SOLAR LEASE AGREEMENT

THIS SOLAR LEASE AGREEMENT ("***Agreement***") is made and entered into as of this ___ day of _____ (the "***Effective Date***"), by and between the Town of Acton, a municipality of the Commonwealth of Massachusetts ("***Lessor***") and _____, a ("***Lessee***"). Lessor and Lessee are sometimes hereinafter referred to individually as a "***Party***" and collectively as the "***Parties***."

ARTICLE 1

DEFINED TERMS; RULES OF INTERPRETATION

Defined Terms. Capitalized terms used in this Agreement shall have the meanings ascribed to them in this Agreement, or as otherwise set forth below:

"***Agreement***" means this Solar Lease Agreement, including all Exhibits and attachments hereto, together with the Request for Proposals issued by the Lessor on or about _____, and the Lessee's proposal in response thereto, which are expressly incorporated herein.

"***Applicable Legal Requirements***" means any present and future law, act, rule, requirement, order, by-law, ordinance, regulation, judgment, decree, or injunction of or by any Governmental Authority, ordinary or extraordinary, foreseen or unforeseen, which may at any time be applicable to the Premises or the System, or any part thereof or to any condition or use thereof, and all licenses, permits and other governmental consents which are or may be required for the use and occupancy of the Premises for the installation, operation, maintenance and removal of the System.

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

events specified in clauses (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

"***Billing Months***" (individually, a "***Billing Month***") means the periods for which the LDC bills the Lessor for the purchase of electricity; provided, that no period of time shall be considered a Billing Month hereunder unless such period occurs, or concludes, after the Commercial Operation Date of the System installed under this Agreement.

"***Business Day***" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday.

"***Commercial Operation***" means that the System is ready for regular, daily operation, has been connected to the LDC System, has undergone testing that shows that the System is capable of delivering electricity generated by the System for eight (8) continuous hours using such instruments and meters as have been installed for such purposes and the System has been approved for interconnected, to the extent required, by the LDC, is in compliance with Applicable Legal Requirements in all respects.

"***Commercial Operation Date***" means the tenth (10th) day after the date of Host's receipt of a Completion Notice for the System, or any other date agreed to in writing by the parties.

"Completion Notice" means the written notice by the Lessee to the Lessor that the System has achieved Commercial Operation, accompanied by a copy of the results of the System acceptance testing.

"Consumer Price Index" means Seasonally Adjusted U.S. City Average For All Items For All Urban Consumers, "CPI-U" of the Bureau of Labor Statistics of the United States Department of Labor, using 2010 as the base year

"***Contract Year***" means the consecutive 12-month period commencing on the Commercial Operation Date.

"***Decommissioning Assurance***" means adequate financial assurance, in a form reasonably satisfactory to Lessor, that is established and thereafter maintained by Lessee upon and after the Commercial Operation Date, to fully cover the cost of decommissioning the System and restoring the Premises as specified in this Agreement. Depending on the circumstances, and subject to Lessor's approval, appropriate forms of financial assurance may include, without limitation, an escrow fund, irrevocable letter of credit, surety bond or third party guaranty; provided, however, that any form of financial assurance must provide Lessor with adequate rights to access the Decommissioning Assurance in the event of Lessee's failure to comply with its System removal and Premises restoration obligations under the Agreement.

"***Early Termination Price***" means, for the applicable Contract Year, either (i) the amount listed on Exhibit D, attached hereto or (ii) the Fair Market Value of the System

on an installed and running, or going-concern basis, as determined in accordance with Section 7.2.3, whichever amount is greater.

"***Effective Date***" is the date first set forth in the introductory paragraph of this Agreement.

"***Environmental Attributes***" means any offset, credit, benefit, reduction, rebate, financial incentive, tax credit and other beneficial allowance that is in effect as of the Effective Date or may come into effect in the future, including, to the extent applicable and without limitation, RECs, Solar RECs, carbon credits, Green-e products, investment tax credits, production tax credits, forward capacity market credits or other credits earned by or in connection with, or otherwise attributable to, the System, or the electricity produced by the System, under or with respect to the Federal Clean Air Act (including, but not limited to, Title IV of the Clean Air Act Amendments of 1990), any state or federal renewable portfolio standard or renewable energy standard or other portfolio purchase mandate or requirement, including the renewable portfolio standard of the Commonwealth of Massachusetts, the Regional Greenhouse Gas Initiative or any statute or regulation implementing the foregoing, any federal or other applicable act or regulation relating to carbon emissions or a cap or other limitation thereupon or any other state, federal or other Governmental Authority act, law or regulation that provides offsets, credits, benefits, reductions, allowances or incentives of any kind or nature related to electricity generation, generation capacity or emissions (or the lack or avoidance thereof).

"Events of Default" has the meaning set forth in ARTICLE 11.

"***Financing Party***" or "***Financing Parties***" means any and all Persons or successors in interest thereof, directly or indirectly, (i) lending money, (ii) extending credit, (iii) investing equity capital or (iv) providing or financing any Lease or other arrangement including tax equity investments for or in connection with any of the following: (a) the construction, term or permanent financing of the System; (b) working capital or other ordinary business requirements of the System (including the maintenance, repair, replacement or improvement of the System); (c) any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the System; or (d) the purchase of the System and the related rights. For avoidance of doubt, "Financing Party" shall include an Equipment Leasing Party, if any, any Person providing any of the foregoing categories of financing to Equipment Leasing Party with respect to the System.

"***Force Majeure Event***" means an event, occurrence or circumstance, or combination thereof, beyond the reasonable control of a Party which wholly or partly prevents or delays the performance of any obligation arising under this Agreement, and is not the result of the negligence of the Claiming Party, and which by the exercise of reasonable due diligence, the Claiming Party is nonetheless unable to overcome or avoid or cause to be avoided, including, but not limited to: (a) acts of God, terrorism, war, blockade, riot, civil disturbance or sabotage; (b) any effect of unusual natural elements, including fire, subsidence, earthquakes, floods, lightning, tornadoes, unusually severe storms, or similar cataclysmic occurrence or other unusual natural calamities; (c)

environmental and other contamination at or affecting the Site, the Lease Area, the System or a Party's obligations hereunder; (d) explosion, accident or epidemic; and (e) general strikes, lockouts or other collective or industrial action by workers or employees, or other labor difficulties; provided, that neither the lack of money nor changes in market conditions shall constitute a Force Majeure Event.

"***Governmental Authority***" means the United States of America, the Commonwealth of Massachusetts, and any political or municipal subdivision thereof (including but not limited to Lessor), and any agency, department, commission, board, bureau, or instrumentality of any of them, and any independent electric system operator.

"***Hazardous Materials***" means those substances defined, classified, or otherwise denominated as a "hazardous substance," "toxic substance," "hazardous material," "hazardous waste," "hazardous pollutant" "toxic pollutant" or oil in the Applicable Legal Requirements or in any regulations promulgated pursuant to the Applicable Legal Requirements.

"Initial Rent" means an annual rent amount of the rent contained in the Lessor's Price Proposal, attached hereto as Exhibit D, paid on a prorated basis for use of the Premises for the number of days from the Effective Date to the Commercial Operation Date.

