discretion, shall have the right to exercise the Purchase Option: (i) upon the tenth (10th), twelfth (12th), or fifteenth (15th) anniversary of the Commercial Operation Date, or (ii) upon the expiration of the Term of this Agreement, subject to the timing and conditions set forth in this Article. The Parties acknowledge that Host may, in its sole discretion, assign its purchase option-related rights under this Lease to CVEC.

(b) Timing of Purchase Option. If the Host declines the Purchase Option or otherwise fails to send its Host Purchase Option Notice within sixty (60) Business Days prior to tenth (10th), twelfth (12th), or fifteenth (15th) anniversary of the Commercial Operation Date, or the date of the expiration of the Term, then the Host Purchase Option shall be deemed to have been declined. Promptly following receipt of a Purchase Option Notice from Host, Developer shall promptly, but no more than ten (10) Business Days thereafter, make available to the Host the records of the operations, maintenance, and warranty repairs of the PV System and all Environmental Attributes, and shall provide reasonable access to inspect the PV System for its inspection during normal business hours.

(c) Inspection. Host shall have fifteen (15) Business Days from their respective purchase option notices to inspect the PV system, review the records provided by Developer and exercise other due diligence.

(d) Determination of Purchase Price. The purchase price shall be the higher of the Host Purchase Payment in Exhibit A-2, or the Appraised Value of the PV System, including but not limited to its physical assets, as determined by the Independent Appraiser ("Purchase Price"). If the Purchase Option arises out of a Developer Event of Default, the Purchase Price shall be the Appraised Value.

(e) Independent Appraiser. Within twenty-five (25) Business Days of Developer's receipt of Purchase Option Notice, Developer and Host shall each propose an Independent Appraiser. If Developer and Host do not agree and appoint an Independent Appraiser within such twenty-five (25) Business Day period, then at the end of such twenty-five (25) Business Day period, the two proposed Independent Appraisers shall, within five (5) Business Days of each Party's notice, select a third Independent Appraiser (who may be one of the Independent Appraisers originally designated by the Parties or another Independent Appraiser) to perform the valuation and provide notice thereof to Developer and Host. Such selection shall be final and binding on Developer and Host.

(f) PV System Records and Inspection. The Developer shall make the records related to the PV System available to the Independent Appraiser and shall give the Independent Appraiser reasonable access to inspect the PV System. Similarly, Host shall make available to

the Independent Appraiser the results of its inspection, review of records and other due diligence. The selected Independent Appraiser shall, within twenty (20) Business Days of appointment, make a preliminary determination of the Appraised Value (the “Preliminary Determination”).

(g) Preliminary and Final Appraisal Determinations. Upon making such Preliminary Determination, the selected Independent Appraiser shall provide such Preliminary Determination to Developer and Host, together with all supporting documentation that details the calculation of the Preliminary Determination. Developer and Host shall each have the right to object to the Preliminary Determination within ten (10) Business Days of receiving such Preliminary Determination; provided that the objecting Party provides a written explanation documenting the reasons for its objection. Within ten (10) Business Days of receipt of the objecting Party’s objections, the selected Independent Appraiser shall issue its final determination (the “Final Determination”) to Developer and Host, which shall specifically address the objections received by the Independent Appraiser and whether such objections were taken into account in making the Final Determination. Except in the case of fraud or manifest error, the Final Determination of the Appraised Value by the selected Independent Appraiser shall be final and binding on the Parties.

(h) Appraisal Costs. Developer and Host shall each be responsible for payment of one half of the costs and expenses of the Independent Appraiser(s), unless the Purchase Option is to be exercised pursuant to a Developer Event of Default, in which case the Developer shall be responsible to pay the fees and costs of the Independent Appraiser.

(i) Final Purchase Option Notice. Within ten (10) Business Days of the Final Determination, Host shall notify the Developer in writing whether it intends to exercise the Purchase Option at the Purchase Price determined in accordance with Section 13.2 (“Final Purchase Option Notice”). Upon such Final Purchase Option Notice, the Purchase Option shall become irrevocable.

(j) Transfer Date. The closing of any sale of the PV System (the “Transfer Date”) pursuant to this Article will occur as soon as practicable but no later than ninety (90) Business Days following the date of the notice provided to Developer pursuant to Section 8.11(i). This Agreement shall terminate effective upon the Transfer Date, if not earlier terminated.

(k) Terms of PV System Purchase. On the Transfer Date (a) Developer shall surrender and transfer to Host all of Developer’s right, title and interest in and to the PV System, and the Environmental Attributes arising after the Transfer Date, and shall retain all liabilities arising from or related to the PV System and the Environmental Attributes arising prior to the Transfer Date, (b) Host shall pay the Purchase Price after deduction of any Developer Termination Payment or other set-offs, as applicable, by certified check, bank draft or wire transfer and shall assume all liabilities arising from or related to the PV System and the Environmental Attributes from and after the Transfer Date, and (c) Host shall pay to Developer all other amounts owing to Developer as of the Transfer Date arising hereunder, and (d) both Parties shall (i) execute and deliver a bill of sale and assignment of contract rights containing

such representations, warranties, covenants and other terms and conditions as are usual and customary for a sale of assets similar to the PV System, together with such other conveyance and transaction documents as are reasonably required to fully transfer and vest title to the PV System, and the Environmental Attributes created following the Transfer Date in Host, and (ii) deliver ancillary documents, including releases, resolutions, certificates, third person consents and approvals and such similar documents as may be reasonably necessary to complete the sale of the PV System and the Environmental Attributes to Host. The purchase shall be on an “as is,” “where is” basis without warranty of any kind.

(l) If Host exercises its Purchase Option, then the Host will assume responsibilities under agreements with energy generation customers’ existing as of the Transfer Date, until the termination date of such agreements. As set forth in Section 11.1(a), Developer shall include in any such agreements with energy generation customers a right of Developer to assign such contracts to Host. Monthly Minimum Reliability Contribution assessments shall be assumed by the entity that has exercised the Purchase Option. In the event that CVEC purchases the PV System, this Agreement shall be novated to substitute CVEC for the Host and shall continue in full force and effect.

ARTICLE IX: INDEMNIFICATION; INSURANCE

9.1 Developer Indemnification of Host. To the fullest extent permitted by law, the Developer shall indemnify and hold harmless the Host and all of its agents, officers, employees, boards, commissions, and representatives from and against all third-party claims, causes of action, suits, costs, damages, and liability of any kind (“*Losses*”), including any Environmental Claim, which arise out of the performance of Developer’s work, provided that such Losses are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property but only to the extent caused by the negligent or intentional acts or omissions, including failure to comply with the provisions of this Agreement, of the Developer, its employees, agents, subcontractors, or anyone directly or indirectly employed by them or anyone for whose acts Developer is legally liable. This indemnity obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of the Host, but the Developer’s obligation to pay Losses shall be reduced in proportion to the percentage by which the Host’s negligent or intentional acts, errors or omissions caused the Losses.

