**LAND LEASE AGREEMENT*[[1]](#footnote-2)***

This land lease agreement (“**Lease**”) is entered into as of the “**Effective Date**” (as defined in Subsection 19(k)). This Lease is made by and between \_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Owner**”) with an address at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“**Tenant**”; together with Owner, referred to jointly as the “**Parties**”), a limited liability company, organized and existing under the laws of the State of Vermont, with an address at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**WHEREAS,** Owner holds title to an approximately \_\_\_\_ acre parcel of real propertylocated in the Town of \_\_\_\_\_\_\_\_\_\_\_, State of Vermont (“**Property**”; as described more fully in attached Exhibit “A”);

**WHEREAS**, Tenant desires to lease from Owner and Owner desires to lease to Tenant an approximately \_\_\_\_\_ acre portion of the Property (the “**Site**”; as described more fully in attached Exhibit “B”), for the site of a net-metered community solar electric facility (the “**Solar Facility**”; as defined in Subsection 5(a)), which, pursuant to a separate agreement and at Tenant’s expense, will be constructed by an entity selected by Tenant (“**Developer**”), and in which members of the Tenant (“**Participants**”) separately purchase percentages of Solar Facility from Developer;

**WHEREAS**, the power from the Solar Facility will be fed into the Green Mountain Power (GMP) electric grid and GMP will issue credits representing the power to Participants and Owner as follows: a portion of which credits will be allocated to Owner to offset Owner’s electrical use as land lease payments for use of the Site (“**Lease Payments**”; as defined in Section 3). The balance of such credits will be allocated on a pro-rata basis to Participants, pursuant to separate agreements with GMP and via “net metering” (as defined by Public Service Board Rule 5.100), to offset Participants’ electrical use;

**WHEREAS**, Tenant has been organized for the purpose of managing certain administrative and financial matters on Participants’ behalf, including acting as liaison with Owner and GMP;

**WHEREAS**, the Parties desire to set forth the terms and conditions of the lease of the Site through this agreement;

**NOW, THEREFORE**, in consideration of all covenants contained in this Lease, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to be legally bound as follows:

**Section 1: Lease of Premises**.

Owner agrees to lease to Tenant and Tenant agrees to lease from Owner the Site for the purposes described herein, together with all required utilities and other Easements (as defined in Subsection 5(e)) and rights of access to the Site, to have and to hold the Site, the Easements and rights of access, together with all rights, privileges, easements and appurtenances thereunto belonging and attaching, unto Tenant. This Lease sets forth the covenants and agreements that the Parties agree to comply with during the Term (as defined in Subsection 2(a)).

**Section 2: Term**.

1. The term of this Lease (the “**Term**”) shall be twenty five (25) years, commencing on the Effective Date and expiring on the twenty fifth (25th) anniversary of the Effective Date, unless otherwise terminated at an earlier date in accordance with the terms of this Lease.
2. Provided that Tenant is not in default under the Lease, Tenant, upon mutual agreement with the Landowner, shall have the option to renew this Lease for an additional term of a length agreed upon by the Parties.

**Section 3: Lease Payments**.

The Lease Payments made to Owner by Tenant for the use of the Site and Easements shall be the electric output of **[five percent (5%)]** of the power production of the Solar Facility, which shall be paid by net meter credits to **Owner’s GMP Account# \_\_\_\_\_\_\_\_\_\_\_\_** or any successor account that may be designated by Owner.

**Section 4: Feasibility and Permitting Period**.

(a) Commencing on the Effective Date and terminating twelve (12) months thereafter (the “**Feasibility Period**”), which period may be extended pursuant to Section 4(c), Tenant and its invitees and licensees are hereby granted the right, at no additional cost to Tenant, to enter upon the Site and Property and conduct such analyses, tests, reviews, inspections and studies (collectively, the “**Tests**”) as are required to determine the suitability of the Site for Tenant’s intended use and to obtain any and all government certificates, permits, variances, licenses, agreements, and entitlements necessary for said use (collectively, the “**Approvals**”). Such Tests may include, but are not limited to, surveys, soil tests, environmental evaluations, solar assessments, and other Tests as Tenant or its invitees or licensees find necessary. In addition, Tenant may obtain an abstract or preliminary title report (the “**Title Report**”) regarding the Property from a title insurance company of its choice. Tenant shall not be liable to Owner or any third party for any pre-existing defect, condition or encumbrance on or with respect to the Property, title to the Property and/or any improvements located on the Property, regardless of whether such defect, condition or encumbrance is disclosed by the Tests, the Title Report, or otherwise known by Tenant. The Owner shall not bear the costs of the Test and Approvals.

(b) During the Feasibility Period and throughout the Term, Owner shall cooperate with Tenant, shall execute all documents required to obtain all permits, zoning, and land use approvals, and authorize Tenant and Tenant’s invitees and licenses to act as Owner’s agents for the limited purpose of obtaining such permits and approvals regarding this Solar Facility, the Site and the Easements. Owner shall permit Tenant’s intended use of the Site and the Easements in compliance with zoning, land use, utility service and building laws, rules, ordinances, permits, approvals, variances, and other governing rules and regulations. Owner shall not take any action that would adversely affect Tenant’s ability to obtain or maintain any governmental approval.

