

## LEASE AGREEMENT [DRAFT]

This LEASE AGREEMENT (this “Lease”) is made and entered into this \_\_\_\_ day of [ \_\_\_\_\_] (the “Effective Date”), by and between [ \_\_\_\_\_], a [ \_\_\_\_\_], with a usual place of business at \_\_\_\_\_ (“Lessee”), and the AUBURN WATER DISTRICT, a Massachusetts public water district established by Chapter 585 of the Acts of 1947, as amended, with a principal place of business at 75 Church Street, Auburn Massachusetts in Worcester County, Massachusetts (“Lessor”). Lessor and Lessee are sometimes referred to collectively hereinafter as the “Parties.”

### RECITALS

A. Lessee is the developer, owner, and operator of solar energy generation equipment and facilities suitable for the production and delivery of electrical energy.

B. Lessor is a Massachusetts water district and is the owner of certain real property located off Pine Valley Drive in Auburn, Massachusetts 01501, more particularly described in Exhibit A attached hereto (the “Property”).

C. Lessee desires to (i) lease a portion of the Properties (the “Premises”) from Lessor, as shown on Exhibit B attached hereto, for purposes of constructing, installing, owning, operating and maintaining Solar Facilities (as defined herein), and (ii) obtain certain ancillary rights affecting the Premises for purposes incidental thereto as more fully set forth below.

D. Lessor agrees to lease the Premises to Lessee for the purposes set forth in this Lease and to grant Lessee certain ancillary rights, all on the terms and conditions herein contained.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Lessee and Lessor hereby agree as follows:

1. Definitions. Capitalized terms not otherwise defined herein shall have the meaning set forth below:

1.1 “Interest Rate” means the rate of interest equal to one percentage point over the rate of interest announced by The Wall Street Journal as its “prime” or “base” lending rate on the Solar Commencement Date, or if such rate can no longer be determined, the base or prime rate advertised by such other commercial bank having an office in New York, NY agreed to by the Parties.

1.2 “Environmental Attributes” means any and all environmental benefits, air quality credits, emissions reductions, offsets and allowances, howsoever entitled, directly or indirectly attributable to the generation from the Solar Facilities and their displacement of conventional energy. Environmental Attributes include but are not

limited to: (1) any benefit accruing from the renewable nature of the generation of energy from the Solar Facilities, (2) any avoided emissions of pollutants to the air, soil or water; (3) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>) and other greenhouse gases (GHGs); (4) displacements of energy generation by fossil fuel sources; (5) any reporting rights to these avoided emissions such as Green Tag Reporting Rights; (6) any certificates, attributes or other premiums or additional value for renewable, clean or green energy generation, or avoided emissions; and (7) any production tax credits or related generation subsidies.

1.3 “Environmental Incentives” include, but are not limited to, (i) federal, state or local production tax credits associated with the construction, purchase, operation, and/or maintenance of the Solar Facilities, (ii) any other financial incentives in the form of credits, reductions, or allowances associated with the Solar Facilities that are applicable to a local, state or federal income taxation obligation, (iii) grants or subsidies in support of renewable energy, (iv) emission reduction credits encumbered or used by the Solar Facilities for compliance with local, state, or federal operating and/or air quality permits, and all rebates, benefits, credits, reductions, tax deductions, offsets, and allowances and entitlements of any kind, howsoever entitled, resulting from the Environmental Attributes or operation of the Solar Facilities.

1.4 “Force Majeure” means any act or event that delays or prevents a Party from timely performing obligations under this Lease or from complying with conditions required under this Lease if such act or event, despite the exercise of reasonable efforts, cannot be avoided or mitigated by, and is beyond the reasonable control of the Party relying thereon as justification for such delay, nonperformance, or noncompliance. Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided or mitigated by, and are beyond the reasonable control of the Party relying thereon as justification for such delay, nonperformance or noncompliance, “Force Majeure” may include without limitation: an act of God or the elements; explosion, fire, epidemic, landslide, or mudslide; sabotage; terrorism; lightning, earthquake, flood or similar cataclysmic event; an act of public enemy, war, blockade, civil insurrection, riot, or other civil disturbance; or strike or other labor difficulty caused or suffered by a Party or any third party beyond the reasonable control of such Party. However, financial cost alone or as the principal factor shall not constitute grounds for a claim of Force Majeure.

1.5 “Interconnection Agreement” means an agreement entered or to be entered between the Lessee, as owner and operator of the Solar Facilities, and the local electric utility, National Grid.

1.6 “Interconnection Facilities” means all improvements the purpose of which is to transmit electrical power from the Solar Facilities to a utility grid or other system, including, without limitation, transformers, and electrical transmission lines.

1.7 “AOBC Purchase Agreement” means that certain agreement entitled “Alternative On-Bill Credit Purchase Agreement” of even date herewith between the Auburn Water District and the owner and operator of the Solar Facilities for the sale of Alternative On-Bill Credits resulting from the electric power generated on the Premises.

1.8 “Photovoltaic Facilities” means any photoelectric cells or other equipment

designed for the collection and/or generation of electrical power from solar radiation, including without limitation, solar panels, associated support structures, racking, floatation devices, braces, wiring, and related equipment.

1.9 “Tax Agreement” means the agreement entitled “Agreement for Payment in Lieu of Taxes for Real Property and Personal Property” entered or to be entered between the Solar Facilities owner and the Town of Auburn, concerning the real estate and personal property taxation on the Premises as shown in Exhibit B.

1.10 “Hazardous Materials” means (i) any material, substance, product, petroleum, petroleum product, derivative, compound or mixture, mineral, including but not limited to asbestos and asbestos containing materials, gas, radon, radioactive materials, chemical, flammable explosives, medical waste or other pollutant, urea formaldehyde foam insulation, lead, polychlorinated biphenyl, in each case whether naturally occurring, man-made or the by-product of any process that is toxic, harmful or hazardous or acutely hazardous and that may cause damage to human health or the environment, safety or real Premises, or (ii) any material or substance sustaining a cause of action or claim under any Environmental Law, whether or not such material or substance is defined as hazardous as such under any Environmental Law and whether such substance is now or hereafter designated as hazardous, under any Environmental Law, or by any environmental agency or otherwise.

1.11 “Environmental Laws” means all federal, state and local laws, ordinances, rules, regulations and legally enforceable policies and guidelines regarding the environment, human health or safety (herein “Environmental Laws”) applicable to the Premises, or the use thereof, including, without limitation, the Federal Water Pollution Control Act (33 U.S.C. Sec. 1251 et seq.), Resource Conservation & Recovery Act (42 U.S.C. Sect. 6901 et seq.), Safe Drinking Water Act (42 U.S.C. Sec. 300f et seq.), Toxic Substances Control Act (15 U.S.C. Sect. 2601 et seq.) the Clean Air Act (42 U.S.C. Sect. 7401 et seq.), and the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sect. 9601 et seq.); and Massachusetts General Laws Chapter 21E and the Massachusetts Contingency Plan.

2. Premises. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises consisting of approximately [\_\_\_\_\_] acres as shown on Exhibit B and described as “Premises” on said Exhibit B (see Exhibit B for outline of Premises) commencing on the Construction Commencement Date (as hereinafter defined) and terminating on the expiration of the Term (as hereinafter defined), subject to extensions, in accordance with the terms and conditions set forth herein.