9.2 Host Indemnification. To the extent permitted by law, Host shall indemnify and hold harmless Developer from and against any and all Losses from or to third parties for injury or death to persons or damage or loss to or of property to the extent arising out of the negligent or intentional acts or omissions of the Host, its employees, agents, subcontractors or representatives. This indemnity obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of Developer, but the Host’s obligation to pay Losses shall be reduced in proportion to the percentage by which the Developer’s negligent or intentional acts, errors or omissions caused the Losses. Notwithstanding any other provision in this Agreement, the Host’s liability hereunder shall be limited by the protections and immunities afforded by and to the amount set forth in Chapter 258 of the Massachusetts General Laws.

9.3 **Insurance.** The Parties agree to comply with the insurance obligations allocated to them in Exhibit C hereto.

9.4 **Survival.** If a Party receives notice of the commencement of any proceeding in connection with Losses asserted by any third party as to which it believes that the other Party may have an obligation under Section 9.1 or Section 9.2, such Party shall deliver to the indemnifying Party reasonably prompt written notice thereof, but in any event not later than sixty (60) calendar days after receipt of such notice. Failure to deliver such prompt written notice shall not relieve the indemnifying Party of its obligations under Section 9.1 or Section 9.2, as applicable, except to the extent that the indemnifying Party is prejudiced by reason of such failure; provided that notwithstanding the foregoing, the provisions of Section 9.1 and 9.2 shall survive for thirty-six (36) months following the commencement of such proceeding.

ARTICLE X: QUIET ENJOYMENT

10.1 **Quiet Enjoyment.** Host covenants that Developer shall quietly have and enjoy the Premises throughout the Term and any extensions thereof. Host warrants and agrees that, throughout the Term and any extensions thereof:

(a) the Premises shall be dedicated to Developer's use for conducting the Permitted Use and designing, constructing, operating, maintaining, repairing, and expanding the PV System, except as provided for in Section 10.2 and subject to the Additional Exceptions set forth in Exhibit A-1 and Special Conditions in Exhibit D;

(b) any other uses of the Premises by Host or any third party pursuant to Section 10.2 and the Additional Exceptions set forth in Exhibit A-1 shall not materially interfere with the Permitted Use and the operational and solar requirements of the PV System;

(c) Host shall maintain or obtain any agreements, contracts, consents, Permits, approvals, or other instruments or permissions necessary for Developer to have the quiet enjoyment of its rights under this Agreement; and

(d) Host shall, in good faith, use its best efforts to protect Developer's quiet enjoyment of its rights hereunder, including, without limitation, defending against a third party claim that could materially interfere with Developer's rights under this Article X or the Permitted Use.

Subject to the specific provisions of this Agreement permitting the same, Host shall have the right to enter upon the Premises at any time, at its own risk, as may be necessary in connection with the maintenance of the Premises for any purpose, consistent with Section 5.21, and provided that such access does not materially interfere with or affect the operation of the PV System, no such entry that complies with the provisions of this Agreement permitting the same shall be considered a breach of the covenant of quiet enjoyment.

10.2 Host's Reserved Uses. Except as specifically set forth in the Additional Exceptions contained in Exhibit A-1, Host shall not itself conduct any other use, nor shall Host allow any third party to conduct any other use, on the Premises.

ARTICLE XI: ASSIGNMENT AND MORTGAGE

11.1 Assignment.

(a) **Developer Assignment.** Except as otherwise provided by this Agreement, Developer shall not assign, subcontract, sublet or delegate its rights, privileges or obligations under this Agreement without the prior written approval of Host, provided that prior notice to or consent of Host shall not be required: (i) for an assignment or transfer by Developer to any of its other individual members or to CVEC; and (ii) for a collateral assignment by Developer to any Financier, subject to the terms and conditions of this Article XI. For assignments requiring Host's approval, approval may be denied in the reasonable discretion of Host if it determines that the proposed assignee does not have at least the same financial and technical ability as the assigning Developer. Notwithstanding the foregoing, Host may not unreasonably withhold its consent to an assignment to an affiliated entity under common control or management with Developer. Developer's assignee shall agree in writing to be bound by the terms and conditions of this Agreement. Developer shall reimburse Host for its reasonable attorneys' fees related to review and approval of assignments, and such reasonable attorneys' fees as may be incurred by Host.

(b) **Host Assignment.** Host shall not assign this Agreement without the prior consent of Developer, such consent not to be unreasonably withheld, provided, however, that any such assignment shall be made subject to the terms and provisions of this Agreement. Host shall assign this Agreement to any successor owner or lessee of the Property or the Premises or to any person that holds an exclusive easement interest in the Premises or the PV System. Host's assignee shall agree in writing to be bound by the terms and conditions of this Agreement. Host shall promptly provide Developer a copy of the assignment document following any assignment.

(c) The rights and obligations created by this Agreement shall inure to the benefit of, and be binding upon, the successors and permitted assigns of the respective Parties hereto. Notice of any permitted assignment shall be provided to the other Party as soon as practicable.

11.2 Financing by Leasehold Mortgage. Host is cognizant of the need of Developer to finance its interest in the Premises and the PV System thereon, and therefore specifically agrees, subject to Section 8.6, without any further request for prior consent to permit Developer to mortgage, assign or transfer its interest in this Agreement and/or the Premises for the purpose of obtaining financing, which shall include equity and/or debt, provided:

(a) The term of such mortgage, assignment or transfer, or other security interest shall not exceed the Term; and

(b) Developer shall give Host and CVEC notice of the existence of any mortgage, assignment or transfer, together with the name and address of the mortgagee, assignee or transferee, within thirty (30) days of the execution of such mortgage, assignment or transfer.

11.3 Financing by Leasehold Mortgage Release of Developer. Developer shall be relieved from its obligations under this Agreement in whole or in part, as the case may be:

(a) by any whole or partial disposition of Developer's interest in this Agreement in compliance with Section 11.1, when coupled with a written instrument signed by the assignee or transferee of such interest in which said assignee or transferee accepts and agrees to be bound by the terms of this Agreement, unless the Parties agree otherwise, and except as otherwise provided by the terms of any assignment or transfer; and

(b) in the event of any foreclosure by a Financier, in which case the Financier shall substitute for the Developer for purposes of this Agreement.

Absent express written consent of Host, the execution of a mortgage or any assignment from a Financier to another Financier shall not relieve Developer from its obligations under this Agreement.

11.4 Financier Provisions. Any Person or entity that holds or is the beneficiary of a first position mortgage, deed of trust or other security interest in this Agreement or in any PV System located on the Premises (any such first position mortgage, deed of trust or other security interest is referred to herein as a "Leasehold Mortgage") shall, for so long as its Leasehold Mortgage is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth herein. No Leasehold Mortgage shall encumber or affect in any way the interest of Host or Host's fee interest in and to the Premises, or Host's rights under this Agreement. Host shall promptly execute any amendments to this Agreement requested by Financier in connection with the financing of the PV System so long as said amendment does not materially change the terms of this Agreement.

(a) **Financier's Right to Possession, Acquire and Assign.** Pursuant to the provisions of this Section 11.4 and subject to Section 8.6, a Financier shall have the right: (i) to assign its security interest; (ii) to enforce its lien and acquire title to the leasehold estate by any lawful means; (iii) to take possession of and operate the PV System or any portion thereof and to perform all obligations to be performed by Developer hereunder, or to cause a receiver to be appointed to do so, subject to the terms and conditions of this Agreement; (iv) to acquire the leasehold estate by foreclosure or by an assignment in lieu of foreclosure; and (v) to sell the PV System and rights under any contracts dealing with the sale of Net Energy or renewable energy certificates from the PV System to a third party. Host's consent shall not be required for the Financier's acquisition of the encumbered leasehold estate created by this Agreement, whether by foreclosure or assignment in lieu of foreclosure.