(c) Tenant shall have the right to extend the Feasibility Period for additional six (6) month periods (each a “**Feasibility Extension Period**”; collectively the “**Feasibility Extension Periods**”) by providing written notice thereof to Owner at least ten (10) days prior to expiration of the Feasibility Period or the Feasibility Extension Period then in effect, provided that: (i) Tenant is diligently and in good faith seeking to obtain the Approvals (as defined in Section 10); (ii) a required Approval has not been rejected without an opportunity to appeal; and (iii) Tenant pays to Owner the sum of **\_\_\_\_\_\_\_ ($\_\_\_.00)** for each Feasibility Extension Period that Tenant extends in accordance with the terms of this Lease. Tenant shall make each such feasibility extension payment prior to the commencement of the Feasibility Extension Period to which such payment relates.

(d) If the state of title to the Property as set forth in the Title Report indicates any liens, claims or encumbrances which may interfere with Tenant’s use and operation of the Site and/or the Easements, Tenant shall have the right but not the obligation to either (i) attempt to discharge such liens, claims and/or encumbrances, if possible, and deduct the cost thereof from the Lease Payments due in accordance with Section 3 of this Lease, or (ii) terminate this Lease by providing written notice thereof to Owner. Upon and after such termination, neither Owner nor Tenant shall have any further obligation or liability under this Lease except as otherwise expressly provided herein.

**Section 5: Use.**

(a) Tenant is granted the sole and exclusive right to use the Site (as described more fully in Exhibit “B”) for the purpose of constructing, installing, removing, replacing, reconstructing, maintaining and operating a solar array, including solar panels, equipment, equipment shelters and buildings, electronics equipment, generators, electric cable, poles, conduits, and, other equipment, improvements, and such other personal property, fencing and landscaping within and around the perimeter of the Site or portion thereof (the “**Solar Facility**”; as described more fully in Exhibit “B”). Any and all such materials installed in, on, or under the Property shall be deemed property of the Participants, and shall not become fixtures or be deemed a permanent part of the Property. Tenant shall have the right to alter, replace, expand, enhance and upgrade the Solar Facility at all times (as defined below in subsection 5(h)) during the Term. Tenant shall require Developer to construct the Solar Facility and any modifications in material compliance with all applicable laws, rules, regulations, ordinances, permits, approvals and variances.

(b) Tenant shall keep and maintain the Solar Facility and the Site in good condition and repair, and shall maintain and operate the Solar Facility in material compliance with all applicable federal, state, and local laws, rules, regulations, ordinances, permits, approvals, and variances. Except, Tenant is not liable for normal wear and tear and casualty not caused by Tenant or, its invitees or licensees.

(c) Tenant has the right to fence the Site and the Solar Facility, and the right to clear and keep the Site and Easements clear of all trees, bushes, rocks, crops and other vegetation using mechanical means, provided that no pesticides or herbicides shall be used at any time. During the construction or any required major repair or reconstruction of the Solar Facility only, Tenant shall have the right to use portions of the Property adjacent to the Site in connection with the construction, repair or reconstruction of the Solar Facility

(d) Pursuant to a separate agreement between Tenant and Developer, the Parties expect that Developer will pay for all utility services used at the Site and the Parties shall not, therefore, be required to do the same. If the Site does not have utility services, Developer shall have the right to cause utility services to be installed at the Site at Developer’s sole expense and the Parties shall not, therefore, be required to do same. Owner agrees to use reasonable efforts to assist Tenant in acquiring any necessary utility services to the Site. Owner is not liable for any costs incurred for Solar Facility’s utility services.

(e) As partial consideration for the Lease Payments, Owner hereby grants to Tenant, for the benefit of Tenant and its invitees, licensees, successors, and assigns, during the Term or any extension thereof, easements in, under, and across the Property: (i) for ingress, egress and access to the Site, by foot and motor vehicles, including trucks and heavy equipment; (ii) to install utility services; (iii) to install storm water management systems; (iv) for the installation and maintenance of equipment, utility wires, poles, cables, conduits, drainage lines, and pipes to operate the Solar Facility and accommodate the permitted use of the Site; and (v) to capture, use and convert the unobstructed solar resources at the Site (collectively, the “**Easements**”). The Easements shall be located on the Property, in the areas described and depicted in Exhibit “B” attached hereto, or as required in order to effectively operate the Solar Facility, and shall have the same term as this Lease.

(f) In the event that any utility company requires an easement not otherwise located within the area of the Easements to provide utility services to the Site, Owner agrees to grant such necessary easement to said utility company. Such additional easements in favor of the utility companies shall be located within the Property in one or more areas mutually approved by and acceptable to Owner, such utility companies, and Tenant. Owner shall not be entitled to payment of any additional amount for use of any Easements or any electromagnetic, visual, view, light, noise, vibration, electrical, or other effects attributable to the Easements or other aspects of the Solar Facility.