As used herein, the term “Premises” means of that portion of the Property as set forth on Exhibit B. The term “Remaining Lessor Property” means the Property, exclusive of the Premises. Throughout the Term of the Lease, Lessee and its employees, contractors, vendors, licensees and invitees shall have non-exclusive, reasonable access to, over and upon the Remaining Lessor Property from public ways within the Town of Auburn for access to and from the Premises.

2.1 Term. The term of this Lease (the “Term”) shall be comprised of the following:

2.1.1 A construction period commencing upon the date of this Lease (the

“Construction Commencement Date”) and expiring upon the day immediately preceding the date that commercial operation of the Solar Facilities commences (the “Solar Commencement Date”) (from the Construction Commencement Date until the day immediately preceding the Solar Commencement Date, herein referred to as the “Construction Term”); provided, however, that the Solar Commencement Date shall commence no later than [\_\_\_\_\_]. Lessee shall deliver written notice to Lessor of the date construction activities will commence on the Premises (the “Notice of Commencement”). Lessee shall also deliver written notice to Lessor of the Solar Commencement Date. If Lessee does not achieve the Solar Commencement Date by the deadline specified, then this Lease may be terminated by Lessor and be subject to the applicable provisions of Section 12.

2.1.2 An initial operating term of twenty (20) years, beginning on the Solar Commencement Date, subject to extension or earlier termination as set forth herein (the “Operating Term”). Following the expiration of the Operating Term, Lessee shall fulfill the obligations set forth in Section 12 during the Decommission Period, as defined herein.

2.2 Payments to Lessor. The Rent Schedule attached hereto as Exhibit C sets forth the monthly rent (the “Rent”) due from Lessee to Lessor. Lessee’s obligation to pay Rent shall begin on the Solar Commencement Date and continue throughout the Term. The total amount of Rent for each year shall be payable in monthly installments, payable in advance, on the first day of each and every calendar month of the Term. If the Solar Commencement Date shall occur on a date other than the first day of a calendar month, the Rent for such month shall be adjusted on a per diem basis.

All payments shall be addressed and directed to the Superintendent, Auburn Water District, P.O. Box 187, 75 Church Street, Auburn, MA 01501.

2.3 Solar Facilities. Lessee shall be the sole legal and beneficial owner and operator of the Solar Facilities, which Solar Facilities may be upgraded or replaced with similar or dissimilar technology; provided, however, that if such upgrade or replacement may reasonably be expected to have a material adverse effect on the Remaining Lessor Property, the same shall be made only subsequent to Lessor’s approval of all plans and specifications for same, which approval shall not be unreasonably withheld. The Solar Facilities shall remain the personal property of Lessee and shall not attach to or be deemed a part of, or become a fixture to, the Premises. At all times, Lessee shall have one hundred percent (100%) of all right, title and interest in and to all Green Tags, Green Tag Reporting Rights, Environmental Incentives and other items of whatever nature relating to Environmental Attributes and Environmental Incentives of the Solar Facilities. Lessor acknowledges that Lessee will receive federal tax credits and accelerated depreciation on the Solar Facilities directly related to the construction and continued operation of the Solar Facilities and Lessor acknowledges that such tax credits and accelerated depreciation are the sole right and property of Lessee. Lessor shall execute and furnish any instrument and/or take any action reasonably requested by Lessee to perfect, confirm or maintain the Lessee’s right, title and interest in the items described in the preceding two sentences so long as all costs and expenses associated with such required action are borne solely by Lessee. Lessee will be responsible for the planning, construction, operation and maintenance of the Solar Facilities at Lessee’s sole cost and expense and shall be solely responsible for the cost of maintaining the Premises in a manner consistent with a “triple net” lease and in compliance with the MA Department of Environmental Protection (“MassDEP”) regulations pertaining to

renewable energy development, operation and maintenance within Wellhead Protection Zones 1 & 2. Lessee will comply with applicable laws and regulations relating to the operation of the Solar Facilities and the generation and sale of energy, including obtaining and maintaining in effect all relevant approvals and permits.

## 2.4 Sale of Energy

2.4.1 The Lessee shall have the sole and exclusive right to convert all of the solar resources of, and to conduct Operations (as hereinafter defined) on, the Premises. Except as otherwise provided in the AOBC Purchase Agreement, any economic benefit from the transmission of energy from the Solar Facilities shall be the sole right, title and interest of Lessee and any economic benefit which is initially credited or paid to the Lessor for such energy, together with any and all Environmental Attributes and/or Environmental Incentives, will be assigned by Lessor to Lessee without delay. Lessor shall also execute and furnish any instrument and/or take any action reasonably requested by Lessee to assign, transfer, perfect, confirm or maintain the Lessee's right, title and interest in the items described in the preceding sentence.

All rights claimed by the Lessee in this Lease for the right to operate the Solar Facilities and to obtain the economic benefits therefrom, whether it be by sale of electricity or by the claim of any of the benefits set forth in the preceding paragraph are subject to any and all applicable regulations of any governmental agency and it shall be the sole responsibility of the Lessee and not the Lessor to comply with same.

Under no circumstances shall the Lessor be responsible for the payment of any claim, charge, fee, permit, application or any other payment of any kind which may be associated with the operation of the Solar Facilities or the transmission of electricity to the local electrical distribution network. All such charges or payments of any type or kind shall be borne by and be timely paid by the Lessee without any credit for or offset against or on account of any payment which may be due to Lessor from Lessee, whether same be rent, tax payment or any other payments due to the Lessor from Lessee under this Lease.

If the Lessor is required to take action as described in this paragraph, then the Lessee shall bear the cost of such action and reimburse the Lessor for such actual costs, including, but not limited to, reasonable attorney's fees for the Lessor's counsel.

2.4.2 The Parties acknowledge and agree that the Parties shall execute the AOBC Purchase Agreement simultaneously with the execution of this Lease. This Lease is contingent upon the execution of the AOBC Purchase Agreement. This Lease shall terminate upon the termination of the AOBC Purchase Agreement.

2.5 Exclusive Rights of Lessee. For so long as there shall be no Event of Default by Lessee under its obligations under this Lease and for so long as this Lease has not been terminated, the Lessee shall have the sole and exclusive right to conduct operate the Photovoltaic Facilities on the Premises. Lessor shall not grant any rights in the Property that would materially interfere with Lessee's conduct of its operations in derogation of Lessee's sole and exclusive rights and privileges hereunder. For so long as there shall be no Event of Default by Lessee under its obligations under this Lease and for so long as this Lease has not been terminated,

without the prior written consent of Lessee, Lessor shall not (i) grant, confirm, acknowledge, recognize or acquiesce in any right claimed by any other person or entity (other than as successor or assignee of the Lessee) to conduct Operations on the Premises, and Lessor agrees to give Lessee notice of any such claims and to cooperate with Lessee, at Lessee's sole cost and expense, in resisting and disputing such claims, or (ii) waive any right available to Lessor or grant any right or privilege subject to the consent of Lessor by law or contract, including, without limitation any environmental regulation, land use ordinance or zoning regulation, with respect to setback requirements, or other restrictions and conditions respecting the placement of the Solar Facilities on the Premises, except to the extent that such waiver or grant of rights is reasonably required in connection with the development or use of the Remaining Lessor Property.

Lessee further acknowledges and recognizes that this Lease and the Premises, as well as the Remaining Lessor Property, is subject to regulation by the MassDEP.