(b) Upon the Financier's acquisition of the leasehold estate, whether by foreclosure or assignment in lieu of foreclosure, Financier shall have the right to sell or assign said acquired leasehold estate, provided Financier and proposed assignee (as applicable) shall

first satisfy each of the following conditions: (i) any such assignee shall be approved in advance by Host, such approval not to be unreasonably conditioned, withheld or delayed; (ii) any such assignee shall assume all of Developer's obligations under this Agreement; (iii) Financier and/or any proposed assignee shall have satisfied every obligation of Developer existing under this Agreement but which remains unsatisfied at the time of the proposed assignment; and (iv) Financier and any such assignee shall satisfy all Applicable Legal Requirements. Financier may assign this Agreement subject to the same requirements for assignment in Section 11.1(a).

(c) Notice of Default; Opportunity to Cure. The Financier shall be entitled to receive simultaneous notice of any default by Developer, provided that such Financier shall have first delivered to Host notice of its interest in the Leasehold Mortgage in the form and manner, if any, provided by state laws, rules, regulations, Developer's procedures, and the provisions of this Agreement. If any notice shall be given of the default of Developer and Developer has failed to cure or commence to cure such default within the cure period provided in this Agreement, then any such Financier, which has given notice as above provided, shall be entitled to receive an additional notice that Developer has failed to cure such default and such Financier shall be entitled to cure any such default pursuant to the terms of Section 8.6. The Financier may take possession of the Premises and the PV System, and operate the PV System if necessary, pursuant to Section 8.6.

ARTICLE XII: DISPUTE RESOLUTION

12.1 Dispute Resolution. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Section 12.1 shall be the exclusive mechanism to resolve disputes arising under this Agreement. The Parties agree to use their respective best efforts to resolve any dispute(s) that may arise regarding this Agreement. Any dispute that arises under or with respect to this Agreement that cannot be resolved shall in the first instance be the subject of informal negotiations between the Parties. The dispute shall be considered to have arisen when one Party sends the other Party a written notice of dispute. The period for informal negotiations shall be fourteen (14) days from receipt of the written notice of dispute unless such time period is modified by written agreement of the Parties. In the event that the Parties cannot resolve a dispute by informal negotiations, the Parties may agree to submit the dispute to mediation. If the Parties so agree, within fourteen (14) days following the expiration of the time period for informal negotiations, the Parties shall propose and agree upon a neutral and otherwise qualified mediator. In the event that the Parties fail to agree upon a mediator, the Parties shall request that the American Arbitration Association, Boston, Massachusetts, appoint a mediator. The period for mediation shall commence upon the appointment of the mediator and shall not exceed sixty (60) days, unless such time period is modified by written agreement of the Parties. The decision to continue mediation shall be in the sole discretion of each Party. The Parties will bear their own costs of the mediation. The mediator's fees shall be shared equally by the Parties. In the event that the Parties cannot resolve a dispute by informal negotiations or mediation, the sole venue for judicial enforcement shall be the courts for or in Barnstable County, Massachusetts. Notwithstanding the foregoing, injunctive relief from such court may be sought without resorting to alternative dispute resolution to prevent irreparable harm that would be caused by a breach of this Agreement.

12.2 Stay of Termination.

(a) During informal negotiations and mediation pursuant to Section 12.1, the Parties shall not exercise any termination rights pursuant to this Agreement. During such informal negotiations and/or mediation, the Parties shall continue to fully perform their respective obligations pursuant to this Agreement. All applicable statutes of limitation and defense based upon the passage of time and similar contractual limitations shall be tolled while discussions in Section 12.1 are pending, the Parties shall take such action, if any, required to effectuate such tolling. Without prejudice to the procedure set forth in Section 12.1, a Party may file a complaint for statute of limitations purposes, if in its sole judgment such action may be necessary to preserve its claims or defenses.

(b) As to any claims that arise between the Parties under this Agreement, all applicable statutes of limitation and defenses based upon the passage of time and similar contractual limitations shall be tolled while such lawsuit is pending and the Parties shall take such action, if any, required to effectuate such tolling. Notwithstanding the foregoing, Host may file a complaint for statute of limitations purposes, if in its sole judgment such action may be necessary to preserve its claims or defenses. This provision may be waived by Host at any time for any reason.

12.3 Survival. This Article XII shall survive the expiration or earlier termination of this Agreement.

ARTICLE XIII: MISCELLANEOUS

13.1 Construction; Obligation to Modify Agreement. Upon implementation by the Department of Public Utilities, Department of Energy Resources, or other Governmental Authority of any Applicable Legal Requirement that may affect any provision of this Agreement or the economic benefits anticipated by either Party, in particular any rule or regulation regarding Net Metering, the Parties shall be obligated to amend this Agreement and shall use their best efforts to conform such amendment to the original intent of this Agreement, including allocation of economic benefits to most closely approximate the benefits anticipated by both Parties, and to do so in a timely fashion.

13.2 Notices. All notices, demands, requests, consents or other communications required or permitted to be given or made under this Agreement shall be in writing and addressed to the following:

If to Host:

Barnstable County Administrator
Barnstable Superior Court
P.O. Box 427
3195 Main Street Barnstable, MA 02630
Attn: _____
Phone () ____ - _____

Email: _____

If to Developer:

Main Street Solar Project 2020, LLC
Erik Schiemann
200 Harborside Drive
Suite 200
Schenectady, NY 12305
Telephone: (518) 742-6863
Email: Erik.Schiemann@ge.com

with a copy to:

General Counsel
Distributed Solar Development, LLC
200 Harborside Drive
Suite 200
Schenectady, NY 12305
Telephone: (518) 380-3770
Email: Jennifer.Gerrard@ge.com

If to CVEC: Cape & Vineyard Electric Cooperative, Inc.
23H2 White's Path, Suite 2
South Yarmouth, MA 02664
Attn: Liz Argo, Executive Director
Tel: (774) 722-1812
Email: largo@cvecinc.org

Notices hereunder shall be deemed properly served: (a) by hand delivery, on the day and at the time on which delivered to the intended recipient at the address set forth in this Agreement; (b) if sent by mail, on the third business day after the day on which deposited in the United States certified or registered mail, postage prepaid, return receipt requested, addressed to the intended recipient at its address set forth in this Agreement; (c) if by Federal Express or other reputable express mail service, on the next business day after delivery to such express mail service, addressed to the intended recipient at its address set forth in this Agreement; or (d) by electronic mail (confirmed by the recipient) to the Party to which notice is to be given. Either Party may change its address and contact person for the purposes of this Section 13.2 by giving notice thereof in the manner required herein.

13.3 Entire Agreement; Amendments; Binding Effect. This Agreement constitutes the entire agreement between the Parties hereto with respect to the subject matter hereof and supersede all prior oral or written agreements and understandings between the Parties relating to the subject matter hereof. This Agreement may only be amended or modified by a written

amendment to this Agreement signed by both Parties hereto. This Agreement inures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.