"***Interest Rate***" means a fluctuating interest rate per annum equal to the sum of the lesser of (i) the Prime Rate as stated in the "Bonds, Rates & Yields" section of the The Wall Street Journal on the Effective Date and thereafter on the first day of every calendar month, plus two (2) percentage points, or (ii) the maximum rate permitted by Applicable Legal Requirements. In the event that such rate is no longer published in The Wall Street Journal or such publication is no longer published, the Interest Rate shall be set using a comparable index or interest rate selected by Lessor and reasonably acceptable to Lessee. The Interest Rate hereunder shall change on the first day of every calendar month. Interest shall be calculated daily on the basis of a year of 365 days and the actual number of days for which such interest is due.

"LDC" means the regulated electric local distribution company that provides electric distribution service to the municipality in which Lessor is located.

"***LDC System***" means the electric distribution system operated and maintained by the LDC.

"***Lessee***" has the meaning set forth in the introductory paragraph of this Agreement.

"***Lessor***" has the meaning set forth in the introductory paragraph of this Agreement.

"***Lease Area***" means the area on the Premises in which Lessor grants Lessee a lease to install and operate the System, as shown on the plan attached hereto as Exhibit F.

"***MCEC***" means the Massachusetts Clean Energy Center.

"***Outside Construction Commencement Date***" means 120 days after the Effective Date.

"***Outside Commercial Operation Date***" means the later of (i) 60 days after the Construction Commencement Date, or (ii) 180 days after the Effective Date.

"***Premises***" has the meaning set forth in Exhibit E, and shall include the Lease Area.

"***System***" means the solar electric generating facility installed in the Lease Area, including but not limited to the System Assets, that produces the Electricity.

"***System Assets***" means each and all of the assets of which the System is comprised, including Lessee's solar energy panels, mounting systems, carports, tracking devices, inverters, integrators and other related equipment and components installed on the Premises, electric lines and conduits required to connect such equipment to the LDC Delivery Point, protective and associated equipment, improvements, metering devices, and other tangible and intangible assets, permits, property rights and contract rights reasonably necessary for the construction, operation, and maintenance of the System.

"***Term***" shall have the meaning set forth in Section 3.1 herein.

"Term Rent" means, after the Commercial Operation Date, an annual amount equal to the price contained in the Lessee's Price Proposal, attached hereto as Exhibit D, subject to Consumer Price Index adjustments as provided in Section 4.2 hereof.

"***Termination Date***" means the earlier to occur of (i) the last day of the Term, (ii) the date of termination of this Agreement as the result of an Event of Default, and (iii) the date of termination pursuant to ARTICLE 7 herein.

"***Termination Payment***" means an amount payable by a Party to the other Party in the event of termination of this Agreement as a result of an Event of Default, as set forth in Exhibit D attached hereto.

ARTICLE 2

THE PREMISES

2.1 **Premises**. Lessor, for and in consideration of the covenants and agreements on the part of Lessee contained in this Agreement, does hereby lease unto Lessee, and Lessee does hereby take from Lessor, upon and subject to the conditions hereinafter expressed, the Lease Area on the Premises for the sole and exclusive purpose of constructing, operating, maintaining, repairing and removing the System. Lessee's use of the Lease Area is subject to all Applicable Legal Requirements.

2.2 **As-Is Lease of the Premises**. Lessee accepts the Lease Area after a full and complete examination thereof, as well as the title thereto, and knowledge of its present uses and non-uses. Lessee accepts the Lease Area in the condition or state in which it now is without any representation or warranty, express or implied in fact or by law, by Lessor and without recourse to Lessor, as to the title thereto, the nature, condition or usability thereof or the use or uses to which the Lease Area or the Premises or any part thereof may be put. Lessor shall not be required to furnish any services or facilities or to make any repairs or alterations in or to the Lease Area or the Premises, except as provided in this section below. Notwithstanding the above, the Parties agree that Lessee shall not be liable for any conditions on the Premises arising from or related to acts or omissions occurring prior to the Effective Date, except to the extent arising from or related to Lessee's negligence or willful misconduct.

2.2.1 Not later than the Construction Commencement Date, the Lessor shall arrange to remove any and all of its equipment, materials, improvements and other items that the parties agree interferes with or obstructs the construction of the System.

2.3 **Ownership of the System**.

2.3.1 Title to System. Subject to the rights provided to Lessor pursuant to other terms hereof, the System and all alterations, additions, improvements or installations made thereto by Lessee and all Lessee property used in connection with the installation, operation and maintenance of the System is, and shall remain, the personal property of Lessee ("***Lessee Property***"). In no event shall any Lessee Property be deemed a fixture, nor shall Lessor, nor anyone claiming by, through or under Lessor (including but not limited to any present or future mortgagee of the Premises) have any rights in or to the Lessee Property at any time except as otherwise provided herein. Except as provided otherwise herein, Lessor shall have no ownership or other interest in the System or any System Assets or other equipment or personal property of Lessee installed on the Premises, and Lessee may remove all or any portion of the System or any System Assets at any time and from time to time as further provided in the Agreement. Without limiting the generality of the foregoing, Lessor hereby waives any statutory or common law lien that it might otherwise have in or to the System and other System Assets or any portion thereof.

2.3.2 **Security Interests in System**. Except as otherwise provided herein and in the Agreement, Lessor acknowledges and agrees that Lessee may grant or cause to be granted to a lender a security interest in the System(s) and in Lessee's rights to payment under the Agreement, and Lessor expressly disclaims and waives any rights in the System at law or in equity pursuant to this lease, except as expressly provided otherwise herein. Any security interest shall be subordinate to the interest of the Lessor in the Premises and subject to the terms and conditions of this Agreement.

2.4 **No Expenditures**. Lessee and Lessor acknowledge and agree that Lessor shall not be required to make any expenditure, incur any obligation, or incur any liability of any kind whatsoever in connection with this lease or the ownership, construction, operation, maintenance, repair, or removal of the System.

2.5 **No Additional Use**. Except with the prior express written consent of Lessor, Lessee shall not use the Premises for any use other than the installation, operation, maintenance, repair and removal of the System.

ARTICLE 3

TERM

3.1 **Term**. The term of this Agreement (the "***Term***") shall commence on the Effective Date and shall remain in effect until the twentieth (20th) anniversary of the Effective Date.

3.2 **Extension of Term**. Lessor shall have the option, but not the obligation, to extend the Term for up to one (1) consecutive period of five (5) years, (the "***Extension Term***"), upon providing ninety (90) days prior written notice to the Lessee, unless this Agreement has been earlier terminated by either Party pursuant to ARTICLE 7 or ARTICLE 11 hereof.

3.3 **Achievement of Commercial Operation.** Lessee shall commence construction of the System by the Outside Construction Commencement Date and achieve Commercial Operation of the System by the Outside Commercial Operation Date. Upon achievement of Commercial Operation, the Lessee shall provide a Completion Notice to Lessor.

ARTICLE 4

RENT

4.1 **The Initial Rent** is as set forth in the Lessee's proposal, attached as Exhibit D hereto. The Initial Rent, prorated for the number of days from the Effective Date to the Commercial Operation Date, shall be due on the Commercial Operation Date. Following the Commercial Operation Date, the Initial Rent shall cease.

4.2 **The Term Rent** is as set forth in the Lessee's proposal and attached as Exhibit D hereto. The first payment of the Term Rent shall be payable in arrears and due no later than ten (10) days following each Billing Month of the Term; provided, that if the first Billing Month hereunder ends within ten (10) days of the Commercial Operation Date of the System, the Payment for such Month shall be included rent payment for the following Month.