2.6 Contingencies. The parties acknowledge that this Lease is expressly contingent upon the following (each a "Contingency" and together the "Contingencies"):

2.6.1 Receipt by Lessee of the Planning Board Site Plan Approval from the Town of Auburn;

2.6.2 An affirmative agreement with the Town of Auburn Board of Selectmen approving the Tax Agreement, in a form and on terms reasonably acceptable to Lessee and Lessor;

2.6.3 Receipt by Lessee of a duly-executed AOBC Purchase Agreement between Lessee and Auburn Water District both in a form and on terms reasonably acceptable to Lessor and Lessee;

2.6.4 Lessee entering an Interconnection Agreement with National Grid; and

2.6.5 Lessee obtaining the insurance policies required herein.

Lessor and Lessee shall cooperate in Lessee's efforts to satisfy the Contingencies listed above and to take all reasonable steps to expedite same including, but not limited to, transmitting draft documents and explanatory materials furnished by Lessee, executing appropriate documents after review by Lessor's counsel, if deemed necessary by Lessor at Lessee's expense subject to the terms of Section 10 and limitations below, authorizing entry onto the Premises by Lessee, its employees, agents, engineers, surveyors, and others for purposes related to obtaining the permits including, but not limited to, the survey of the Premises the preparation of a site plan, the preparation of engineering studies or reports in support of the development of the Solar Facilities by Lessee, the preparation of applications and information required under the Interconnection Agreement and such other activities as may be reasonably deemed necessary by the Lessee in preparation for the construction of the Photovoltaic Facilities. Such entry shall be during normal business hours provided that none of same shall disrupt the normal operations on the Property during the conduct of any such activities. In addition, the Lessee shall be solely responsible to restore the Premises to its current condition following any such inspections or tests and all of the contractors, subcontractors or consultants shall be required by the Lessee to be insured for workmen's compensation and to

carry commercial general liability insurance in forms and amounts reasonably acceptable to Lessor. Lessee shall be responsible for any damage to person or Property which may occur as a result of any of these entries onto the Property and shall indemnify and hold lessor harmless from any such personal injury or property damage.

2.7 Option to Extend. Lessee shall have the right to extend the Operating Term (an “Option to Extend”) for the two (2) periods of five (5) years each (each an “Extension Term”). An Option to Extend shall be effectively exercised only if (a) Lessee gives notice of exercise to Lessor not less than 270 days prior to then-existing final day of the Term, and (b) there are no Events of Default outstanding on either the date of exercise or the first day of the Extension Term. Each Extension Term shall be on the terms and conditions of this Lease as existing on immediately preceding the commencement of such Extension Term, provided, however, that the number of Extension Terms available to Lessee shall be reduced by one (1) for each Option to Extend that is exercised and the Rent shall be as set forth in Exhibit C.

### 3. Access Rights and Solar License

3.1 Solar License. Lessor hereby grants to Lessee, from the Construction Commencement Date through the end of the Term, a Solar License over and on the Premises, whereby no structure shall be erected on or vegetation be permitted on the Remaining Lessor Property, which will, during daylight, cast a shadow on the Solar Facilities.

3.2 Access. Lessor grants to Lessee the access to the Premises.

### 4. Use of the Premises.

4.1 Permitted Uses. During the Term, Lessee shall have the right to occupy and use the Premises for solar energy generation, conversion, for the collection and transmission of electric power, and for related and incidental purposes and activities (collectively, “Operations”) which shall be limited to the following;

(a) constructing, reconstructing, erecting, installing, maintaining, repairing, improving, upgrading, replacing, relocating, removing, using, monitoring and/or operating existing, additional or new (i) Photovoltaic Facilities and Interconnection Facilities, (ii) electrical production, transmission and distribution facilities, including without limitation, overhead and underground transmission, distribution or collector lines, circuit breakers, meters, conduit, footings, cabling and wires, (iii) overhead and underground control, communications and radio relay systems, (iv) interconnection and/or switching facilities, transformers and inverters, (v) control boxes and computer and monitoring hardware, (vi) utility installation, (vii) safety protection facilities, (viii) signs and fences, and (ix) other improvements, fixtures, facilities, machinery and equipment associated or connected with the generation, conversion, storage, switching, metering, step-up, step-down, transmission, distribution, conducting, sale or other use or conveyance of electricity (all of the foregoing, including the Photovoltaic Facilities and Interconnection Facilities, collectively “Solar Facilities”) which Solar Facilities may be replaced with similar or dissimilar technology at Lessee's cost and expense; provided, however, that if such replacement may reasonably be expected to have a material adverse effect on the Remaining Lessor Property, the same shall be made only subsequent to Lessor's approval of all plans and specifications for same, which approval shall not be unreasonably withheld;

(b) Generating, producing, inverting, transforming, and transmitting energy related to the Operations of the Photovoltaic Facilities;

(c) Undertaking any other lawful activities, whether accomplished by Lessee or a third party authorized by Lessee, that are necessary, helpful, appropriate, desirable or convenient in connection with, incidental to or to accomplish any of the foregoing purposes so long as they are essential to the Operations of the Photovoltaic Facilities and the sale and transmission of electricity emanating therefrom, and are in accordance with all applicable laws, rules, ordinances, orders, and regulations of all governmental agencies ("Legal Requirements").

4.2 Lessee's Exercise of Rights. Lessee may, at any time and from time to time after the commencement of the Construction Term and throughout the Term, construct, install, use, maintain, repair, replace and/or relocate any part of the Solar Facilities (including, but not limited to, racks, panels, pipes, electric lines, conduits, wires and/or appurtenant fixtures and equipment and the like, wherever located on the Premises) and otherwise conduct and perform Operations in a manner Lessee deems reasonable and appropriate subject to the Legal Requirements.

5. Design and Construction of Solar Facilities.

5.1 Installation. Lessor acknowledges that the installation of all or a portion of the Solar Facilities may require physically mounting and adhering the Photovoltaic-Facilities on the Premises. Lessor's consent shall not be required for the installation, any reconstruction, maintenance, repair, relocation, removal, alteration or modification of all or any portion of the Solar Facilities; provided, however, that if such installation, reconstruction, maintenance, repair, relocation, removal, alteration or modification may reasonably be expected to have a material adverse effect on the Remaining Lessor Property, the same shall be made only subsequent to Lessor's approval of all plans and specifications for same, which approval shall not be unreasonably withheld. All costs and expenses (including permits or licenses) attributable to any installations by Lessee shall be borne by Lessee.

5.2 Liens and Claims. In the event that any contractor, subcontractor, vendor, supplier or any other party for whom Lessee is responsible makes claim of a demand for payment Lien against the Lessors, Lessee shall, within thirty (30) days following notice of such claim or demand, cause such claim or demand to be released and discharged (whether by obtaining and recording or filing a lien discharge, posting a bond as required under statute, or otherwise) at no cost to Lessor. Upon becoming aware of the existence of a claim or demand, the Lessee shall give prompt notice to the Lessor, providing the details of such claim or demand and the identification of the claimant. Lessee shall keep Lessor advised of the steps being taken by Lessee to have the claim or demand released and shall indemnify and hold Lessor harmless from any and all claims, costs and expenses which Lessor may incur in the release of such claim or demand and adverse impact same may have to the Lessor before its removal, including but not limited to reasonable attorney's fees and the cost of any bond.