13.4 Expenses. Each Party hereto shall pay all expenses incurred by it in connection with its entering into this Agreement, including but not limited to, all attorneys' fees and expenses.

13.5 No Joint Venture. Nothing herein contained shall be deemed to constitute either Party a partner, agent or legal representative of the other Party or to create a joint venture, partnership, agency or any relationship between the Parties. The obligations of the Parties are individual and not collective in nature.

13.6 Joint Work Product. This Agreement shall be considered the work product of both Parties hereto, and, therefore, no rule of strict construction shall be applied against either Party.

13.7 Waiver. No waiver by either Party hereto of any one or more defaults by the other Party in the performance of any provision of this Agreement shall operate or be construed as a waiver of any future default, whether of like or different character. No failure on the part of either Party hereto to complain of any action or non-action on the part of the other Party, no matter how long the same may continue, shall be deemed to be a waiver of any right hereunder by the Party so failing. A waiver of any of the provisions of this Agreement shall only be effective if made in writing and signed by the Party who is making such waiver.

13.8 Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and shall be construed, enforced and performed in accordance with the laws of the Commonwealth of Massachusetts without regard to principles of conflicts of law.

The Parties agree that to the maximum extent permissible by law, nothing in this Agreement shall be interpreted to eliminate or reduce legal protections or defenses available to the Host as municipal entity.

13.9 Nondiscrimination. Developer agrees that it shall not, because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation, gender identity, genetic information, or status as a veteran, discriminate against any qualified employee, applicant for employment, subcontractor, or person or firm seeking to provide goods or services to Developer, or deny any person access to the Premises or to any activities or programs carried out upon the Premises. Developer shall comply with all applicable federal and state statutes, rules, and regulations prohibiting discrimination in employment or public accommodation.

13.10 Severability. If any article, section, phrase or portion of this Agreement is, for any reason, held or adjudged to be invalid, illegal or unenforceable by any court of competent jurisdiction, such article, section, phrase, or portion so adjudged shall be deemed separate, severable and independent and the remainder of this Agreement shall be and remain in full force

and effect and shall not be invalidated or rendered illegal or unenforceable or otherwise affected by such adjudication, provided the basic purpose of this Agreement and the benefits to the Parties are not substantially impaired.

13.11 Further Assurances. From time to time and at any time at and after the execution of this Agreement, each Party shall execute, acknowledge and deliver such documents and assurances, reasonably requested by the other and shall take any other action consistent with the terms of this Agreement that may be reasonably requested by the other for the purpose of effecting or confirming any of the transactions contemplated by this Agreement.

13.12 Survival. Termination of this Agreement for any reason shall not relieve Host or Developer of any obligation accrued or accruing prior to such termination, including, but not limited to, the obligations set forth in Sections 5.25, 9.1 and 9.2 (Indemnification), Article IX (Indemnification), and Article XII (Dispute Resolution), which shall survive the expiration or termination of this Agreement.

13.13 Counterparts; Scanned Copy. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument. The Parties agree that a scanned or electronically reproduced copy or image of this Agreement bearing the signatures of the Parties hereto shall be deemed an original and may be introduced or submitted in any action or proceeding as competent evidence of the execution, terms and existence of this Agreement notwithstanding the failure or inability to produce or tender an original, executed counterpart of this Agreement and without the requirement that the unavailability of such original, executed counterpart of this Agreement first be proven.

13.14 Special Terms and Conditions. This Agreement is a standard form lease agreement for project development and that modifications to the main body of this Agreement are not permitted. To the extent there are special terms and conditions that are specific to the installation of the PV System on the Premises, such terms and conditions will be set forth in Exhibit D attached hereto (the "Special Terms and Conditions"). To the extent there is a conflict between the Special Terms and Conditions and the main body of this Agreement, the Special Terms and Conditions will control.

13.15 No Limitation of Regulatory Authority. The Parties acknowledge that nothing in this Agreement shall be deemed to be an agreement by Host to issue or cause the issuance of any permit or approval, or to limit or otherwise affect the ability of the Host or the Commonwealth of Massachusetts to fulfill its regulatory mandate or execute its regulatory powers consistent with Applicable Legal Requirements.

[Signature page to follow]

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

DEVELOPER:

MAIN STREET SOLAR PROJECT 2020, LLC

By: _____

Name: _____

Title: _____

HOST:

BARNSTABLE COUNTY

By: _____

Name: _____

Title: _____

List of Exhibits to this Agreement

- Exhibit A – Description of Premises
- Exhibit A-1 – Additional Exceptions
- Exhibit A-2 – Rent
- Exhibit A-3 – Liability Cap
- Exhibit B – Description of PV System
- Exhibit C – Insurance Requirements
- Exhibit D – Special Terms and Conditions
- Exhibit E – Common Technical Specifications
- Exhibit F – Services Agreement between CVEC and Host

EXHIBIT A

DESCRIPTION OF PREMISES

Address:

Barnstable County Farm
3675 Main Street
Barnstable, MA 02630

System Description:

Ground-mounted solar photovoltaic generating system and battery storage with agricultural use beneath solar modules located at the above address, as illustrated in the Sketch Plan entitled “Barnstable County Farm PV System” as such Sketch Plan may be amended or revised from time to time.

Description of the Premises:

The Premises depicted on the attached Sketch Plan entitled “Barnstable County Farm PV System” and shall further include all necessary electrical and other utility sources, together with a non-exclusive easement for ingress and egress from a public right-of-way, to the Premises for the purpose of design, procurement, installation, testing, commissioning, ownership, operation, inspection, maintenance, repair and improvements and removal of the PV System. In the event there are not sufficient electric and other necessary utility sources located on the Premises to enable Developer to transmit Net Energy generated by the PV System to the Point of Delivery, Host agrees to grant Developer or the Distribution Company the easement rights to install such utilities on, over and/or under the Premises and the Property, as necessary to operate the PV System, provided, however, the location of such utilities shall be as reasonably designated by Host.