4.2.1 At the end of the second and each succeeding year following the Commercial Operation Date, the Term Rent shall be adjusted to reflect the corresponding increase in the annual Consumer Price Index for the immediately preceding calendar year.

4.3 **Taxes**. During the initial term, or any extension term of this Lease, Lessee shall be responsible to pay any real or personal property taxes, assessments and other governmental charges levied upon, assessed against, and applicable to the Premises or the

System arising from Lessee's occupancy and use of the Premises and the installation and ownership of the System.

4.4 **Independent Covenant**. The Lessee shall pay all of the Initial Rent and the Term Rent hereunder, without any offset, defense, claim, counterclaim, reduction or deduction of any kind whatsoever. The obligations of the Lessee and the Lessor, respectively, under this Agreement are expressly agreed by the Parties to be independent covenants. If the Lessor fails to perform any obligation under this Lease required to be performed by the Lessor, the Lessee shall have no right of setoff and no right to terminate this Lease, avail itself of self-help or abate or withhold rent or any other charges or sums payable by the Lessee under this Lease.

ARTICLE 5

LESSEE'S DUTY TO MAINTAIN

5.1 **Maintenance; Repairs**.

5.1.1 Lessee shall take good care of the Lease Area and the System, conduct all required maintenance and make all repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the Lease Area and the System in first class order, repair and condition ("***Lessee's Maintenance Obligations***").

5.1.2 Lessor shall have no duty or liability to Lessee with respect to the maintenance, repair or security of the Lease Area, the System or any access areas.

5.1.3 Nothing in this Agreement shall limit Lessor's ability to maintain the Premises in a reasonable manner consistent with Lessor's current and past practices.

5.1.4 Notwithstanding the foregoing in Section 5.1.3 above, Lessor acknowledges, agrees, and accepts that activities conducted by or on behalf of Lessee on the Premises relating to the System may interfere with Lessor's maintenance of the Premises or Lessor's conduct of business thereon. Lessee agrees to take all commercially reasonable measures to minimize such interferences.

5.1.5 **Utilities**. Lessee shall make all arrangements for and pay directly to the entity providing the service, before delinquent, all charges for all utilities and services furnished to or used by it, including without limitation, gas, electricity, water, steam, telephone service, trash collection and connection charges. Lessor shall have no duty or liability to Lessee with respect to the maintenance, repair, upgrade, replacement or security of any utilities, including, without limitation, any electrical transmission or distribution lines, whether such lines are owned by Lessor or any third party, nor shall Lessor have any liability to Lessee (including, without limitation, liability for lost revenue) arising from Lessor's actions or omissions with respect to such maintenance, repair, upgrade, replacement or security. In the event that Lessee desires to undertake maintenance, repair, upgrade, replacement or security activities with respect to electrical

transmission or distribution lines owned by Lessor, Lessee may do so at Lessee's expense subject to the approval of Lessor, which shall not be unreasonably withheld.

5.2 **Compliance with Laws; Professional Standards**. Lessee, at Lessee's expense, shall diligently and fully comply with all Applicable Legal Requirements. In addition, Lessee shall ensure that the System is operated and maintained in a professional manner by appropriately trained and qualified individuals

5.3 **Decommissioning Assurance**. Upon the issuance of the Notice of Commercial Operation, Lessee shall establish and maintain thereafter the Decommissioning Assurance.

ARTICLE 6

CONSTRUCTION AND OPERATION OF PERMITTED USE

6.1 **General Description**. Except as otherwise specified herein, the System shall consist solely of the improvements described in Exhibit C of the Agreement.

6.2 **Governmental Approval**. Except as otherwise specified herein, or otherwise obtained prior to the Effective Date, Lessee will obtain at its sole cost all approvals and permits required under the Applicable Legal Requirements for Lessee's use of the Premises and for the System from any Governmental Authority having jurisdiction in the matter. Lessee will promptly inform Lessor of all significant developments relating to the issuance of such approvals or permits. Lessor will reasonably cooperate with Lessee in procuring such approvals; provided, however, that the parties acknowledge and agree that this Agreement does not impose an affirmative obligation on the Lessor to issue or procure any approval or to engage in any action or inaction inconsistent with the proper exercise of the Lessor's regulatory authority. If any changes in such plans and/or specifications are required by any Governmental Authority, then Lessee shall submit such changes, if any, to Lessor for its approval, which shall not be unreasonably conditioned, withheld or delayed.

6.3 **Construction Commences Promptly**. Lessee shall commence the construction of the System promptly following the Effective Date and will proceed diligently and continuously thereafter until completion, subject only to delays on account of a Force Majeure Event.

6.4 **Completion Requirements**. Lessee will arrange for the construction of the System in a good, careful, proper and workmanlike manner in accordance with good engineering practices, the Request for Proposals which resulted in the Agreement (the "***RFP***"), and with all Applicable Legal Requirements. The System will, when completed, comply with all Applicable Legal Requirements and the RFP.

6.5 **Interconnection with Electric Distribution Grid**. Lessee will obtain at its sole cost all approvals and agreements required for Lessee's interconnection of the System to the LDC System. Lessee will promptly inform Lessor of all significant developments relating to such interconnection matters.

6.6 **Access to and Use of the Premises.** Lessee and its sub-contractors, agents, consultants, and representatives shall have reasonable access at all reasonable times (including under emergency conditions) to the necessary portion of the Premises for the purpose of construction, operation, inspection, maintenance, repair and removal of the System, and to any documents, materials and records of Lessor relating to the Premises that Lessee reasonably requests in conjunction with these activities. Lessee shall provide Lessor reasonable notice of all activities conducted by or on behalf of Lessee on the Premises relating to the System. During any such activities, Lessee, and its sub-contractors, agents, consultants and representatives shall comply with Lessor's reasonable safety and security procedures (as may be promulgated from time to time), and Lessee and its sub-contractors, agents, consultants and representatives shall conduct such activities in such a manner and such a time and day as to cause minimum interference with Lessor's activities.

6.7 **As-built Plans.** Within ninety (90) days following the issuance of the Notice of Commercial Operation, Lessee shall prepare and deliver to Lessor detailed as-built plans accurately depicting the System including, without limitation, all wiring, lines, conduits, piping and other structures or equipment.

6.8 **Removal of the System**.

6.8.1 Upon expiration or termination of the Agreement according to its terms, and unless the Lessor elects to purchase the System pursuant to ARTICLE 7, Lessee shall at its sole cost and expense remove from the Premises all of the tangible property comprising the System, including but not limited all structures built by the Lessee, any fencing and/or barriers to secure the System and any System mounting and other support structures, on a mutually convenient date not later than sixty (60) days after such expiration or termination and shall return the Lease Area to the same condition as it was in on the Effective Date except for any reasonable use and wear or damage by casualty or eminent domain.

6.8.2 Lessee shall repair any damage it causes in connection with such removal not related to ordinary use and wear.

6.8.3 Not later than sixty (60) days after Lessee's removal of the System and restoration of the Lease Area is completed, Lessor shall release or return to the Lessee the full amount of the Decommissioning Assurance, including any interest accrued thereon from the Effective Date.