(g) The Easements are non-exclusive easements to and for the benefit of Tenant and its invitees, licensees, successors, and assigns. Tenant shall have the right to construct, maintain and repair a roadway over the aforementioned Easements, including such work as may be necessary for slope and drainage and to install such poles, wires, pipes, cables, conduits and related appurtenances as shall be necessary to install services and systems, as defined in Subsection 5(e), for the Solar Facility. **If Owner or other tenants, employees, agents, contractors, licensees or invitees of Owner damage or disturb the Easements, then Owner and Owner’s other tenants, employees, agents, contractors, licensees and invitees shall share in the reasonable and proportionate costs incurred to repair such Easements.**

(h) Tenant and its invitees and licensees shall have reasonable access to the Site and the Easements for the purposes of constructing and maintaining the Solar Facility during the Term, provided that, barring exigent circumstances, all work shall be performed during daylight hours only. Tenant and its invitees and licensees shall have the right to park their vehicles on the Property during construction, repair, replacement, and/or servicing of the Solar Facility. All other access to the Property by the Tenant and its invitees and licensees will only be allowed through the advance notice and approval of the Owner.

(i) Tenant covenants that it shall comply with the decommissioning plan approved by the Public Service Board in connection with the issuance of its Certificate of Public Good.

**Section 6: Assignment**.

(a) [Upon notice to Owner and subject to Owner’s approval, such approval not to be unreasonably withheld,][[2]](#footnote-3) Tenant shall have the right to assign or transfer its rights under this Lease, in whole or in part, to any person or any business entity at any time, subject to the assignee assuming all of Tenant’s obligations hereunder.

(b) After delivery by Tenant to Owner of an instrument of assumption by an assignee wherein such assignee assumes all of the obligations of Tenant under this Lease, Tenant will thereafter be relieved of all liabilities and obligations pursuant to this Lease.

(c) Owner may assign its rights and obligations under this Lease to its successor in interest in and to the Property without the prior consent of Tenant. The Parties agree that Tenant’s rights under this Lease shall continue for the full Term regardless of a sale, conveyance, transfer or other disposition of the Property or any part thereof or interest therein. **Owner agrees that all sales, leases and transfers of the Property or any part thereof, and the granting of any easement, encumbrance or interest in and to the Property or any part thereof, shall, during the Term and any extension thereof, be subject to this Lease**. Owner also agrees that all such sales, leases, and transfers of the Property and granting of any easement or interests shall be subject to Tenant’s rights and options under this Lease for the duration of the Term and shall not adversely affect the use of the Site or Easements by Tenant and its invitees and licensees.

**Section 7: Taxes.**

(a) As of the date that the Solar Facility becomes operational (the “**Commencement Date**”), Tenant agrees to pay, or ensure payment will be made when due, for any increase in real estate taxes, municipal charges and assessments, as determined by tax authorities, due against the Property because of the Solar Facility’s presence on the Property. Owner shall cooperate with Tenant in the protest of any tax assessment by providing Tenant with information regarding the relative valuation of the Property and allowing Tenant to participate in any proceeding related to such tax protest. Nothing in this Subsection shall be construed as limiting Tenant’s right to contest, appeal, or challenge any tax assessment.

(b) Tenant shall pay when due all personal property taxes that are directly attributable to the presence or installation of the Solar Facility on the Property.

**Section 8: Removal of Solar Facility**.

(a) Tenant shall have the right at any time during the Lease to remove the Solar Facility without the consent of the Owner. If Tenant intends to remove the Solar Facility prior to the Term’s expiration, Tenant shall provide the Owner prior written notice of such intent to remove the Solar Facility at least \_\_days prior to such removal.

(b) Upon written request of Owner, given to Tenant ten (10) days or more prior to the expiration or earlier termination of this Lease, all personal property and trade fixtures of Tenant, Participants, Developer, and/or other third parties, specifically including, but not limited to, the Solar Facility, shall be removed by Tenant from the Site within \_\_\_\_\_\_\_\_\_\_\_\_ days after the expiration or earlier termination of this Lease or as soon thereafter as weather and ground conditions reasonably allow.

**Section 9: Liability Insurance**.

At its sole cost and expense, Tenant shall procure and maintain during the Term a Commercial General Liability policy issued by a company licensed to do business in Vermont by the Department of Financial Regulation. The policy shall insure Tenant and name Owner as an additional insured in the event of liability for injury or death of a person or persons or damage to property occasioned by or arising out of or in connection with Tenant’s occupation and use of the Site or activities thereon.  [Tenant’s insurance policy shall provide a limit of at least $100,000 for a residential facility or a limit of at least $300,000 coverage for non-residential facilities, as formerly required by the Vermont Public Service Board Rule 5.100 and the GMP net-metering tariff.]

**Section 10: Termination**.

(a) Tenant may terminate this Lease at any time, in its sole discretion, upon written notice to Owner prior to the Commencement Date.

(b) Further, this Lease may be terminated by Tenant immediately, at any time, upon giving written notice to Owner, and if: (i) Tenant cannot obtain all governmental certificates, permits, variances, leases or other approvals (each an “**Approval**”; collectively, the “**Approvals**”) and/or any easements required for the installation and operation of the Solar Facility as contemplated hereunder; (ii) any Approval is canceled, terminated, or expires or lapses; (iii) Owner fails to deliver to Tenant any non-disturbance agreement or subordination agreement required hereunder (as defined in Subsection 16(b)); (iv) Owner does not have proper ownership of the Property and/or authority to enter into this Lease; (v) Tenant permanently and completely removes the Solar Facility (as defined in Subsection 8(a)); (vi) Tenant determines that the Property contains Hazardous Substances (as defined in Subsection 12(a)) and such Hazardous Substances were not introduced to the Property by Tenant; or (vii) Owner is in default hereunder and fails to cure such default within the periods specified in Section 15.