Barnstable County Farm PV System

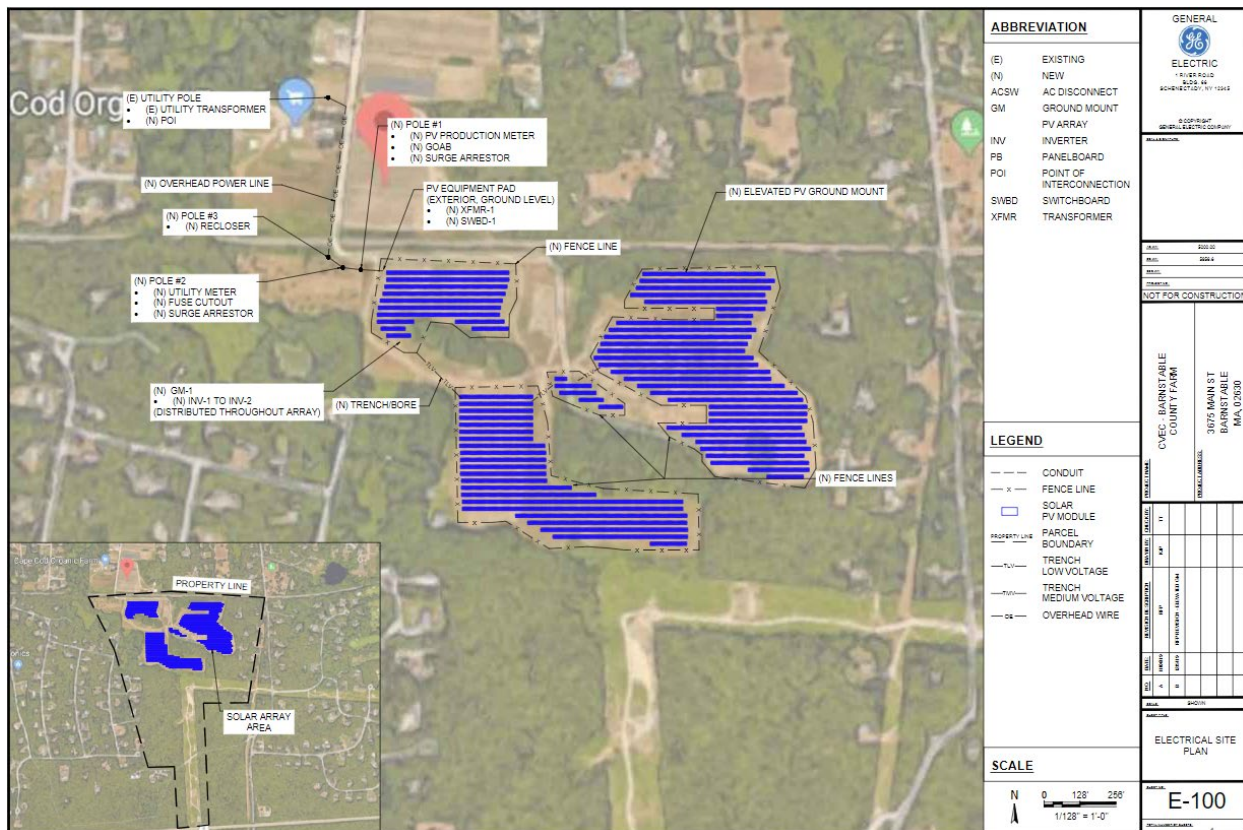


EXHIBIT A-1

ADDITIONAL EXCEPTIONS

A. Developer's use of the Premises shall be subject to the following:

NONE

EXHIBIT A-2

RENT

As described in Section 4.1 of this Agreement, the annual rent payment shall be \$455,000.¹

REDUCTION OF ANNUAL RENT PAYMENT FOR EACH \$10,000 OF UTILITY UPGRADE COSTS (IN EXCESS OF INITIAL \$10,000) ²	\$1300.00 per year	
PROPOSED HOST PURCHASE PAYMENT FOR THE PV SYSTEM ³	\$8,207,944	Contract Year 10
	\$6,986,050	Contract Year 12
	\$4,810,516	Contract Year 15
	\$2,385,180	Contract Year 20

¹ Assumes SMART Block 5 and associated adders. For each incremental SMART Block above Block 5 the annual rental payment decreases by \$48,000.

² In accordance with the provisions of Section 8.1(f)(1).

³ In accordance with Section 8.11(d), the Purchase Price shall be the greater of the Appraised Value and the Host Purchase Payment for the PV System.

EXHIBIT A-3

AGGREGATE LIABILITY CAP

As described in Section 8.5 of this Agreement, the aggregate liability cap shall be \$7,000,000.00 which excludes third party indemnification obligations.

EXHIBIT B

DESCRIPTION OF PV SYSTEM

PV SYSTEM:

Module Manufacturer: Hanwha

Nameplate Capacity: 395 kW

Approximate Annual Energy Production:

7,651,862 kWh

Guaranteed Annual Energy Production: 6,504,083 kW

Location: See Exhibit A attached.

Preliminary Specifications:

Battery Manufacturer: Tesla Powerpack

BESS Nameplate Capacity in kilowatts per two hour duration: 2,500 kW

Location: See Exhibit A _____

Mounting Systems: Pile driven foundations (pending geotechnical analysis)

PV SYSTEM ASSETS:

Inverters: Sunny TriPower 50 kW

Related Equipment: _____

Electric Lines: _____

EXHIBIT C

INSURANCE REQUIREMENTS

A. Developer's insurance obligations. Developer shall secure and maintain, at its own expense, throughout the Term of this Agreement the following insurance coverage. Developer shall provide Host with evidence, reasonably satisfactory to the Host, of its insurance hereunder, upon request.

1. ***Comprehensive commercial general liability insurance*** of at least \$2,000,000 combined single limit. This limit requirement may be satisfied by (i) the purchase of the specified limits in an individual policy, or (ii) with the purchase of additional umbrella or excess liability insurance which, in combination with the limits of the separate policies, provides the total limit required.

2. ***Excess liability*** coverage of at least \$10,000,000.

3. ***Additional insurance requirements.*** All insurance maintained by Developer shall:

a. include as additional insured the Host for obligations arising out of this Agreement. The policies shall be endorsed to require that such additional insureds receive at least thirty (30) days' notice of cancellation or non-renewal. Additionally, the Developer shall be required to provide notice to the Host of any cancellation or non-renewal at least thirty (30) days in advance of said cancellation or non-renewal.

b. the insurance may be provided on a claims-made basis.

c. in the event such insurance is cancelled or non-renewed, Developer agrees to provide a 36 month discovery period endorsement for obligations under this Agreement.

d. The insurance shall include coverage for bodily injury liability, property damage liability, advertising injury liability and personal injury liability.

e. The insurance shall include blanket contractual liability coverage, including coverage for this Agreement.

B. Host's insurance obligations. Host shall secure and maintain, at its own expense, throughout the Term of this Agreement the following insurance coverage. Host shall provide Developer with evidence, reasonably satisfactory to the Developer, of its insurance hereunder, upon request.

1. ***Commercial general liability insurance*** written on an occurrence basis and endorsed to include its independent contractors, bodily injury liability, property damage liability, personal injury liability, premises/operations liability, and broad form general liability, with limits of not less than \$3,000,000 combined single limit and annual aggregate. This limit

requirement may be may be satisfied by (i) the purchase of the specified limits in an individual policy, or (ii) with the purchase of additional umbrella or excess liability insurance which, in combination with the limits of the separate policies, provides the total limit required.

2. ***Property insurance*** on the Premises with a waiver of subrogation rights against the Developer.

EXHIBIT D
SPECIAL TERMS AND CONDITIONS APPLICABLE TO THIS
LEASE AGREEMENT

Upon the issuance of the Notice of Commercial Operation, Developer shall establish and maintain thereafter adequate financial assurance in the amount of \$595,700, to fully cover the cost of decommissioning the PV System and restoring the Premises as specified in this Agreement

EXHIBIT E

COMMON TECHNICAL SPECIFICATIONS

This Exhibit describes the technical specifications and requirements that are common to all the PV Systems. These common technical specifications are those that each PV System must meet or exceed. These specifications and requirements are not intended to be all-encompassing, nor are they intended to override Good Engineering Practice or Applicable laws and code requirements. The Developer is responsible for conformance to all relevant, prevailing codes, and the codes take precedence over these Technical Specifications. Site-specific conditions and/or local regulations may require additional specifications and requirements not included in this Exhibit.