6.8.4 If Lessee fails to remove or commence substantial efforts to remove the System within sixty (60) days of the expiration or of the date that the Agreement terminates, Lessor shall have the right, at its option, to remove the System and restore the Lease Area to its original condition (other than ordinary wear and tear) and Lessee shall reimburse Lessor for reasonable out-of-pocket costs and expenses incurred by Lessor in removing and storing the System and in restoring the Lease Area.

6.8.5 If Lessee fails to reimburse Lessor for such reasonable costs and expenses incurred in removing and storing the System and in restoring the Lease Area within sixty (60) days of its completion of such actions, Lessee shall be deemed to have abandoned the System and Lessor shall have the right to sell the System (and Lessee hereby appoints Lessor as its agent for such purposes in such circumstances) for its scrap value and to retain the proceeds of such sale to the extent of Lessor's costs and expenses, with any excess proceeds to be delivered to Lessee within sixty (60) days of such a sale.

6.8.6 In addition, if Lessee has so abandoned the System, Lessor shall be permitted to access and retain the full amount of the Decommissioning Assurance, including any interest accrued thereon, as additional compensation for its costs and expenses incurred in connection with its removal, storage and sale of the System and restoration of the Lease Area without any setoff against the amount it may recoup from sale proceeds.

6.8.7 The provisions of this Section survive expiration or termination of this Agreement until the actual removal of the System has been completed hereunder.

ARTICLE 7

PURCHASE OF THE SYSTEM

7.1 **System Purchase Option; Termination for Convenience.** Lessor may purchase the System and terminate this Agreement for convenience at any time after the ____ anniversary of the Commercial Operation Date of the System installed under this Agreement, upon at least sixty (60) days' prior written notice to Lessee; provided, that upon such termination the City shall pay Lessee the applicable Early Termination Price, as set forth in Exhibit D.

7.1.1 Prior to exercising its rights under this section, Lessor and its agents shall be permitted to inspect the System and all records relating to operation, maintenance and warranties applicable to the System.

7.1.2 Upon the payment of the Early Termination Price in accordance with this Section and execution and delivery by Lessee to the Lessor of a bill of sale for the System, (a) title to the System shall pass to the Lessor, free and clear of any liens and encumbrances, and without warranties of any kind except as to title, (b) the remaining period on all third party warranties for the System, and the remaining term of all third party contracts regarding monitoring, operations and/or maintenance of the System, in each case to the extent transferable, will be transferred to the Lessor, (c) as between Lessee and the Lessor, all right, title and interest in and to the Environmental Attributes related to the System arising on and after such date of payment shall accrue to the benefit of or vest in the Lessor or, if applicable, Lessee shall assign to the Lessor rights under any forward sale contract related to such Environmental Attributes as may be in effect as of the date of such payment, if any, but in any case Lessee shall execute and deliver to the Lessor such documentation as may be commercially reasonable to effect such transfer or assignment and (d) this Agreement shall terminate automatically; provided, that, with

respect to the System, the Lessor and the System shall remain subject to the MCEC Obligations until the twentieth (20th) anniversary of the Commercial Operation Date of the System.

7.2 **Purchase Option Upon Expiration**. The Lessor may purchase the System upon the expiration of this Agreement, or any renewal term thereof, if the Agreement is still in effect on such date, at the System' fair market value on an installed and running, or going-concern basis, as determined pursuant to this Section (the "Fair Market Value"). The Lessor shall provide written notice to Lessee of the Lessor's intent to exercise this purchase option, not less than ninety (90) days prior to the expiration date (or else the option shall automatically expire).

7.2.1 Prior to exercising its rights under this section, the Lessor and its agents shall be permitted to inspect the System and all records relating to operation, maintenance and warranties applicable to the System.

7.2.2 Upon the Lessor's payment of the Fair Market Value to Lessee pursuant to this Section and Lessee's execution and delivery to the Lessor of a bill of sale for the System: (a) title to the System shall pass to Lessor, free and clear of any liens and encumbrances, and without warranties of any kind except as to title, (b) the remaining period on all third party warranties for the System, to the extent transferable, will be transferred to the Lessor, (c) as between Lessee and the Lessor, all right, title and interest in and to the Environmental Attributes related to the System arising on and after such date of payment shall accrue to the benefit of or vest in the Lessor or, if applicable, Lessee shall assign to the Lessor rights under any forward sale contract related to such Environmental Attributes as may be in effect as of the date of such payment, if any, but in any case Lessee shall execute and deliver to the Lessor such documentation as may be commercially reasonable to effect such transfer or assignment, and (d) this Agreement shall terminate. If the Fair Market Value has not been paid to Lessee by the Expiration Date, then Lessee shall retain title to the System and remove it from the Premises pursuant to Section 6.8. If the Fair Market Value has not been determined by the expiration date, the Term shall be automatically extended until the date thirty (30) days after such determination has been made, on which date payment of the Fair Market Value to Lessee shall be due, unless Lessee consents to a further extension, or else Lessee shall retain title to the System and remove the System from the Premises pursuant to Section 6.8.

7.2.3 The Fair Market Value shall be determined by the mutual agreement of the Lessor and the Lessee within ten (10) days of the Lessor's provision of notice to Lessee regarding its intent to exercise its purchase option pursuant to this Section (or pursuant to Section 7.1). If the Lessor and Lessee cannot agree upon the Fair Market Value, then Lessee shall submit to the Lessor the names, qualifications and price proposals of at least three nationally recognized independent appraisers with experience and expertise in the solar electric power industry, and the Lessor shall designate among such names the appraiser to value the System. Such appraiser shall act reasonably and in good faith to determine the Fair Market Value and shall set forth such determination in a written opinion delivered to the Parties. The Lessor may elect, within ten (10) business

days of the appraiser's determination of Fair Market Value, to withdraw its exercise of its purchase option pursuant to Section 7.2. In the case of the Lessor's withdrawal of its election to purchase the System under Section 7.2, this Agreement will continue in full force and effect. Subject to the Lessor's right to withdraw its election to purchase the System as set forth in this Section, the valuation made by the appraiser shall be binding on the Parties in the absence of fraud or manifest error. The costs of the appraisal shall be borne by the Parties equally.

7.3 **MCEC Obligations**. In the event that either of the Parties have participated in the Commonwealth Solar program, the Lessee shall comply at all times with all MCEC Obligations during System installation and thereafter for as long as it holds title to the System. If Lessor obtains title to the System hereunder pursuant to Section 7.1, Lessor shall be obligated to MCEC with respect to the System until the tenth (10th) anniversary of the Commercial Operation Date of the System as follows (collectively, the "MCEC Obligations"):

7.3.1 to repair and maintain the System in good operating condition;

7.3.2 to keep the System connected to MCEC's Production Tracking System;

7.3.3 to honor the remaining term of all third party contracts regarding the sale of Environmental Attributes generated by or with respect to the System;

7.3.4 to meet other reasonable requirements of MCEC; and

7.3.5 to notify MCEC and Supplier within three (3) business days of the failure to meet any of the foregoing requirements.

7.4 **MCEC as Third Party Beneficiary**. The provisions of Section 7.3 are for the benefit of MCEC as well as the Parties hereto, and if either of the Parties has participated in the Commonwealth Solar program, shall be enforceable by MCEC as express third-party beneficiaries hereof. Lessor hereby agrees that neither MCEC, nor any Person for whom it may act, shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of Lessee or shall have any obligation or liability to Lessor with respect to this Agreement.