(c) **Tenant shall have the right at any time prior to the expiration of the Feasibility Period and any Feasibility Extension Period to terminate this Lease by providing written notice to Owner** if: (i) Tenant is unsuccessful in obtaining the permits necessary for the solar array; or (ii) in the sole and absolute discretion of the Tenant, Tenant determines that the Site are not suitable for the use of a solar array; (iii) or that the construction and operation of the Solar Facility on the Site would not be in the best interest of Tenant. Upon and after such termination, neither Owner nor Tenant shall have any further obligation or liability under this Lease except as otherwise expressly provided in this Lease.

(d) Any termination of this Lease pursuant to this Section 10 shall not constitute a waiver of Parties’ rights under Section 11 and Section 12. Tenant, upon termination, shall, at its sole cost and expense, restore the Site as reasonably possible to its original condition.

**Section 11: Indemnity and Arbitration**.

(a) The Parties agree to indemnify and hold harmless one another from and against any and all administrative and judicial actions and rulings, claims, causes of action, demands and liabilities including, but not limited to, damages, costs, expenses, assessments, penalties, fines, losses, judgments and reasonable attorney fees (collectively, “**Losses**”). The Parties must indemnify against Losses to the extent such Losses are caused by or arise out of (i) the negligent acts or omissions of the indemnifying party; or (ii) a breach of, or default by, the indemnifying party under this Lease that has not been cured in accordance with the terms hereof. Notwithstanding the foregoing, this indemnification shall not extend to Losses exclusively arising from the negligence or intentional misconduct of the indemnified party.

(b) The indemnifying party’s obligations under this section are contingent upon (i) its receiving prompt written notice of any event giving rise to an obligation to indemnify the other party hereto, and (ii) the indemnified party’s granting such indemnifying party the right to control the defense and settlement of the matter for which indemnification is being given, provided that no such settlement shall be agreed to or otherwise effective unless the same has been approved in advance by the indemnified party, such approval has not been unreasonably withheld, and the indemnified party shall have the right to participate in such defense with counsel selected by the indemnified party, and all costs and expenses of such counsel selected by the indemnified party shall be borne exclusively by the indemnified party.

##### (c) **In the event a dispute shall arise between the Parties with respect to this Lease the dispute shall be submitted to binding arbitration in accordance with the rules then prevailing of the American Arbitration Association. The arbitrator’s decision shall be final and binding, and judgment may be entered thereon.** The cost of any such arbitration shall be paid as determined by the arbitrators. The judgment rendered by the arbitrators may be entered into any court of competent jurisdiction.

**Section 12:**  **Hazardous Substances**.

(a) Owner hereby represents and warrants that it has no knowledge of any substance, chemical, or waste on the Property that is identified as hazardous, toxic, or dangerous in any applicable federal, state, or local law or regulation (collectively, the “**Hazardous Substances**”). Owner has not introduced or used, and shall not introduce or use, any Hazardous Substance on the Property in violation of any applicable law. Owner shall be responsible for, and shall promptly conduct, any investigation and remediation as required by any applicable federal, state, and local laws or regulation of all spills or other releases of any Hazardous Substance caused solely by Owner or any employee, agent, licensees and invites, contractor, representative or affiliate of the Owner, that have occurred or may occur on the Property during the Term.

(b) Tenant hereby represents and warrants that it shall not: (i) bury underground or discharge into the sewage system at the Property any Hazardous Substances, or (ii) use the Property as a storage site for Hazardous Substances, except minimal quantities used in the ordinary course of business in accordance with all applicable environmental laws.

(c) The Parties each agree to defend, indemnify, and hold each other harmless from and against any and all Losses (as defined in Subsection 11(a)) that indemnified party may suffer or incur due to the existence or discovery of any Hazardous Substances on the Property or the migration of any Hazardous Substance to other properties or the release of any Hazardous Substance into the environment that arise from the indemnifying party’s activities on or at the Property. The indemnification obligations set forth in this Subsection specifically include, without limitation, costs incurred in connection with any investigation of site conditions and/or any cleanup, remedial, removal or restoration work required by any governmental authority. This Subsection shall survive the termination or expiration of this Lease (as described in Subsection 10(d)).

**Section 13: Casualty/Condemnation**.

(a) If there is a condemnation of the Site, the Easements, and/or the Property, or a portion thereof which is sufficient to render the Site and/or the Easements unsuitable for Tenant’s purposes, including but not limited to a transfer of the Site, the Easements and/or the Property or a part thereof by consensual deed in lieu of condemnation, then this Lease shall, at the option of Tenant, terminate upon transfer of title to the condemning or deeded authority, without further liability to either of the Parties, except as otherwise expressly provided herein. The Lease Payment due hereunder shall be prorated to the date of the taking, and Tenant shall not be required to make any payments for the period following the date of such taking. Tenant and Owner shall be entitled to pursue their own separate condemnation awards with respect to any such taking, which award to Tenant may include, where applicable, the value of the Solar Facility, moving expenses, prepaid rent to the extent not reimbursed to Tenant by Owner, and business dislocation expenses.