A. Design

1. Design Life and Estimated Production Requirements

- a. Each PV System shall have a service life of twenty (20) years at rated load.
- b. The PV System must be designed so that the estimated annual energy output for the PV System, based on actual site-specific shading, azimuth, and inclination is at least 80% of the default optimal output for a fixed PV System of the same capacity in Boston as estimated by PVWATTS Version 1. PVWATTS Version 1 is available at the following website:
<http://rredc.nrel.gov/solar/calculators/PVWATTS/version1/US/Massachusetts/>

2. Additional Design Requirements - Stamped affidavits or drawings are required for the electrical and structural components of the installation.

- a. The electrical design of the PV System must be performed by a Professional Engineer (“PE”) licensed in the Commonwealth of Massachusetts.
- b. The structural design of the PV System requires a stamped affidavit from a Massachusetts-licensed PE confirming that the underlying structure or bearing stratum, is adequate to withstand the static and dynamic loads of the PV System. The analysis must include all mounted portions of the PV System, including modules, racks, ballast, and other related components. The analysis must also include all mount securing portions of the PV System, including any anchors and penetrating devices.

B. Equipment

1. **General** - All mounting materials for the PV System shall be corrosion-proof aluminum or 316 stainless steel. If the Developer determines the use of galvanized structural steel is warranted, the extent of Developer’s use of such material shall be clearly outlined in the Developer’s Proposal. All materials

subject to exposure to the sun must be sunlight resistant material. All conductors shall be copper. Bare copper conductors exposed to free air shall be tin-plated. Alternative materials must be approved by the Host and CVEC.

2. Inverters

- a. Inverter efficiency shall be equal to or greater than 93%.
- b. Installation shall meet the current UL 1741/IEEE Standard 1547, MEC codes and the latest applicable ANSI and FCC standards and addenda dated prior to the award of the purchase order for this procurement.
- c. The point of interconnection for the inverter(s) shall not be in parallel with any backup generators at the site during emergency generation.
- d. Each inverter shall include:
 - i. Automatic operation including start-up, shutdown, self-diagnosis, fault detection and alarming.
 - ii. Ground fault protection.
 - iii. NEMA 2R rating for interior electrical room location or NEMA 3R for any exterior locations.
- e. The inverter(s) must have secure, weatherproof housing in the exterior installation.
- f. The inverter(s) housing must be a sound structure designed to withstand all dead load, live load, wind and seismic loads for the area.
- g. The inverter(s) must be located to provide adequate air flow for cooling.
- h. Lightning protection must be provided for the inverter(s) housing.

3. **Batteries** – The battery energy storage system will be DC coupled and meet all NEC requirements.

4. **Combiner & Junction Boxes** - Combiner boxes and junction boxes which are located outdoors shall have the following characteristics: NEMA 4X enclosure, 600 VDC, and listed by a nationally recognized testing laboratory. All PV System output circuits shall be protected by lightning arrestors of the appropriate voltage rating.

5. **DC Disconnect Switches** - The DC disconnect(s) shall be 600 VDC, heavy-duty safety switch and be listed by a nationally recognized testing laboratory. Where

located outdoors, disconnects shall be NEMA 3R. Where fused disconnects are used, the fuse shall have appropriate DC ratings.

6. **AC Disconnects** - All AC disconnects shall be rated to interrupt the necessary voltage and current for the application and be listed by a nationally recognized testing laboratory. Where located outdoors disconnects shall be NEMA 3R. The AC disconnect shall be appropriately located per the utility's requirements and its location shall be noted on the one-line electrical drawing.
7. **Interconnection Circuit Breaker** - The Developer shall provide the appropriate size, make, and model circuit breaker for the specified AC interconnection switchgear that is suitable for back feed in accordance with NEC 690.64.
8. **Wiring and Conduit**
 - a. All system wiring shall be of an MEC approved wiring method. All conductors shall have a temperature rating of 90 degrees C or lower.
 - b. All conductors shall be copper, sized appropriately to minimize line losses.
 - c. All conduits used in interior building applications shall be electro metallic tubing ("EMT").
 - d. All exterior conduits shall be hot dipped galvanized EMT with weather tight compression fittings and expansion joints as required.
 - e. Expansion fittings shall be used in conduit runs in compliance with MEC article 300.7. A value of 144°F (80°C) shall be used for the maximum change in temperature (delta T) in the calculation of conduit expansion.
 - f. All conduits shall be bonded at each end using listed bonding bushings.
 - g. Where conduit is attached to roofs, fully flashed, non ferrous stanchions shall allow for expansion and contraction. For roof-mounted conditions, conduits shall be supported at a height greater than 3.5 inches by fully flashed, non ferrous stanchions. Manufacturer's approved surface applied stanchions shall be used on membrane roofs.
 - h. All outdoor electrical enclosures shall be NEMA 3R and have watertight connections.
 - i. Exposed cables shall be listed as sunlight resistant and have a temperature rating of 90°C. These conductors shall be properly secured and well supported. Conductors are not permitted to be resting on the abrasive surfaces such as asphalt shingles.

- j. All wiring and conductors installed in subsurface applications shall be housed in utility grade PVC conduit(s) sufficiently covered and include trench warning identification. Spare conduits shall also be installed with a volumetric capacity of at least 25% of the original service. In the event subsurface conduits are exposed to vehicular traffic, concrete encasement shall be included.

9. PV System Grounding - The PV System shall be properly grounded in accordance with all applicable requirements of local electrical, MEC and NEC codes.

10. PV Array

a. PV Modules

- i. Modules shall be UL 1703 listed.

b. Mounting Systems

- i. In all installations, the mounting system shall promote ambient air circulation beneath and above modules to enhance efficiency. The lower edge of the panels on the mounting should be designed to eliminate power production losses from snow coverage and provide a comfortable working height for maintenance.
- ii. Modules shall be individually removable for maintenance and repair.
- iii. The mounting system, regardless of application, shall be designed to meet or exceed requirements of all applicable state and local building codes, including wind speed, snow and seismic load requirements. The Developer shall describe and document the wind and snow loads that the PV System is designed to withstand.
- iv. For ballasted roof mounted systems, the Developer shall provide a manufacturer's comprehensive designed system. The Professional Engineer responsible for this portion of work shall also be licensed in the state of Massachusetts.
- v. In the event an existing lightning protection system is modified or augmented, the Developer is responsible for UL recertification.
- vi. Each module row or column must be separated to minimize shadowing effects on other modules. The spacing between modules shall be noted on the PV layout drawing.
- vii. For all PV Systems with roof penetration points through previously warranted roofs, and provided that Host has delivered a true, complete and

correct copy of such roof warranty to Developer prior to the Effective Date, then the Developer is responsible for designing and installing the PV System in compliance with such roof warranty to ensure that it is not voided.