ARTICLE 8

MECHANIC'S LIENS

8.1 **No Liens**. Lessee shall not create, or suffer to be created or to remain, and shall promptly discharge, any mechanic's, laborer's or materialman's lien upon the Premises or the System or the income therefrom and Lessee will not suffer any other matter or thing arising out of Lessee's use and occupancy of the Premises whereby the estate, rights and interests of Lessor in the Premises or any part thereof might be impaired, except in accordance with and subject to the provisions of this lease.

8.2 **Discharge**. If any mechanic's, laborer's or materialman's lien shall at any time be filed against the Premises or the System, Lessee, within ten (10) days after notice to Lessee of the filing thereof, shall cause such lien to be discharged of record by payment, deposit, bond, insurance, order of court of competent jurisdiction or otherwise. If Lessee shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Lessor may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding. Any amount so paid by Lessor and Costs reasonably incurred by Lessor in connection therewith, together with interest thereon at the Interest Rate from the respective dates of Lessor's making of the payment of the cost and expenses, shall be paid by Lessee to Lessor within ten (10) Business Days of Lessor's invoice therefor.

8.3 **Lessor's Obligations**. Lessor shall not directly or indirectly cause, create, incur, assume or suffer to exist any liens on or with respect to the System(s) or any interest therein.

ARTICLE 9

RIGHT TO INSPECT AND ENTER

9.1 **Inspection and Entry**. During the course of construction and completion of the System and any substantial alteration thereto, Lessee shall maintain all plans, shop drawings, and specifications relating to such construction which Lessor, its agents or contractors may examine at reasonable times upon reasonable prior notice for the purpose of determining whether the work conforms to the agreements contained or referenced in this lease. Lessor may, upon reasonable prior notice to Lessee, enter upon the Lease Area and inspect the System for the purpose of ascertaining its condition or whether Lessee is observing and performing the obligations assumed by it under this lease, all without hindrance or molestation from Lessee.

9.2 **Examination of Books of Account.** Lessor shall, upon five (5) Business Days' prior notice to Lessee, have the right, at Lessor's expense, to examine, during normal business hours and at Lessee's place of business, the books of account and other records in Lessee's possession, custody, or control pertaining to Lessee's obligations hereunder or under the Agreement.

9.3 **Notice of Damage**. Lessor shall promptly notify Lessee of any matter it is aware of pertaining to any damage to or loss of the use of the System(s) or that could reasonably be expected to adversely affect the System(s).

ARTICLE 10

ASSIGNMENT AND SUBCONTRACTING.

10.1 **Successors and Assigns; Subcontracting**. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective permitted successors and assigns; provided, that Lessee in its discretion may elect to use such certified and licensed subcontractors as it may choose in performing any of its obligations hereunder and performance of any obligation of Lessee by any such subcontractor shall satisfy such obligation to the extent of such subcontractor's performance.

10.2 **Assignment by Lessor**. Lessor shall not sell, transfer, assign, pledge or cause to be assumed (together, "Assign"; and any such action, an "Assignment") this Agreement, in whole or in part, without the prior written consent of Lessee and its applicable Financing Parties.

10.3 **Assignment by Lessee**. Except as set forth in Section 10.4, Lessee shall not, without the prior written consent of Lessor, assign this Agreement, in whole or in part; provided, Lessor's consent to an assignment by Lessee of any of its rights (and/or a delegation of any of its obligations) shall not be unreasonably withheld, delayed or conditioned if Lessor has been provided with reasonable proof that the proposed assignee: (a) has comparable experience in operating and maintaining a solar electric generating Systems similar to the System; and (b) has the financial capability to maintain the System in the manner required by this Agreement and to perform the obligations under this Agreement; and provided, further, that without the prior consent of Lessor, Lessee may assign this Agreement to an Affiliate of Lessee. Any assignment shall be conditioned upon the assignee explicitly assuming all of Lessee's obligations under this Agreement. Neither the consent of Lessor to an assignment, nor the references in this Agreement to assignees or successors, shall in any way be construed to relieve Lessee (in the event of a partial assignment) or any assignee of the requirement of obtaining the consent of Lessor to any further assignment of this Agreement. Lessee shall deliver to Lessor thirty days' (30) advance written notice of its intent to assign this Agreement.

10.4 **Consent to Assignment for Financing or Leasing**. Lessee may seek financing for the ownership of all or a portion of the System under this Agreement, whether by leasing all or a portion of the System from an Equipment Leasing Party or entering into other arrangements with a Financing Party in the form of an equipment Lease, finance Lease, debt, equity, tax equity or other financing arrangement. Notwithstanding any provisions in this Agreement to the contrary, Lessee may collaterally assign, or assign fully in connection with any financing of the System (which may, in connection with such Assignment, permit the Financing Party to further assign collaterally), its rights, and/or obligations hereunder, or the Agreement in its entirety for

purposes of securing such financing or leasing arrangement. Lessor hereby consents to any such Assignment, provided that:

10.4.1 such Assignment shall not create any Lien or other encumbrance on the Site other than Lessee's rights and obligations contemplated in this Agreement nor on any other real or personal property located on the Site other than the System;

10.4.2 all provisions regarding the entry onto and use of the applicable Lease Area shall remain in effect;

10.4.3 the Financing Party, as applicable, shall enforce its interest and protect the applicable Lease Area in accordance with Lessee's obligations hereunder;

10.4.4 Lessor acknowledges that upon and following an event of default under any financing or leasing documents relating to the System, the Financing Parties, if any, may (but shall not be obligated to) assume, or cause their designees to assume, all of the interests, rights and obligations of Lessee thereafter arising under this Agreement; and

10.4.5 If the rights and interests of Lessee in this Agreement shall be assigned, in whole or in part, as herein provided, and the assignee shall agree in a writing submitted to Lessor to be bound by, and to assume, the terms and conditions hereof and any and all obligations to Lessor arising or accruing hereunder from and after the date of such Assignment (or, in the case of a partial Assignment, to be bound by the portion of this Agreement so assigned and relevant associated obligations to Lessor arising or accruing hereunder from and after the date of such Assignment), Lessee shall be released and discharged from the terms and conditions hereof and each such obligation hereunder from and after such date (or, in the case of a partial Assignment, released and discharged of the terms and conditions hereof so assigned and the associated obligations hereunder from and after such date), and Lessor shall continue this Agreement, or the relevant portion of this Agreement with the assignee as if such person had been named as Lessee under this Agreement; provided that such assignee: (a) has experience in operating and maintaining solar electric generating System similar to the System and in similar geographic location and climate comparable to that in which the System is located and personnel qualifications and performance record contained in Lessee's proposal; and (b) has financial capability to maintain the System in the manner required by this Agreement and to perform the obligations under this Agreement, each substantially similar to that of Lessee; and provided, further, that if Lessee assigns this Agreement, or any portion hereof, to a Financing Party as provided herein, Lessor acknowledges and agrees that such persons shall not be personally liable for the performance of such assigned obligations hereunder except to the extent of the interest of the Financing Parties in the System. Notwithstanding any such Assignment to one or more Financing Parties or a designee thereof, Lessee shall not be relicensed and discharged from and shall remain liable for any and all obligations to Lessor arising or accruing hereunder (and, in the case of a partial Assignment, for the obligations accruing after the date of such Assignment with respect to obligations accruing under the unassigned portion of the Agreement). Lessee shall not, however, have any liability for any action or omission of the Financing Party hereunder.