(b) If the Site, the Solar Facility, the Easements, and/or the Property are damaged or destroyed to an extent sufficient to render the Site and/or the Easements unsuitable for Tenant’s purposes, Tenant shall have the right, but not the obligation, to not rebuild, replace or repair any improvement and to terminate this Lease as of the date that such damage or destruction occurred, without prejudice to or otherwise affecting any rights or remedies that Tenant may have hereunder or at law or in equity, and the Lease Payment due hereunder shall be prorated to such date of termination.

(c) Notwithstanding anything in this Lease to the contrary, in the event of any casualty to or condemnation of the Property or any portion thereof during such time as any security instrument shall remain unsatisfied, the financing entity in whose favor such security instrument has been granted shall be entitled to receive all insurance proceeds and/or condemnation awards, up to the amount of the indebtedness secured by such security instrument, otherwise payable to Tenant and apply such proceeds in accordance with the terms of the security instrument, and shall further have the right, but not the obligation, to restore the Property, as reasonably possible to its original condition, in the event that the same is damaged or destroyed.

**Section 14: Quiet Enjoyment**.

(a) Owner agrees that Tenant, upon making Lease Payments and complying with all covenants and terms of this Lease, shall and may peaceably and quietly have, hold and enjoy the Site and the Easements and all related appurtenances, rights, privileges and easements throughout the Term without any unlawful hindrance or interruption by Owner and any person claiming to act by, through, or under Owner. Owner shall have access to the Site, but shall not take any action to interfere with the optimal and safe operation or maintenance of the Solar Facility.

(b) The Solar Facility shall be the exclusive property of and owned by Tenant, Participants, and/or Developer, as set forth in separate agreements between them, and not the property of the Owner. Owner covenants and agrees that neither the Solar Facility nor any part of the improvements constructed, erected or placed by Tenant on the Site or the Easements shall become or be considered as being affixed to or a part of the Property. The Parties agree and specifically intend that the Solar Facility and all improvements of every kind and nature constructed, erected, or placed by the Tenant on the Site, and the Easements **shall be and remain the property of Tenant, Participants and/or Developer, as set forth in separate agreements between them.** The Owner agrees and acknowledges that none of the above listed improvements or Easements, including, without limitation, any trade fixtures, shall become the property of Owner upon termination or expiration of the Lease. Owner hereby waives any and all lien rights and/or security interests it may have, statutory or otherwise, in or otherwise with regard to the Solar Facility or any portion thereof.

(c) Owner agrees for itself and all future holders of the Property that no use shall be made of the Property that would interfere with Tenant’s use of the Site and the Easements, including, without limitation, the operation of the Solar Facility.

(d) Owner hereby represents and warrants to Tenant that: (i) Owner is the fee owner of the Site and the Easements and the lands immediately adjacent which comprise the easements and rights of way granted to Tenant in this Lease; (ii) such ownership is free and clear of all liens, claims, and encumbrances other than those which do not interfere with Tenant’s use of the Site and the Easements; (iii) Owner has the lawful right and authority to execute this Lease and to grant the leasehold interests, Easements, rights of way, and other rights described herein; (iv) the Tenant’s intended use of the Site and the Easements by Tenant does not conflict with any agreements, restrictions, covenants, conditions, easements or licenses, whether or not of record, that affect the Premises and/or the Easements; (v) the Property, including the Site and the Easements, and all improvements located thereon, other than improvements constructed by Tenant, are in substantial compliance with all laws, rules, regulations and ordinances, including, but not limited to, building, life/safety, disability and other laws, codes and regulations of applicable governmental authorities; and (vi) Owner has obtained and delivered to Tenant the consents of all parties other than Owner that hold any encumbrance upon or interest in the Site and/or the Easements to the existence, execution, and delivery of this Lease, the granting of a leasehold interest in the Site and the granting of the Easements to Tenant in accordance with the terms in this Lease, and Tenant and its successors and assigns utilization of the Site and the Easements for the purposes described herein.

**Section 15: Default**.

Notwithstanding anything contained herein to the contrary, and without waiving any other rights granted at law or in equity, if either of the Parties is in default under this Lease for a period of (i) forty-five (45) days following receipt of notice of default from the non-defaulting party, and where the default may be cured solely by the payment of money; or (ii) sixty (60) days following receipt of notice of default from the non-defaulting party with respect to a default which may not be cured solely by the payment of money, then, in either event, the non-defaulting party may pursue any remedies available against the defaulting party under applicable law or in equity, subject to the terms of Subsection 11(b) of this Lease. If a non-monetary default may not reasonably be cured within such 60 day period, the Lease may not be terminated if the defaulting party commences action to cure the default within such 60 day period and proceeds with due diligence to fully cure the default as soon as reasonably practicable thereafter.