11. Installation Requirements

- a. If the PV System interconnects to a building owned by Host and located on the Property, the output of the PV inverter(s) shall not interfere with or damage the function of existing building electrical distribution systems. All serviceable components must be “accessible” as defined by the MEC article 100. The installation shall comply with all applicable federal, state and local building codes including the latest Massachusetts Electrical Code. The Developer shall not, under any circumstance, operate switchgear forming part of the main distribution system. The Developer shall coordinate with the Host to operate the switchgear to disconnect or re-energize loads. Advanced notice shall be given to the Host for interconnection of PV System output or if the switchgear is to be turned off.
- b. The PV System electrical work must be performed by individuals licensed in Massachusetts.
- c. The PV System must be installed according to the manufacturer’s instructions and in compliance with all applicable codes and standards.
- d. The Developer is responsible for all aspects of the local electric utility interconnection agreement including the submission of Schedule Z to accommodate any Net Metering or Alternative On-bill Credit arrangement requested by CVEC or the Host. An application must be submitted to the local electric utility, with or without Schedule Z as appropriate, to start the formal interconnection process, and sufficient lead time should be allowed to successfully achieve interconnection under the local electric utility interconnection standards. All PV Systems must have an appropriate electric utility interconnection agreement in place at the time of interconnection to the utility grid.
- e. All pertinent permits and inspections must be obtained and copies kept on file as may be required by local codes and/or state law.
- f. All PV Systems shall include appropriate surge arresters or other means to protect the PV System components from lightning and other surge events. It is the responsibility of the Developer to ensure that the installation meets any local, state or federal building and electrical laws that address lightning and surge protection.

12. PV System Warranty Requirements

- a. **Developer Warranty.** All PV Systems must have a minimum five (5) year labor warranty provided by the Developer to protect the Host against defective workmanship, PV System or component breakdown, or degradation in electrical output of more than fifteen percent from their originally rated electrical output during the warranty period. The warranty must cover the PV System, including PV modules (panels) and inverter(s), racking, conduit run, and components, and provide for no-cost repair or replacement of the PV System, components, including any associated labor during the warranty period.
- b. **Manufacturer Warranty.** All major equipment must meet the following minimum manufacturer warranties:
 - i. **Photovoltaic Module:** Minimum of one (1) year product warranty from date of sale to first consumer purchaser for product workmanship and materials, plus a minimum performance warranty of twenty (20) years within which time the module will produce, under standard test conditions, a minimum of 80% of the product’s minimum rated power at time of sale.
 - ii. **Inverters:** Minimum of ten (10) years product warranty from date of sale to first consumer purchaser for product workmanship and materials.
 - iii. **Batteries:** Minimum of ten (10) years product warranty from date of sale to first consumer purchaser for product workmanship and materials.
 - iv. **Revenue grade production meters:** Minimum of two (2) years following the effective commercial operation date that the meter system will be free from all defects in design, materials and workmanship.
 - v. **Mounting equipment:** The Developer shall obtain from the mounting system manufacturer(s) a warranty that the mounting system(s) will be free from all defects in design, materials and workmanship for a period of ten (10) years following the effective commercial operation date.

13. Electricity Production Meter Requirements - All PV Systems must have a dedicated revenue grade production meter that:

- a. is readily accessible and easily understood by the Host;
- b. records the PV System’s AC output as measured on the AC side of the PV System’s isolation transformer;
- c. shall be separate from the local utility billing meter and shall not interfere with utility billing or net metering;
- d. must be a standard utility “revenue quality” meter that conforms to applicable American National Standards Institute (“ANSI”) C-12 standards and shall be

installed on the AC output side of the PV System's inverter or isolation transformer; and

- e. shall have a visible display of cumulative energy produced by the PV System and be available for periodic testing and/or re-calibration, if necessary.

- 14. Automated Reporting** - All PV Systems must include an automated reporting system, i.e. Data Acquisition System ("DAS") which will report to the Massachusetts Renewable Energy Trust ("MRET") Production Tracking System ("PTS") and detail view be accessible to CVEC and Host. In addition, the public will have access to a Public View from the DAS. Where Battery Energy Storage System is proposed, automated and manual system controls must be provided which will be accessible to CVEC and Host offsite through high speed internet online access.

C. Commissioning Requirements

- 1. Commissioning Procedure** - At a minimum, the Developer's sample testing and commissioning plan shall cover:
 - a. measurement and recording of voltage-open-circuit of every source circuit;
 - b. performance of inverter startup tests as specified by the inverter manufacturer in the inverter operation manual;
 - c. measurement of AC power and comparison to predicted power based upon estimated irradiance level;
 - d. performance of loss of grid test and verification of five minute delay upon restoration of the grid; and
 - e. measurement and recording of I_{mp} of every source circuit, measured at each combiner box (source circuit measurements should be done under uniform irradiance conditions and the time of the first and last measurements taken at each combiner box should be recorded).
- 2.** The Developer shall verify that the data acquisition/display system and, where applicable, the Battery Energy Storage System controls, are functioning properly, comparing independent measurements to data acquisition display and able to switch Battery Energy Storage System configurations and operations.
- 3.** The Developer shall correct, at no additional cost to the Host, any deficiencies uncovered by the testing prior to commissioning of the PV System.

D. Training Requirements

The Developer shall train the Host or staff at the Premises on basic principles of operation, maintenance requirements, on-line data monitoring and system controls, and safety issues that are specific to the PV System installed (including points of contact in emergency situations). An operations manual to accompany the training will be delivered to the Host and to CVEC.

E. Documentation Requirements

- 1. Documentation** – The Developer shall prepare an Operations and Maintenance manual for the PV System. In addition, the Contractor shall provide CVEC and the Host each with one (1) printed copy and one (1) digital copies on CD of the information listed below.
- 2.** The documentation shall include:
 - a. A complete set of all approved shop drawings, a list of equipment and products used, and product literature. The list of equipment shall include the manufacturer, brand name, model (if applicable), equipment components, recommended maintenance procedures for each piece of equipment, approximate amount of product installed and materials contained in the product.
 - b. Record drawings showing, to scale, the location of all arrays, locations of major equipment, including combiner box clusters, all underground and major conduit runs, grounding electrodes and specific locations to building or utility connections points. The record drawings shall also contain detailed DC and AC electrical schematics.
 - c. The Permission to Operate provided by the Local Distribution Company.
 - d. Trouble shooting guidelines.
 - e. PV System maintenance schedule and procedures.
 - f. Contact information for technical assistance and parts ordering.
 - g. Records of all warranties and serial numbers of all warranted equipment.

EXHIBIT F
SERVICES AGREEMENT BETWEEN CVEC AND HOST

EXHIBIT G
[RESERVED]

UPON RECORDING RETURN TO:

Distributed Solar Development, LLC
General Counsel
2690 Balltown Road
Building 610
Miskayuna, NY 12309
Schenectady, NY 12345
Attention: Jennifer Gerrard, Esq.

SPACE ABOVE FOR RECORDER'S USE ONLY

MEMORANDUM OF LEASE

Pursuant to M.G.L. c. 183, §4

THIS MEMORANDUM OF LEASE (this “*Memorandum*”) is dated as of the ___ day of _____, 2020, by and between the COUNTY OF BARNSTABLE, a Massachusetts municipal corporation (“*Owner*”), and MAIN STREET SOLAR PROJECT 2020, LLC, a Delaware limited liability company (“*Tenant*”).