10.4.6 Lessor agrees to sign, execute and deliver each such instrument or other document as Lessee or its Financing Parties, if any, may reasonably request to satisfy the requirements of any Financing Party with respect to or in connection with any financing or leasing of the System. Lessor also agrees, to the extent required by a Financing Party, if any, to provide Lessee and/or a Financing Party with such information about Lessor or the Site as Lessee, a Financing Party may reasonably request.

10.5 **Rights of Financing Parties**.

10.5.1 A Financing Party may perform, but shall not be obligated to perform, any of Lessee's obligations hereunder, including holding and conveying title to the System. The rights of Lessee hereunder shall apply, to the extent relevant, *mutatis mutandis* to any Financing Party.

10.5.2 Any Financing Party shall each have the benefit of the lease to the Site provided to Lessee.

10.5.3 **Financing Parties as Third Party Beneficiaries**. The provisions of this Section 10.5 are for the benefit of any Financing Party as well as the Parties hereto, and shall be enforceable by any Financing Party as express third-party beneficiaries hereof. Lessor hereby agrees that neither a Financing Party, nor any Person for whom they may act, shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of Lessee or shall have any obligation or liability to Lessor with respect to this Agreement except to the extent any of them becomes a party hereto pursuant to Sections 10.4 and 10.5.

ARTICLE 11

DEFAULT AND REMEDIES.

11.1 **Events of Default.** The following events shall be deemed to be Events of Default under this Lease:

11.1.1 Lessee fails to pay when due any sum of money becoming due to be paid to Lessor under this Lease, whether such sum be any installment of the rent reserved by this Lease, any other amount treated as additional rent under this Lease, or any other payment or reimbursement to Lessor required by this Lease, whether or not treated as additional rent under this Lease, and such failure shall continue for a period of twenty (20) business days after written notice that such payment was not made when due, but if any such notice shall be given, for the twelve (12) month period commencing with the date of such notice, the failure to pay within twenty (20) business days after due any additional sum of money becoming due to be paid to Lessor under this Lease during such period shall be an Event of Default, without notice.

11.1.2 Lessee fails to perform or observe any term or condition of this Lease which, because of its character, would immediately jeopardize Lessor's interest

(such as, but without limitation, violation of laws governing the discharge of Hazardous Materials).

11.1.3 Lessee fails to comply with any term, provision or covenant of this Lease which is not provided for otherwise in this ARTICLE 11 and shall not cure such failure within thirty (30) days after written notice of such failure to Lessee, which period shall be extended for an additional period not to exceed thirty (30) days if such failure cannot be cured within such initial 30-day period provided Lessee has commenced such cure within such period and is diligently prosecuting the same to completion.

11.1.4 Lessee fails to vacate the Premises immediately upon termination of this Lease, by lapse of time or otherwise.

11.1.5 Lessee is Bankrupt.

11.1.6 Lessee vacates or abandons the Premises.

11.1.7 Lessee's interest in this Lease devolves upon or passes to any person, whether by operation or law or otherwise, except as expressly permitted hereunder.

11.2 **Lessor Remedies.** Upon the occurrence of any of the Events of Default described herein, Lessor shall have the option to pursue any one or more of the following remedies without any notice or demand whatsoever, concurrently or consecutively and not alternatively:

11.2.1 Lessor may terminate this Lease or terminate Lessee's right to possession only without terminating the Lease.

11.2.2 Upon any termination of this Lease, whether by lapse of time or otherwise, Lessee shall surrender possession and vacate the Lease Area immediately and deliver possession thereof to Lessor, and Lessee hereby grants to Lessor full and free lease to enter into and upon the Lease Area in such event and to repossess Lessor of the Lease Area and to expel or remove Lessee and any others who may be occupying or be within the Premises and to remove Lessee's signs and other evidence of tenancy and all other property of Lessee therefrom, subject only to the provisions in on Removal of the System, without the Lessor being deemed in any manner guilty of trespass, eviction or forcible entry or detainer and without incurring any liability for any damage resulting therefrom, Lessee waiving any right to claim damages for such re-entry and expulsion, and without relinquishing Lessor's right to rent or any other right given to Lessor under this Lease or by operation of law.

11.2.3 Upon any termination of this Lease, whether by lapse of time or otherwise, Lessor shall be entitled to recover as damages all rent, including any amounts treated as additional rent under this Lease, and other sums due and payable by Lessee on the date of termination, plus as liquidated damages and not as a penalty, an amount equal to the sum of: (a) an amount equal to the then present value of the rent reserved in this Lease as determined by using the Applicable Federal Rate as published

by the United States Department of Treasury appropriate for the remaining term for the residue of the stated term of this Lease including any amounts treated as additional rent under this Lease and all other sums provided in this Lease to be paid by Lessee.

11.2.4 Lessor may, but need not, enter into a new lease of the Premises or any part thereof for such rent and upon such terms as Lessor, in its sole discretion, shall determine (including the right to relicense the premises for a greater or lesser term than that remaining under this Lease and the right to change the character or use made of the Premises). In connection with or in preparation for any relicensing, Lessor may, but shall not be required to, make repairs or alterations to the Premises to the extent Lessor deems necessary or desirable, and Lessee shall, upon demand, pay the cost thereof, together with Lessor's expenses of relicensing including.

11.2.5 Until such time as Lessor shall elect to terminate the Lease and shall thereupon be entitled to recover the amounts specified herein, Lessee shall pay to Lessor upon demand the full amount of all rent, including any amounts treated as additional rent under this Lease and other sums reserved in this Lease for the remaining term, together with the costs of repairs or alterations and Lessor's expenses of relicensing and the collection of the rent accruing therefrom (including attorney's fees), as the same shall then be due or become due from time to time, less only such consideration as Lessor may have received from any relicensing of the Premises; and Lessee agrees that Lessor may file suits from time to time to recover any sums falling due under this section as they become due. Any proceeds of relicensing by Lessor in excess of the amount then owed by Lessee to Lessor from time to time shall be credited against Lessee's future obligations under this Lease but shall not otherwise be refunded to Lessee or inure to Lessee's benefit.

11.2.6 Lessor, without being under any obligation to do so and without waiving any Lessee default, may remedy such other default for the account of Lessee, immediately upon notice in the case of emergency or if necessary to protect public health or safety, or to avoid forfeiture of a material right, or in any other case only provided Lessee shall fail to remedy such default within thirty (30) days, or such longer period as may be required due to the nature of such default (provided Lessee has commenced and is diligently prosecuting a cure), after Lessor notifies Lessee in writing of Lessor’s intention to remedy such other default. All costs reasonably incurred by Lessor to remedy such default (including, without limitation, all reasonable attorney’s fees), shall be at the expense of Lessee.

11.2.7 Regardless of whether Lessor exercises its rights pursuant to Section 11.2.6 of this Agreement, Lessor shall have the right, but not the obligation, and to the extent permitted by Applicable Legal Requirements, to take possession of the System until Lessee demonstrates to the reasonable satisfaction of Lessor that the events giving rise to the Default Event have been cured, and that Lessee has taken all reasonably necessary steps to ensure that such events shall not re-occur. Lessor shall not be liable to Lessee for any damages, losses or claims sustained by or made against Lessee as a result of Lessor’s exercise of possession and operational control of the System except to the

extent such damages, losses or claims result from the negligence or willful misconduct of Lessor.