5.3 Performance Bond. Notwithstanding anything contained herein to the contrary, as a precondition to Lessee installing any component of the Solar Facilities at the Premises, Lessee shall post a bond in the amount of \$[\_\_\_\_\_] with a bonding company reasonably

acceptable to Lessor to secure (a) the complete the initial construction and installation of the Solar Facilities, and (b) the removal of all components of the Solar Facilities at the expiration of the Term.

6. Maintenance and Repair.

6.1 Maintenance and Repair Obligations of Lessor and Lessee. Lessee shall, for the Term of this Lease, at Lessee's sole cost and expense, maintain and repair the Solar Facilities in accordance with all Legal Requirements.

6.2 Impact on Solar Facilities.

6.2.1 Lessor shall not (and shall not allow any other party to) move, remove, upset, disturb or otherwise handle any of the Solar Facilities except to the extent that it is necessary to take such action in order to prevent imminent damage to tangible property or personal injury, in which event Lessor shall notify Lessee as soon as practicable of the emergency event and the actions taken by or on behalf of Lessor. Lessor shall not be responsible for any action taken by it or its agents, servants, employees in connection or conjunction with such activity. Except in the case of an emergency, in connection with any maintenance or repairs by Lessor or anyone acting by or behalf of Lessor with respect to the Remaining Lessor Property, Lessor shall provide Lessee with not less than thirty (30) days prior written notice of any unavoidable need to move, remove, upset or otherwise handle any of the Solar Facilities.

7. Ownership of Improvements. Except as expressly set forth herein, the Solar Facilities shall at all times remain the property of the Lessee or its successors and assigns and the Lessor shall have no right, title or interest therein. The Solar Facilities shall not be deemed to be fixtures (even if affixed to the Premises) and shall be and remain the sole property of Lessee.

8. Security. After the Solar Commencement Date, Lessee shall implement commercially reasonable measures that Lessee deems necessary or desirable to secure the Solar Facilities at Lessee's sole cost and expense; provided, however, that the plans for any fencing, signage or other security measures which may be visible from the Remaining Lessor Property shall be approved in advance by Lessor, such approval not to be unreasonably withheld. Such measures may, but not necessarily will, include warning signs, fences along the array perimeter or perimeter of the Premises, closed and locked gates, and other measures appropriate and reasonable to protect against damage or destruction of the Solar Facilities or injury or damage to persons or property resulting from the Solar Facilities and Operations. It shall be the Lessee's sole responsibility to conform in all such activities to the Legal Requirements of all governmental agencies which have jurisdiction over the Solar Facilities or the Premises.

9. Representations, Warranties and Covenants.

9.1 Representations, Warranties and Covenants of Lessor.

9.1.1 Lessor represents and warrants as follows to the best of Lessor's knowledge: (a) there are no circumstances known to Lessor and no commitments to third parties that may damage, impair or otherwise adversely affect Lessee's Operations, the Solar Facilities or their

function including, but not limited to, blocking direct sunlight to the Photovoltaic System; (b) Lessor has good and lawful fee simple title to the Premises and all required legal access for ingress and egress to and from the Premises, free and clear of all mortgages or other liens (c) Lessor has the full right to enter into this Lease without the consent or approval of any other party; and (d) Lessee shall have quiet and peaceful possession and use of the Premises throughout the term of this Lease.

9.1.2 Lessor hereby agrees, for itself, its agents, employees, representatives, tenants, contractors, successors and assigns, that it will not initiate or conduct activities at any location that it knows or reasonably should know may damage, impair or otherwise adversely affect the Solar Facilities or their functions, including, without limitation, activities that may adversely affect the Photovoltaic System's exposure to sunlight Lessor further covenants for itself, its agents, employees, representatives, tenants, contractors, successors and assigns that it will not (i) materially interfere with or prohibit the free and complete use and enjoyment by Lessee of its rights granted under this Lease; (ii) take any action or permit any action to be taken which will materially interfere with the availability and accessibility of solar radiation over and above the Premises; (iii) take any action that will or may materially interfere with the transmission of energy to or from the Premises or by, over and through the easement areas; (iv) take any action or permit any action to be taken that may impair Lessee's access to the Premises and/or any portion of the Solar Facilities for the purposes specified in this Lease, or (v) plant, maintain or allow any vegetation or erect or maintain or allow any structure or use which will, during daylight, cast a shadow on the Solar Facilities or permit the same to be done by others. To the extent that Lessor is provided with notice of plans to develop or build upon any properties directly adjacent to the Premises, then Lessor shall immediately provide Lessee with notice of such plan to develop or build.

9.2 Representations, Warranties and Covenants of Lessee. Lessee represents, warrants and covenants that: (a) subject to the Contingencies set forth herein, Lessee has the full right to enter into this Lease without the consent or approval of any other party; and (b) Lessee shall maintain and repair the Solar Facilities and the Premises in good repair and condition, in a neat and orderly manner and full compliance with requirements of this Lease and any governmental agency or authority having jurisdiction over the Solar Facilities and/or the Premises, including without limitation Environmental Laws.

9.3 Solar Facilities Property of Lessee; Transfer of Premises. Lessor acknowledges and agrees that Lessee is the exclusive owner and operator of the Solar Facilities, that no portion or component of the Solar Facilities is a fixture, and the Solar Facilities may not be sold, leased, assigned, mortgaged, pledged or otherwise alienated or encumbered by Lessor. Lessor agrees that this Lease shall survive any Transfer of the Premises and it shall be the obligation of Lessor to inform any transferee of this Lease and the rights and obligations set forth herein.

9.4 Lessee Rights to Electricity and Environmental Attributes. Subject to the terms and conditions of the AOBC Purchase Agreement, Lessor acknowledges that Lessee and/or its affiliate and/or transferee is the exclusive owner of electricity generated by the Solar Facilities and of the Environmental Attributes and Environmental Incentives of and arising from the Solar Facilities. Lessor shall execute and furnish any instrument and/or take any action reasonably requested by Lessee to perfect, confirm or maintain the Lessee's right, title and

interest in the items described in the preceding sentence.

10. Permits and Governmental Approvals. Lessee shall be responsible for obtaining, renewing and maintaining, at its sole cost and expense, any governmental approvals necessary for the construction and operation of the Solar Facilities, including, but not limited to, the Utility Permits, any zoning variances, building permits, approvals, environmental statements, licenses, authority or other Legal Requirement from any county, state or federal authority (collectively, “Permits”), and shall pay all costs associated therewith. Lessor shall cooperate with Lessee as necessary to obtain any governmental approvals, at no cost or expense to Lessor, provided that Lessee shall reimburse Lessor for its reasonable actual out-of-pocket expenses directly incurred in connection with such cooperation in an amount not to exceed \$5,000.00 in the aggregate, including, but not limited to, reasonable attorney's fees, payable no sooner than the occurrence of the Solar Commencement Date. Lessor agrees to cooperate with and assist the Lessee in applying for any and all Permits that Lessee finds necessary or desirable for the operation of the Solar Facilities, all at Lessee's sole cost and expense.

11. Default and Remedies. The provisions of this Section 11 are subject to the provisions of Section 16 (relating to financing).