**Section 16: Subordination and Non-Disturbance[[3]](#footnote-4)**.

(a) Tenant acknowledges that prior to the Commencement Date, Owner may have granted a mortgage, deed of trust, or other security instrument (“**Mortgage**”) which encumbers some or all of the Property and/or the Easements to certain institutions or persons (collectively, the “**Mortgagees**”; individually, a “**Mortgagee**”). Tenant also acknowledges that Owner, may grant a Mortgage that encumbers some or all of the Property and/or the Easements to a Mortgagee on or after the Commencement Date.

(b) With regard to each Mortgage that is in effect and/or of record on or prior to the recordation of a **Memorandum/Notice of Lease**, (“**MOL**”), substantially in the form of Exhibit “C” attached hereto. Owner hereby grants to Tenant permission to insert the Commencement Date of this Lease into the MOL after execution of the MOL and to record the MOL in the proper jurisdiction.

(c) Owner will request the Mortgagee to execute and deliver to Tenant **a subordination, non-disturbance and attornment agreement** (“**SNDA Agreement**”) among Owner, Tenant and Mortgagee. In the SNDA Agreement: (i) Tenant confirms that this Lease is subordinated to the Mortgage granted to Mortgagee; (ii) Tenant agrees to attorn to Mortgagee in the event that the Mortgagee acquires title to the Property; and (iii) **Mortgagee agrees to honor the Lease in the event of foreclosure under the Mortgage to which Owner and Mortgagee are parties, and that the Lease shall remain in full force and effect and shall not be terminated, and Tenant shall be permitted to exercise all of its rights and remedies, as long as Tenant is not in default under the Lease**. If Owner fails to deliver a SNDA Agreement to Tenant on or prior to the execution of the MOL, then Tenant shall have the right, in its sole discretion, to terminate this Lease by providing written notice thereof to Owner. Upon such termination neither of the Parties shall have any further obligations or liabilities hereunder.

(d) With regard to each Mortgage in effect and/or of record after the recordation of the MOL, Tenant shall promptly enter into a SNDA Agreement with Owner and the Mortgagee thereunder. If Tenant fails to deliver a SNDA Agreement to Owner, then Owner shall have the right, in its sole discretion, to terminate this Lease by providing written notice thereof to Tenant, and upon such termination neither of the Parties shall have any further obligations or liabilities hereunder.

(e) With regard to each Mortgage granted by the Owner after the recordation of the MOL, Owner shall promptly request the Mortgagee execute and deliver to Tenant a SNDA Agreement among Owner, Tenant, and Mortgagee. If Owner and Mortgagee fail to deliver a SNDA Agreement to Tenant, then Tenant shall have the right, in its sole discretion, to terminate this Lease by providing written notice thereof to Owner, and upon such termination neither of the Parties shall have any further obligations or liabilities hereunder.

(f) The Parties covenant and agree that, notwithstanding anything to the contrary set forth herein, the form and terms of each SNDA Agreement shall be mutually approved by and deemed acceptable to Owner, Tenant, and the Mortgagee that is a party to such SNDA Agreement.

**Section 17: Solar Energy Environmental Attributes**

(a) A net-metered customer (“**Net Metered Customer**”) for the purposes of this Section is defined as a Vermont electric consumer who receives net-metered energy from the Solar Facility, including the Participants and Owner.

(b) Each Net Metered Customer shall own and retain the environmental attributes of their net metered energy produced by the Solar Facility and shall have sole rights to make any green or renewable energy claims in regards to their net metered energy. Net Metered Customers shall not unbundle or separately sell the environmental attributes, including any renewable energy credits or certificates, from the net-metered electricity.

**Section 18: ACKNOWLEDGMENT OF ARBITRATION**

Owner and Tenant each acknowledge that this Lease contains an agreement to arbitrate in Subsection 11(b) above. After signing this document, **Owner and Tenant each understands that it will not be able to bring a lawsuit concerning any disputes that may arise which is covered by the agreement to arbitrate**, unless such dispute involves a question of constitutional or civil rights.

**Section 19: Miscellaneous**.

(a) Owner and Tenant each represents and warrants that it has all right and authority to execute this Lease, and that, upon execution of this Lease, the Lease shall be fully binding upon the Parties.

(b) This Lease sets forth and contains the entire agreement between the Parties regarding the subject matter hereof, and supersedes all prior discussions, agreements and negotiations between the Parties with regard to the subject matter hereof.

(c) The Parties may sign this Lease in multiple counterparts, each of which, when executed, shall be deemed to be an original instrument, and all of which, taken together, shall constitute one and the same agreement.

(d) The terms and conditions of this Lease shall extend to and bind the heirs, personal representatives, successors, and assigns of the Parties.

(e) In the case a dispute arises that does not follow the resolution terms agreed upon per the indemnification and arbitration clause set forth in Section 11, the substantially prevailing party in any action or proceeding in court to enforce the terms of this Lease shall be entitled to receive its reasonable attorneys’ fees and other reasonable enforcement costs and expenses from the non-prevailing party.

(f) Notices, requests, and other communication shall be in writing and sent by United States Mail, postage prepaid, certified or registered with return receipt requested, or by any nationally recognized overnight courier service for priority delivery, to the respective addresses set forth below. Any such notice shall be deemed given when deposited in the United States Mail or delivered to such courier service. Notices shall be sent to:

For Tenant:

(Include Address and Name of Interested Party)

For Owner:

(Include Address and Name of Interested Party)

Either party may change the address for notice by sending written notice to the other.