11.2.8 If, on account of any breach or default by Lessee in Lessee's obligations under the terms and conditions of this Lease, it shall become necessary or appropriate for Lessor to employ or consult with an attorney concerning or to enforce or defend any of Lessor's rights or remedies arising under this Lease or to respond to or interpret an inquiry of Lessee under the Lease, Lessee agrees to pay all Lessor's attorney's fees and court costs so incurred. Lessee expressly waives any right to trial by jury.

11.2.9 Pursuit of any of the foregoing remedies shall not preclude pursuit of any of the other remedies provided in this Lease or any other remedies provided by law (all such remedies being cumulative), nor shall pursuit of any remedy provided in this Lease constitute a forfeiture or waiver of any rent due to Lessor under this Lease or of any damages accruing to Lessor by reason of the violation of any of the terms, provisions and covenants contained in this Lease.

11.2.10 No act or thing done by Lessor or its agents during the term shall be deemed a termination of this Lease or an acceptance of the surrender of the Premises, and no agreement to terminate this Lease or accept a surrender of said Premises shall be valid, unless in writing signed by Lessor.

ARTICLE 12

CASUALTY.

If the Premises is damaged by fire or other casualty whatsoever so that such damage may reasonably be expected to materially and adversely disrupt the Lessee's operations at the Premises for more than ninety (90) days, then the Lessee may at any time following such fire or other casualty so long as such material and adverse disruption is continuing, terminate this Lease upon sixty (60) days written notice to the Lessor. Any such notice of termination shall cause this Lease to expire with the same force and effect as though the date set forth in such notice were the date originally set as the expiration date of this Lease, and the Parties shall make an appropriate adjustment, as of such termination date, with respect to payments due to the other under this Lease. Nothing herein shall relieve Lessee from its obligations under Section 6.8.1 to restore the Lease Area.

ARTICLE 13

INSURANCE

13.1 **Coverages.** Lessor shall maintain the following insurance coverages in full force and effect throughout the Term:

13.1.1 Workers' Compensation Insurance as may be from time to time required under applicable federal and state law;

13.1.2 Commercial General Liability Insurance on an occurrence (not claims-made) form, including premises and operations, personal injury, broad form property damage, products/completed operations, contractual liability and independent contractors protective liability all with minimum combined single limit liability of two million dollars ($2,000,000) in the aggregate and one million dollars ($1,000,000) per occurrence;

13.1.3 Automobile Liability Insurance (including owned, non-owned and hired) with limits of not less than one million dollars ($1,000,000) combined single limit and in the aggregate; and

13.1.4 All Risk Property Coverage and Boiler and Machinery Coverage, or All Risk Builder's Risk Insurance during construction, against damage to the System during the Term in an amount not less than the full replacement cost of the System, with commercially reasonable sub-limits and deductibles. Such insurance shall provide for a waiver of the underwriters' right to subrogation against the Lessor.

13.1.5 Excess Umbrella Liability Insurance in an amount not less than five million dollars ($5,000,000).

13.2 **Certificates of Insurance.** Lessee shall furnish current certificates evidencing that the insurance required under Section 13.1 is being maintained. Each insurance policy provided hereunder shall contain a provision whereby the insurer agrees to give the other Party thirty (30) days' written notice before the insurance is cancelled or materially altered. The Lessee's insurance policies shall be written on an occurrence basis and shall include the Lessor as an additional insured as its interest may appear.

13.3 **Insurer Qualifications**. All insurance maintained hereunder shall be maintained with companies authorized to do business in Massachusetts and either rated no less than A- as to Policy Holder's Rating in the current edition of Best's Insurance Guide (or with an association of companies each of the members of which are so rated) or having a parent company's debt to policyholder surplus ratio of 1:1.

ARTICLE 14

INDEMNIFICATION

14.1 **Indemnification of Lessor**. Lessee shall indemnify, save harmless and defend Lessor and its officers, employees, and agents (collectively, the "***Lessor Indemnified Parties***") from and against all liabilities, losses, damages, penalties, costs, and expenses, including reasonable attorneys' fees, that may be imposed upon or incurred by or asserted against any Lessor Indemnified Party by reason of any of the following occurrences during the Term:

14.1.1 any breach by Lessee of its obligations, covenants, representations or warranties contained in this lease or made pursuant thereto;

14.1.2 any work or thing done in, on or about the Premises or any part thereof by Lessee, its agents, contractors, subcontractors, servants, employees, or invitees;

14.1.3 any negligence on the part of Lessee or any of its agents, contractors, subcontractors, servants, employees, licensees or invitees in, on or about the Premises or in connection with the System;

14.1.4 any accident, injury, or damage to any person or property occurring in, on or about the Lease Area or any part thereof, except to the extent caused by the negligence or intentional misconduct of Lessor or any of its officers, employees or agents; and

14.1.5 any failure on the part of Lessee or any of its agents, contractors, subcontractors, servants, employees, licensees or invitees in, on or about the Premises to fully comply with the Applicable Legal Requirements.

In case any action or proceeding is brought against any Lessor Indemnified Party by reason of any such claim, Lessor may elect that Lessee defend such action or proceeding with counsel approved by Lessor. Upon written notice from Lessor of such election, Lessee shall defend such action or proceeding at Lessee's expense to the reasonable satisfaction of Lessor.

14.2 **Survival**. The provisions of this ARTICLE 14 shall survive the expiration or earlier termination of the Agreement.

ARTICLE 15

DISPUTE RESOLUTION.

15.1 **Binding Arbitration**. The Parties shall meet, confer and negotiate in good faith and attempt to resolve any dispute, controversy or claim arising out of or relating to the Agreement or the breach, interpretation, termination or validity thereof (a "Dispute"). Any Dispute that is not settled to their mutual satisfaction within the applicable notice or cure periods provided in this Agreement shall be settled by arbitration between the Parties conducted in Boston, Massachusetts, and in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect on the date that a Party gives notice of its demand for arbitration under this Section. The submitting Party shall submit such Dispute to arbitration by providing a written demand for arbitration to the other Party and the Parties shall select a single neutral arbitrator. If the Parties cannot agree on a single neutral arbitrator within fifteen (15) days thereafter, then either Party may request that the American Arbitration Association select and appoint a neutral arbitrator who shall act as the sole arbitrator. The Parties may engage in discovery in connection with the arbitration as provided by the Massachusetts statutes and shall be entitled to submit expert testimony or written documentation in such arbitration proceeding. The decision of the arbitrator shall be final and binding upon the Parties and

shall be set forth in a reasoned opinion, and award may be enforced thereon by either Party in a court of competent jurisdiction; provided, however, that the arbitrator shall not have the authority to award punitive, exemplary or analogous damages. Any award of the arbitrator shall include interest from the date of any damages incurred for breach or other violation of this Agreement at the Interest Rate. Each Party shall each bear the cost of preparing and presenting its own case, provided, however, that the Parties hereby agree that the prevailing party in such arbitration shall be awarded its reasonable attorney's fees, expert fees, expenses and costs incurred in connection with the dispute. The cost of the arbitration, including the fees and expenses of the arbitrator, shall initially be shared equally by Parties, subject to reimbursement of such arbitration costs and attorney's fees and costs to the prevailing party. The arbitrator shall be instructed to establish procedures such that a decision can be rendered within one-hundred eighty (180) calendar days of the appointment of the arbitrator.