11.1 Event of Default Defined. The occurrence of any of the following shall be an “Event of Default” on the part of Lessee:

11.1.1 The failure by Lessee to pay any Rents or taxes when due, and such failure continues for ten (10) days after written notice of such failure to Lessee, provided, however, that Lessor shall not be obligated to provide such written notice more than three (3) times in any twenty-four (24) month period; or

11.1.2 The failure by Lessee to perform any of the other terms and conditions of this Lease and failure to remedy the same within thirty (30) days after receipt of notice from Lessor to do so, provided that in the case of breaches of obligations under this Lease which are susceptible to cure but cannot be cured within thirty (30) days after receipt of notice from Lessor through the exercise of due diligence, so long as the Lessee commences such cure within thirty (30) days after receipt of notice from Lessor and thereafter diligently and continuously pursues such cure, such breach shall not be deemed to create an Event of Default; or

11.1.3 The failure, not timely cured, by Lessee to make any payment or perform any term or condition of the AOBC Purchase Agreement and/or the Tax Agreement. The breach of any one of the three Agreements shall constitute a breach of all three (3) such Agreements; or

11.1.4 If Lessee shall make a general assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due, or shall file a petition in bankruptcy, or shall be adjudicated insolvent, or shall file a petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, or shall file an answer admitting or not contesting the material allegations of a petition against it in any such proceeding, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver or liquidator of Lessee or any material part of its assets; or

11.1.5 If there is an entry of an order for relief, or, in the absence of an order for relief, if, within sixty (60) days after the commencement of any proceeding against Lessee seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future statute, law or regulation, such proceeding shall not have been dismissed, or if within sixty (60) days after the appointment without the consent or acquiescence of Lessee of any trustee, receiver or liquidator of Lessee or of any material part of its assets, such appointment shall not have been vacated; or

11.1.6 If the interest of Lessee in the Premises shall be sold under execution or other legal process.

## 11.2 Bankruptcy Default.

11.2.1 If a petition is filed by, or an order for relief is entered against the Lessee under Chapter 7 of the United States Bankruptcy Code (the "Bankruptcy Code") and the trustee of the Lessee elects to assume this Lease for the purpose of assigning it, the election or assignment, or both, and subject to limitations then in force under the Bankruptcy Code, the same may be made only if all of the terms and conditions of Sections 11 of this Lease are satisfied. If the trustee fails to elect to assume this Lease for the purpose of assigning it within ninety (90) days after his appointment, this Lease will be deemed to have been rejected. The Lessor shall then immediately be entitled to possession of the Leased Premises without further obligation to the Lessee or the trustee, and this Lease will be terminated. The Lessor's right to be compensated for damages in such bankruptcy proceeding, however, shall survive.

11.2.2 If the Lessee files a petition for reorganization under Chapters 11 or 13 of the Bankruptcy Code or a proceeding that is filed by or against the Lessee under any other chapter of the Bankruptcy Code is converted to a Chapter 11 or 13 proceeding.

11.3 Lessor Remedies. At any time following and during the continuance of an uncured Event of Default on the part of Lessee:

11.3.1 Lessor may cure any default by Lessee after Lessee's cure period has expired. If Lessor at any time by reason of Lessee's default pays any sum or does any act that requires the payment of any sum, the sum paid by Lessor shall be due immediately from Lessee to Lessor as additional rent hereunder, together with any interest due.

11.3.2 Subject to the requirement for notice and right to cure set forth hereinabove, Lessor may terminate Lessee's right to possession of Lessor's Premises upon written notice to Lessee. No act by Lessor other than the giving of such notice to Lessee shall terminate this Lease. This Lease and Lessee's rights and obligations hereunder shall continue as long as Lessor does not terminate Lessee's right to possession, and Lessor shall have the right to collect Rent, plus accrued interest, if any, when due. Upon termination, and subject to Lessor's compliance with the requirements of applicable laws, Lessor has the right to recover from Lessee the unpaid Rent and/or any other charges due hereunder or any charges, taxes or rents due to Lessor under the AOBC Purchase Agreement and/or the Tax Agreement, plus interest at the Interest Rate and costs including a reasonable attorney's fee from the date due until the date paid by Lessee.

11.3.3 In the event that Lessor elects to terminate Lessee's right to possession of the Leased Premises pursuant to this Section 11.3 following an Event of Default, Lessor may reenter and take possession of the Premises, and Lessee hereby waives any claim for damages as a result thereof, and Lessee shall be obligated to pay to Lessor as damages on demand, and Lessor shall be entitled to recover from Lessee, (a) all Additional Rent payable to the date of termination of Lessee's right to possession, plus (b) the cost to Lessor of all reasonable legal and other expenses and costs (including attorney's fees) incurred by Lessor in obtaining possession of the Leased Premises, in enforcing any provision of this Lease, in preserving the Premises during any period of vacancy, in taking reasonable steps to protect its interest in the Premises, in making such repairs as Lessor may reasonably deem necessary or advisable in operating and maintaining the Premises, and in re-letting the Premises, including reasonable brokerage commissions, plus (c) amounts equal to any Additional Rent herein reserved for the balance of the Term less the net amount of rent, if any, which may be collected and received by Lessor from the Premises for a period of time commencing upon termination of Lessee's right of possession and terminating on the sixth (6th ) anniversary thereof. During the balance of the Term, Lessor may relet the Premises, or any part or parts thereof (but in no event shall Lessor be obligated to do so), for a term or terms which may at Lessor's option be less than or extend after the Term, and Lessor may grant concessions or charge a rental in excess of that provided in this Lease (and Lessee shall have no right to any excess), plus any damages allowable at law or in equity.

11.3.4 Lessor may sue for and collect any amounts which may be due pursuant to the provisions of the preceding subsections of this Lease from time to time as Lessor may elect, but no such suit shall bar or in any way prejudice the rights of Lessor to enforce the collection of amounts due at any time or times thereafter by a like or similar proceeding.

## 12. Surrender and Restoration; Holding Over.

12.1 Surrender; Restoration. Upon any termination, surrender, or expiration of this Lease, except as expressly set forth herein, Lessee shall remove the Solar Facilities and all of Lessee's improvements and shall peaceably deliver to Lessor possession of the Premises or any part thereof, and other rights granted by this Lease. Upon any termination, surrender or expiration of this Lease, Lessee shall restore the Premises to its condition at the Effective Date, taking into account ordinary and reasonable wear and tear since the Effective Date, and shall repair any damage to the Premises as a result of any removal of the Solar Facilities under this Section. Said restoration shall be completed within six (6) months following the termination of the Operating Term (the "Decommissioning Period"). The obligation of the Lessee to the Lessor under the terms of this Lease for the payment of such use and occupancy and associated costs, and taxes is independent of the obligation to restore the Premises and shall not be affected by the provisions of this Section 12.1. Notwithstanding the foregoing, the Lessee shall surrender all roadways or access ways constructed by Lessee upon the Premises or the Remaining Lessor Property upon the expiration or earlier termination of the Lease in their then as-is condition.

12.2 Holding Over. If Lessee shall remain in possession of the Premises without extension after the expiration of the Term, Lessee shall hold as a tenant at sufferance.