(g) This Lease shall be governed by and construed in accordance with the laws of the state in which the Property is located, without giving effect to the conflicts of laws rules of such state.

(h) If Owner is represented by any broker or any other leasing agent in connection with the transactions contemplated by this Lease, Owner shall be responsible for and shall pay when due all commissions, fees and/or other payments to such agent, and agrees to indemnify and hold Tenant harmless from all claims by such broker or anyone claiming through such broker with regard to such commissions, fees and payments. If Tenant is represented by any broker or any other leasing agent in connection with the transactions contemplated by this Lease, Tenant shall be responsible for and shall pay when due all commissions, fees and/or other payments to such agent, and agrees to indemnify and hold Owner harmless from all claims by such broker or anyone claiming through such broker with regard to such commissions, fees and payments.

(i) This Lease may not be amended, supplemented or restated except by a written instrument that has been executed and delivered by each of the Parties.

(j) The effective date of this Lease is the date of execution by the last party to sign the Lease (the “**Effective Date**”).

(k) The waiver by any party hereto of a breach of any provision of this Lease shall not bar or be construed as a waiver of any subsequent breach by any party.

(l) If any provision of this Lease is found by a court of competent jurisdiction to be unenforceable or illegal, such findings shall not impair the remaining provisions of this Lease and the remainder of this Lease shall be enforceable as if such illegal or invalid provision had not been contained within this Lease.

IN WITNESS WHEREOF, the Parties do hereby execute this Lease as of the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20 .

IN PRESENCE OF: **(NAME OF OWNER), as Owner**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Witness Duly Authorized Agent

**(NAME OF LLC), as Tenant**

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

Witness Duly Authorized Agent

STATE OF VERMONT

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, SS.

On this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, personally appeared **(NAME OF OWNER)** to me known to be the person who executed the foregoing instrument, and he acknowledged this instrument, by him signed, to be his free act and deed.

Before me,

Notary Public

Printed Name:

Notary commission issued in XXX County

My commission expires: DATE OF EXPIRATION

STATE OF VERMONT

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, SS.

On this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, personally appeared **\_\_\_\_\_\_\_\_\_\_\_\_\_\_** Duly Authorized Agent of **(NAME OF LLC)** to me known to be the person who executed the foregoing instrument, and he acknowledged this instrument, by him signed, to be his free act and deed and the free act and deed of **(NAME OF LLC)**.

Before me,

Notary Public

Printed Name:

Notary commission issued in XXX County

My commission expires: DATE OF EXPIRATION

**EXHIBIT “A”**

**LEGAL DESCRIPTION OF PROPERTY**

The Site (as described further in Exhibit “B”) is located on the “**Property**”. The Property is a \_\_\_ acre (approximately) parcel including (i.e. lands and premises, farm buildings and easements). The entire parcel, located in (enter location by address or in manner recorded by municipality). Said overall parcel is described and annotated by metes and bounds descriptions in the following deeds recorded in the (Municipal) Land Records:

1. (Include here, if any, a) Warranty Deed of any (Person), dated (Date) and recorded on (Location).
2. (Include here, if any, a) Quit Claim Deed of (Person) dated (Date) and recorded in (Location).

The following Rights of Way and Easements are annotated in the Deeds mentioned above.

1. (Include here, if any a) Right of Way in warranty Deed, (Date and Location)

2. (Include here, if any a) Utility Line Easements: (Location).

**EXHIBIT “B”**

**DESCRIPTION OF THE SOLAR FACILITY AND SITE**

A \_\_\_\_ kW AC nameplate solar generating Solar Facility (“Solar Facility”) as specifically designed, approved and permitted in the Certificate of Public Good issued by the Public Service Board.

The Solar Facility shall be comprised of \_\_\_\_watt solar modules, required racking assembly, combiner boxes, inverters, panel boards, fuses, disconnects, data acquisition equipment, and meters consistent with all local, state, and federal codes.

The “**Site”** is the land area within the Owner’s Property (as described further in Exhibit “A”) that will be utilized by the Solar Facility and will be approximately \_\_\_ acres or less. The Site should not be any larger than necessary to accommodate the Solar Facility’s design and to ensure compliance with zoning, land use, utility service and building laws, rules, ordinances, permits, approvals, variances, and other governing rules and regulations. The Solar Facility will be located in **(describe the area where Solar Facility will be located on Property[[4]](#footnote-5))** as depicted below.

CAN INCLUDE HERE GOOGLE (OR EQUIVALENT) EARTH IMAGE OF SITE AND PROPERTY DELINEATIONS INCLUDING THE LAYOUT OF SOLAR FACILITY

**EXHIBIT “C”**

**MEMORANDUM/NOTICE OF LEASE**

Site Name/Location: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

This Memorandum/Notice of Lease, dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, evidences that a land lease agreement (the “**Lease**”) dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_, was made and written between **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** (“**Owner**”), and **\_\_\_\_\_\_\_\_\_\_\_\_\_\_** (“**Tenant**”), a Vermont limited liability company with an address at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The terms and conditions of the Lease are incorporated herein by this reference. Nothing in this Memorandum/Notice of Lease shall be deemed to modify, amend, limit, or otherwise affect the terms and conditions of the Lease. In the event of any inconsistency between the terms of this Memorandum/Notice of Lease and the terms of the Lease, the terms of the Lease shall control.