15.2 **Exceptions to Arbitration Obligation**. The obligation to arbitrate shall not be binding upon any Party with respect to (a) requests for preliminary injunctions, temporary restraining orders, specific performance, or other procedures in a court of competent jurisdiction to obtain interim relief when deemed necessary by such court to preserve the status quo or prevent irreparable injury pending resolution by arbitration of the actual Dispute or (b) actions to collect payments not subject to a bona fide Dispute or (c) claims permitted hereunder against third parties.

ARTICLE 16

NOTICES.

16.1 **Notice**. Unless otherwise provided herein, any notice provided for in this Agreement shall be hand delivered, sent by registered or certified United States Mail, postage prepaid, or by commercial overnight delivery service, or transmitted by facsimile, and shall be deemed served or delivered to the addressee or its office when received at the address for notice specified herein when hand delivered, upon confirmation of sending when sent by facsimile (if sent during normal business hours or the next business day if sent at any other time), on the day after being sent when sent by overnight delivery service, or five (5) business days after deposit in the mail when sent by United States mail.

16.2 **Financing Party Notice**. Any notice or other communication which Lessor shall desire or is required to give to or serve upon a Financing Party in accordance with the terms of this Agreement shall be in writing and shall be served in accordance with the provisions of Section 16.1, addressed to such Financing Party at such party's addresses provided in writing by a Financing Party or by the Lessee, and any notice or other communication which the Financing Party shall desire or be required to give to or serve upon Lessor shall be deemed to have been duly given or served if sent in accordance with the provisions of Section 16.1 or at such other address as shall be designated by Lessor by notice in writing given to such Financing Party in accordance with the provisions of this Section.

16.3 **Notice Addresses**

Lessor Address:

Town Manager
Town of Acton
472 Main Street
Acton, MA 01720

Lessee Address:

16.4 **Address for Rent Payment**. All rent payments under this Agreement shall be sent to the Lessor's address as provided in Section 16.3 and shall be sent by regular first class mail postage prepaid or as otherwise agreed by the Parties.

ARTICLE 17

MISCELLANEOUS

17.1 **Non-interference**. Lessee shall operate, maintain and repair the System in a manner that will not obstruct or interfere with Lessor's use of the Premises or the rights of any other occupants of the Premises and Lessee will not injure or annoy any occupants of the Premises. In the event interference occurs, Lessee agrees to take all reasonable steps necessary to eliminate such interference promptly, but no later than thirty (30) days from notification by the Lessor. Lessee will use its best efforts to maintain its System in a manner that does not interfere with the Premises or improvements to the Premises. Lessor may construct, reconstruct, modify or make alterations to the Premises so long as such activities do not materially interfere (including shading) with the operation of the System.

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

17.3 **Subordination to Existing Licenses, Easements and Rights of Way**. Lessee acknowledges and understands that this Solar Lease Agreement, and all rights of Lessee are subject and subordinate to all existing Licenses, easements, rights of way, declarations, restrictions or other matters of record and all existing agreements of the Lessor with respect to the Premises. Lessor reserves the right to grant additional licenses, easements, Licenses or rights of way, whether recorded or unrecorded, as may be

necessary, which do not unreasonably interfere (including shading) with Lessee's use of the Premises and the operation of the System.

17.4 **Hazardous Materials**. The Lessee shall not, and shall not direct, suffer or permit any of its agents, contractors, subcontractors, employees, licensees or invitees at any time to manufacture or dispose of in or about the Premises any Hazardous Materials, including but not limited to flammables, explosives, and radioactive materials. Lessee agrees to comply with all Applicable Legal Requirements pertaining to the use, storage and disposal of Hazardous Materials ("***Environmental Laws***") at the Premises. Lessee shall indemnify, defend and hold harmless Lessor and its agents, representatives and employees from any and all liabilities and costs (including any and all sums paid for settlement of claims, litigation, expenses, attorneys' fees, consultant and expert fees) of whatever kind or nature, known, or unknown, resulting from any violation of Environmental Laws caused by Lessee or Lessee's agents, contractors, subcontractors, employees, licensees or invitees at the Premises. In addition, Lessee shall reimburse Lessor for any and all costs related to investigation, clean up and/or fines incurred by Lessor for non-compliance with Environmental Laws, that are caused by Lessee or Lessee's agents, contractors, subcontractors, employees, licensees or invitees s at the Premises. Lessor reserves the right to inspect the Licensed Area for purposes of verifying compliance with these Hazardous Materials requirements.

17.5 **Limited Effect of Waiver**. The failure of either Party to enforce any of the provisions of this Agreement, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision, in any other instance or of any other provision in any instance.

17.6 **Survival**. In addition to the other provisions of this Agreement that shall survive any expiration or termination hereof in accordance with the explicit terms thereof, the provisions of ARTICLE 1 (Definitions), ARTICLE 10 (Assignment and Subcontracting), ARTICLE 14 (Indemnity) ARTICLE 15 (Dispute Resolution), ARTICLE 16 (Notices), and ARTICLE 17 (Miscellaneous) shall survive the expiration or termination of this Agreement for any reason; provided, that the survival of any particular provision or set of provisions shall be limited in duration if and to the extent such survival is explicitly limited herein or otherwise limited by Applicable Legal Requirements.

17.7 **Severability**. If any term, covenant or condition in this Agreement shall, to any extent, be invalid or unenforceable in any respect under the laws governing this Agreement, the remainder of this Agreement shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by Applicable Legal Requirements and, if appropriate, such invalid or unenforceable provision shall be modified or replaced to give effect to the underlying intent of the Parties and to the intended economic benefits of the Parties.

17.8 **Nonrecourse**. Redress for any claim against the Lessor under this Lease shall be limited to and enforceable only against and to the extent of the Lessor's interest in the Premises and only to the extent necessary for Lessee to exercise its rights

under this Lease. The obligations of the Lessor and the Lessee under this Lease are not intended to and shall not be personally binding on, nor shall any resort be had to the private properties of, any of the Lessor's officers, employees, agents nor of the Lessee's trustees or board of directors and officers, as the case may be, or any beneficiaries, employees, agents or the like thereof. In no event shall the Lessor ever be liable to the Lessee for any indirect or consequential damages under the provisions of this Lease, and in no event shall the Lessee ever be liable to the Lessor for any indirect or consequential damages hereunder.

17.9 **Authority**. Each Party covenants, warrants and represents that it has full power and authority to enter into this Lease.

[The remainder of this page has been intentionally left blank.]

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

LESSOR:

By:_____
Name:
Title:

LESSEE:

By:_____
Name:
Title:

EXHIBIT A

HOST REQUEST FOR PROPOSALS

EXHIBIT B

SUPPLIER NON-PRICE PROPOSAL

EXHIBIT C

DESCRIPTION OF SYSTEM

EXHIBIT D

ACCEPTED PRICE PROPOSAL

EXHIBIT E

DESCRIPTION OF THE PREMISES

Address:

Legal Description:

EXHIBIT F

PLAN OF LEASE AREA