12.3 Decommissioning Obligations. In the event that Lessee fails to timely fulfill the Decommissioning Obligations, then Lessor shall be entitled to file a claim, or multiple claims, against the bond required under Section 5.3 to obtain the funds necessary to complete the Decommissioning Obligations. In addition to and without limiting the foregoing, any property on the Premises after the Decommissioning Period shall become the property of Lessor and Lessee shall immediately, upon demand, reimburse Lessor for all of Lessor's costs incurred in connection with removing and disposing of the Solar Facilities. In the event Lessee fails so to remove any such components of the Solar Facilities or fails to repair any such damage to the Premises or Remaining Lessor Property, Lessor may perform such work and collect from Lessee the cost of such work.

### 13. Insurance

13.1 Commercial General Liability and Property Damage Insurance. Commencing on the date of the Construction Commencement Date and during the remainder of the Term, and except to the extent otherwise required by Applicable Legal Requirements or by the Interconnection Agreement, Lessee at its cost shall maintain commercial general liability insurance on the Premises that is written on an occurrence basis insuring against all liability for personal injury and property damage arising out of and in connection with the Premises, the Permitted Use or Lessee's use or occupancy of the Premises, in standard form with a general aggregate limit of not less than \$5,000,000, a products-completed operations aggregate limit of not less than \$2,000,000 and a per occurrence limit of not less than \$2,000,000 for bodily injury and property damage, with a deductible amount of \$10,000 and which shall include operations and blanket contractual liability coverage which insured performance of Lessee of the indemnity provisions of this Lease. The Auburn Water District shall be named as an additional insured.

13.2 Property Insurance-Personal Property. Commencing on the date of the Construction Commencement Date and during the remainder of the Term, Lessee at its cost shall maintain on all of its personal property on or about the Premises a policy of "all risk" or "special causes of loss" property insurance, with a deductible amount of \$10,000 and with vandalism and malicious mischief endorsements, to the extent of at least 100 percent of their full replacement.

13.3 Automobile Insurance. Business automobile liability insurance (occurrence coverage) for owned, non-owned, and hired automobiles with a minimum combined single limit of liability of \$1,000,000 each accident for bodily injury and property damage.

13.4 Workers' Compensation Insurance. Commencing on the date of its Construction Commence Date and during the remainder of the Term, if applicable, Lessee shall at its cost maintain Workers' Compensation Insurance, subject to the statutory limits of the Commonwealth of Massachusetts, an employer's liability insurance with a limit of at least \$1,000,000 per accident and per employee.

13.5 Lessor's Insurance. During the Term, Lessor at its cost shall maintain insurance of the type and in the amount(s) customarily maintained by the Auburn Water District against acts, omissions or negligence by Lessor.

13.6 Insurance Companies. All insurance required under this Lease shall be issued by insurance companies authorized to do business in the Commonwealth of Massachusetts, with a claims paying ability rating of A- or better and a financial class of V or better, as rated in the most recent edition of Best's Insurance Reports.

13.7 Policy Delivery, Payment Evidence. Concurrent with the delivery of the Notice of Commencement and not less than thirty (30) days prior to the expiration dates of the expiring policies furnished pursuant to this Article 13, certificates of insurance bearing notations evidencing the payment of premiums or accompanied by other evidence satisfactory to the other Party of such payment shall be delivered by Lessee and Lessor to the other Party.

13.8 Notice of Cancellation. Each certificate of insurance delivered hereunder, to the extent obtainable, shall contain an agreement by the insurer that such policy shall not be cancelled or surrendered without at least thirty (30) days prior written notice to the other Party and to any mortgagee named in such policy.

14. Indemnity.

14.1 Lessee shall indemnify, defend and hold harmless Lessor and their respective managers, officers, agents and employees (the "Lessor Indemnitees") from any claim, demand, lawsuit, or action of any kind for injury to or death of persons, including, but not limited to, employees of Lessee or Lessor, and damage or destruction of Premises, including, but not limited to, claims of any utility company or other loss or damage incurred by Lessor, arising out of (a) acts or omissions or willful misconduct of Lessee, its agents, officers, directors, employees or contractors and subcontractors; or (b) the material breach by Lessee of any of its obligations under this Lease; or (c) claims made against Lessor by a contractor, subcontractor, laborer, vendor, supplier or any other party for whom Lessee is responsible. The obligation to indemnify shall extend to and encompass all reasonable costs actually incurred by Lessor and any Lessor Indemnitee in defending such claims, demands, lawsuits or actions, including, but not limited to, attorney, witness and expert witness fees, and any other litigation related expenses. Lessee's obligations pursuant to this Section 14.1 shall not extend to claims, demands, lawsuits or actions for liability to the extent attributable to the negligence or willful misconduct of Lessor, the Lessor Indemnitees, or their respective contractors, successors or assigns, or to the acts of third parties for which no specific obligation of indemnification has otherwise been given by Lessee. Lessee shall pay any cost that may be incurred by Lessor or the Lessor Indemnitees in enforcing this indemnity, including reasonable attorney's fees.

15. Assignment.

15.1 Lessor's Assignment. The Lessor shall have the right to assign any of its rights, duties or obligations under this Lease without the prior written consent of the other Party, to a purchase of the Premises, provided that such assignee agrees in writing to be bound by all of the terms and conditions of this Lease. Following such assignment, including the delivery to the assignee of the balance of the any security deposit, if any, given by Lessee to Lessor in accordance with this Lease, (a) the Lessee shall recognize and attorn to the assignee and (b) the assignor shall be automatically released from any and all liabilities and/or obligations arising hereunder from and after the effective date of such assignment to the extent assumed in writing by the assignee. At the request of the Lessor, the Lessee shall execute an estoppel certificate and

such other instruments as are reasonably requested by the Lessor to confirm any such assignment and the continuing viability of this Lease.

15.2 Lessee Assignment. Subject to the provisions of Section 16 (relating to financing), Lessee shall not transfer or assign (collectively, an “Assignment”) this Lease or any interest therein, without prior written consent of Lessor. Notwithstanding the prior sentence, without Lessor’s consent, Lessee may (i) make an Assignment to an affiliate of Lessee or Guarantor (provided that such Assignment shall not release Lessee or Guarantor from its obligations hereunder) or (ii) make an Assignment to a successor in the operation of the assignor’s or transferor’s assets and/or business by reason of a reorganization, merger, consolidation, sale or foreclosure, where substantially all of such assignor’s or transferor’s assets are acquired by such successor; provided, however, that in the case of an Assignment described in clause (ii) the assignee or transferee meets all of the Conditions (as defined below). Lessor’s consent to any other Assignment shall not be unreasonably withheld if Lessor has been provided with reasonable evidence that the proposed assignee: (x) has comparable experience to that of the initial named Lessee in operating and maintaining photovoltaic solar systems comparable to the Solar Facility; and (y) has comparable financial capability to that of the initial named Lessee and Guarantor (the requirements of (x) and (y) are, collectively, the “Conditions”). Any Assignment in violation of this Article 15 will be null and void.