Such Lease provides in part that Owner leases to Tenant that certain parcel of real property located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Town of \_\_\_\_\_\_, State of Vermont, more particularly described in Exhibit “A” attached hereto (the “**Site**”). The Site is situated within a larger parcel of real property that is owned by Owner and more particularly described in Exhibit “B” attached hereto (the “**Property**”). Pursuant to the Lease, Owner has also granted to Tenant an easement for non-exclusive rights of access to the Site and for electric, stormwater management, and other utility services and facilities to the Site. The date of the Lease is as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. The Lease term shall commence on the \_\_\_\_\_ day of \_\_\_\_\_\_, \_\_\_\_\_\_, which is the date the Solar Facility is commissioned at the Solar Site (the “Commencement Date”), and ends on the 25th anniversary of the Commencement Date.

The Lease provides [subject to written notice to Owner and Owner’s consent, which consent shall not be unreasonably withheld] Tenant the right to assign or transfer its rights under the Lease, in whole or in part, to any person or any business entity at any time, subject to the assignee assuming all of Tenant’s obligations thereunder. After delivery by Tenant to Owner of an instrument of assumption by an assignee, wherein such assignee assumes all of the obligations of Tenant under the Lease, Tenant will thereafter be relieved of all liabilities and obligations pursuant to the Lease.

Upon the cancellation, termination or expiration of the Lease, Tenant will make, execute and deliver to Owner an instrument releasing this Memorandum/Notice of Lease, which instrument shall in form and substance be satisfactory to Owner and shall be in recordable form.

Tenant does hereby make, constitute and appoint Owner as Tenant’s true and lawful agent for the limited, specific and exclusive purpose of executing, delivering and recording a termination of this Memorandum/Notice of Lease, in the event that Tenant has not signed and returned to Owner a termination of this Memorandum/Notice of Lease, within ten (10) business days after the cancellation, termination or expiration of the Lease, in accordance with the terms thereof. This agent is coupled with an interest and shall be irrevocable until this Memorandum/Notice of Lease has been validly released of record. The agency relationship set forth in this paragraph is hereby expressly limited to the specific matters and rights set forth in such paragraph.

This Memorandum/Notice of Lease may be executed in counterparts, each of which, when executed, shall be deemed an original instrument, but all of which taken together shall constitute one and the same agreement. Capitalized terms not otherwise defined herein shall have the respective meanings ascribed to such terms in the Lease.

The location of the original Lease is on file and available for inspection during usual business hours at the offices of Tenant.

IN WITNESS WHEREOF, the Parties hereto have executed the Memorandum/Notice of Lease as of the day and year first above written.

IN PRESENCE OF: **NAME OF LANDOWNER, as Owner**

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

Witness Duly Authorized Agent

**NAME OF** **COMPANY/ENTITY, as Tenant**

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

Witness Duly Authorized Agent

STATE OF VERMONT

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, SS.

On this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, personally appeared **\_\_\_\_\_\_\_\_\_\_\_\_\_\_** Duly Authorized Agent of **NAME OF LANDOWNER** to me known to be the person who executed the foregoing instrument, and he acknowledged this instrument, by him signed, to be his free act and deed and the free act and deed of **NAME OF LANDOWNER**

Before me,

Notary Public

Printed Name:

Notary commission issued in XXX County

My commission expires: DATE OF EXPIRATION

STATE OF VERMONT

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, SS.

On this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_, personally appeared **\_\_\_\_\_\_\_\_\_\_\_\_\_\_** Duly Authorized Agent of **COMPANY/ENTITY** to me known to be the person who executed the foregoing instrument, and he acknowledged this instrument, by him signed, to be his free act and deed and the free act and deed of **COMPANY/ENTITY.**

Before me,

Notary Public

Printed Name:

Notary commission issued in XXX County

My commission expires: DATE OF EXPIRATION

[[5]](#footnote-6)⋅

1. Disclaimer: This agreement is intended as a model agreement that should be adapted by the user to apply to their specific circumstances and current law. We strongly recommend that all users of this agreement consult with legal counsel licensed in the appropriate jurisdiction on how best to apply this model agreement to their specific circumstances. [↑](#footnote-ref-2)
2. All bracketed text is subject to the parties’ negotiations and final agreement. If desired, parties may eliminate bracketed text without undermining the remaining provisions. [↑](#footnote-ref-3)
3. Subordination and Non-disturbance Agreements are subject to Vermont state and local laws and customs. In crafting such agreement, we strongly recommend users of this model obtain independent counsel from an attorney with expertise in Vermont real estate and mortgage law. [↑](#footnote-ref-4)
4. In describing the property give particular focus upon any potentially sensitive ecological or man-made features within the Site that may influence the Site’s preparation, Solar Facility construction, operation, and maintenance activities. [↑](#footnote-ref-5)
5. [↑](#footnote-ref-6)