1. Fee Parcel. Owner owns and maintains approximately ___ acres of land located at 3675 Main Street, Barnstable, MA 02630, as more particularly shown on Assessor’s Map ___, Block __, Lot __ (the “*Fee Parcel*”).
2. Lease. Owner and Tenant entered into that certain Lease Agreement for Ground Mounted Solar Photovoltaic Energy Facility, dated as of _____, 2020 (the “*Lease*”), pursuant to which Owner (a) leased to Tenant, and Tenant leased from Owner a portion of the Fee Parcel consisting of approximately ___ acres on land, as more particularly described in the Lease and as more specifically described on Exhibit A attached hereto (the “*Site*”), for the purposes of constructing, interconnecting and operating a solar power generation facility and battery energy storage facility on the Site (the “*Project*”), and (b) granted and conveyed to Tenant certain Easements (as such term is defined in the Lease).
3. Term of Lease. The initial term of the Lease commenced on _____, 2020 (the “*Commencement Date*”), and shall end on the twentieth (20th) anniversary of the Commercial Operation Date (as

such term is defined in the Lease), unless sooner terminated in accordance with the terms of the Lease. The initial term of the Lease may be extended for one additional five (5) year period.

4. Provisions Binding on Parties. The provisions of the Lease to be performed by Owner and Tenant are intended to and shall bind or benefit the respective parties hereto and their respective successors and assigns, as applicable, at all times.
5. Purpose of Memorandum of Lease. This Memorandum is prepared solely for purposes of providing constructive notice of Tenant's rights under the Lease to third parties in accordance with M.G.L. c. 183, §4, and in no way modifies the provisions of the Lease.
6. Counterparts. This Memorandum of Lease may be executed in any number of counterparts, each of which when taken together shall constitute one and the same original.

[Remainder of Page Intentionally Left Blank

Signature Pages Follow]

IN WITNESS WHEREOF, the undersigned have executed this Memorandum of Lease as of the date and year first above written.

OWNER:

COUNTY OF BARNSTABLE,
a Massachusetts municipal corporation

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

COMMONWEALTH OF MASSACHUSETTS §
§
COUNTY OF _____ §

On this _____ day of _____, 2020, before me, the undersigned notary public in and for the Commonwealth of Massachusetts, personally appeared _____, _____, and _____, members of the County of Barnstable Select Board, who each proved to me through satisfactory evidence of identification, which was photographic identification with signature issued by a federal or state governmental agency, oath or affirmation of a credible witness, personal knowledge of the undersigned, to be the person(s) whose name(s) are signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose in the foregoing capacity.

Notary Public

Print Name: _____

My Commission Expires: _____

TENANT:

MAIN STREET SOLAR PROJECT 2020, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

STATE OF NEW YORK §
 §
COUNTY OF _____ §

On the ___ day of _____, in the year 2020, before me, the undersigned, a notary public in and for said state, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument..

Notary Public

EXHIBIT A

DESCRIPTION OF LEASE PARCEL

Assessor's Map ____, Block __, Lot __

Address:

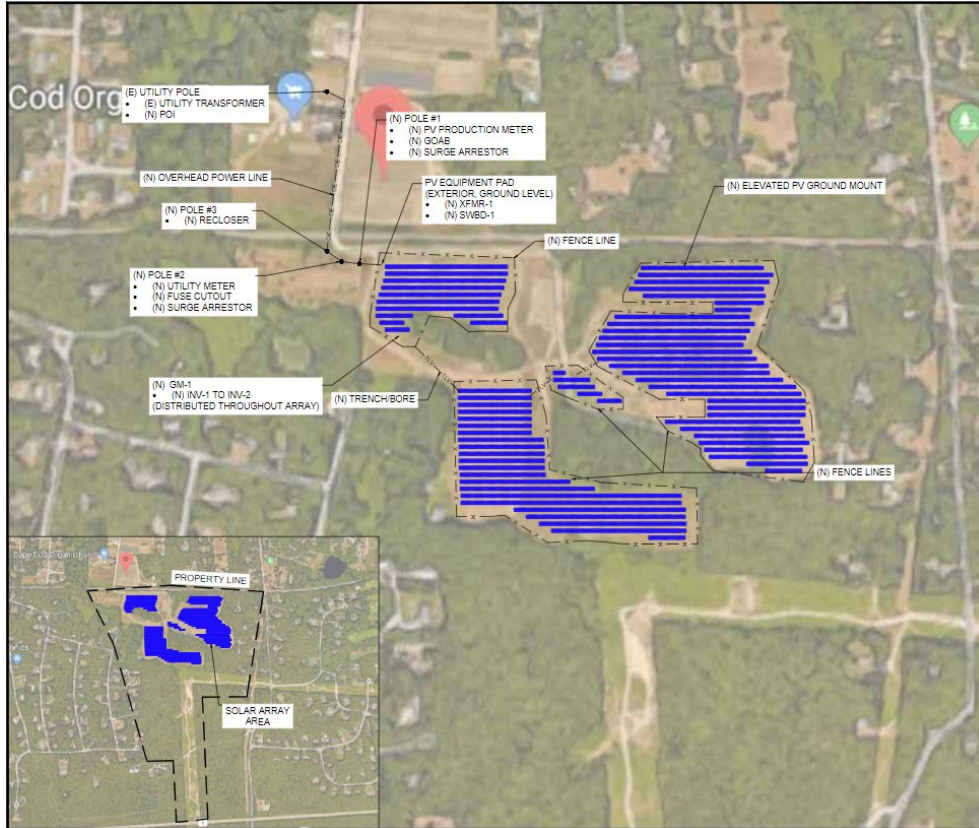
Barnstable County Farm
3675 Main Street
Barnstable, MA 02630

System Description:

Ground-mounted solar photovoltaic generating system and battery storage located at the above address, as illustrated in the Sketch Plan entitled "Barnstable County Farm PV System" as such Sketch Plan may be amended or revised from time to time.

Description of the Premises:

The Premises depicted on the attached Sketch Plan entitled "Barnstable County Farm PV System" and shall further include all necessary electrical and other utility sources, together with a non-exclusive easement for ingress and egress from a public right-of-way, to the Premises for the purpose of design, procurement, installation, testing, commissioning, ownership, operation, inspection, maintenance, repair and improvements and removal of the PV System. In the event there are not sufficient electric and other necessary utility sources located on the Premises to enable Developer to transmit Net Energy generated by the PV System to the Point of Delivery, Host agrees to grant Developer or the Distribution Company the easement rights to install such utilities on, over and/or under the Premises and the Property, as necessary to operate the PV System, provided, however, the location of such utilities shall be as reasonably designated by Host.



ABBREVIATION

(E) EXISTING
 (N) NEW
 ACSW AC DISCONNECT
 GM GROUND MOUNT
 PV ARRAY
 INV INVERTER
 PB PANELBOARD
 POI POINT OF INTERCONNECTION
 SWBD SWITCHBOARD
 XFMR TRANSFORMER

LEGEND

--- CONDUIT
 -x- FENCE LINE
 □ SOLAR PV MODULE
 --- PROPERTY LINE
 --- TRENCH BORE
 --- TRENCH LOW VOLTAGE
 --- TRENCH MEDIUM VOLTAGE
 --- OVERHEAD WIRE

SCALE

N 0 125' 250'
 1/128" = 1'-0"

GENERAL

GE ELECTRIC
 1100 RIVER ROAD
 SUITE 400
 WASHINGTON, VT 05676

PROJECT NO. 2023-02
 SHEET NO. E-100

NOT FOR CONSTRUCTION

CVEC - BARNSTABLE COUNTY TOWN
 3975 MAIN ST
 BARNSTABLE MASS 02706

ELECTRICAL SITE PLAN

E-100