## 16. Lessee and Lessor Financing.

### 16.1 Lessee Financing.

16.1.1 Right to Grant a Security Interest. Lessee or its successors and/or assigns may from time to time, without the prior written consent of Lessor, encumber the interest of Lessee or a successor and/or assignee in this Lease and the rights granted hereunder by one or more security instruments (a “Security Interest”), provided that any Security Interest and all rights acquired under it shall (i) be subject to each and all of the covenants, conditions and restrictions stated in this Lease, (ii) be subject to all rights and interests of Lessor and shall not constitute a lien against Lessor's fee simple interest in the Property and (iii) shall be subordinate to the current or future mortgage lien of the Lessor's current or future mortgagee(s) subject to a non-disturbance agreement executed by such mortgagee and an attornment agreement by Lessee, and further provided, that Lessee or an assignee shall promptly upon the execution of any Security Interest deliver a true copy thereof to Lessor. Without limiting the generality of the foregoing, nothing contained in such Security Interests shall release or be deemed to relieve Lessee from full and faithful observance and performance of the terms, covenants and conditions contained in this Lease to be observed and performed by Lessee or from any liability for the non-observance or non-performance of any of the terms and conditions hereof, nor be deemed to constitute a waiver of any rights of Lessor hereunder, except as expressly provided for herein, and further provided that such Security Interest shall be subordinate to the Security Interest referred to in paragraph 28 given to secure the full and faithful performance of this Lease, the AOBC Purchase Agreement and the Tax Agreement.

16.1.2 Protection of Security Interest. Any Security Interest Holder of any interest of Lessee hereunder shall, for so long as its Security Interest is in existence and until the lien thereof has been extinguished, be entitled to the following protections:

(a) Notice of Default. Notwithstanding any default by Lessee under this Lease, Lessor shall have no right to terminate this Lease unless and until Lessor shall first have given the Security Interest Holder(s) a written notice of Lessee's default and failure to cure same within the period(s) specified in Article 11 and thereafter afforded the Security Interest Holder(s) an opportunity to cure such default within 30 days and the Security Interest Holder(s) shall have failed to effect the cure of such default within 30 days. It is understood that the Lessor shall have the right to give to the Security Interest Holder(s) written notice of the default and demand to cure simultaneously with the notice given to Lessee, and all such cure periods shall run concurrently for 30 days. The Security Interest Holder shall be entitled to remedy any default under this Lease in the manner and on the same terms as granted to Lessee in Article 11 of this Lease.

(c) Right to Perform. The Security Interest Holder shall have the right at any time to pay any Rent due hereunder and to perform or cause to be performed any other obligation of Lessee at or within the time such payment or performance is required under this Lease. Nothing in this Lease shall be construed to obligate the Security Interest Holder to cure any default of Lessee.

(d) Foreclosure. If Lessee's Security Interest Holder becomes the assignee of this Lease by means of foreclosure or transfer in lieu thereof, such Security Interest Holder shall be personally liable under this Lease only for the period the Security Interest Holder remains a successor Lessee hereunder, provided that any subsequent assignee or Lessee shall assume and agree to be bound by all the terms and conditions of this Lease

(e) Re-entry and Repossession. Following (i) any re-entry and repossession of the Premises by Lessor or (ii) any termination of this Lease (whether by rejection of the Lease in any bankruptcy or similar proceeding or otherwise), Lessor shall deliver written notice to the Security Interest Holder indicating the completion of Lessor's re-entry and repossession of the Premises or termination of this Lease.

## 17. Estoppel Certificate

17.1 Estoppel Certificate from Lessor. At the request of Lessee or a Security Interest Holder, Lessor shall execute, acknowledge and deliver to such Lessee or Security Interest Holder a written statement declaring: (i) either that the Lease is unmodified and in full force and effect, or the manner in which this Lease has been modified and whether the Lease as so modified is in full force and effect; (ii) the dates to which Lessee's monetary obligations hereunder have been paid in advance; (iii) to Lessor's knowledge, whether Lessee is or is not then in default hereunder; and (iv) to Lessor's knowledge, whether any past defaults of Lessee have been fully cured.

17.2 Estoppel Certificate from Lessee. At the request of Lessor, Lessee shall execute, acknowledge and deliver to Lessor a written statement declaring: (i) either that this Lease is unmodified and in full force and effect, or the manner in which the Lease has been modified and whether the Lease as so modified is in full force and effect; (ii) the dates to which Lessee's monetary obligations hereunder have been paid in advance; (iii) to Lessee's knowledge, whether the Lessor is or is not then in default hereunder; and (iv) to Lessee's knowledge, whether any past defaults of Lessor have been fully cured.

## 18. Casualty/Eminent Domain

18.1 Casualty. If any part of the Premises is damaged by fire or other casualty so as to render it inoperable and the Premises substantially unsuitable for operation of the Lessee in its reasonable determination, Lessee shall either promptly restore and repair the Premises or terminate this Lease by providing at least thirty (30) days prior written notice thereof to Lessor and on the date so specified, this Lease shall expire as fully as if such date were the date set forth above for the expiration of this Lease, and this Lease shall be null and void, without recourse to the Parties, except that the provisions hereof that are stated herein to survive said termination shall so survive. Upon any such termination, Lessee shall be entitled to collect all insurance proceeds payable to Lessee on account thereof and to be reimbursed for any prepaid Rent.

18.2 Eminent Domain. If a taking authority takes all of the Premises by Eminent Domain, this Lease shall terminate as of the date title vests with the taking authority. If a substantial portion of the Premises are taken and the taking, in Lessee's reasonable determination, renders the remaining Premises substantially unsuitable for the operation, Lessee may terminate this Lease by written notice thereof within sixty (60) days of such taking, and on the date so specified, this Lease shall expire as fully as if such date were the date set forth above for the expiration of this Lease, and this Lease shall be null and void, without recourse to the Lessee, except that the provisions hereof that are stated herein to survive said termination shall so survive including all balances due to the date of termination to Lessor under this Lease, the Purchase Power Agreement and the Tax Agreement. The Lessee will be entitled to share in the taking proceeds in proportion to the values of its ownership interest in the personal property located on the Premises which, for Lessee, may include, if applicable the value of the Premises, moving expenses and business relocation expenses.

19. Notice.

Any notice or communication required, permitted, or contemplated hereunder shall be given in writing, addressed to the Party to be notified at the address or set forth below or at such other address or addresses (s) as a Party may designate for itself from time to time by written notice hereunder and delivered by (a) hand delivery, (b) nationally recognized overnight courier with delivery signature required, (c) registered or certified mail, return receipt requested. Any notice or communication so delivered shall be deemed duly given on the earliest of (i) the actual date received, (ii) the first (1st) business day following the day of depositing such communication with a nationally recognized overnight courier with next day delivery specified, so long as confirmation of delivery is given by such courier service, or (iii) the third (3rd) business day following the day of mailing if mailed by registered or certified mail, return receipt requested.

Lessor: Auburn Water District  
Greg Woods, Superintendent  
P.O. Box 187  
75 Church Street  
Auburn, MA 01501  
(508) 832-5336  
[gwoods@auburnwater.com](mailto:gwoods@auburnwater.com)

Lessee: [\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]
[\_\_\_\_\_]

20. Miscellaneous.

20.1 Waiver / Headings / Further Assurances. The waiver by either party of any breach of any term, condition, or provision herein contained shall not be deemed to be a waiver of such term, condition, or provision, or any subsequent breach of the same, or any other term, condition, or provision contained herein. The headings in this Lease are solely for convenience and ease of reference and shall have no effect on interpreting the meaning of any provision of this Lease. The Parties acknowledge that each of them and their counsel have had an opportunity to review this Lease and that this Lease will not be construed against either Party merely because its counsel has prepared it. Upon the receipt of a written request from the other Party, each Party shall execute such additional documents, instruments and assurances and take such additional actions as are reasonably necessary and desirable to carry out the terms and intent hereof. Neither Party shall unreasonably withhold, condition or delay its compliance with any reasonable request made pursuant to this section.

20.2 Memorandum. Lessor and Lessee agree (a) to execute, on the date hereof, a memorandum of this Lease setting forth the pertinent terms of this Lease in accordance with MGL c. 183 § 4.

20.3 Disputes and Choice of Law: Attorneys' Fees. This Lease is governed by and shall be interpreted in accordance with the laws of the Commonwealth of Massachusetts (without regard to principles of conflicts of laws). Any controversy or claim arising out of, or relating to, this Lease, or to the making, performance, or interpretation thereof, shall be submitted to the jurisdiction and venue of the Superior Court of the Commonwealth of Massachusetts for the County of Middlesex. EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS LEASE.

20.4 No Partnership or Sale. Nothing contained in this Lease shall be deemed or construed by the Parties or by any third person to create the relationship of principal and agent, partnership, joint venture, buyer and seller of electrical energy, or any other association between Lessor and Lessee, other than the relationship of lessor and lessee.

20.5 Force Majeure. Except as otherwise specifically provided in this Lease, neither Party shall be considered in breach of the Lease or liable for any delay or failure to comply with the terms of this Lease (other than Lessee's obligation to pay Rent or any other sums due herein and to maintain insurance to be in effect), if and to the extent that such delay or failure is directly attributable to the occurrence of a Force Majeure Event; provided that the Party claiming relief under this Section shall immediately; (i) notify the other Party in writing of the existence of the force Majeure Event, which shall include any information reasonably available regarding the nature and anticipated duration of such Force Majeure Event, (ii) exercise all commercially reasonable and diligent efforts necessary to continue to perform its

obligations hereunder and to minimize delay caused by such Force Majeure Event, (iii) promptly notify the other Party in writing of the cessation or termination of said Force Majeure Event and (iv) resume performance of its obligations hereunder as soon as practicable thereafter. If a Force Majeure Event shall have occurred that has prevented either Party from performing any of its material obligations hereunder and that has continued for a continuous period of one hundred twenty (120) days, then either Party shall have the right, but not the obligation, to terminate this Lease upon three (3) days' written notice to the other Party without penalty or further liability. Upon such termination due to a Force Majeure Event, neither Party shall have any liability to the other (other than any such liabilities that have accrued prior to such termination or those which expressly survive the termination or expiration of the Lease pursuant to the terms hereof). The suspension of performance shall be of no greater scope and of no longer duration that is reasonably required by the Force Majeure Event.

20.6 Counterparts / Binding Effect / Entire Lease. This Lease and the rights, privileges, duties and obligations of the Parties as set forth herein shall inure to the benefit of and be binding upon each of the Parties, together with their respective successors and assigns. This Lease represents the full and complete Lease between the Parties with respect to the subject matter contained herein and supersedes all prior written and oral Leases between the Parties with respect to said subject matter. This Lease may be amended only in writing signed by Lessee and Lessor or their respective successors in interest.

20.7 Reserved Rights. Lessor hereby reserves the right at any time and from time to time to make alterations or additions to existing buildings located on the Remaining Lessor Property and/or to construct or alter other buildings or improvements upon the Remaining Lessor Property, provided that such actions do not adversely impact Lessee's Operations or otherwise conflict or interfere with Lessee's rights hereunder.

20.8 Brokerage. Lessor and Lessee warrant to each other that no broker or agent was hired, engaged or consulted with regard to this transaction. Lessor and Lessee hereby agree to indemnify each other against any claim, action or suit for any fee or commission arising out of this transaction.

21. Professional Costs and Expenses. Except as otherwise set forth in Section 10 above, Lessor and Lessee shall each be responsible for the costs and expenses of their own respective legal and other professional consultants in connection with the transaction contemplated herein.

23. Certification Required Per M.G.L. c. 62C, §49A. By entering this Lease, the duly authorized representative of Lessee certifies, under penalties of perjury, that Lessee has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting of child support.

24. Disclosure Required of Lessee. Lessor and Lessee acknowledge that Lessee completed and submitted to Lessor a Disclosure of Beneficial Interests, pursuant to MGL c. 7C, § 38, in the general form shown in Exhibit D, attached.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have caused their authorized representatives to execute this Lease on their behalf, on the dates set forth below.

LESSOR: Auburn Water District

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

Name: Gregory Woods

Title: Superintendent

DATE: \_\_\_\_\_

LESSEE: [\_\_\_\_\_]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

DATE: \_\_\_\_\_

## SCHEDULE OF EXHIBITS

- A. Plan Showing Remaining Lessor Property
- B. Plan Showing Premises
- C. Rent Schedule
- D. Form for Disclosure of Beneficial Interest in Real Property

**EXHIBIT A**

**PLAN SHOWING REMAINING LESSOR PROPERTY**

**EXHIBIT B**  
**PLAN SHOWING PREMISES**

**EXHIBIT C**  
**RENT SCHEDULE**

<b>Contract Year in Term</b>	<b>Annual Rent – East Parcel</b>	<b>Annual Rent – West Parcel</b>	<b>Contract Year in Term</b>	<b>Annual Rent – East Parcel</b>	<b>Annual Rent – West Parcel</b>
1			17		
2			18		
3			19		
4			20		
5			21		
6			22		
7			23		
8			24		
9			25		
10			26		
11			27		
12			28		
13			29		
14			30		
15					
16					

**EXHIBIT D**

**DISCLOSURE OF BENEFICIAL INTERESTS  
IN REAL PROPERTY TRANSACTION**

This form contains a disclosure of the names and addresses of all persons with a direct or indirect beneficial interest in the real estate transaction described below. This form must be filed with the Massachusetts Division of Capital Asset Management and Maintenance, as required by M.G.L. c. 7C, § 38, prior to the conveyance of or execution of a lease for the real property described below. Attach additional sheets if necessary.

1. Public agency involved in this transaction: Auburn Water District

2. Complete legal description of the Property:

A portion of the properties located at and known as \_\_\_\_\_ and adjacent properties,  
Auburn, MA, containing approximately \_\_\_\_\_ acres of land and being  
more fully described in \_\_\_\_\_

3. Type of transaction        Sale        Lease or rental for [ \_\_\_\_\_ ] ( \_\_\_\_\_ ) year term.

4. Seller(s) or Lessor(s):        Auburn Water District

Purchaser(s) or Lessee(s):

5. Names and addresses of all persons who have or will have a direct or indirect beneficial interest in the real property described above. *Note: If a corporation has or will have a direct or indirect beneficial interest in the real property, the names of all stockholders must also be listed except that, if the stock of the corporation is listed for sale to the general public, the name of any person holding less than ten percent of the outstanding voting shares need not be disclosed.*

Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

None of the persons listed in this section is an official elected to public office in the Commonwealth of Massachusetts except as noted below:

Name	Title or position
_____	_____
_____	_____

6. This section must be signed by the individual(s) or organization(s) entering into this real property transaction with the public agency named in item 1. If this form is signed on behalf of a corporation, it must be signed by a duly authorized officer of that corporation.

The undersigned acknowledges that any changes or additions to item 4 of this form during the term of any lease or rental will require filing a new disclosure with the Division of Capital Asset Management and Maintenance within 30 days following the change or addition.

The undersigned swears under the pains and penalties of perjury that this form is complete and accurate in all respects;

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_